

# CITY OF JERSEY CITY

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



Memorandum

DATE: 2/2/2023  
TO: Planning Board Commissioners  
FROM: Matt Ward, AICP, PP, Supervising Planner  
RE: 417 Communipaw Ave and 139 Woodward St  
Case P22-146  
Preliminary and Final Major Site Plan with Variances  
Staff Report

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## **APPLICATION SUMMARY**

The applicant is proposing a project with an 18-story mixed-use building consisting of 420 dwelling units (of which 21 units will be affordable), 7,425 square feet of commercial, 273 off-street parking spaces, and 236 bike parking spaces.

The proposed project includes a 22,000 square foot recreation center to be dedicated to the City; an area to be improved as 40 surface parking spaces to be dedicated to the City; a 14,000 square foot retail component where no less than 40% of floor area designated as retail incubator space for state-licensed minority, women, veteran owned businesses or state-licensed disadvantaged business enterprises; just over 20,000 square feet of publicly accessible open space (to be owned and maintained by the Redeveloper-Applicant) linking Communipaw Avenue to Berry Lane Park; the installation of improvements along Woodward Street; the adaptive reuse of the Steel Tech Head House; and other certain on- and off-site improvements.

This application is proposed in conjunction with a proposed subdivision filed under Case P22-145.

The applicant is requesting the following variances: Minimum setback from Berry Lane Park for structures greater than 2 stories; Minimum landscaped buffer; Maximum number of stories.

## **BACKGROUND**

The subject site is over three acres and located along Communipaw Avenue and Woodward Street next to Berry Lane Park. The site was formerly a foundry and is known as Steel Tech. The address for the subject site is 417 Communipaw Avenue and 139 Woodward Street also known as Block 18901, Lot 23 and 29 on the Jersey City Tax Map.

The subject site is located in the Berry Lane Park North District of the Morris Canal Redevelopment Plan. The redevelopment plan specifies multiple standards, requirements, and community benefits by which this site shall be developed, programmed and regulated.

The applicant has provided notice to the Community Empowerment group listed and still active in the neighborhood as well as other related parties.

The applicant has met with the Ward A and F Council people as well as city staff in the Division of Architecture, Division of Recreation, and Division of City Planning in order to prepare and propose the design and programming of the Recreation Center.

**VARIANCES REQUESTED**

Description	Required	Proposed	Staff Comments
Minimum setback from Berry Lane Park for any structure greater than 2 stories	75' minimum	1.25'	Result of working with City representatives and staff regarding Basketball Court on the ground floor and 3-story component for the other programmatic needs and rooms. The recreation center includes a High School regulation sized basketball court, programmable rooftop area, and 2 <sup>nd</sup> story viewing balcony of the court. See addendum - C2.
Minimum landscape buffer width required between any building and any surface parking lot along Woodward Street for any building greater than 2 stories	5' minimum	5', not continuous	See addendum - C2.
Maximum Height of building	17 stories and 190 feet	18 stories and 190 feet	See addendum - C2.

**REQUIRED COMMUNITY BENEFITS**

To utilize the provisions of the Berry Lane Park North Zone, the Applicant shall provide the following community benefits:

**1. Right-of-Way Widening Requirements**

- a. As part of any project in the Berry Lane Park – North zone, the portion of the Woodward Street right-of-way adjacent to the property shall be widened to create a minimum 60-foot right-of-way to allow for the efficient flow of traffic and on-street public parking.
- b. The right-of-way widening shall allow for the alignment of on-street parking and sidewalks along Woodward Street to be consistent with the portion of Woodward Street along Berry Lane Park (Block 18901 Lot 1.01).
- c. The right-of-way widening shall be completed along Woodward Street for Block 18901, Lots 23 and 29.

- d. Curb extensions shall be permitted within the right-of-way to allow for street trees, landscaping, bioswales, etc.
- e. The right-of-way widening shall be stated in the RDA between the JCRA and the designated developer.
- f. Said improvements shall be designed and built as approved by the Planning Board.

## **2. Inclusionary Housing Requirements**

- a. Any development constructed pursuant to the Berry Lane Park – North zone must provide inclusionary housing units equivalent to not less than 5% of the total residential units constructed within the Zone, rounded up to the nearest whole number. This requirement shall apply to both rental units and all forms of residential ownership.
- b. All required inclusionary units must be provided on-site and integrated with the market rate units.
- c. The designated redeveloper must provide the on-site inclusionary units to be affordable to families up to moderate income (i.e. incomes up to 80% of the area median income).
- d. All affordable units shall be consistent with Chapter 188 of the Jersey City Code. All projects will require an Affordable Housing Agreement, as required in Chapter 188 of the Jersey City Code. The Affordable Housing Agreement shall be executed prior to the any certificate of occupancy.
- e. All inclusionary housing units shall be required to be income restricted for a minimum of 30 years.

## **3. Recreation Center Requirements**

- a. The designated redeveloper shall construct a Recreation Center of at least 22,000 square feet with a regulation basketball court, associated surface parking area, which shall be deeded to the City of Jersey City at no cost to the City of Jersey City.
- b. The construction obligation will consist of the “white box” construction including elements such as the building shell, closed walls, roof, windows, doors, stairwells, restrooms, code required electric, sprinkler and basic HVAC. The construction obligation includes the full construction of the basketball court such as hardwood floors, basketball rims and backboards and floor paint.
- c. The designated redeveloper shall enter into an RDA with the JCRA. Said RDA shall specify the size, uses, finishes, timing of construction, parking spaces, and other details of the required Recreation Center.
- d. As a prerequisite for a complete application, the Designated Redeveloper shall work with the Division of Architecture, Division of City Planning, the Ward F Councilperson, and any other entity deemed necessary to determine the programmatic needs of the Recreation Center. The results of which shall be reflected in any site plan application.
- e. It is envisioned that the Recreation Center will have a mix of facilities related to sports, exercise, dance, education, technology, arts and other extracurricular activities. Administrative offices and storages spaces will be needed as well.
- f. The Recreation Center shall be situated along Woodward Street adjacent to Berry Lane Park.
- g. The architecture of the Recreation Center shall tie in with the themes, colors, materiality and design of Berry Lane Park and its facilities.
- h. The entrance to the Recreation Center shall be visible from Woodward Street and Berry Lane Park.

- i. A minimum of 40 vehicle spaces shall be provided in a surface parking area to be used by the public in connection with the Recreation Center, Berry Lane Park and Neighborhood Commercial Facility. A few spaces may be reserved for city vehicles.
- j. All easements or agreements as further outlined in a Redeveloper Agreement shall be in place prior to any certificate of occupancy to the safe and efficient operation of the Recreation Center including but not limited to, access to entrances, exits, associated parking, refuse rooms, and utility rooms.
- k. The designated redeveloper is required to comply with any other performance standards deemed reasonable by the JCRA.

#### **4. Preservation of Steel Tech Head House Building Requirements**

- a. The designated redeveloper shall preserve the structure and façade of the existing Steel Tech Head House building that is located along Communipaw Avenue.
- b. The Steel Tech Head House building may be adaptively reused.
- c. The front and side facades shall be preserved and repaired as necessary.
- d. The gable is to remain as is and its existing peak is the permitted height of the structure.
- e. Rear additions are permitted, but additions shall not exceed the height of the existing gable roof.
- f. Said improvements shall be designed and built as approved by the Planning Board.
- g. The Steel Tech Head House building may initially be used as offices during construction.

#### **5. Neighborhood Commercial Facility Requirements**

- a. The designated redeveloper shall construct a Neighborhood Commercial Facility (“Facility”).
- b. The Facility shall be at least 14,000 square feet.
- c. The Facility shall be located on Communipaw Avenue.
- d. At least 40% of the required square footage shall be reserved for a period of at least ten years as Enterprise Units. The remaining square footage may be used for market-rate commercial units. The space reserved in the Facility for the Enterprise Units shall be flexible with the total number of units based on demand, and the size of the individual units according to individual business needs.
- e. Enterprise Units are reserved for certified Small, Minority, Women, and Veteran-Owned Business Enterprises (SMWVBEs) or Disadvantaged Business Enterprises (DBEs). Certification with the State is required for all Enterprise Units.
- f. Other than multi-family residential, all other permitted principal uses are permitted within Neighborhood Commercial Facility.
- g. The designated redeveloper shall enter into an RDA with the JCRA. Said RDA shall specify the terms required of the Enterprise Units including subsidized rent levels, square footages, number of years that the Facility shall be reserved for Enterprise Units, and any other required details. The RDA may also include a condition of removal of the Enterprise Units and transition to market rate units in the case of extended vacancy.
- h. An annual compliance report shall be prepared by the designated redeveloper and shall be sent to the Jersey City Office of Diversity and Inclusion and the Jersey City Division of Planning.
- i. The Facility shall provide a shared interior lobby or court that is accessed from a main entry along Communipaw Avenue. A secondary entrance or entrances shall be provided facing the

Steel Tech Head House. Market-rate commercial units shall have primary entrances from Communipaw Avenue and secondary entrances on any shared interior lobby or court.

- j. The Enterprise Units shall share facilities such as loading, trash, storage, lobby, bathrooms, etc.

#### **6. Public Open Space Requirements**

- a. The site shall be designed to permit and strengthen public access through the site to and from Berry Lane Park and Communipaw Avenue (adjacent to the Steel Tech Head House).
- b. The site shall be designed to include public open space of at least 20,000 square feet and a pedestrian plaza fronting Communipaw Avenue.
- c. The pedestrian plaza shall be a minimum of 30-foot wide area with hardscape, landscaping and street furniture and it shall be designed to permit and encourage access between Communipaw Avenue and the public open space.
- d. The designated redeveloper shall enter into a conservation and public access agreement with the City of Jersey City regarding the public open space.
- e. The public open space may be used for public/private outdoor events that may include but shall not be limited to farmers' markets, local music concerts, art shows, job fairs, fitness classes, holiday markers, workshops, etc.
- f. The designated redeveloper shall maintain and remain the owner of the public open space for public use.

#### **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 and wayfinding, preservation, programming, community benefits, trash removal and loading.
- 2. Applicant shall provide testimony regarding the satisfaction of and compliance with the Community Benefits as proposed and as required throughout construction and after Certificate of Occupancy.
- 3. Applicant shall provide testimony regarding the variances requested.

#### **STAFF RECOMMENDED 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. The applicant shall comply with the rules and regulations of Jersey City Municipal Code, Chapter 188 – Housing Accommodations and Affordable Housing Compliance.
7. An Affordable Housing Agreement shall be executed and receive all necessary City approvals prior to any Certificate of Occupancy for this project.
8. Prior to any issuance of any certificate of occupancy, the designated redeveloper shall construct a Recreation Center of at least 22,000 square feet with a regulation basketball court, associated surface parking area, which shall be deeded to the City of Jersey City at no cost to the City of Jersey City.
9. The designated developer shall continue to work and coordinate with the Division of City Planning, Department of Recreation, and other City representatives as deemed necessary regarding the “white box” construction of the Recreation Center and full fit-out and construction of the basketball court including but not limited to hardwood floors, basketball rims and backboards and floor paint.
10. An annual compliance report shall be prepared by the designated redeveloper and shall be sent to the Jersey City Office of Diversity and Inclusion and the Jersey City Division of Planning detailing compliance Neighborhood Commercial Facility Requirements.
11. Prior to any issuance of any certificate of occupancy, the designated redeveloper shall enter into a conservation and public access agreement with and in favor of the City of Jersey City regarding the public open space (minimum of 20,000 square feet). The agreement shall be in the form of a Deed and recorded with the Register of Deeds of Hudson County.
12. The designated redeveloper shall maintain and remain the owner of the public open space.

*Addendum on next page*

## 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