

# CITY OF JERSEY CITY

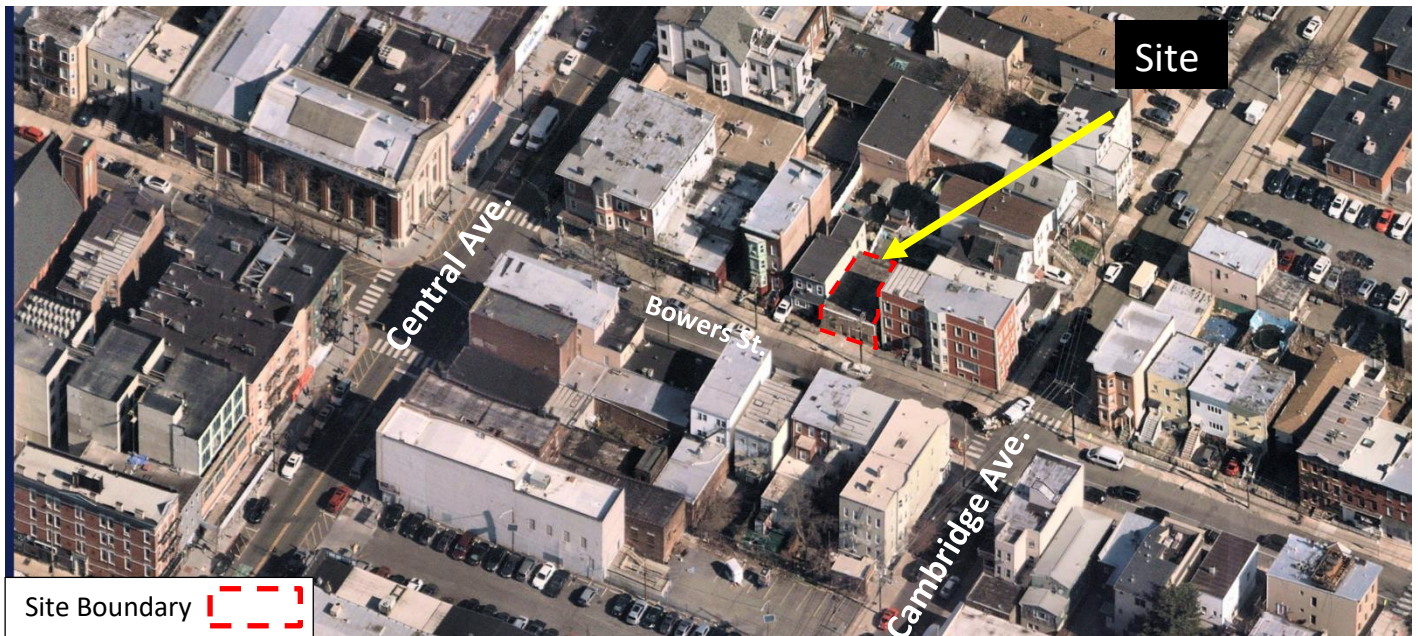
Department of Housing, Economic Development & Commerce  
Division of City Planning



## Interdepartmental Memorandum

DATE: 1/17/2024  
TO: Zoning Board Commissioners  
FROM: Francisco Espinoza, Senior Planner  
RE: Case # Z23-022  
114 Bowers Street, Block: 2201 Lot: 51  
Preliminary & Final Major Site Plan w 'c' &  
'd' Variance(s)

### Aerial View of Site.



- **APPLICATION BACKGROUND + PROPOSAL**

**Existing Conditions:** The subject property, known as Block 2201, Lot 51, is located at 114 Bowers Street. The property is approximately a 30 ft by 50 ft lot totaling 1,500 SF. The min lot size in the R-1 zone is 25 X 100 or 2,500 SF, this lot is well below the lot size of the standard. The site contains a one-story building with a commercial space that fronts Bowers St.

**Proposed Conditions:** The applicant intends to keep the retail space on the ground floor and expand the building to accommodate a 3-story mixed-use building that contains 2 dwelling units. The project will add a street tree where none exist today and add a green roof to assist with rainwater and flooding concerns.

**VARIANCES**

- **D(1) USE**  
Required/ Permitted: One-and Two-Family Home  
Proposed: Mixed-Use (Two-Family +Retail)
- **Rear Yard Setback**  
Required/ Permitted: 20 ft  
Proposed: 4 ft, 7 in
- **Side-Yard Setback**  
Required/ Permitted: One side – 2ft, Both sides 5 ft 1in  
Proposed: 0 ft for both Sides
- **Front-and-Rear Yard Setback**  
Required/ Permitted: 35 ft  
Proposed: 4 ft, 7 in
- **Lot Coverage**  
Required/ Permitted: 85%  
Proposed: 100%
- **Building Coverage**  
Required/ Permitted: 60%  
Proposed: ~91%

**STAFF COMMENTS**

**D(1) Variance:**

- Permitted principal uses in the R-1, at the time the application was submitted, include one and two-family dwellings. The applicant is seeking a use variance for the project because it is a mixed-use project and not listed as a permitted principal use. Bowers St. is a unique street, in 1963 the area was zoned as Business District 'B' which allowed for building or premises used for the retail sale and display of any commodity, equipment, merchandise or product, etc. As per the 1932 historical tax photo the existing building was a restaurant in the neighborhood. Many current businesses still exist on this portion of Bowers such as a nail salon, a barbershop, a restaurant, and a multi service business. A ground floor retail space along with the complaint two (2) residential units on the upper floors at 114 Bowers will be consistent with the character of the Bowers St. corridor and with the R-1 zoning on this block.
- Additionally, the newly approved R-1 Zone allows for first floor commercial provided that the commercial unit(s) existed in the 1930's Tax Assessor's photo and that the original storefront character including window configuration be restored or maintained. Storefronts on streets like Bowers that either abandoned their retail use or converted to residential now can operate as retail spaces again without asking for variances such as this one today.

- Given the adjacent existing context of a mixed-use corridor with an established market of ground-floor retail space and new zoning allowing first floor commercial storefronts to convert, if it existed in the 1930's, staff feels the applicant meets the positive criteria. Staff feels that the purposes of the zoning are advanced through the granting of the variance, and that the benefits of the mixed-use building outweigh the detriments.

**Rear-yard Setback:**

- The applicant is proposing a 4ft – 7in setback as it currently exists. Given the building will not be demolished and its current lot configuration, sound urban planning and design principles call to maintain continuation of the street wall on Bowers Street. Additionally, the lot is significantly undersized from a depth standpoint at 50 ft where a conforming depth is 100ft. Given that the structure is compliant height-wise it results in a bulk that mirrors a typical side property line relationship for the adjacent properties, and therefore staff sees no detrimental impact on light and air.

**Lot/Building Coverage:**

- The variances for both lot and building coverage are related to the undersized nature of the lot. The project as proposed is a typical R-1 bulk that would be considered compliant of all bulk standards if situated on a 2,500sf lot as the zone contemplates. This indicates that the applicant is not seeking to arbitrarily max out the bulk on the site but is proposing a consistent product with what the zoning calls for in terms of the structure itself. To mitigate the lot coverage variance, the proposal includes green roof areas totaling 192 sf.
- If the applicant finds that permeable pavers in the rear yard can happen without compromising the current foundation of the building it could total an additional 141sf. Compliant coverage on the lot would result in 225sf of permeable area. With the addition of the permeable pavers the coverage would increase to 333sf. Given that the proposed condition including the green roof trays would yield the requirement, staff feels the benefits of the variance outweigh the detriments and the variance can be granted without compromising the intent of the zone plan.

**Side-yard Setback:**

**§ 345-40. E.6.b**

**Attached Buildings:**

If an 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).

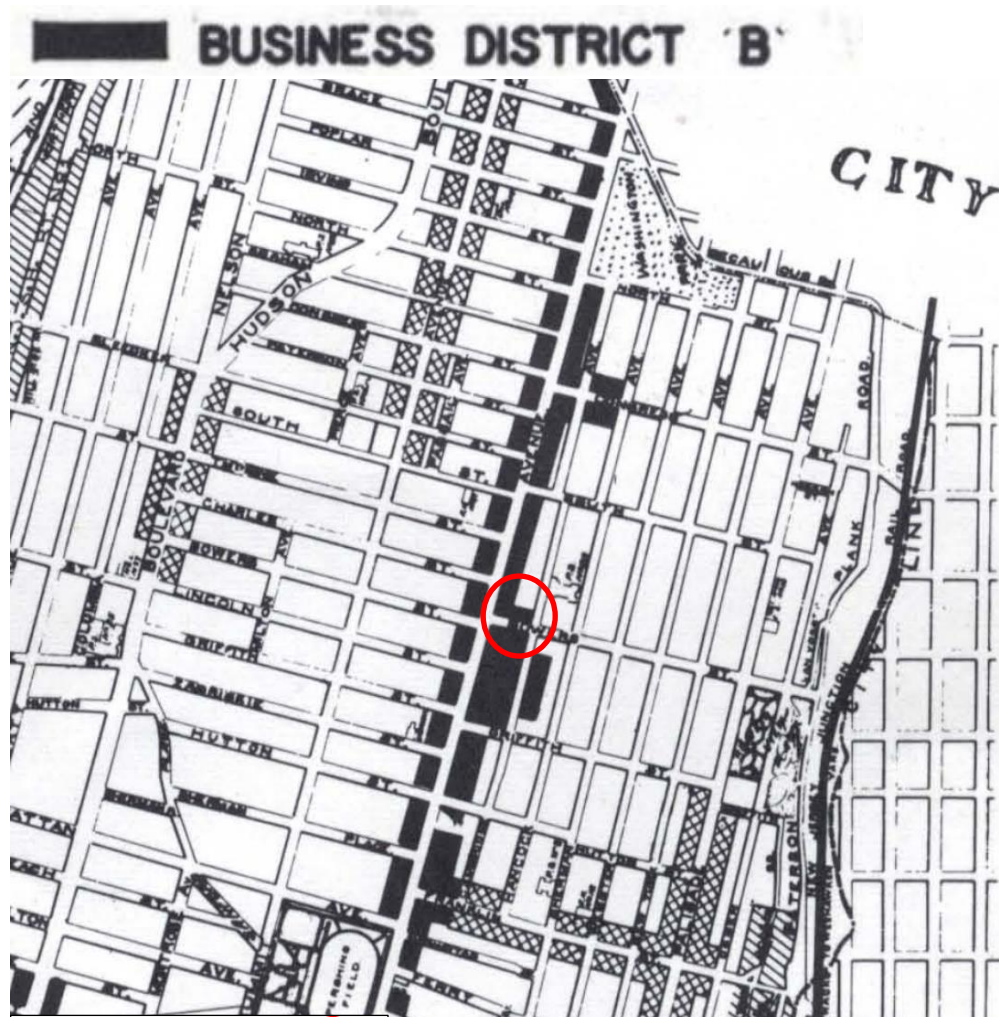
In the instance the adjacent building has a zero side yard setback but also has an existing window that is either directly on the side lot line or setback less than three feet, the new building may still build to the zero side lot line, starting at the front building line, but shall be required to setback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

- The applicants proposed building contains a 0 ft lot line next to a building where it appears that it contains windows on the second floor. The applicant shall work with staff to accommodate a window well or setback the structure where there is an existing window as noted in the zoning code.

### 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. Applicant shall adhere to the Design standards: recommended and not recommended. For Commercial and Residential buildings. Chapter § 345-72
4. Green roof shall be installed prior to an issuance of a Certificate of Occupancy.
5. All street trees/landscaping shall be installed in accordance with 345-66 and the City's Forestry Standards, prior to an issuance of a Certificate of Occupancy.



Approx. Site Boundary

**Site Photos**

# 1938 Tax Card Photos





# Site Photos



October 24<sup>th</sup>, 2023 Current Photo of 114 Bowers St.

## 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

**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**

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**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.**

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