

CITY OF JERSEY CITY

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



DATE: 8/17/2023
TO: Planning Board Commissioners
FROM: Markian Borkowsky, AICP, Project Manager
Matt Ward, AICP, PP, Supervising Planner
RE: 361 Tonnele Avenue
Case P23-016
Preliminary and Final Major Site Plan with Variances
Staff Report

SITE LOCATION



(Approximate boundary of site highlighted above).

APPLICATION SUMMARY

The applicant is proposing the construction of an automobile and truck sales lot with a mobile, temporary trailer as a sales office of 240 sf² with two parking spaces. The lot is an irregularly shaped parking lot along U.S. Route 1/9.

The applicant is requesting the following variances: Minimum perimeter setback

BACKGROUND

The subject site is 11,747 square feet and located along Tonnele Avenue just north of Tonnele Circle. The site is an irregularly shaped lot used as a parking lot. The address for the subject site is 361 Tonnele Avenue, which is also known as Block 4101 Lot 1 on the Jersey City Tax Map.

The subject site is located in a Highway Commercial Zone.

VARIANCES REQUESTED

Description	Required	Proposed	Staff Comments
Minimum perimeter setback	30 ft	15 ft	C1 See addendum.

STAFF COMMENTS

1. Applicant shall provide testimony regarding the variances requested.
2. Applicant shall confirm the payment-in-lieu amount to satisfy the Street Tree requirement for this property.

STAFF RECOMMENDED CONDITIONS

Should the board make a motion 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. 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.
5. 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.
6. Approval of application is contingent upon favorable review from New Jersey Department of Transportation of a Letter of No Interest Determination.
7. Applicant shall provide a payment-in-lieu of nine (9) street trees to the sum of \$16,650 to be paid to the City of Jersey City.

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.

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