

CITY OF JERSEY CITY

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



DATE: 3.9.23
TO: Zoning Board Commissioners
FROM: Tanya Marione, AICP, PP
RE: 74 Bowers Street
Case # Z22-040
Block 2301, Lot 1
Minor Site Plan with "d" and "c" variances

Applicant is proposing to expand an existing mixed-use building with one commercial on the ground floor and two units above into a four unit building with ground floor commercial. The site is in the R-1, One and Two Unit Housing District, and will require a d(2) expansion of a non-conforming use variance along with 'c' variances for maximum curb cut width and maximum driveway width.

Background:

The 1938 tax cards suggest that 74 Bowers were built around 1890. At that time it was a 2 family building with one store on the ground floor. The rear building is noted as a 2 story storehouse with a 1 story brick garage for 3 cars. Later tax records continue to confirm that this building had not changed its use. Therefore, the existing building is a legal non-conforming use pursuant to NJSA 40:55D-68.

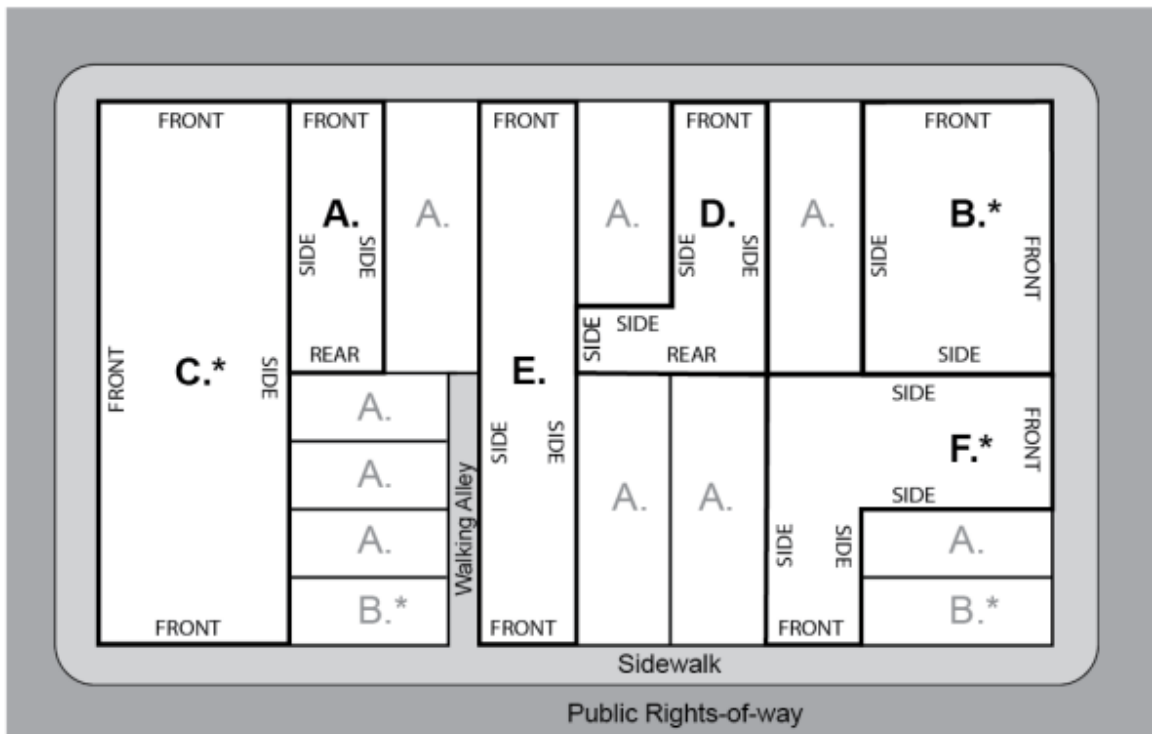
Although the construction of this building pre-dates zoning, the first zoning given to this site and area was "Residential District." This zoning would have not permitted the commercial but would have allowed 'Apartment house' and 'Two family buildings.' Later zoning for the 1970s up to 2000 would have opened this zone to allow for ground floor commercial as a conditional use, but only if the building had direct access to specific blocks and specific geographies of those blocks. The current zoning, adopted in 2000 removed conditional commercial uses, and instead created a provision that commercial could be converted into residential without requiring a use or density variance if it meant the result was more than two units.

Variance Request and Relief Criteria:

The application requires a d(2) expansion of a non-conforming use variance and not a d(1) use variance, because the existing use is a mixed use building and the expansion will not change the use but rather expand/intensify the existing non-conforming use.

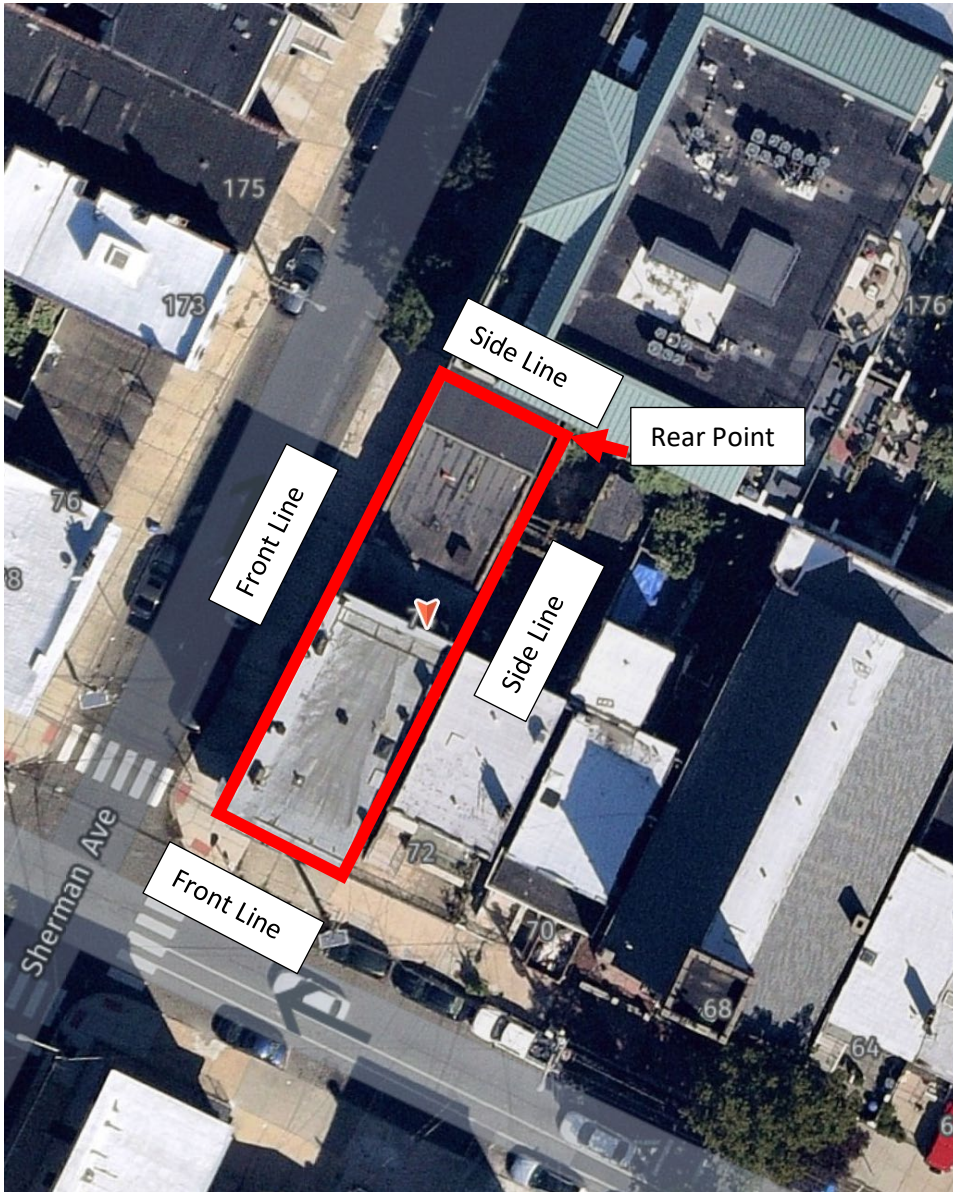
D(2) variances are still 'use' variances in the sense that the applicant will still need to demonstrate site suitability. In other words, why the site is particularly suited to the use even though it is not a permitted use, and what is unique about the site that makes it particularly appropriate for the proposed use rather than the permitted use. What is slightly different, is that the Courts have recognized that legally existing structures can also be considered a hardship. The applicant should still need to show which purposes of zoning are advanced through the expansion, but *Burbridge v. Mine Hill Tp*, 117 NJ (1990) also accepted that advancing NJSA 40:55D-2.i., the promotion of a desirable visual environment, sometimes referred to as aesthetic improvement, can satisfy the special reasons requirement. It should be noted that the intention behind that is because of visual compatibility having the effect of minimizing, or bringing the non-conforming use more into conformance. This purpose has less relevance for a newly purposed use that is not permitted.

The site is a corner lot, so the frontages of Bowers and Sherman Avenue are considered front lot lines, the opposite lot lines the side, and the rear lot point as the rear yard.



- A. Interior Lots - one front lot line, two sides lot lines, one rear lot line
- B. Corner Lots - two front lot lines, two side lot lines, one rear lot point
- C. Cap Lots - three front lot lines, one side lot line, one rear lot line
- D. Flag Lots - one front lot line, three side lot lines, one rear lot line
- E. Through Lots (parallel streets) - two fronts lot lines, two sides lot lines
- F. Through Lots (intersecting streets) - two fronts lot lines, two side lot lines, one rear lot point

*rear lot point not shown



5. Front Yard Setback:

Front yard setback shall match the setback of the Front Primary Façade (see Article I for definition of Front Primary Façade) of the closest permitted use on either side of the subject parcel, provided that the building setback to be matched shall be closest to the predominant (most frequently occurring) setback on the blockfront. A current signed and sealed survey of the subject property showing adjacent building setbacks on both sides along with photos showing the entire blockfront to the left and right of the subject property must be provided to the Zoning Officer as part of the application for a building permit.

6. Side Yards:

a. Detached Buildings:

Minimum setback for one side: Two feet.

Minimum setback for both sides: Five feet one inch.

b. Attached Buildings:

- i. If adjacent building has zero side yard setback (i.e., is built to the side lot line), a zero feet side yard may be permitted (i.e., new house may also be built to the side lot line).
- ii. In the instance the adjacent building has a zero side yard setback but also has an existing window that is either directly on the side lot line or setback less than three feet, the new building may still build to the zero side lot line, starting at the front building line, but shall be required to setback the new building three feet, starting from one foot in front of the existing window, to the rear building line.

- c. All side yard setback three feet or greater: The side yard starting at the front of the building shall be enclosed with a fence constructed in compliance with the design standards in 345-67.B.

7. Minimum Rear Yard:

- a. The rear yard setback shall be added to the front yard setback (as determined above) to produce a total of not less than thirty-five (35) feet, provided however, that in no case shall a rear yard be less than twenty (20) feet. The mathematical formula for this calculation is as follows.

X = required front yard setback

Y = required rear yard setback

X + Y = at least 35 feet

3. Maximum width of curb cut: ten (10) feet; Maximum width of driveway: ten (10) feet; Maximum garage door width: ten (10) feet; only a single curb cut is permitted along the front property line; two garage doors with a pier between them shall be permitted on corner lots where garage entrance(s) shall be located at the rear of the long side of the building.

The proposal to enclose the expand the building on the second and third floor is in line with the lot standards and setback requirements of the R-1 district. The site is not able to meet the rear yard requirements as it would create a semi-circle setback and eventually overlap with the side yard requirements.

The adjacent building along Sherman Avenue is a 4-story building with a setback on the 4th floor. Expanding 74 Bowers on the second and third floor would create a consistent blockfront along Sherman Avenue. The proposed stories also match the permitted height for the R-1 Zone.

No shadow study was conducted for this application, because the Land Development Ordinance only requires the study be done when a building is existing or proposed to be over 40 ft. The height of the building with the expansion is 35 ft, again the permitted height within the district. However, because the building is on the northeast corner of Bowers and Sherman Avenue, there will be little to no impact on the light and air on the properties to the east, as the sun sets in the east and the sun is the strongest when it is in the south. The only light and air issue would be on the adjacent building along Sherman Avenue, and that building is taller with full building coverage.

Planning staff opinion is that the application meets both the positive and negative criteria and can be granted approval with the following conditions:

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

1. Architect of record shall submit a signed and sealed affidavit confirming that the final building was constructed as approved, prior to issuance of the Certificate of Occupancy.
2. 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.
3. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
4. All street trees and landscaping shall be installed in accordance with 345-66 and the City's Forestry Standards, prior to an issuance of a Certificate of Occupancy.