

# CITY OF JERSEY CITY

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

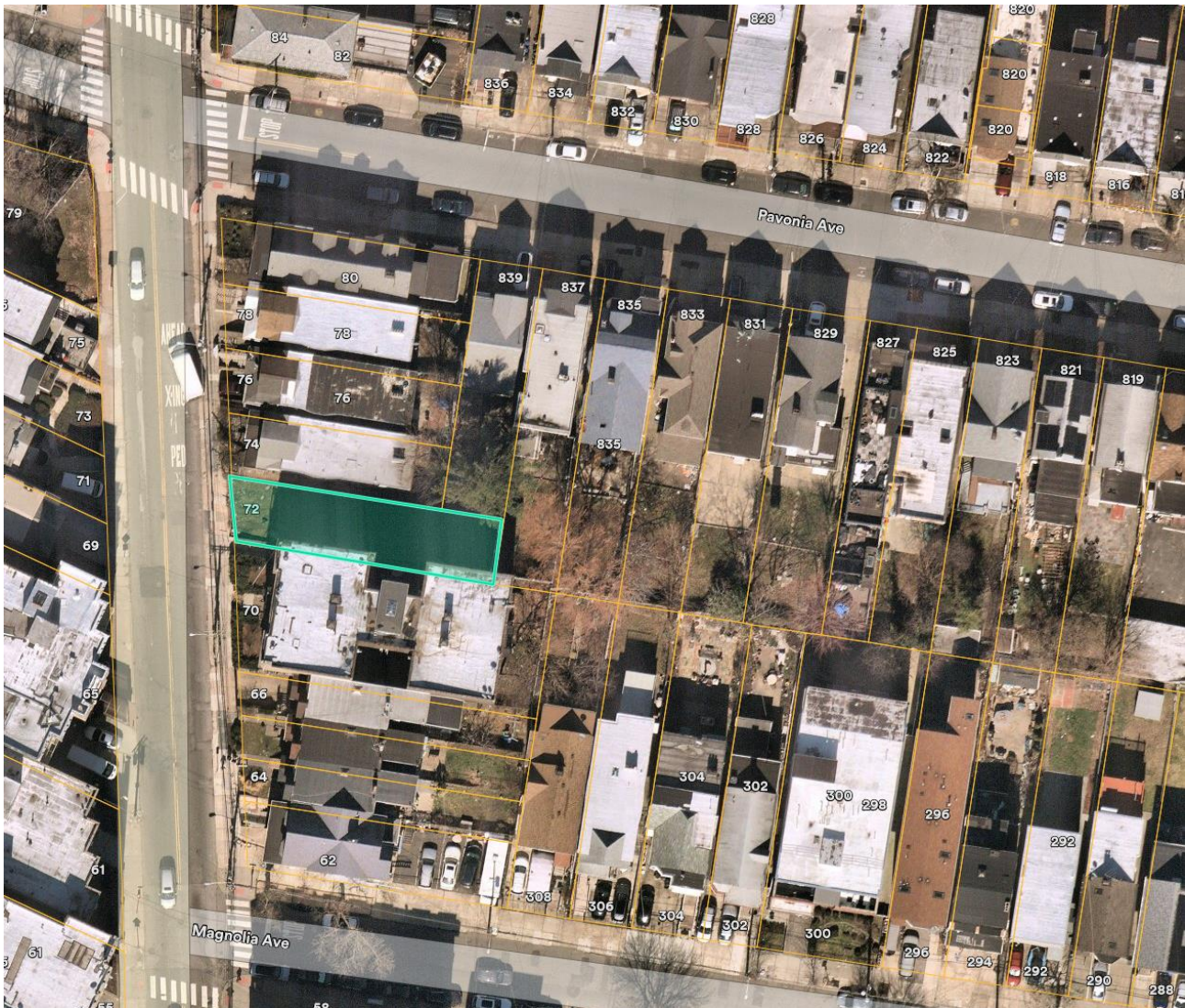


## Memorandum

DATE: May 20, 2024  
TO: Planning Board Commissioners  
FROM: Matt Ward, AICP, PP, Supervising Planner  
RE: Case P2023-0035  
72 Tonnele Ave  
Minor Site Plan with Variances  
Staff Comments

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### AERIAL (approximate boundaries)



## **APPLICATION SUMMARY**

The applicant is proposing a four-story seven-unit residential building. The applicant is requesting the following variance: Maximum building depth.

The subject site is located on Tonnele Avenue between Magonlia Avenue and Pavonia Avenue in Zone 4 of the Journal Square 2060 Redevelopment Plan. The site is irregularly shaped, 25' wide by 106' wide. The site is a vacant interior lot located next to a residential building. The proposed project has no off-street parking but does include bike parking within the building.

## **VARIANCES REQUESTED**

Description	Required	Proposed	Staff Comments
Maximum Building Depth	70' from right-of-way	81.31' from right-of-way	See addendum

## **STAFF COMMENTS**

1. Applicant shall provide testimony regarding the variance requested.
2. Applicant shall provide testimony for, but not limited to, the following: overall design, façade materials, unit mix and unit sizes, average unit sizes, bulk, setbacks, floor to ceiling heights, side yard access and coordination, trash removal, rear yard design, landscaping, roof design, mechanicals.
3. Off-street parking is not permitted on lots less than 60 feet wide. This lot is 25 feet wide. Parking is not permitted.

## **STAFF RECOMMENDED CONDITIONS**

In the event a motion is made to approve this application, staff recommends the following conditions:

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 and approval by planning staff.
2. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
3. That the applicant comply with all Jersey City review agent comments.
4. With exception of the proposed tree spacing, all street trees and landscaping shall be installed in accordance with 345-66, prior to an issuance of a Certificate of Occupancy.
5. Architect of record shall provide an affidavit confirming the development is built in accordance with the approved plans prior to the issuance of the first certificate of occupancy.
6. The memorialized resolution shall be recorded with the office of the County Registrar and made part of the deed. In addition, documentation of same shall be submitted to the Division of City Planning prior to application for construction permits.
7. Applicant and Owners shall comply with all conditions of approval set forth on the record by the planning board and/or the Division of City Planning staff.

## **ADDENDUM**

### **FINDINGS NEEDED FOR “c” VARIANCE RELIEF**

The following findings are required for “c” Variance Relief:

- 1) Hardship “C1” Variance Standard under N.J.S.A. 40:55(D)-70(c)(1):
  - a. Pertinent information: Exceptional narrowness, shallowness, or shape of the property, exceptional topographical conditions, and/or other exceptional situations.
  - b. Based on this information, the strict application of the Ordinance would result in exceptional difficulties to, and undue hardships upon, the developer of such property.
  - c. The conditions causing hardship are peculiar to the subject property, and do not apply generally to other properties in the same district.
  - d. Other means to cure the deficiency (such as purchase or sale of property) do not exist, or are unreasonable or impracticable.
  - e. The variance requested is the reasonable minimum needed.
- 2) Flexible “C2” Variance Standard under N.J.S.A. 40:55D-70(c)(2):
  - a. The justifications must relate to a specific piece of property;
  - b. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement;
  - c. The variance can be granted without substantial detriment to the public good;
  - d. The community benefits of the deviation would substantially outweigh any detriment and;
  - e. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

### **NEGATIVE CRITERIA**

The language for negative criteria is first introduced in 1948 through a legislative amendment to the state land use laws.

*“...provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.”*

**No relief may ever be granted unless it can be done WITHOUT:**

- 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.

In *North Bergen Action Group v. Planning Board (1991)*, the Court noted:

*"the greater the disparity between the variance granted and the ordinance's restriction, the more compelling and specific the proofs must be that the grant of the variance"*

*"Because zoning restrictions are enacted to further municipal planning and zoning objectives, it is fundamental that resolutions granting variances undertake to reconcile the deviation authorized by the Board with the municipality's objectives in establishing the restriction."*

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