

# CITY OF JERSEY CITY

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



## Memorandum

DATE: 3/14/2023  
TO: Planning Board Commissioners  
FROM: Matt Ward, AICP, PP, Supervising Planner  
RE: 277-301 West Side Avenue and 19-23 Fisk Street  
Case P22-069  
Preliminary and Final Major Site Plan with Variances  
Staff Report

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## SITE LOCATION



## **APPLICATION SUMMARY**

The applicant is proposing construction of a six (6) story residential building with 200 dwelling units (utilizing the affordable housing overlay “AHO” which requires 20 affordable units), 100 off-street parking spaces, and partial preservation and adaptive reuse of an existing industrial structure. The proposal includes the preservation of a two story commercial building that cannot be demolished.

The applicant is requesting the following variances: maximum lot coverage, maximum building coverage, minimum rear yard setback.

## **BACKGROUND**

The subject site is over an acre at 52,043 square feet and located along West Side Avenue at the corner of Fisk Street. The site was formerly an industrial/commercial use and a portion of the corner building on the site must remain as it denied full demolition. The address for the subject site is 277-301 West Side Avenue and 19-23 Fisk Street, which is also known as Block 22103, Lots 5, 13 & 14 on the Jersey City Tax Map.

The subject site is located in the West Side Avenue Redevelopment Plan. The redevelopment plan was adopted in 2005. The site is located in the Loft Residential and Residential districts of the redevelopment plan.

The applicant is utilizing the Affordable Housing Overlay (“Overlay”). The overlay permits a density by building envelope as well as removes any minimum parking standard. The applicant shall set aside ten percent of units as onsite affordable housing (20 affordable units).

## **VARIANCES REQUESTED**

<b>Description</b>	<b>Required</b>	<b>Proposed</b>	<b>Staff Comments</b>
Maximum Lot Coverage	85%	95.4%	C2. See addendum.
Maximum Building Coverage	70%	88.3%	C2 See addendum.
Minimum Rear Yard Setback	25'	9.56' (West Side Ave) 2.82 (Fisk St)	C2 See addendum.

## **STAFF COMMENTS**

1. Applicant shall provide testimony for, but not limited to, the following: overall design, façade materials, adaptive reuse means and methods, unit mix and unit sizes, average unit sizes, bulk, setbacks, retail areas, lobby design, circulation, landscape design, signage, preservation, trash removal and loading.
2. Applicant shall provide testimony regarding the satisfaction of and compliance with the requirements of the Affordable Housing Overlay.
3. Applicant shall provide testimony regarding the variances requested.

## **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. 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. 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.
7. The applicant shall comply with the rules and regulations of Jersey City Municipal Code, Chapter 188 – Housing Accommodations and Affordable Housing Compliance and Chapter 345-59.7 – Affordable Housing Overlay.
8. An Affordable Housing Agreement shall be executed and receive all necessary City approvals prior to any Certificate of Occupancy for this project.

## **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