

**RESOLUTION
City of Jersey City
Planning Board
Plaza VIII & IX Associates, LLC**

**242 Hudson Street and 3 Second Street (rear)
Block 11603, Lots 22 and 27**

**P19-153
Decided on February 18, 2020
Memorialized on March 10, 2020
Application for Preliminary and Final Major Site Plan Approval with Deviations
and Interim Use**

WHEREAS, Plaza VIII and IX Associates, LLC (hereinafter the "Applicant") made an application before the Planning Board of the City of Jersey City, County of Hudson and State of New Jersey (the "Board"), for Preliminary and Final Major Site Plan Approval with deviations and interim use in connection with the property located at 242 Hudson Street and 3 Second Street (rear), Jersey City, New Jersey, also known as Block 11603, Lots 22 and 27 on the Tax Maps of the City of Jersey City (the "Property"), to permit construction of a 68-story building containing 680 residential units, 18,662 square feet of commercial space, approximately 505 parking spaces (329 garage spaces and 176 spaces in a surface lot) and a revised layout for the Lutze Biergarten (the "Project").

WHEREAS, the proposed Property is situated within the Harsimus Cove Station Redevelopment Plan (the "Redevelopment Plan") in the East - Waterfront District; and

WHEREAS, public hearings were conducted on the application on February 4, 2020 and February 18, 2020; and

WHEREAS, the Board reviewed the Applicant's Affidavit of Service and Affidavit of Publication and determined that the Applicant had standing and the Board had jurisdiction to hear this application; and

WHEREAS, the Applicant was represented by Donald M. Pepe, Esq. of Scarinci Hollenbeck; and

WHEREAS, American Financial Exchange, LLC, the owner of Plaza X, with an address of 3 Second Street, was represented by Steven Tripp, Esq. of Wilentz, Goldman & Spitzer; and

WHEREAS, Building X, LLC, the owner and operator of Hudson & Co. and Atelier on behalf of the tenants at 3 Second Street, was represented by Lorraine Medeiros, Esq. of the Law Offices of Lorraine Medeiros; and

WHEREAS, the Applicant submitted proof of compliance with the applicable procedural requirements including the payment of fees.

NOW, THEREFORE, after consideration of the application and the testimony presented at the hearing, the Board made the following findings of fact relating to the Project:

1. The Property is situated within the Harsimus Cove Station Redevelopment Plan in the East - Waterfront District.

2. The Applicant is proposing to construct a 68-story building containing 680 residential units, 18,662 square feet of commercial space, approximately 505 parking spaces (329 garage spaces and 176 spaces in a surface lot) and a revised layout for the Lutze Biergarten.

3. The first witness on behalf of the Applicant was Mathew Neuls, who was sworn in and is qualified as an expert civil engineer. Mr. Neuls described the site layout. He testified that the project includes Lots 27 and 22 and that presently consists of a large parking lot labeled in the site plans as Future Plaza IX and Proposed Plaza VIII, as well as the waterfront park, which contains the Lutze on the southeastern side of the property. He further testified that Harborside Place is a private access road that provides access to residences out on the adjacent residential pier and a loading area for Harborside 3. Mr. Neuls stated that the site area is approximately 169,000 square feet, or 3.89 acres, and includes a mixed-use high-rise building, 680 residential units, ground floor retail, lobby and back-of-house uses, as well as the redevelopment of the Lutze and the waterfront park. He further testified that the garage parking on the site is to contain 329 spaces and 176 spaces will remain on the surface lot. Mr. Neuls provided a brief history of the site as follows: prior to 2002, the project site was utilized as a surface parking lot for commuter ferry passengers. He stated that in 2002, preliminary final site plan approvals were granted for Plaza X and the property was subdivided into three lots. He further stated that in 2017, the planning board approved an interim use for the waterfront park, which is known as Lutze, which authorized the temporary structures on the property, which is a

privately owned but a publicly accessible park, and provided for minor modifications of the parking lot. Mr. Neuls further stated there will be a new road through the Property which will have a decorative finish and an entrance onto Hudson Street and will connect to a turnaround area on the eastern end of the road. He also stated that retail uses are proposed along the west, north and east side at the ground level. Mr. Neuls stated that the Lutze will be redeveloped as part of this application and it will provide permanent kiosks for the various functions there. In addition, he stated that permanent restrooms will be provided on the site and a playground will be added near the waterfront walkway to the east of the site. Regarding circulation, Mr. Neuls added that there is sufficient access. Mr. Neuls presented a colorized version of an open space plan showing open spaces around the site and stated that there will be new open spaces on the north and south side of the building. He testified that based on the calculation for open space provided on the site which was equal to 6 percent of the gross floor area on the project, 44,254 square feet is required, and 83,052 square feet is provided. Mr. Neuls also stated that for interim parking during construction, people who typically park at the western portion of the site will park at Harborside's Plaza IV-A garage, located at 135 Greene Street.

4. Mr. Neuls went on to describe the deviations. He stated that the first deviation is a minimum setback deviation from the redevelopment plan Section 2.1.B, as shown on the zoning table. Whereas the redevelopment plan requires a setback of five times the square root of the height of the building or a minimum of 133.09 feet on three sides of the building, the requirement is met on one side of the building and a deviation is need from two or more sides. Mr. Neuls testified that the second deviation relates to the requirement under Section 1.C.8 of the redevelopment plan which provides that structured parking be wrapped with a principal use. He stated that the structured parking as proposed will be wrapped by the principal use on two sides while the balance will be treated with a contemporary garage screening system. He stated that the next deviation is the maximum number of signs which is addressed in Redevelopment plan Section 1.F.15.d.I. which limits retail and restaurant uses fronting on a public street to one sign per use. He stated that the Lutze use proposes seven signs, six of which are related to park rules. He indicated that the next deviation is for the maximum retail sign area, addressed in redevelopment plan Section 1.F.15.d.I, which limits the retail sign area to

10 percent of the area of store front to which the sign is attached. He stated that there is a Lutze sign on one of the kiosks that takes up more than 10 percent of the wall. He stated that the last deviation is for maximum signage lettering height which based on Section 1.F.15.a of the redevelopment plan is limited to 18 inches. He testified that one of the Lutze signs has a height of 72 inches.

5. Regarding alternate parking during construction, Commissioner Seborowski asked if 135 Greene Street is just a parking garage. Mr. Neuls confirmed that it is the building that has seven floors of parking with office stories on top. Commissioner Seborowski asked if there is retail on the first floor. Mr. Neuls stated it will be a Whole Foods. Commissioner Seborowski asked if parking will be shared. Mr. Pepe confirmed that there is sufficient parking outside of the Whole Foods application because there are seven floors which are presently underutilized. Mr. Pepe further indicated that as a condition of approval, the Applicant will provide, if necessary, an equal number of parking spaces during construction as to what the owners and tenants of Plaza X have now. Commissioner Torres asked if there is going to be additional on-street parking on the new road. Mr. Pepe responded that surface parking is prohibited under the redevelopment plan and the Board attorney confirmed. Mr. Pepe agreed to maximize parking if it is made a condition. Commissioner Torres asked if the board would be voting on permanent bathroom kiosks at the Lutze and indicated that this would be a permanent feature. The board attorney stated that he did not believe having a permanent bathroom structure makes the beer garden a permanent and perpetual use of the property. Mr. Pepe clarified that the permanent use is being sought now as part of the pending application. Mr. Pepe confirmed that the Lutze would operate the same way as it did last summer. Mr. Pepe and Mr. Ward also confirmed that the Lutze was referenced in the legal notice.

6. Mr. Tripp proceeded to cross-examine Mr. Neuls by asking if the plans allocate any parking spaces to Plaza X. Mr. Neuls replied that 224 spaces would be allocated to be in use for Plaza X. On redirect, Mr. Pepe asked if there are any minimum parking requirements under the Harsimus Cove Station Redevelopment Plan to which Mr. Neuls replied no. Mr. Tripp then asked what size trucks were used when Mr. Neuls prepared the template. Mr. Neuls stated that 30-foot box trucks were used.

7. The second witness on behalf of the Applicant was John Martin, who was sworn in and is qualified as an expert architect at Elkus Manfredi. Mr. Martin described the site and testified that the Applicant divided the site into two blocks to create the walkable, livable environment that the redevelopment plan calls for, preserve and enhance public open space, as well as to create new public open space. He highlighted the two-story retail space that characterizes the eastern façade of the building as the signature space of the project and the proposed location of a two-story restaurant. He confirmed that there will be eight levels of parking. He described the nighttime view of the project and lighting to bring the podium to life. He went on to discuss the residential components of the project and the 16,000 square feet of residential amenities including an indoor pool, a large fitness center with a cycling room, yoga room, gaming area, common living room area, maker space, and a children's play area that opens up to an outdoor terrace. Mr. Martin testified that there will be 13,000 square feet of outdoor terraces. He also described the building materials and brought material samples intended for use in connection with the project. He stated that podium is composed of three different color metal panels, a silver, gray, and a white; dark mullions around the framed openings; a granite base; and two perforated metal panels. He further stated that a finer perforation will be used for the quilted, folded panels; and a larger perforation is used in the windows of the garage. As to the tower, he testified that two different types of clear glass with silver mullions and white metal panels for accent will be used. Materials were passed around. Mr. Martin also presented an aerial view of the tower and project in context. He stated that the project reinforces and addresses the primary goals of the redevelopment plan by providing housing and a variety of unit types, by placing housing within a five-minute walk of a variety of multimodal transit options, by allowing for small, walkable vibrant blocks, by providing, as well as enhancing open space, and by creating a visually compelling tower. Mr. Pepe confirmed that it is the Applicant's practice to provide window treatments and to require tenants maintain them as part of their lease.

8. The third witness on behalf of the Applicant was Thomas Carman, who was sworn in and is qualified as an expert landscape architect. Mr. Carman described the proposed street-level landscaping and lighting improvements, the amenity deck on the residential building, the open space waterfront park known as the Lutze and the proposed signage. He presented various graphic exhibits related to the same. He stated that a

permanent restroom facility for the Lutze with a screen immediately adjacent to it is proposed. He indicated that the Lutze bathrooms and the open space comprising the Lutze will be open 365 days a year regardless of whether the Lutze is in operation. He confirmed that the Lutze sign will be off after hours. He stated that park signage will confirm it is a public space. He pointed out the open space park will have a water panel with water features, as well as the plan to activate the space with table and chair seating, and the addition of a children's play area with a knoll, slide, tunnel, chimes and such. He highlighted that certain streetlights, bollard lights and pole lights within the open space area are for safety purposes would be on after hours. He confirmed all pole lights aim down and that the park rule signs list a phone number for someone to reach in the event of an emergency.

9. The fourth witness on behalf of the Applicant was Ed Kolling, who was sworn in and is qualified as a professional planner. Mr. Kolling stated that the first variance requested was for wrapping the parking in Section 1, paragraph C, number 8, which states that all parking structures must be wrapped with a principal use to separate and shield it from view. He stated that the subject property, as the architect mentioned, is impacted by a requirement to maintain the viewshed easement along the extension of what would have been First Street and this requirement constrains the building; keeps it narrower than could otherwise be accommodated. He further testified that by making it narrower, it's virtually impossible physically to be able to provide the required parking, which is permitted, to be shielded on all sides. He stated that as such he believes this is a hardship that impacts the property and makes it impossible to meet the requirement which would be a c(1) variance. He testified that if the building was widened, then it would be contrary to the intent of the redevelopment plan, for the interconnection of uses and blocks, since it would block that visual interconnection, and inhibit the creation of integrated neighborhoods, which is one of the intents and purposes of the redevelopment plan (number 6). He cited the requirement for streets and open spaces would be impeded (number 7) and the requirement to provide a clearly articulated and rationally designed open space system, which is the view corridor (number 10) and several other intents and purposes would be impeded if the requested deviation were not granted. In terms of a negative impact, he said that in order to mitigate any adverse impacts, the architects have designed an interesting architectural approach to screening the parking use. He

confirmed that this approach is anticipated in the requirements in the final sentence in paragraph C, number 8, which states that, "Alternatively, contemporary garage screening maybe permitted, if found acceptable by the planning board at site plan review." He stated that the screening is appropriate, and acceptable, and the Applicant was also mitigating negative impacts. He said that another mitigating feature is that, on two sides, as the architect mentioned, on the west side and a portion of the north side, there are residential uses that partially screen the parking with active uses.

10. Mr. Kolling stated that the next variance is related to the setbacks; and the engineer described the requirement of 133 feet on three sides which is met on one side. He said you cannot have setbacks of that distance from the roadways and have a functional building. He said the board should grant the requested relief under the c(2) variance, because what this project does is continue the street grid system by extending the streets and view corridors.

11. Mr. Kolling went on to describe the three deviations for signage that are related to the Lutze use, all found in Section 1, paragraph F. He said subparagraph number 15d under paragraph F states that "Each retail use shall be permitted one sign fronting on a public street," and in the case of the Lutze use, as was described by the landscape architect, there are seven signs, six for public rules of conduct for the public – for the park. He said the signs are there to demonstrate that the park is open to the public which serves a public purpose. He noted that the variance for those additional six signs can be granted under the c(2) variance. Mr. Kolling said there is also a statement that signage cannot exceed 10 percent of the storefront to which it is attached, and that applies to the Lutze sign due to readability at a distance.

12. He testified that the last variance is for the monument sign located on Hudson Street at the new proposed interior roadway and enhances usability of the park and identification of the tower's entrance. He also confirmed the request that the surface parking on Plaza 9 would be continued as an interim use and that as long as Plaza 9 remained a surface parking lot and open for parking, which may not be the case should the Plaza 9 site be further developed for a different use, the parking spaces therein will be used exclusively by occupants and visitors of Plaza 8 and Plaza 10 and not by others, such as commuters. Mr. Pepe agreed that the Applicant would police the parking areas to stop usage by commuters and that all parking is by pass only. Mr. Kolling further

testified that the deviations could also be granted under the c(2) variance, wherein the benefits substantially outweigh any detriment. He further testified that there will be no substantial detriment to the zone plan and instead, this project promotes the intent of the zone plan and there is no substantial detriment to the public welfare.

13. The Application was opened to the public for comment and various members of the public spoke regarding the new road, parking, and noise from the Lutze. Upon hearing all interested parties, the public portion of the hearing was closed by motion.

14. At the request of Chairman Langston, the matter was carried over to the February 18, 2020 hearing date so the Applicant could supply the Board with material samples relating to the Lutze. It was expressly set forth on the record that no further notice would be provided and that testimony on the 18th and comments from the Public would be limited to the new information provided on that date.

15. Matthew Ward, Principal Planner of the Division of City Planning, testified that the Applicant covered staff comments and the answers provided to the Board were sufficient. Referencing his January 28, 2020 review memorandum, Mr. Ward testified that there is a long history of granting deviations from the setback requirement of the Plan dating back to 1994, with over 13 instances cited in his report where a setback deviation was previously granted by the Planning Board. He also testified that in 2017, Planning staff sought to address the inherent difficulties posed by the Plan's setback requirements by amending the Plan, that an amendment was referred to the City Council by the Planning Board and introduced by the City Council as Ordinance 18-016, but that the Ordinance never progressed to a second reading. He recommended that if a motion is made to approve that the resolution includes the following conditions:

- a. Conditions 1 through 7 of Staff planning memo; and
- b. the various conditions made on the record, regarding working with staff regarding the East face perforated panel podium lighting, operational months of Lutze, bathroom access and gates to remain open during nonoperational hours.

16. At the continuation of the hearing on February 18, 2020, Mark Sheeleigh was sworn in and qualified as a licensed professional architect. Mr. Sheeleigh presented the Board with samples of the materials that were proposed for the Lutze.

17. The hearing was again opened to the public and no public testified upon which the hearing was closed to the public by motion.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the City of Jersey City makes the following conclusions of law based upon the foregoing findings of fact.

1. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant deviations from strict bulk and other non-use related issues when the Applicant satisfies certain specific proofs which are enunciated in the statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the (c)(2) criteria, the Applicant has the option of showing that in a particular instance relating to a specific piece of property, the purposes of the act would be advanced by allowing a deviation from the redevelopment plan requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a deviation may be granted to allow departure from regulations promulgated under the applicable redevelopment plan. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an Applicant must also show that the proposed relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan as reflected in the applicable redevelopment plan. It is only in those instances when the Applicant has satisfied either of these tests (either c(1) or c(2)), that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicant to establish these criteria.

2. Preliminary and Final Major Site Plan approval is granted pursuant to N.J.S.A. 40:55D-50.

3. With regard to the deviations sought by the Applicant, the Board finds that the Applicant has provided sufficient reasons to allow the Board to approve the aforesaid deviations. The Board finds that the testimony placed before it, consisting of the plans, renderings, building materials, documents and proffered testimony submitted in support of the Application justify the deviations sought by the Applicant. The Board finds that many purposes of the MLUL are satisfied by the granting of the deviations as set forth above. The Board specifically finds, based upon the evidence placed before it, the deviations that result from the proposed development of the Property are directly related to the inherent limitations of the Property; these deviations will not, in the position of the Board, substantially impair the intent and purpose of the Redevelopment Plan and will not result in a substantial detriment to the public good. The Board finds that the granting of all of the deviations is warranted and that the benefits of granting these deviations substantially outweigh any detriments and as such grants the requested deviations from the Redevelopment Plan as described above pursuant to N.J.S.A. 40:55D-70(c).

4. The use proposed by the Applicant is consistent with the permitted uses under the Redevelopment Plan with the exception of maintaining the proposed surface parking on the balance of Lot 27 which the Board previously permitted to be maintained as an interim use.

5. The proposed construction complies with the goals and intent of the Redevelopment Plan, will enhance the neighborhood in general and will eliminate a portion of an existing surface parking lot that is prohibited under the redevelopment plan.

6. The proposed deviations can be granted based on the specific design limitations inherent to the Property and the Project as set forth by the Applicant and the Applicant's professionals as part of the record.

7. The proposed site plan approval and deviations from the Redevelopment Plan and guidelines will have no detrimental impact to the public good or impair the intent and purpose of the Redevelopment Plan if granted.

BE IT FURTHER RESOLVED, by the Planning Board of the City of Jersey City that the application approved herein is subject to the following terms and conditions as to the Applicant:

1. The Lutze is to operate in accordance with prior the approval and conditions memorialized in Resolution P18-035.

2. The lighted Lutze signage shall remain off after normal operating hours.
3. 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.
4. The Applicant shall comply with all review agent comments by the JC Division of Engineering (January 17, 2020) with the exception of the requirement to repave the adjoining interior driveway from curb-to-curb as required therein, which the Applicant has agreed to do as long as the adjoining property owner provides the necessary consent to perform the required work.
5. The Applicant shall forward copies of any waterfront development permits associated with this development application to City Planning.
6. The Applicant shall setback any building on the future Plaza 9 site at least 75 feet from the north façade of the Plaza 8 building in order to maintain a view corridor which coincides with First Street to the west.
7. The north/south driveway shall be maintained as part of future application for the Plaza 9 site.
8. Prior to the issuance of any Certificate of Occupancy, the Applicant agrees to enter into an agreement or amend any agreement with the City regarding the onsite public access and public open spaces.
9. A lighting plan with respect to the quilted, perforated screening for the garage façade and the after-hours Lutze lighting will be provided to the Planning Department for its approval.
10. The bathrooms provided as part of the application for the Lutze shall remain accessible to the public year around during park hours of operation.

11. The gates to the park shall be swung to an open position and remain open during nonoperational hours of Lutze.

12. As requested by American Financial Exchanges, LLC, the existing curb line immediately West of Plaza X's Loading Dock shall remain as currently designed to ensure the existing truck turning radius is not altered.

13. The Applicant shall use commercially reasonable efforts to minimize utility service interruptions to Plaza X when relocating the existing water main.

14. The implementation of the plan shall be implemented strictly in accordance with the plans submitted and approved by the Board.

15. The Applicant shall comply with all requirements and any reports from the Board's professionals with respect to this application.

16. All testimony given by the Applicant and their expert witnesses in accordance with this Application shall be binding.

RESOLUTION
City of Jersey City
Planning Board
Plaza VIII & IX Associates, LLC

242 Hudson Street and 3 Second Street (rear)
Block 11603, Lots 22 and 27

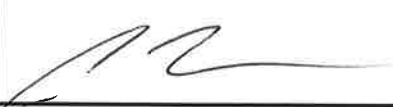


P19-153

Decided on February 18, 2020

Memorialized on March 10, 2020

**Application for Preliminary and Final Major Site Plan Approval with Deviations
and Interim Use**

Vote:

COMMISSIONER:	YES	NO	ABSTAIN	ABSEN
Dr. Orlando V. Gonzales, Vice-Chairman	X			
Edwardo Torres, Commissioner	X			
John Seborowski, Commissioner		X		
Allison Solowsky, Commissioner	X			
Harkesh Thakur, Councilwoman	X			
David Cruz, Commissioner	X			
Vidya Gangadin, Commissioner	X			
				
Christopher Langston, Chairman Jersey City Planning Board	Matt Ward, Secretary Jersey City Planning Board			
				
APPROVED AS TO LEGAL FORM:	Santo T. Alampi, Esq.			
DATE OF HEARING:	February 4, 2020 and February 18, 2020			
DATE OF MEMORIALIZATION	March 10, 2020			

