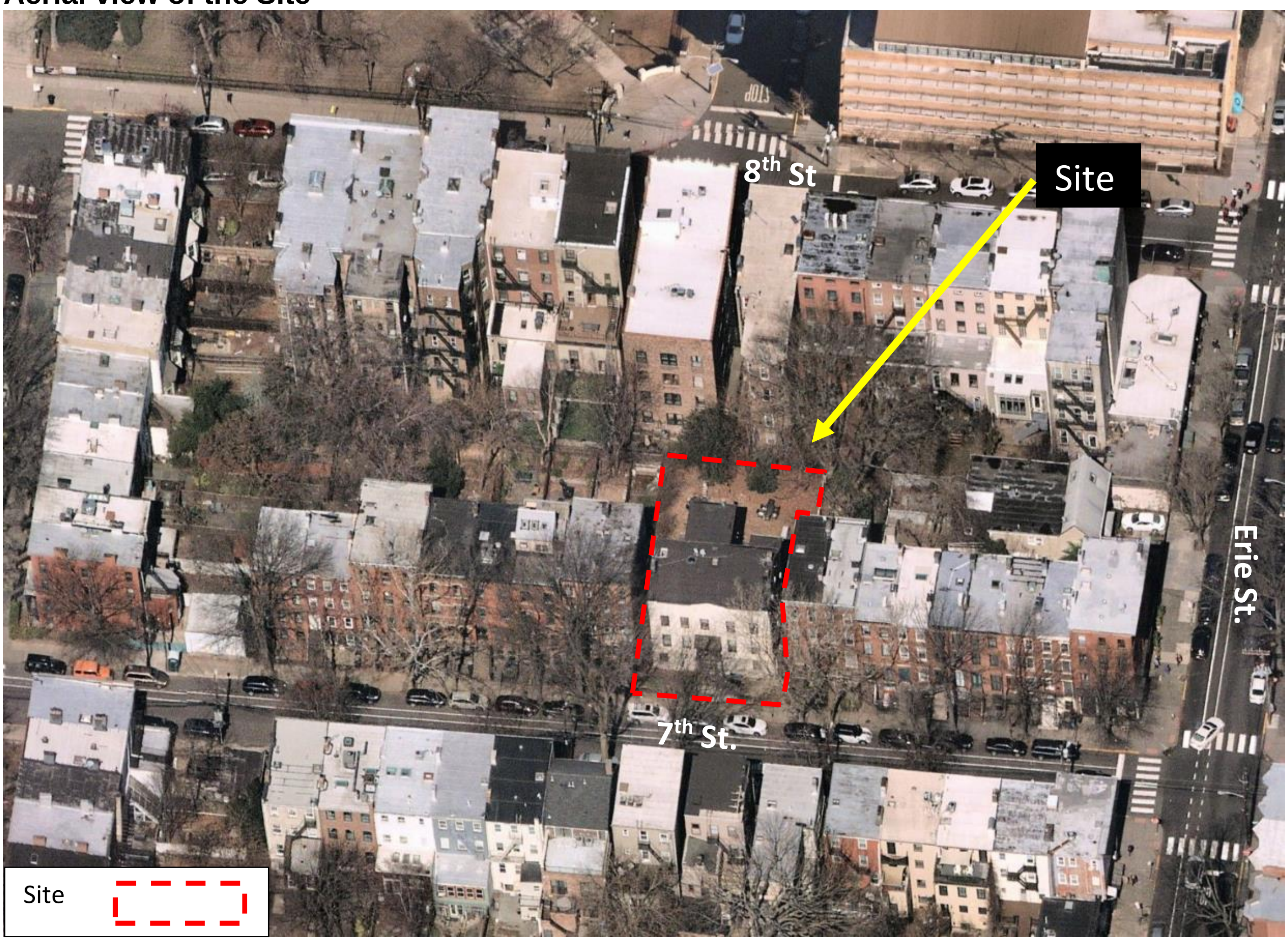
CITY OF JERSEY CITY

Department of Housing, Economic Development & Commerce
Division of City Planning

Interdepartmental Memorandum

DATE: 12/1/23
TO: Zoning Board Commissioners
FROM: Francisco Espinoza, Senior Planner
RE: Case # Z21-074
238-240 7th Street., Block: 10005 Lot: 24
Preliminary & Final Major Site Plan w 'D' Variance

Aerial view of the Site



Aerial View of Site.

APPLICATION BACKGROUND + PROPOSAL

Existing Conditions: The subject property, known as Block 10005, Lot 24, is located at 238-240 7th St. The property is approximately a 55.75 ft by 100 ft lot totaling 5,575 SF. The min lot size in the H zone is 18 X 100 or 1,800 SF, this lot is over triple the lot size of the standard. The site has a 4-Story, 5 unit building in the Hamilton Park Historic District fronting on 7th St.

Proposed Conditions: The applicant proposes to expand the building in the rear to accommodate a 3-story extension and bring the total number of units from 5 to 8. The project will restore the buildings' historic features. In addition, a stormwater detention system will be added in the rear to assist with rainwater and flooding concerns.

STAFF COMMENTS

Applicant sought and received approval from the Historic Preservation Commission at its October 23rd, 2023, meeting under application **H20-357.**

Use Variance:

In terms of use, the site is oversized at 5,575 SF therefore the proposal is suited for the property. Beyond the use itself, the proposed density should be considered. The implied density in Historic Districts is **75 units / acre.** The proposed density is nearly **63 units/acre.** There are no other variances that are being requested other than the use.

It is the opinion of staff that the applicant meets the following intent of the Land Use Objectives of the Jersey City Master Plan:

"Continue efforts to enhance residential neighborhoods" – (Jersey City Master Plan Land Use Element, Chapter 3, 85)

"Ensure the City's available housing is balanced and meets the needs of all current and future city residents" – (Jersey City Master Plan Land Use Element, Chapter 3, 85)

"Recognize and promote the richness of the City's historic assets and cultural diversity" – (Jersey City Master Plan Land Use Element, Chapter 3, 90)

It is also the opinion of staff that this proposal advances the following purposes of Zoning, per NJSA 40:55D-2 of Municipal Land Use Law:

b. "To secure safety from flood;"

- The applicant is proposing a water retention system in the rear yard to mitigate rainwater. The site is not located in the flood zone.

c. "To provide adequate light, air and open space;"

- The applicant is retaining the current rear yard setback at 41 ft which is more than what is required, 30 ft.

e. "To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment."

- In terms of positive criteria, the proposed multifamily is appropriate for the oversized nature of the lot and the proposed bulk associated with the multifamily use is consistent with the character and scale of the surrounding context. The proposal will also conform to the lot coverage, side yard and rear yard requirements per the H standards. A density of 75 un/ac is the permitted amount in this zone for the residential properties on the block.

- As far as negative criteria, the existing density standard along with other non-conformities help validate that the use is not out of character for the neighborhood. The proposal is in line with what the zone permits and therefore the benefits outweigh the detriments.

j. "To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;"

- The applicant is restoring the home to what it would have looked like historically.

On-site parking for projects of less than ten (10) dwelling units is prohibited.

Staff Recommends Approval, provided that the applicant complies with all conditions imposed by the Historic Preservation Commission under its approval of H20-357.

STAFF RECOMMENDED CONDITIONS

All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding. The staff recommends the following conditions to mitigate the negative criteria:

1. All materials and color selections shall be shown on Final Plans. No change to the facade and site design, including materials as well as any changes that may be required by the Office of Construction Code, shall be permitted without consultation with planning staff and approval by the zoning board.
2. Applicant shall provide an affidavit from the architect of record representing that the constructed project is consistent with final approved plans.
3. A copy of the memorialized resolution with amended deed shall be filed with the Hudson County Register's Office with proof of such filing to be submitted to the Division of City Planning prior to application for construction permits.
4. The applicant shall comply with all the conditions imposed by the Historic Preservation Commission as well as in the COA issued by the Senior Historic Preservation Specialist Maggie O'Neill on 10/23/23.

Site Photos

APPENDIX: REQUIRED PROOFS FOR VARIANCES

- **D(1) USE VARIANCE (NJSA 40:55D-70D):**
  - **Hardship**

    Prior to the 1948 Land Use Law amendments, a use variance could only be granted if an undue hardship was proven. NJSA 40:55D-70d states that “in particular cases for special reasons.” certain variances may be granted by the Board of Adjustment. These “special reasons” are also often referred to as positive criteria.

  - In 1952, Ward v. Scott NJ 117 clarified that “special reasons” was bound by the purposes of general zoning.

  - **Positive Criteria**

    Medici v BPR, 107 NJ 1 (1987) sets forth the standard for reviewing a use variance, with the positive criteria requiring that the application shows;

    1. That the purposes of zoning are advanced, and
    2. That the use is particularly suited to the property, and
    3. Must also meet the enhanced burden of proof – the Applicant must reconcile why the use is not listed in the permitted or conditional uses for this zone.

  - **Negative Criteria**

    No relief may ever be granted unless it can be done:
    1. without substantial detriment to the public good, and
    2. without substantially impairing the intent and purpose of the zone plan and zoning ordinance

    1) Substantial detriment to the public good – Balancing Requirement.
    The focus of this first prong of the negative criteria is on the variance’s effect on the surrounding properties. The board must weigh the zoning benefits from the variance against the zoning harms. In many instances, conditions of approval address the negative criteria standard and help to mitigate the impact of the variance.

    2) Substantial impairment to the intent and purpose of the zone plan and ordinance.
    The focus of this second prong of the negative criteria is on the power to zone based on ordinance and not variance