

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF
JERSEY CITY**

APPLICANT: 859 COMMUNIPAW JC, LLC

FOR: PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL
WITH "C" AND "D" VARIANCES
851-859 COMMUNIPAW AVENUE, JERSEY CITY, NEW JERSEY
BLOCK 18206, LOTS 8, 9, AND 10

CASE NO.: Z20-071

WHEREAS, the Applicant, 859 Communipaw JC, LLC (the "Applicant"), per Connell Foley, LLC, (Charles J. Harrington, III, Esq., appearing) made application to the Zoning Board of Adjustment of the City of Jersey City, County of Hudson and State of New Jersey for Preliminary and Final Major Site Plan approval with variances pursuant to N.J.S.A. 40:55D-70(d) (use, height) and N.J.S.A. 40:55D-70(c) (compact spaces; drive aisle width), to wit: Calendar No. Z20-071, for the purpose of developing the property with a six (6) story mixed-use building containing ninety (90) dwelling units (with 10% of the units [9] restricted as moderate affordable housing units for 30 years), ground floor commercial space, and forty-eight (48) parking spaces at grade on the property located at 851-859 Communipaw Avenue, Jersey City, New Jersey, and identified on the Jersey City Tax Maps as Block 18206, Lots 8, 9, and 10 ("Property"); and

WHEREAS, the initial hearing for the proposed development of the Property took place on March 25, 2021; and

WHEREAS, the Applicant requested to carry the application to further review the comments of the public and the Zoning Board of Adjustment; and

WHEREAS, the Applicant made amendments to the development between the March 25, 2021 hearing and the December 2021 hearing; and

WHEREAS, the Applicant is presenting this application, and its amendments, along with the presentation of the application for the property immediately adjacent as phased projects, Z20-072 (869-877 Communipaw Avenue, Jersey City, Block 18206, Lots 5, 6 and 7); and

WHEREAS, it appears that due notice of a hearing on the above said application before the Zoning Board of Adjustment of the City of Jersey City, on December 2, 2021 at 6:30 p.m., was duly published as prescribed in the Jersey City Land Development Ordinance and the Municipal Land Use Law; and

WHEREAS, the Applicant has submitted proof that it has complied with the applicable procedural requirements including the payment of fees and public notices; and

WHEREAS, the Applicant and its witnesses first having been sworn and all testimony having been formally heard for this application; and

WHEREAS, after consideration of the application and the testimony presented at the meeting, the Zoning Board of Adjustment has made the following findings of fact:

FINDINGS OF FACT

1. The Applicant, 859 Communipaw JC, LLC, filed an application with the Jersey City Zoning Board of Adjustment (the "Board") for Preliminary and Final Major Site Plan approval with variances pursuant to N.J.S.A. 40:55D-70(c) (compact parking spaces; minimum drive aisle width) and N.J.S.A. 40:55D-70(d) (use; height), with regard to the property located at 851-859 Communipaw Avenue, Jersey City, New Jersey, and also identified on the Jersey City Tax Maps as Block 18206, Lots 8, 9, and 10 (the "Property").
2. The Applicant's initial presentation of the proposed development of the Property took place on March 25, 2021.
3. The Applicant amended the proposed development since the March 25, 2021 hearing, and presented the amended development together with the application for the immediately adjacent property at 869-877 Communipaw Avenue, Block 18206, Lots 5, 6 and 7, under Z20-072 (the "869 Communipaw Project"). The adjacent projects are being presented as phased projects.
4. The Property is an approximately 24,737 square foot lot located in the C/A Commercial Automotive District (the "C/A Zone"). The Property is currently used as a retail/commercial use and an accessory surface parking lot.
5. The purpose of the C/A Zone is to upgrade the appearance and function of Communipaw Avenue through screening and buffering, sensitive site planning, selective acquisition of properties and the redirection of parking. The C/A Zone permits the following uses: "1. Retail sales of goods and services. 2. Auto sales. 3. Auto repair and services. 4. Service stations. 5. Auto body shops. 6. Financial institutions. 7. Restaurants, all categories. 8. Offices."
6. The Jersey City Master Plan from 2000 indicates that automotive uses on small and irregularly configured lots are undesirable and conflict with the district's dual function as a major east-west transportation corridor and gateway to the City. "These uses generate significant nuisance impacts caused by the lack of screening, inadequate off-street parking and the industrial nature of the activities occurring on the premises." Recommendations to improve the appearance of this area include, providing streetscape improvements such as street trees, eliminating on-street parking, screening, and buffering automotive uses from Communipaw Avenue as well as homes to the rear of these uses. "Selective acquisition of property for redevelopment, parking and the reduction of curb cuts should also be considered, and on street parking should be reduced or eliminated." The Jersey City Master Plan also indicates that "Communipaw Avenue is included in

the number of streets which lack adequate physical amenities for bicyclists, mass transit, and pedestrians, thus inhibiting residents and visitors from utilizing the City's parks and institutions." After 20 years, Jersey City residents have seen limited improvements to this corridor.

7. The purpose of this application phase is to construct a new six (6) story mixed-use residential/retail building containing ninety (90) dwelling units (with 10% of the units [9] restricted as moderate affordable housing units for 30 years), ground floor commercial space and forty-eight (48) parking spaces at grade. (the "Project").

8. The Property is located in the C/A Zone. However, the majority of the surrounding area to the north and south of the Property is residential or park area. The location of this Property and the Project will allow it to serve as a connection between the surrounding residential neighborhoods and nearby Lincoln Park.

9. In connection with the Application, the Applicant is requesting the following variances, exceptions and/or waivers from the Jersey City Land Development Ordinance ("JC LDO") in connection with this application.

- a) A use variance to permit a mixed-use retail/multifamily building in the C/A Zone;
- b) A height variance to permit a building height of six (6) stories and sixty feet (60');;
- c) Approval and / or a variance to permit eleven (11) compact parking spaces;
- d) A variance for relief from minimum required drive aisle width; and
- e) The Applicant is also seeking any other variances, waivers and/or exceptions that the Zoning Board of Adjustment shall deem necessary in connection with this application.

10. Richard Garber, R.A. of GRO Architects PLLC, Matthew Neuls, P.E. of Dresdner Robin, and Charles Heydt, P.P. of Dresdner Robin testified on behalf of the Applicant. All were qualified as experts in their respective fields of architecture, civil engineering, and planning by the Zoning Board of Adjustment.

11. Mr. Garber testified that this Project is related to the project at 869-877 Communipaw Avenue, which was presented together with this Project. The project located at 869-877 Communipaw Avenue (the 869 Communipaw Project) was heard under case number Z20-072. The two projects are designed to have complimentary façade designs and to be developed as phased projects.

12. Mr. Garber testified as to the existing conditions, the overall building design, the floor plans, and the selected materials for the Project. Mr. Garber's testimony was supplemented by Exhibit A-3, a slide deck presentation of the Project, and he explained that the façade material choices and design are meant to break up the bulk of the building by created a multi-faceted front façade to reduce the visual impact of the Project.

13. The Property is located in the C/A Zone. However, the majority of the surrounding area to the north and south of the Property is residential or park area. The location of this Property and the Project will allow it to serve as a connection between the surrounding residential neighborhoods and nearby Lincoln Park.
14. The Project will include a loading zone at the front of the building to accommodate deliveries, resident move-in / move-out, and rideshare pickups and drop-offs, with minimal effect on the traffic circulation on Communipaw Avenue. The drop off/loading area will be coordinated with the 869 Communipaw Project.
15. The Project will provide for improved storm water management. Specifically, the proposed tree pits associated with the Project will all have bio retention systems with infiltration, and will serve to accommodate additional storm water. Further, there will be on-site detention and a modular green roof system installed on the roof of the parking garage where the second floor is stepped back in the rear yard.
16. The Project provides a five (5) foot rear yard setback at the ground floor level, and a twenty-eight (28) foot rear yard setback from the rear lot line on the upper floors (above the garage area).
17. The Project will have forty-eight (48) parking spaces, which includes one ADA van space, one standard ADA space, thirty-five (35) standard parking spaces, and eleven (11) compact spaces.
18. There will also be two (or more if further subdivided) commercial spaces within the Project on the ground floor with a total of approximately 3,090 square feet of commercial space.
19. The overall building height will be six (6) stories and sixty (60) feet. The sixth floor will be setback from Communipaw Avenue by an approximate average of six (6) feet. This sixth floor setback will reduce the visual impact of the Project. It is recognized that the Project will be shorter than an unrelated neighboring project at 847-849 Communipaw Avenue that was previously approved by the Jersey City Zoning Board of Adjustment by way of case number Z20-073 (the "847 Communipaw Project").
20. The Project is designed with only one-foot floor assemblies, which is less than would be typical for a project of this scale. The purpose of this design choice is to reduce the height of the Project. The floor to floor height for each floor of the Project will be ten (10) feet, and the floor to ceiling heights will be nine (9) feet.
21. There will not be a publically accessible roof or any rear yard terraces.
22. The Applicant presented a shadow and visual impact study that demonstrated that most of any shadows resulting from the Project will project onto Communipaw Avenue, and not to the rear of the Property towards Roosevelt Avenue.
23. Matthew Neuls, P.E., of Dresdner Robin was called to testify as to the storm water

detention elements of the Project. The Project will have an on-site detention tank approximately 120' in length and 30" in diameter, and the proposed storm water retention complies with all statewide and Jersey City storm water management laws and regulations. The Project will significantly improve the existing conditions by reducing the amount of run off from the Property. The existing site is largely impervious and that condition will be improved by the proposed storm water management elements of the Project.

24. Charles Heydt, P.P., of Dresdner Robin testified as to the requested variances for the Project.

25. The Project satisfies the "Medici" requirements to grant a use variance. The Project is located in the C/A Zone, but the surrounding area has a variety of land uses, including residential uses to the north and south of the Property, Lincoln Park, and commercial land uses. The Property is located on a major east-west thoroughfare through Jersey City, with more commercial uses to the West of the Property that serves as the unofficial entrance to Jersey City from the West (the "Gateway"), and then transitions into more mixed-use and residential uses to the East of the Property as Communipaw Avenue transitions into the Neighborhood Commercial zoning district (which is similar to this Project). The location, and size of the Property, and its proximity to Lincoln Park makes this Property specifically and particularly suited to the proposed mixed use development in the Project.

26. The Property is particularly suited to the proposed use because of its location and the oversized nature of the Property. This Property is approximately 24,737 square feet, which is an oversized lot for the C/A Zone. The Property is also located within close proximity of the Neighborhood Commercial zoning district on West Side Avenue, which permits mixed use buildings similar to what is proposed in this Project (at building heights up to five stories and 55 and 64 feet in height), and does not have any density standard (which promotes greater density to support the permitted mixed uses). The proposed density of this Project is slightly higher than other multifamily uses in the surrounding area, but none of those buildings are on a Property this large. This unique oversized property can support the proposed density, the mixed uses, and the bulk of the Project.

27. The Project's parking ratio is approximately 0.5, which is consistent with typical multifamily buildings in other zoning districts throughout the city. The Project also provides bicycle parking and is close to several bus lines. Further, the sidewalk improvements and design at the ground floor level of the Project will help to make this section of Communipaw Avenue and the neighborhood a more pedestrian friendly area.

28. There will also not be any substantial detriments associated with traffic. The Applicant provided a traffic report in support of this conclusion.

29. Consistent with the foregoing, the Board recognizes that the Applicant demonstrated that the site is particularly suited for the proposed use because of its size and location, and because the Property and surrounding neighborhood can accommodate the intensity of the development.

30. The bulk and height of the Project is mitigated by stepping the building back above the garage level by twenty-eight (28) feet at the rear of the Project above the ground floor. These setbacks will further reduce the visual impact of the bulk and will provide additional light and air to the residential neighborhood to the south of the Property. The minimum required rear yard setback in the C/A Zone is only five (5) feet. The Board recognizes that although the maximum permitted building height in the C/A Zone is three (3) stories and thirty (30) feet, the C/A Zone would permit that building to be within five (5) feet of the rear lot line in this instance, while the proposed building will be six (6) stories and sixty (60) feet, this is mitigated by the additional setback of twenty-eight (28) feet from the rear lot line.
31. The building and lot coverage of the Project will also be mitigated by the storm water management elements of the Project, which will benefit the surrounding neighborhood by improving the storm water management from the existing conditions.
32. There will not be any substantial detriments to the general welfare and no substantial impairment to the zone plan and the zoning ordinance. The setback on the upper floors at the rear of the Property as well as the setback on the sixth floor in the front of the building will create a building mass that is appropriate for the neighborhood. The majority of any shadows created by the Project will be on to Communipaw Avenue, which is a seventy (70) foot wide right of way. The Project is also an improvement over the existing and/or prior uses at the Property (an automobile dealership, automobile repair shop, retail, and surface parking).
33. The Project will not create any substantial detriments to the general welfare with respect to storm water management, as the Project will improve the existing condition by replacing an impervious existing surface with a Project that provides an adequate storm water detention tank, bioswales in the tree pits, and green roof area.
34. The Project will advance the purposes of the Municipal Land Use Law (the "MLUL"). Specifically, the Project will guide appropriate development for the general welfare. The Project will be a better land use because it incorporates the commercial nature of the C/A Zone while also linking the residential uses to the North and South of the Property. There are also adequate vehicle and bicycle parking, and there is appropriate access to other resources in the greater neighborhood (including bus lines) that this is an appropriate use and benefits the general welfare.
35. The Project is also providing for the inherently beneficial use of affordable housing as part of the Project as it will be providing that ten percent (10%) of the residential units (9 units) will be restricted as moderate income affordable units for a thirty (30) year period.
36. The Project advances the purposes of the Jersey City Master Plan. The Project is providing adequate buffering from neighboring properties by providing setbacks and stepbacks to reduce the building's bulk, and by not providing any accessible rooftop or rear yard outdoor space to accommodate noise concerns from surrounding properties. The existing use includes surface parking which is an undesirable land use, and the Project will be a vast improvement over the

existing use. The Jersey City Master Plan acknowledges that there are unique planning challenges with the C/A Zone due to the well-entrenched and undesirable automotive uses on small lots, and this Project helps to advance the purposes of the C/A Zone to upgrade and improve the appearance of Communipaw Avenue through sensitive site planning and other measures.

37. The Project will be transformative for the neighborhood and this Gateway corridor to the western edge of Jersey City, and will advance the purposes of the Municipal Land Use Law (the "MLUL"), the C/A Zone, and the Jersey City Master Plan.

38. The granting of the requested use variance will be a municipal action that will guide the appropriate development of the Property with a mixed-use building and it will promote the public health, safety, and general welfare, consistent with N.J.S.A. 40:55D,-2.a.

39. The Project will also establish an appropriate population density at a location lacking in residential uses, and will contribute to the well-being of persons, the neighborhood, and community, consistent with N.J.S.A. 40:55D-2.e.

40. The proposed multi-family building will also promote a desirable visual environment through creative development technique, and good civic design and arrangement, consistent with N.J.S.A. 40:55D-2.i.

41. The positive and negative criteria for granting the requested use variance are satisfied. The Project will not create any substantial detriments to the general welfare. Accordingly, the requested use variance is warranted and can be granted.

42. The Applicant is also requesting a variance to permit relief from the maximum permitted building height of a principal structure in the C/A Zone. The maximum building height in the C/A Zone is three (3) stories and thirty (30) feet. The bulk standards in the C/A Zone also permit a building to be within five (5) feet of the rear yard, zero side setbacks, and a building and lot coverage of ninety (90) percent. The Applicant is proposing a building that is six (6) stories and sixty (60) feet in height.

43. The ground level of the Project building (the retail/commercial and garage level) is setback from the rear yard lot line by five (5) feet, which is consistent with the C/A Zone rear yard requirement. Additionally, the upper floors of this Project are set back an additional twenty-three (23) feet from the rear yard lot line, for a total setback from the rear lot line of twenty-eight (28) feet. The Project will have an additional average/approximate setback of six (6) feet at the front of the building at the sixth floor level.

44. The location of the building and its setbacks will also create a substantial distance between the Project building and the structures to the south along Roosevelt Avenue.

45. The Applicant demonstrated that the proposed additional building height will not offend the purpose of the C/A height limitation as any shadows from the Project and the additional height of the building will predominantly all fall to the north along Communipaw Avenue, and

accordingly, not on the properties to the south along Roosevelt Avenue. Therefore, there will be sufficient and adequate light and air consistent with the intent of the height limitation in the C/A Zone as this will not be a three story building only five (5) feet off the rear lot line. The Project is also not blocking any view corridors that would not also be blocked by a conforming thirty (30) foot building.

46. This Board acknowledges that it granted an approval for a six (6) story building, at a height of sixty-seven (67) feet, at the adjacent property at 847-849 Communipaw Avenue, Jersey City ("847 Communipaw Project"). This Project will be consistent and harmonious with the height of 847 Communipaw Project and the immediate neighborhood (including the nearby NC Zone, which permits buildings up to five stories and 55 feet with residential uses, and 64 feet for non-residential uses), and will be of a similar character of building and use (a similar mixed use building with on-site parking) along this "Gateway" to Jersey City.

47. The substantial oversized nature of the Property also supports the additional height, density and use of the Property. The Project includes the retail/commercial uses permitted by the C/A Zone, and the residential uses will support these uses, similar to the NC, Neighborhood Commercial Zone a few hundred yards to the east along West Side Avenue. This will assist in making the immediate community and this portion of Communipaw Avenue a more walkable and safer area.

48. The Project also does not provide for rear yard terraces or balconies, which will maintain a passive area between this Project and the properties to the south. In contrast, the C/A Zone does not have any prohibitions against the use of rear yards for any of the permitted uses.

49. The proposed additional building height is consistent with the surrounding neighborhood, and specifically the 847 Communipaw Project, and the Project is not out of place along this Communipaw Avenue corridor; the Project will not block any view corridors/sheds that would not otherwise be blocked by a compliant building height; the Project is consistent with the character of this Communipaw Avenue corridor and the nearby NC Zone as it will be a mixed use development consisting of permitted uses and the residential use to support the permitted uses; and as a result of the numerous setbacks, the Project does not offend the purpose of the height restrictions in the C/A Zone and the additional building height will not have a detrimental effect on the neighborhood than a permitted building height. Accordingly, the requested relief for the height variance can be granted.

50. The Applicant is also requesting relief for the minimum drive aisle space and for the providing of compact car spaces. These are issues that are interior to the property. The garage will be used by those living in the building and those familiar with the building, so any detriments from the smaller areas will be minimal. Accordingly, the relief for the drive aisle width and smaller spaces can be accommodated. The resulting benefits of this relief will result in more parking in the Project. The benefits of the additional parking outweigh any substantial detriments from the relief requested, and these variances can be granted.

51. The Board concurs with the testimony presented on behalf of Applicant and the testimony

of the Division of Planning Staff. The Board also recognizes and acknowledges the Division of Planning Staff report dated November 16, 2021 and prepared by Tanya Marione, AICP, PP, Director of the Division of Planning (the "Planning Report"). The Planning Report is part of the record for this Project, and attached hereto as Exhibit A. The Board relied upon the Planning Report and Ms. Marione's testimony with regard to the Planning Report, and Ms. Marione's testimony and opinions as to the requested variances.

52. The proposed use and height will promote the transitional character of the neighborhood. The Project advances the Jersey City Master Plan by developing a unique, attractive, and high-quality mixed use building that will attract new residents with a wide range of housing (including affordable housing units) and life-style choices, and retail/commercial uses. The requested variances can be approved in that both the positive and negative criteria have been met pursuant to N.J.S.A. 40:55D-70.d(1) and N.J.S.A. 40:55D-70(d)(6) for the use and height variances. The subject property is particularly well-suited to accommodate the proposed use and the building without any substantial detrimental impacts to the character of the area or the intent of the zone plan, and the granting of the variances will not result in any substantial detriments to the public good, and will not substantially impair the intent and purposes of the zone plan as discussed above.

53. The requested variances pursuant to N.J.S.A. 40:55D-70(c) as to the drive aisle width and compact car spaces can also be granted as the benefits of granting this relief outweighs any substantial detriments.

54. Several residents of the surrounding area commented on the Project. The Board considered these views when making its decision.

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment of the City of Jersey City, County of Hudson and State of New Jersey, for the foregoing reasons, approves the within application for Preliminary and Final Major Site Plan approval with variances pursuant to N.J.S.A 40:55D-70(d) (use, height) and N.J.S.A 40:55D-70(c) (compact spaces; drive aisle width), to wit: Calendar No. Z20-071, for the purpose of developing the property with new construction of six (6) story mixed-use building containing ninety (90) dwelling units (with 10% of the units [9] restricted as moderate affordable housing units for 30 years), ground floor commercial space and forty-eight (48) parking spaces at grade on the property located at 851-859 Communipaw Avenue, Jersey City, New Jersey, and identified on the Jersey City Tax Maps as Block 18206, Lots 8, 9, and 10, in accordance with the plans and testimony submitted to the Zoning Board of Adjustment of the City of Jersey City in accordance with the submitted plans and testimony that are incorporated herein, subject to the following conditions:

1. Applicant and/or developer shall have a completed Affordable Housing Agreement with the Division of Affordable Housing prior to issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.

2. All street trees and improvements in the right-of-way must be complete and done in accordance with final plans prior to issuance of a Certificate of Occupancy.
3. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
4. All material and color selections shall be shown on the final plans. No change to the façade and site design, including materials as well as any changes that may be required by the Construction Code Official, shall be permitted without consultation and approval by the Planning staff.
5. All street trees and landscaping shall be installed in accordance with the Jersey City Forestry standards prior to the issuance of a Certificate of Occupancy.


APPLICANT: 859 COMMUNIPAW AVENUE JC, LLC

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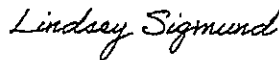
CASE NO.: Z20-071

VOTE: 6-1

COMMISSIONER:	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Joshua Jacobs, Chairman	X			
Kate Donnelly, Commissioner		X		
Ahmed Shedeed, Commissioner	X			
Sonia Araujo, Commissioner	X			
Bhavesh Patel, Commissioner	X			
Lenora Brown, Commissioner	X			
Danielle Maini, Commissioner	X			



Josh Jacobs (Jan 20, 2022 16:19 EST)

JOSHUA JACOBS, CHAIRMAN
JERSEY CITY ZONING BOARD
OF ADJUSTMENT



LINDSEY SIGMUND, SECRETARY
JERSEY CITY ZONING BOARD OF
ADJUSTMENT

APPROVED AS TO LEGAL FORM:


Vincent LaPaglia (Jan 21, 2022 02:53 EST)
VINCENT LaPAGLIA, ESQ.

DATE OF HEARING:
DATE OF MEMORIALIZATION:

December 2, 2021
January 13, 2022

CITY OF JERSEY CITY

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



Interdepartmental Memorandum

DATE: 11.16.21

TO: Zoning Board of Adjustment

FROM: Tanya R. Marione, AICP, PP

RE: 851-859 Communipaw Avenue aka 859 Communipaw Avenue
Z20-071 - Preliminary and Final Major Site Plan with 'c' and 'd' variances

861-877 Communipaw Avenue aka 869 Communipaw Avenue
Z20-072 - Preliminary and Final Major Site Plan with 'c' and 'd' variances

DOCUMENTS REVIEWED

- General Development Applications for Z20-071/Z20-072
- Architectural and Engineering Plans dated 9.17.21 by GRO Architects and Min W. Kil
- Shadow Study dated 9.24.21 by GRO Architects
- Statement of Principal Points for Z20-071/Z20-072
- Traffic Reports for 859 and 869 Communipaw Avenue by Klein Traffic Consulting, LLC dated 6.18.21

SITE & PROJECT DESCRIPTION

859 Communipaw Avenue

24,737 sq ft lot in the C/A – Commercial Automotive zone with a single story warehouse building previously used as a gym, with accessory surface parking.

869 Communipaw Avenue

18,467 sq ft lot in the C/A zone used entirely for surface parking. This lot was the former site for Al's Diner.

Exhibit A

PROPOSED ACTION

#	Standard	859 Communipaw		869 Communipaw	
		Original Submission	Current Submission	Original Submission	Current Submission
1	Use 1.Retail sales of goods and services. 2.Auto sales. 3.Auto repair and services. 4.Service stations. 5.Auto body shops. 6.Financial institutions.	- Multi-Family with 90 units/10% moderate affordable onsite/Ground floor commercial spaces	- Multi-Family with 90 units/10% moderate affordable onsite units/Ground floor commercial	- Multi-Family with 70 units/10% moderate affordable onsite units/Ground floor commercial	- Multi-Family with 65 units/10% moderate affordable onsite units/Ground floor commercial
2	Maximum Height 30'	67'	60'	67'	60'
3	Front yard setback	18'	0-12'	18'	0-12'
4	Rear yard setback	1 st floor – 0' 2 nd and above – 23'	1 st floor – 5' 2 nd floor and above – 28'	1 st floor – 0' 2 nd and above – 23'	1 st floor – 5' 2 nd floor and above 27'5"
5	Max building coverage	96.5%	93%	95.74%	92%
6	Max lot coverage	100%	96%	100%	96%
7	Off street parking	36	48	27	33
8	Unit breakdown	10 – 2 bedroom 75 – 1+ den bedroom 5 – 1 bedroom	21 – 2 bedroom 69 – 1+ den bedroom	5 – 2 bedroom 50 – 1 bedroom 15- studio	20 – 2 bedroom 41 – 1+ den bedroom 4 – 1 bedroom

Positive Criteria – Special Reasons and Site Suitability

All 'd' variances must prove that there are sufficient special reasons that fall under one or both circumstances: 1) the applicant would suffer an undue hardship if not granted relief from the zone standards, and/or 2) the proposal carries out the purposes of zoning as defined in NJ. 40:55D-2. Use variances have the additional burden of proving the site suitability test – It must be shown that the site is 'particularly suitable' for the proposed use. Cox explains that site suitability is not focused on the zoning

criteria but “1) why the location of the site within the municipality or region is particularly suited to the use despite the zoning and/or 2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use.” Cox, 2021 pg 706

Special reasons for granting a variance were determined by the NJ Supreme Court exist if the reasons fall within the Purposes of Zoning as outlined in the MLUL. It is staff's opinion that this application meets the purposes NJSA 40:55D,2, a, b, c, d, e, g, h, i, and m .

a. To encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals and general welfare.

d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole

e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods communities and regions and preservation of the environment

m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land

The earliest European settlements in Jersey City were in the area we now refer to as Bergen-Lafayette, and then slightly west up the Palisade ridge to Bergen Square. It would be Bergen Square, and not downtown, where residential neighborhoods in Jersey City started to develop. Communipaw Avenue – which originally connected Bergen Square to the ferry in Communipaw (Van Vorst/Paulus Hook neighborhood) – would be extended further west to the Hackensack River completing the east –west corridor.

The “Uptown Jersey City Narrative” written by Joseph Brooks in 1986, gives a further explanation on the development that eventually would come to the area of the applicant's site.

“It was along Bergen Avenue where architectural development had begun. Nevertheless, with the broadening and extension of Communipaw Avenue to the Hackensack River, and of Grand Street to Paulus Hook, after 1849, development was encouraged....

The West Side Avenue, however, marks the sloping of the palisade ridge, and it was marshy west of Mallory; so the area along West Side Avenue and even south of Communipaw Avenue, which was a bit far from Bergen Square or Exchange Place, was considered not so valuable. Therefore in that area a more middle-class neighborhood grew. The area west of West Side Avenue developed as a blue-collar section of the city.

...perhaps the most consistently 19th century street is – naturally – West Side Avenue. The street was laid early and developed from 1850 as a commercial street and so has the combined usage

of residential/commercial Italianate buildings – like Newark Avenue or Central Avenue... West Side Avenue has 'Main Street' designation potentiality." (page 66-8)

The 1920 "Jersey City Development Plan" also makes reference to this area under the section "The West Waterfront."

"Newark Bay, the Passaic and Hackensack Rivers and the great valley extending from the foothills of the Palisades to the Orange Mountains, the Passaic Valley, present the opportunity for development of the greatest industrial, commercial and maritime city in the world. No other location within the Metropolitan District offers such a magnificent opportunity for the creation of an ideal harbor with piers, wharves, warehouses and loading appliances of ample capacity and with direct railroad connection to the adjacent factory or industrial plant, for the construction of which there exists here unlimited space, for direct trans-shipment to and from the interior. All the trunk lines cross this great natural industrial basin on their way to carry more and more congestion to Manhattan and the Jersey City waterfront."

100 years later, the conversation shifted to dealing with the pollution and contamination left behind as a result of that industrial development boom. An article published in northjersey.com on January 12, 2018 spoke about how the then Governor Christie and his DEP Commissioner, Bob Martin, refused to ask the EPA to list the Hackensack River to the Superfund list. The Hackensack Riverkeeper had been advocating to the EPA to add the river to list, and as a result of that advocacy, the EPA performed samples.

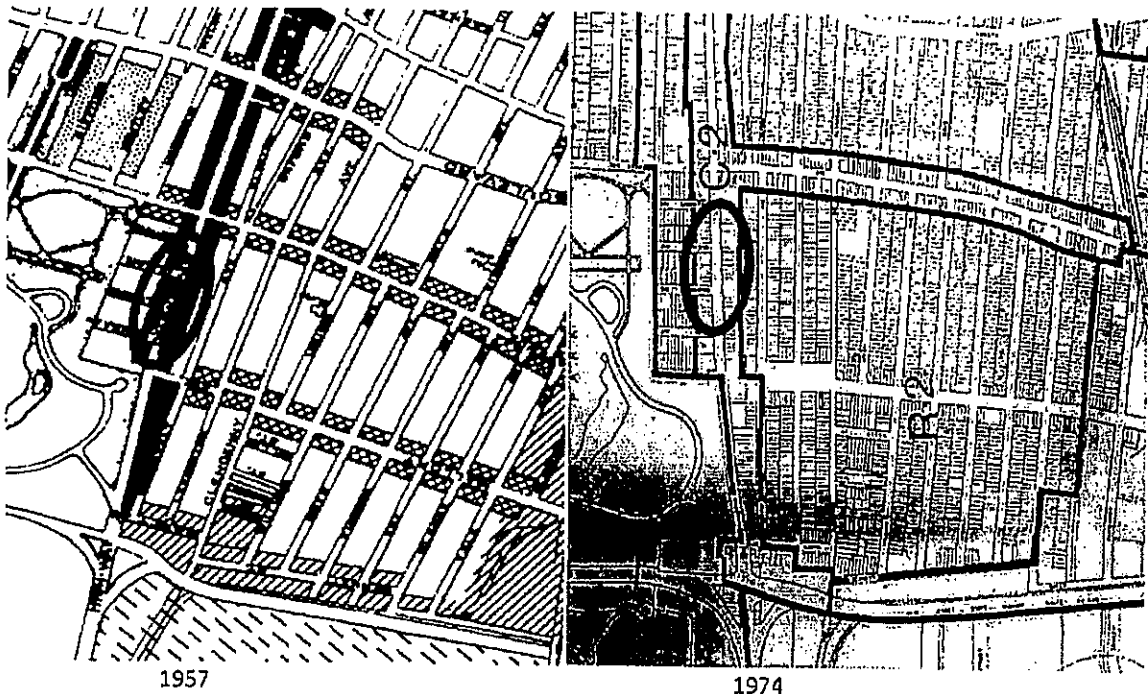
"The EPA sampling showed that the riverbed is laced for 22 miles with a toxic cocktail made up of dozens of contaminants, from Newark Bay north to the Oradell Reservoir — the legacy of more than a century of industrial activity along the river's banks. The sediment contains elevated levels of cadmium, lead, mercury, cancer-causing dioxin and PCBs — enough for the EPA to conclude that the river's contaminants are a potential health threat to humans and wildlife. Several experts on river pollution agree the sediment samples show widespread contamination." O'Neill, James M. "Despite Urging from feds, NJ has not asked for Hackensack River Superfund status", January 12, 2018, <https://www.northjersey.com/story/news/watchdog/2018/01/12/despite-urging-feds-nj-has-not-asked-hackensack-river-superfund-status/1014528001/>

Governor Christie refused to support the effort. The Hackensack River would not get state support to be added to the federal Superfund list until July, 2021.

"New Jersey already has 114 Superfund sites — the most in the country and by far the most per square mile for such small state. Adding the Hackensack, LaTourette (NJ DEP Commissioner) said, would not be another black mark for New Jersey and amplify its status as one of the most polluted states in the nation. Instead, he said it would show how much the state cares about cleaning up its messes." Fallon, Scott, "Gov. Murphy backs Superfund status for polluted Hackensack River after years of delay," July 23, 2021, <https://www.northjersey.com/story/news/environment/2021/07/23/murphy-nj-superfund-site-status-hackensack-river-epa/8053716002/>

There are only a few roads in Jersey City that are regional corridors. Communipaw Avenue, one of the oldest roads is the crossroads connecting the east coast to the rest of the country to the west. The 1930 and 1950s zoning called for the entirety of this road to be commercial. The neighborhoods around Communipaw Avenue, specifically where the applicant's site is located, built communities around the local main street, West Side Avenue, and eventually the construction of one of the largest parks in Hudson County. Both the east and west coasts of Jersey City were industry giants in a time when manufacturing was the economic engine of this country. The people who lived there were always the more socially and economically vulnerable. When the manufacturing economy changed to a post-industrial service economy these established neighborhoods were left with the legacy of industrial contamination without the benefit of employment. The warehouses along Communipaw that were constructed as a part of that industrial history were taken over by a more service oriented use – automobile service. When the industries left it also came with a loss in a tax base, resulting in the inability of the cities to keep up these areas and eventually blight and decline.

The 1957 Zoning for this site was Business District 'B,' this zone would have prohibited any manufacturing, light industrial, gas filling stations, and public garages. It would have permitted businesses of any kind, apartment houses, and limited commercial uses. In 1974 this area was rezoned as C-2, Office Retail. This zone would have permitted offices, retail, mid-rise apartments, auto service stations, auto sales, and parking garages and lots.



The 2000 Jersey City Master Plan described this area as 'Community Commercial' and 'Commercial Automotive.'

"The community commercial district is influenced by the presence of Routes 1 and 9, Tonnele Avenue and 440, which results in auto-dependent access and an uncoordinated streetscape. This district is in transition and is characterized by declining manufacturing uses, highway-oriented commercial development and vacant or underutilized former industrial auto-related property. There are significant opportunities to revitalize these areas while improving the function and appearance of the Routes 440, Tonnele Avenue and 1 and 9 corridors.

The commercial automotive district along Communipaw Avenue recognizes the unique planning challenges that exist in this area. These include the presence of well-entrenched and undesirable automotive uses on small and irregularly configured lots that conflict with the district's dual function as a major east-west transportation corridor and gateway to the City. The district extends along both sides of Communipaw Avenue from Route 440 in the west to Martin Luther King Drive and Monticello Avenue in the east. It is characterized by a predominance of low-end automotive uses including service stations, repair shops, body shops and used car sales. These uses generate significant nuisance impacts caused by the lack of screening, inadequate off-street parking and the industrial nature of the activities occurring on the premises.

Issues

1. Determining whether the commercial automotive district qualifies as an "area in need of redevelopment."
2. Improving the appearance of the commercial automotive district from Communipaw Avenue and residences to the rear of properties fronting on Communipaw Avenue.
3. Improving traffic conditions in the commercial automotive district and enhancing the function of Communipaw Avenue as a major east-west transportation corridor.
4. Recognizing Communipaw Avenue as a gateway into Jersey City from points to the west.

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In 2018, the Jersey City Municipal Council bonded \$170 million for the Bayfront Redevelopment Plan area that had been remediated by Honeywell. The site is 100 acres with a proposed development of 8,100 units, 401,000 sq ft of retail, a public school and a fire station. The Bayfront redevelopment plan is less than a mile from the applicant's site, this is an important factor because it shows the level of public commitment from the City for the redevelopment of this area. Part of the Bayfront redevelopment includes a partnership with NJ Transit for the expansion of the HBLR from the West Side station to cross Route 440 and open the west side more fully to the benefits of having more immediate access to mass transit. Applicant's site is a little more than a .5 mile from the West Side station.

The applicant's site is also located across the street from Hudson County's oldest and largest park – Lincoln Park. In the last 7 years alone, the County has made millions of dollars of capital improvements in the park to restore the fountain, replace the former greenhouse with a brand new greenhouse and storage

building that utilizes geothermal heating and cooling, grey water and a green roof, and finally complete rehabilitation of areas and paths adjacent to the lake.

In the 2021 newly adopted Jersey City Master Plan refers to this area as the "Gateway Commercial Zone."

Under current zoning, the City lacks a general commercial zone providing for a scale of development that accommodates vehicles but also serves pedestrians and cyclists. Such a zone would encourage a development pattern at an intensity between the auto-oriented HC district and the human-scaled NC and R-2D districts. This type of zone would recognize that some commercial areas in Jersey City may remain primarily accessible by vehicle, but that they should also ensure strong non-auto access and aesthetics. Because these commercial areas abut low-scale residential neighborhoods, zoning provisions need to be in place to buffer one- and two-family housing from non-residential uses and to Gateway Commercial Zone would seek to improve the public realm (i.e. wide sidewalks, street trees, buffers from travel lanes) to enhance the pedestrian experience, lessen nuisance impacts to nearby residential neighborhoods, and reduce the prevalence of drive-in commercial activities in favor of uses oriented to the street frontage. To accomplish these changes, a development scale of up to 5-6 stories would be appropriate, with additional allowable uses including grocery stores, office buildings, and hotels.

One candidate for a potential Gateway Commercial Zone is the C/A district found along western Communipaw Avenue (west of West Side Avenue). As noted below, the eastern Route 139 Use along Communipaw west of West Side Avenue 162 | Jersey City Master Plan: Land Use Element Chapter 5: Zoning Issues and Recommendations | 163 portion of the C/A district is recommended to be rezoned to NC. The western portion of the corridor includes long-time automotive uses on irregularly configured lots (including some small lots and some larger, through-lots west of Mallory Avenue) that conflict with the district's dual function as a major east-west transportation corridor and as a gateway to the City. The western portion of Communipaw Avenue is characterized by a predominance of low-rise automotive uses including service stations, repair shops, and car sales. These uses generate significant nuisance impacts caused by a lack of screening, inadequate off-street parking, and their semiindustrial nature. Zoning for this area could be less autooriented and better supportive of aesthetics and treatments that will make the corridor more walkable and less impactful on adjacent neighborhoods. (page 163-164)

The applicant's proposal advances the recommendations and issues highlighted from the 1957 zoning, 1974 zoning, 2000 Jersey City Master Plan, and 2021 Jersey City Master Plan. It also enhances the public efforts and investments happening at the local, county and state level. The 2000 Master Plan recommends this area be blighted so that nuisance uses could be removed in order to protect surrounding residences, improve the traffic conditions and enhance the function of Communipaw Ave as a major east-west transportation corridor. The proposal not only meets the intentions of previous plans, but it also clearly fits with the newly adopted 2021 Master Plan. Therefore, the application promotes the general welfare and proper development of population density and uses in coordination with local, county and state efforts and goals. Furthermore, the site is uniquely and particularly suited for the proposed use in that it will advance the purposes of zoning, purposes of the Master Plan – past and present, and general welfare substantially more than a currently permitted use would.

Finally, the applicant is also proposing 10% onsite affordable moderate units. This is not required by ordinance as the Inclusionary Zoning Ordinance has not yet been approved by City Council, however this area would trigger the 10% onsite requirement – meaning that proposal would also meet the ordinance currently before City Council.

b. To secure safety from fire, flood, panic and other natural man-made disasters.

Applicant is not in a flood zone, however the area is prone to flooding due to combined sewer overflows and drainage issues caused by the DOT on Route 440. Applicant is mitigating flooding issues through the proposed construction of an underground detention basin, installation of a green roof, and providing enhanced tree pits in the right of way.

c. To provide adequate light, air and open space

The current building on 859 Communipaw Avenue is setback 7 ft from the rear property lines of the buildings that front on Roosevelt Avenue. Additionally, 52, 54, 64, and 70 Roosevelt Avenue, properties within the R-1 zone that require a 30ft rear yard setback, all have buildings that extend to or abut their rear property line. The applicant is proposing for the first floor, the parking and retail level, to be setback 5 ft from the rear. The upper floors will be setback 28 ft, which is similar to the setback that would be required if the R-1 lots backed up to other R-1 lots. Additionally, the minimum rear yard setback in the C/A zone is 5 ft with a maximum building height of 30 ft. Meaning, that the homes on Roosevelt could back up to a 30 ft tall building setback only 5 ft from their rear property lines. The applicant is proposing for the first floor to be 10 ft, so only a 1/3 of what would be permitted had the applicant built a fully compliant building. There are no usable deck or terraces proposed along the rear of the applicant's building. The proposal results in more light and air for the surrounding homes than would be provided for a permitted building.



h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight

i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement

This area of Communipaw Avenue has been identified as a High Injury Road in the Jersey City Vision Zero Action Plan. High Injury Roads are analyzed and mapped according to police reports of all crashes where people were killed or seriously injured. Additionally, the Jersey City Vision Zero Action Plan points out that there is a significant overlap with High Injury Roads and traditionally underserved and under-resourced neighborhoods, referred to as Communities of Concern within the plan. This area of Communipaw Avenue is identified as both a High Injury Road with reported fatalities and is also a community of concern. The Vision Zero Plan highlights three points with the overlap of traffic safety and social vulnerability:

- 1) Conditions for walking and riding a bike lack safety and dignity because of the dominance of motor vehicles in the public realm and decades of inequitable investment and public policy.
- 2) Design and engineering solutions are highly effective in addressing traffic safety, and should be a priority throughout the City's HIN.
- 3) Speed is a dominant risk factor for fatal and serious crashes.

Both application sites are along Communipaw Avenue between West Side Avenue and Mallory Avenue. Belvidere Avenue and Nunda Avenue intersect at Communipaw Avenue along the site frontage. Additionally, there are multiple long curb cuts along both sites, with no street trees or buffer in the right of way between the pedestrian and traffic lane. The sidewalk is currently 8 ft wide and narrower than 5 ft wide where utility poles are located. The applicant is proposing to create a bump out for parking and loading along with significantly increasing the width of the sidewalk. There is currently no on street parking along this part of Communipaw, so the bump out lane provides parking but also a safe place for loading and deliveries without interfering with traffic. The addition of enhanced tree pits also provides a buffer for the pedestrians.

Within both traffic reports provided by Klein Traffic Consulting, the traffic engineer concludes that neither project would have a significant impact on the traffic operations of area roadways and intersections or on local parking conditions. Both projects also propose shared parking spaces, 4 spaces for 859 and 2 spaces for 869. The Klein report for 869 Communipaw cites that according to a Montclair zoning ordinance, "each car-sharing vehicle would count as the equivalent of 6 parking spaces. This is because the car-sharing vehicle would be available for tenants to use instead of owning their own personal vehicle. The Urban Land Institute (ULI) reported in August 2019 that 'increasingly cities are using parking policies to stimulate shared mobility through alternatives to personal ownership of automobiles.'"

Negative Criteria

The proposed use will not cause substantial detriment to the public good, but will in fact advance the public welfare. The proposed use will not impair the purposes of the zone plan as the proposed use conforms perfectly to the previous and newly adopted Master Plan.

STAFF RECOMMENDS APPROVAL OF THE APPLICATION WITH THE FOLLOWING CONDITIONS

- 1) Applicant and/or developer shall have a completed Affordable Housing Agreement with the Division of Affordable Housing prior to issuance of a Certificate of Occupancy, or TCO.
- 2) All street trees and improvements in the right-of-way must be complete and done in accordance with final plans prior to issuance of a Certificate of Occupancy.
- 3) All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
- 4) All material and color selections shall be shown on the final plans. No change to the façade and site design, including materials as well as any changes that may be required by the Construction Code Official, shall be permitted without consultation and approval by the Planning staff.
- 5) All street trees and landscaping shall be installed in accordance with the Jersey City Forestry standards prior to the issuance of a Certificate of Occupancy.