

## **PRINCIPAL POINTS STATEMENT**

**342 COMMUNIPAW JC LLC  
342 COMMUNIPAW AVENUE  
BLOCK 2005, LOT 12**

342 Communipaw JC LLC (the “Applicant”) has submitted a General Development Application to the Jersey City Planning Board requesting Minor Site Plan approval with “c” variances (proposed side yard; required depth to permit ground floor residential; bicycle parking location) to develop a four (4) story mixed-use building containing 7 dwelling units (including a ground floor residential unit) and a ground floor retail space (the “Project”). Applicant is currently the owner of 342 Communipaw Avenue, also designated as Block 20005, Lot 12 on the Official Tax Map of the City of Jersey City (the “Property”). The Property is an approximately 1,875 sq. ft. (25’ x 75’) undersized, vacant lot. The Property is located within the Mixed-Use A district of the Morris Canal Redevelopment Plan Area and is subject to the requirements of the Morris Canal Redevelopment Plan (the “Redevelopment Plan”).

The provided zoning table indicated the following deviations would be required:

- Proposed Side Yard: 0’/ Required: 3’ for side yard lot line windows
- Proposed Building Depth while Providing Ground Floor Residential Uses: 60’/ Required 80’
- Proposed Bicycle Parking Location: Basement/ Required: indoors

The majority of the requested deviations are a direct result of the truncated nature of the existing lot. The required lot size is 2,500 sq. ft. while the required depth is 75’. Applicant cannot comply with either of these conditions as the lot size is existing, yet the Redevelopment Plan grandfathers all pre-existing lots at the time of the adoption of the Redevelopment Plan to be considered conforming. The lot size cannot be increased as the neighboring building is located on a flag lot with a portion of the existing building to the direct rear of the lot making subdivision to create a conforming lot not feasible without destroying the rear yard building. No deviation for the lot size or depth is needed, however, the existing lot size is a result justification for the proposed lot.

**Side Yard:** The Proposed zero lot line is in keeping with the goals of urban planning for mixed-use and commercial corridors. Compliance with the required sideyards would result in gaps between buildings where contiguous streetscapes are preferred. 3’ sideyard is required only to accommodate existing windows. While there is a neighboring window on the western façade of the building to the east, a continuous lightwell to the rear yard is proposed to accommodate the window of 3’ ultimately causing no detriment. As the benefits outweigh the detriments the deviation N.J.S.A. 40:55D-70(c)(2).

**Required Ground Floor Depth for Residential Uses:** Firstly, Applicant contends that the ground

floor residential use does not require a use variance pursuant to N.J.S.A. 40:55D-70(d)(1). Pursuant to that section, a (d)(1) variance is required where a departure is requested for “a use or principal structure in a district restricted against such use or principal structure.” Ground floor residential uses are permitted by the Redevelopment Plan in the Mixed-Use A district. Though the Project does not meet the specifications for the use, the use itself is permitted and could be freely utilized without relief on a deeper lot.

The permissibility of a ground floor residential use can be more likened to a conditional use, whereby the use is permitted subject to certain conditions subsequent. However, this also cannot be the case. In a passage in William M. Cox’s New Jersey Zoning and Land Use Administration, (“Cox”), generally considered the leading authority on New Jersey Land Use, the author states that conditional uses do not exist in a municipality unless specifically authorized in the zoning ordinance. See § 25-1.1 (2020). The Jersey City Land Development Ordinance (“JC LDO”) permits conditional uses pursuant to § 345-26. Cox goes on to state that where an ordinance otherwise establishes conditional uses, the attachment of an additional condition to a permitted use does not convert the use to a conditional use. See PBR Enterprises, Inc. v. South Brunswick, 105 NJ 1, 8-9 (1987).

In PBR, a use was only permitted if it was a “a medium traffic generator.” The Planning Board treated this as a condition precedent for the permissibility of a conditional use. Keeping aside the Court’s discussion of the specificity of the condition, the Court held that the requirement that the use be a “a medium traffic generator” did not convert the use to a conditional use. The court found that the zone contemplated conditional uses and did not directly identify the proposed use as a conditional use “clearly reflecting the governing body’s determination that [the proposed use] was not intended to be designated as a conditional use.” Id. at 8.

While the Morris Canal Redevelopment Plan does not contain any conditional uses, the JC LDO does contain conditional uses. In adopting the Redevelopment Plan, the Governing Body was permitted to make certain uses conditional by JC LDO § 345-26. The Governing Board either chose not do so or did not contemplate that the uses within the Redevelopment Plan should be conditional. As such, it can be argued that that the conditions precedent to the ground floor use can be deviated from due to hardship as they are not conditional uses requiring a (d)(4) variance. A variance not cognizable as a “d” variance is considered a “c” variance: “If an application development requests one or more variances but not a variance for a purpose enumerated in subsection d. of this section, the decision on the requested variance or variances shall be rendered under subsection c. of this section.” N.J.S.A. 40:55D-70(d). Accordingly, the Board can grant the requested deviation.

Secondly, the deviation is appropriate as the undersized lot creates a hardship and the benefits outweigh the detriments. The undersized nature of the lot makes compliance with the requirements impossible. Applicant is requesting the ground floor unit in order to comply with ADA regulations. Not only does the requested unit provide an ADA accessible unit at the ground floor, it mitigates the need for an elevator. An elevator would require a bulkhead; a permitted

bulkhead which would increase the visual height of the building and likely be visible from the street due to the shortened nature of the building.

**Bicycle Parking Location:** Applicant is in compliance with the required number of bicycle parking spaces. The location is proposed within the basement as much out of convenience as availability. Applicant is proposing a basement and accordingly can accommodate bicycle parking within the space. This allows for greater area on the first floor to accommodate the required commercial space and the ADA accessible unit. As Applicant otherwise complies with the requirement, there is no detriment to the zone plan and the deviation can be granted.

The proposed development of the Property is an appropriate development of the property that will benefit the immediate neighborhood and will promote the general welfare, promote appropriate population densities, and a desirable visual environment. The development will promote a desirable visual environment by redeveloping a residential use appropriate for the neighborhood. The proposed use and the bulk of the project is an appropriate use of the land and an appropriate build out of the land, and the proposed project will not affect any permitted uses in the neighborhood.

The proposed variances will not cause a substantial detriment to the public good, nor impairment to the intent and purpose of the Jersey City Zone Plan and Zoning Ordinance.

The Applicant reserves the right to supplement its reasoning through expert testimony at the hearing.