

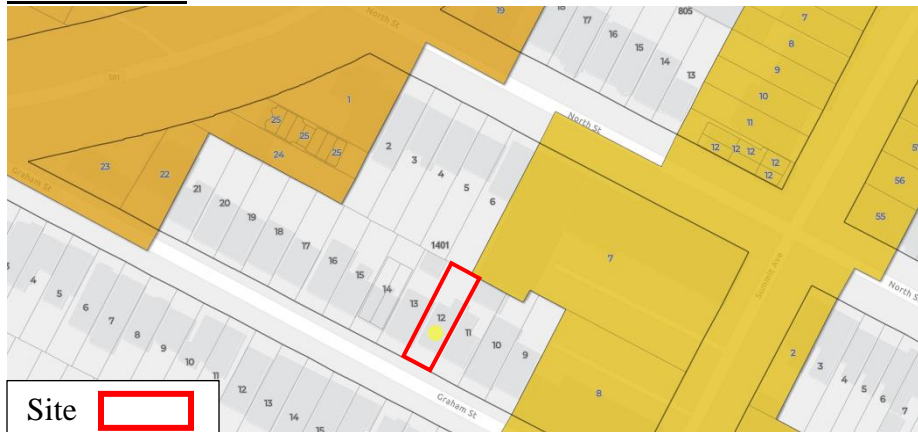
**CITY OF JERSEY CITY**

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



DATE: February 21, 2023  
TO: Board of Adjustment Commissioners  
FROM: Francisco Espinoza, Assistant Planner  
Matthew Ward, PP, AICP, Supervising Planner  
RE: Case #Z22-061  
74 Graham St. Block: 1401 Lot: 12  
"a" Appeal or in the Alternative 'c' Variance(s)

**Site Location:**



**Application Background:**

The subject property, known as Block 1401, Lot 12 is located at 74 Graham in the R-1 One-and Two-Family Housing District. The site includes a two (2) unit dwelling. The property was issued two violations on July 14, 2022 for:

1. Off Street Parking shall not be located between the building and the street – Chapter 345, Article V, Section 70, Paragraph A-1.
2. At least 60% of the area between the building line and street line on residential lots shall be landscaped. Landscaping to be restored. – Chapter 345, Article V, Section 66, Paragraph A-2a.

The applicant applied to the City Planning Office for the appeal to be heard by the Zoning Board of Adjustments or a 'c' variance in the alternative.

**'C' Variance:**

C variance criteria for relief can only be granted through

1) A physical or legal hardship (Caution NOT a self-created hardship):

Ex: Irregularly Shape lot, topographic conditions and other unique conditions affecting your property.

2) When the benefits of not complying with the requirement outweigh any detriments that would be caused by not complying with the requirement

Every variance, the applicant needs to also show the board that this variance will not cause an adverse effect to the municipality, intent of the master plan and zone, neighborhood, and residents.

**1) § 345-41.F. 1- Parking Standards for One and Two Family Dwellings:**

**Parking not required for lots with width of fifty (50) feet or less.** Minimum required parking for lots with widths over fifty (50) feet: one space per dwelling unit.

- The applicant's site is not over 50 ft, so it's important to note that parking is not required.
- However, if parking is being proposed it must be done so in a garage and the garage must be able to provide 2 parking spaces, one per unit. **One-car garages approved as part of a single-family home are to be designed to enable expansion in depth to accommodate no less than a 13-foot wide by 44-foot deep garage.**

2) **345-41.F.2. No parking shall be permitted between the building line and the street line.**

- Applicant is proposing parking between the building line and the street line.

3) **345-70.9. No parking space shall be less than 18 feet long and 8.5 feet wide.**

- An EXCEPTION only when approved by a BOARD is for a compact space to be 16 ft deep
- Applicant is ONLY able to provide a space that is 16 ft long. Enforcing that ONLY compact cars are purchased and used by the owner or any resident it impossible and not within a zoning intention. Compact spaces are mainly for parking garages where multiple types of cars will be stored. In this instance, any car longer than 16 ft will encroach in the public right of way, on to the sidewalk.

4) **§ 345-66. - Landscaping:**

At least 60 percent of the area between the building line and street line on residential lots shall be landscaped, provided, however, that for new construction in the R-1 District, or for construction of three-family detached housing in the R-3 District, which

includes either a front garage and driveway, or driveway access through the front yard to a side or rear yard parking area, or rear yard garage in lieu of a front yard garage access, a minimum of 30 percent of the area shall be landscaped.

- Applicant is providing 0% to 15%.

### **Master Plan Land Use Element of 2021**

- Make the City more transit friendly, walkable, and less reliant on the car. **Land Use Principles, Housing and Neighborhoods, pg.11**
- Provision of both on- and off-street parking, including minimum parking standards, has wide-ranging and significant impacts on improving the streetscape, reducing conflicts, improving safety for pedestrians and bicyclist, reducing the costs of housing production, improving air quality and encouraging alternative modes of transportation. **Chapter 3: Land Use Principles pg. 89**
- Addressing parking is especially important on smaller lot sizes where there is limited space to accommodate driveways. While parking is essential for many residents, it must be providing in a way that minimize impact on streetscape (e.g., excessive curb cuts), and that recognizes the inefficiency of allocating valuable land to parking and preventing it from being used for more community-oriented uses (e.g., open space or housing). **Chapter 3: Land Use Principles pg. 89**
- Until recently, Low Density Residential Zones allowed off-street parking and garages on most residential lots, which has resulted in frequent curb cuts and an environment that favors cars over pedestrians on these blocks. These provisions, coupled with large, paved front setbacks and street-facing garages, encourage cars to take over the sidewalk for parking, further restraining pedestrian movement. - **Chapter 4: Urban Design Framework- Low Density Residential- Recommendations- Reclaim public realm and create safe walkable environment for pedestrians and bicyclists. Pg.128**

### **Staff Comments:**

The applicant is appealing the Zoning Officer's violations to the Zoning Board of Adjustments, who may then:

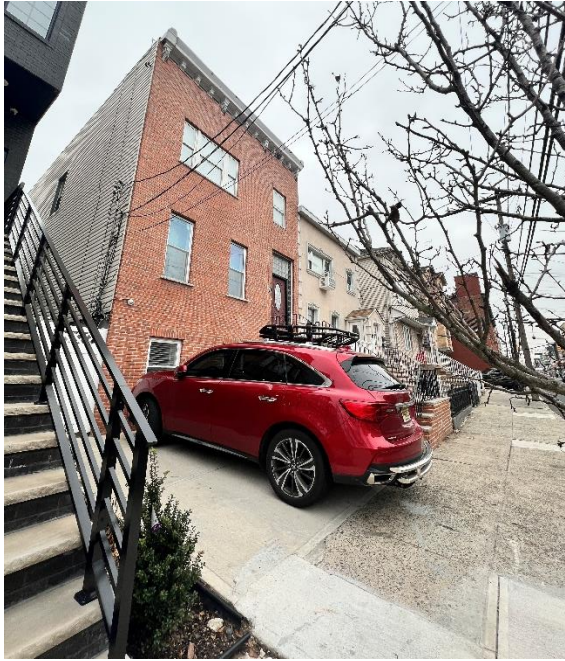
1. Uphold the Zoning Officer's violation; OR
2. Uphold the appeal, reversing the Zoning Officer's violation.

### **Staff Recommends Denial Based on the Inability to Fully Satisfy the Negative Criteria**

- Staff does see a **substantial detriment** to the general public if this deviation is granted.
  - The vehicle encroaches onto the public ROW.
  - It encourages cars to take over sidewalks for parking and further restrain pedestrian movement.

- This creates a hazardous condition for pedestrians and drivers by impeding visibility and reducing the width of the sidewalk.
- It would encourage other property owners in the neighborhood to seek similar variances, which could lead to a proliferation of front yard parking, further exacerbating the negative impact on the streetscape and neighborhood.
- The conditions causing hardship are not peculiar to the subject property and can apply generally to other properties on the same block and even throughout the City.
- Staff sees a **substantial detriment** to the zone plan (Master plan) and the zoning ordinance.
  - The proposed parking dimension does **not** abide by the R-1 Parking standards **(13-foot wide by 44-foot deep)**.
  - The Zoning Ordinance is clear “No parking shall be permitted between the building line and the street line” per the R-1 standards.
  - The Master Plan recommends the city become less reliant on cars and promote front yards to be landscaped except where paving is necessary for entryways into homes and existing garages to minimize impact on streetscapes.
  - This variance is not improving the local zoning / planning and is inconsistent with the Master Plan recommendations.

**APPENDIX: WITH PHOTO EVIDENCE AND REQUIRED PROOFS FOR VARIANCES**



Photos from  
January 10, 2023



September 14, 2014



July 24, 2021



September 27, 2022

**345-76. - Enforcement.**

A. Zoning Officer. It shall be the duty of the Zoning Officer and his or her staff to administer and enforce this chapter. No structure shall be erected without a building permit and no structure or lot shall use or have its use changed so as to be in violation of this chapter, In no case shall a building permit be issued for the construction or alteration of any structure nor shall a certificate of occupancy be issued for a new occupant with a new use, or new use by the present occupant, until the proposed construction or alteration or use conforms to the provisions of this chapter. It shall be the duty of the Zoning Officer to cause any structures, plans or premises to be inspected or examined and order the owner in writing that any condition be remedied which is found to exist in violation of any provisions of this chapter. It shall be the duty of the Zoning Officer to keep a record of all applications and all permits which are either issued or denied, with notations of any conditions involved, which data shall form a part of the City public records.

B. Building Permits. Applications for building permits shall be submitted in a form required by the Building Code of Jersey City and with sufficient data to confirm conformance with all applicable portions of this chapter. Building permit applications shall also be accompanied by an approved site plan as required by this chapter prior to the granting of a building permit.

**Master Plan Recommendations:**

District	Recommendation
Zoning Map Changes	<ul style="list-style-type: none"> <li>- Consider areas shown in Figure 38 where it may be appropriate to change zoning to reflect existing land use character of area.</li> </ul>
R-1 District	<ul style="list-style-type: none"> <li>- Consider allowing three families as a conditional use in the R-1 district to address illegal conversion and frequent variance requests, and to respond to market demand for smaller, more affordable units.</li> <li>- Permit conversion of existing street-facing garages to small businesses.</li> <li>- Establish a residential density that accommodates three-unit dwellings, with additional residential density to promote rehabilitation/restoration of historically significant structures.</li> <li>- Enact standards to increase pervious coverage on individual lots.</li> <li>- Allow ground-floor category 1 &amp; 2 restaurants as conditional uses at corners and along appropriate streets.</li> <li>- Allow the conversion of garages into small businesses.</li> </ul>
R-1A/R-1F Districts	<ul style="list-style-type: none"> <li>- Consider merging the R-1A districts into R-1F to allow three family units in these areas as a conditional use. If separate districts are maintained, establish residential density as in the R-1.</li> </ul>
Low-Rise Zone	<ul style="list-style-type: none"> <li>- Explore zoning approaches to recognize and protect two-story residential areas.</li> </ul>
R-3 District	<ul style="list-style-type: none"> <li>- Adjust the graduated density requirements and consider graduated height requirements that correlate with these densities.</li> </ul>
R-4 District	<ul style="list-style-type: none"> <li>- Simplify height stepback requirements</li> <li>- Consider elimination of some of these areas and incorporating them into other districts</li> <li>- Increase allowable height to 14 stories (from 4-8 stories, allowable height currently dependent on use)</li> </ul>

**Table 13: Zoning Map Recommendations (See Figure 47)**

District	Recommendation
R-1 District	<ul style="list-style-type: none"> <li>- Consider eliminating off-street parking as a permitted use for lots smaller than 5,000 square feet, and only allow a curb cut to access permitted off-street parking. This would effectively restrict curb cuts to lots that are 50 feet or more in width.</li> <li>- Base parking requirements on bedrooms, not total unit count (0.2 space per bedroom).</li> <li>- Enforce prohibitions on parking in front yard*</li> </ul>

## **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**

**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