



MEMORANDUM

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To: City of Bayonne Zoning Board of Adjustment

From: Brian Slaugh, PP, AICP
James Clavelli, PP, AICP

Re: **Henry Budny**
Use and Bulk Variances
Block 460, Lot 16
14 Prospect Avenue
R-2 Residential District &
TDO Transit Development Overlay District

Date: October 10, 2023

1. APPLICATION DESCRIPTION

1.1. Applicant's Proposal. The applicant proposes to convert an existing single family attached residence, or townhouse, on a 2,500 sf. lot into a two-family townhouse. The interior of the building is set up as a two-family townhouse but neither the R-2 district nor the TOD overlay allow this type of building use. Effectively, the fact that the building is used for a permitted use means that the applicant has abandoned the prior non-conforming use for a conforming one. With this application, the applicant seeks to make a conforming use back into a non-conforming use, which is in opposition to the zoning principle to bring land use in ever greater conformity with the zoning ordinance. In addition, the applicant will need for the Board to grant various bulk variances. The proposal requires six “-(c)” variances.

1.2. Existing Site Conditions. The property is a two-story building at 14 Prospect Avenue that is now attached to 16 Prospect Avenue and appears to have been constructed about the same time. Both properties appear on the 1912 Sanborn map but interestingly, were not joined at that time. The subject property is approximately 140 feet south of East 21st Street. The residence has two kitchens and living rooms, one on each floor, and two bedrooms on each floor. The upper floor has a third room labeled a den, which aside from the lack of a closet looks to be a small bedroom (structures built before World War I did not necessarily have closets; clothes were stored in wardrobes or hung on pegs on the wall). There is a single front entrance on Prospect Avenue that leads to a hall and the staircase rising to the second floor. The property does not contain off-street parking spaces.

John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP
Michael Hanrahan, AIA
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Aerial of Subject Property and Surrounding Area

- 1.3. **What is the Proposed Use?** The plan identifies the existing building as a detached double-family dwelling. Technically, Bayonne defines a single structure with two households, one living above the other with certain design elements, as the following:

Townhouse, Two-Family - Shall mean a two-family dwelling in a row of at least two such double units in which each individual unit is served by an exterior door with a private stairway, and in which each double unit is separated from any other double unit by one or more vertical common fire resistant walls.

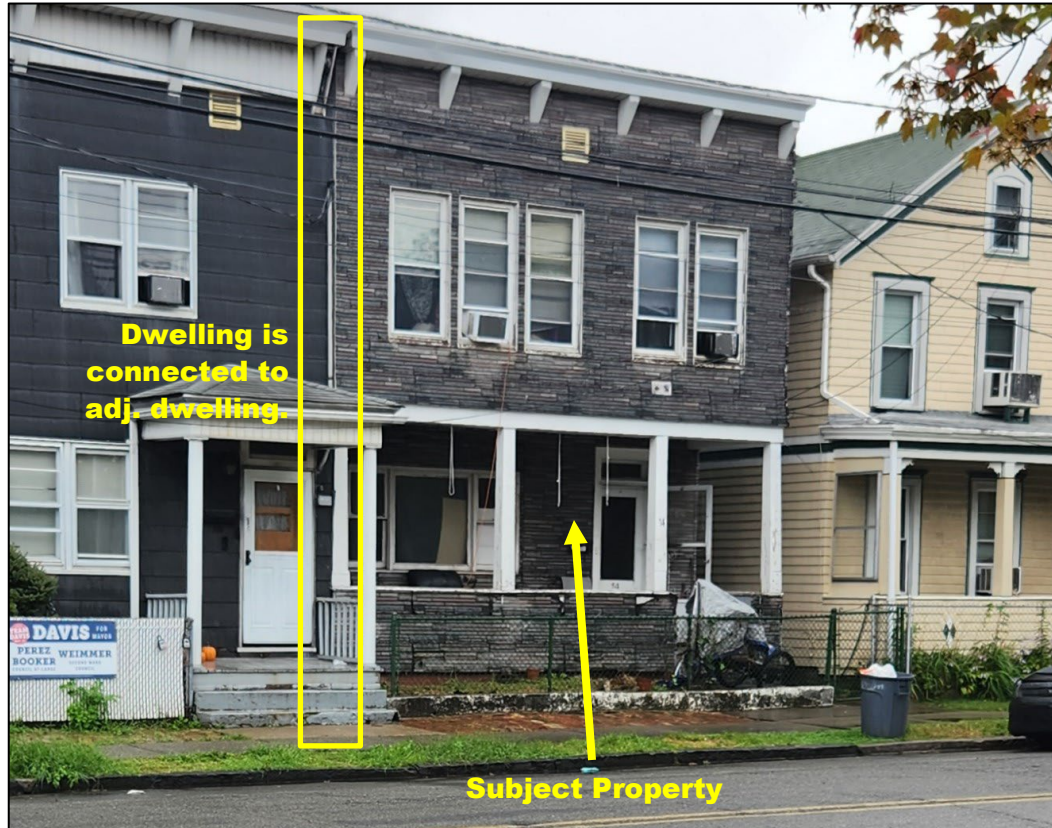
At least from the front, 14 Prospect Avenue is attached to 16 Prospect Avenue – not detached. Furthermore, while the arrangement inside would easily allow for a two-family use, it was not last occupied in that fashion, but as a four-bedroom single family attached dwelling, otherwise known as a townhouse. From the property record card for 16 Prospect Avenue, this building has two dwellings, so two-families in 14 Prospect would meet, at least definitionally, that it would be in a row of at least two such two-family dwellings. However, neither 14 or 16



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Prospect have separate entrances to the internal units and it is unlikely that the wall in between is fire-resistant¹.



Moreover, the TDO district permits townhouses whereas the R-2 district only permits detached double-family dwellings. **Accordingly, the plan should be revised to reflect the following:**

- Indicate that the subject property is located within both the R-2 and TDO districts.
- Indicate that the proposed use of the property will be similar to, but not definitionally equal to a Bayonne two-family townhouse, not a detached double-family dwelling.

¹ - Meaning having a two-hour fire rating by the building code.



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- The project description on the plan indicates the “legalization of an existing one family residential building to go from one family to two family,” however, the schedule of district regulations states that the existing building use is a detached double-family building. The plan should be revised so that the property’s existing use is made consistent.
 - The site plan should include a table that compares the proposed development to the TDO district standards for townhouses in §35-5.15.e as opposed to the R-2 district standards for detached double-family dwellings in §35-5.3.e.
- 1.4. Neighborhood Context.** Aside from the R-2 and TDO districts in which the subject property is located, it is also near the boundaries of the H-C Highway Commercial district (approximately 200 feet to the south beyond East 19th Street) and the Transit Development District (approximately 50 feet to the west beyond Prospect Avenue). Single and two-family residential dwellings surround the site immediately to the north, south and east. To the west on the other side of Prospect Avenue is a parking lot and generator (owned by NJ Transit), the 22nd Street Hudson-Bergen Light Rail station, and the *Lofts Two22* apartment building. A NJ Transit Park & Ride facility is located to the south of East 19th Street, and several non-residential uses are located north on East 21st Street (including the Beacon Christian Academy and Melanie’s Deli luncheonette, which has common ownership with this property).
- 1.5. Environmental Factors.** The site is not in a flood zone, nor are there wetlands located within the vicinity of the site. Although the subject property is not a NJDEP remediation facility, there are several of these sites in the nearby vicinity, including the existing *Lofts Two22* apartment building to the west, Beacon Christian Academy to the north, and Mid-City Garage auto repair to the east.
- 1.6. Site Plan Approval is not Required.** The Municipal Land Use Law prohibits requiring site plan approval for one- and two-family dwellings. This report will only review zoning regulations relating to the variances and will not serve as a general site plan review.
- 2. ZONING**
- 2.1. Permitted Use.** Pursuant to §35-5.14.a, the TDO zoning district permits townhouses at a density not to exceed 90 dwelling units per acre. The proposed two units on 2,500 sf. The density proposed works out to be approximately 34.85 units per acre, well below the maximum density envisioned.



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- 2.2. **Required Accessory Use Variance.** Pursuant to §35-5.15.b, off-street parking is a required accessory use in the TDO district, or in the alternative, seek a waiver under the provisions of §35-17.7 in which case a variance is not required. No off-street parking exists onsite, nor is any proposed. The net increase from the existing condition to the proposed condition is one parking space.
- 2.3. **Area and Yard Standards and Required Variances.** The following table indicates the site's conformance with area and yard requirements in the TDO zone pursuant to §35-5.15.e.

TDO Area, Yard and Structure Requirements for Townhouses ~ §35-5.15.e				
Standard	Required	Existing	Proposed	Complies?
Minimum lot area	25,000 sf.	2,500 sf.	2,500 sf.	No (V)
Maximum density	5 ⁽²⁾	1	2	Yes
Minimum lot frontage	100 ft.	25 ft.	2,500 sf.	No (V)
Minimum front yard setback	25 ft.	5 ft.	No change	No⁽¹⁾
Minimum rear yard setback	25 ft.	45.4 ft.	No change	Yes
Max. bldg. height (ft. and stories)	75 / 7	27.6 / 2	No change	Yes
Min. gross habitable floor area (sf. per unit / ground floor area min.)	1,000 / 700	1,285± / 638⁽³⁾	638 sf.	No (V)
Maximum lot coverage	75%	~40%	No change	Yes
Minimum Unoccupied Open Space	15%	43.5%	No change	Yes

⁽¹⁾ - Preexisting Nonconformity.
⁽²⁾ - Max. density permitted is 90/acre. The site is 2,500 sf., permitting 5 units max. on site.
⁽³⁾ - Estimate for total habitable area and applicant's measurement of first floor habitable area. Our measurement differs. The plan should be revised to include the square footage of the second-floor apartment.

- 2.4. **Minimum Lot Area.** Pursuant to §35-5.15.e.1(c), at least 25,000 sf. is required for any type of townhouse. The existing lot is 2,500 sf. With the change from a single unit townhouse to a two-family townhouse, this standard is applicable. **A variance is required.**



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- 2.5. **Minimum Lot Frontage.** Pursuant to §35-5.15.e.2(c), lots with townhouses are required to have 100 feet of frontage where the existing lot is 25 feet². The change in the type of proposed townhouse triggers this variance. **A variance is required.**
- 2.6. **Minimum Gross Habitable Floor Area Per Unit.** In accordance with §35-5.15.e.7(d), a minimum gross habitable area of 1,000 sf. is required per unit. The ground floor unit is required to contain at least 700 sf. This office utilized a measuring program to determine the floor area of the unit(s). The ground floor area appears to contain ±620 sf. of area, and the second floor apartment appears to contain ±665 sf. of area. The ground floor contains less area due to the common hallway/staircase, which does not count towards the floor area of each unit. **A variance is required for minimum gross habitable floor area of the ground floor.**
- 2.7. **Preexisting Nonconformity.** Pursuant to §35-5.15.e.3(d), the a front yard setback of 25 feet where the existing condition is 5 feet. **The Zoning Board of Adjustment in practice has considered such conditions as necessitating variance relief.**
- 2.8. **Note Regarding Nonconforming Lot Size and Lot Frontage.** This office notes, based on review of tax maps from the City of Bayonne, that the vast majority of the properties on Prospect Avenue are lots which are 25' x 100', indicating that the TDO zoning requirements for lot size (25,000 square feet minimum) and lot frontage (100 feet minimum) are out of sync with the existing built environment.

It appears that the TDO's bulk standards for townhouses were intended for larger townhouse developments consisting of multiple, attached buildings. The proposed use for a type of two-family townhouse similar to Bayonne's definition of a two-family townhouse, is functionally closer in nature to a semi-detached single-family dwelling rather than a larger townhouse development on a lot in excess of half an acre.

In addition, §35-16.6 recognizes certain situations where two-family dwellings may be erected on nonconforming lots:

- The total lot area is not less than 2,500 square feet;
- The applicant has been unable, upon a good faith effort, to purchase at fair market value any adjacent available vacant lot or a portion of any adjacent land, whether vacant or not, which would render the applicant's lot conforming;
- Required front, rear and side yards are provided; and

² - The ordinance actually says "square feet" instead of "lineal feet" but is a typological error.



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- Off-street parking is provided in accordance with the zoning ordinance.

The submitted application materials have demonstrated the first two criteria for non-conforming lots to be built on without variance relief if the lots were already in existence, but does not meet the front yard requirement nor the parking standard. These factors may inform the Zoning Board in its deliberations over this application.

- 2.9. **Lot Coverage Standard:** The plan should be revised to indicate the current and proposed lot coverage of the subject property – which appear to be the same coverage. We estimate the existing coverage is approximately 40%, which complies with the district requirement of 75% (993 square foot building divided by 2,500 square foot lot area equals 40%). **The plan should be revised accordingly.**
- 2.10. **Parking Space Requirements.** Pursuant to §35-17.6.b, the minimum number of street parking spaces for two-family dwellings containing two bedrooms is 1.25 parking spaces per dwelling unit. The site is required to provide 2.5 total off-street parking spaces, or three spaces, rounded up, as the building would contain two two-bedroom dwelling units. No off-street parking currently exists or is proposed at the subject property; however, the applicant indicates they are the owner of the nearby deli luncheonette at 24-26 Prospect Avenue and can provide two off-street parking spaces after hours in support of the application. **If this arrangement is required by the Board, this office recommends that it be formalized through a licensing agreement and that the applicant demonstrate how the vehicles would park on that site. A variance would still be required.** The site's proximity to the 22nd Street Hudson Bergen Light Rail station may be a consideration regarding the parking variance.
- 2.11. **Licensing of Off-Site Parking Spaces.** This office recommends that the applicant pursue a licensing agreement to provide parking for the building tenants at 24-26 Prospect Avenue, rather than a deed restriction. The temporary nature of a licensing agreement, compared with permanent nature of the deed restriction, is preferable for the following reasons:
 - The pace of development in Bayonne has accelerated in the last decade. If either property is the subject of further development the parking needs on the sites may change. The deed restriction may prove a barrier to further development of either lot.
 - While the need for personal vehicles is seen as a priority at this time, future conditions may change the demand for vehicles, particularly for renters.



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These include the cost of ownership of an automobile, an increase in the available transportation alternatives such as e-bikes, public transportation or otherwise, and, changing preferences for younger generations towards driving.

As such, this office recommends that the applicant pursue a licensing agreement for any off-site parking spaces for a span of 10 – 15 years, with renewable options.

3. VARIANCE COMMENTS

- 3.I. **Uses Not Permitted in the Zone.** As the Board is aware, a request for a variance permitting a use not permitted by the zoning district must satisfy the positive and negative criteria. Decisions by the courts have set out the standards by which use variances are judged by the Board. The guiding case is *Medici v. BPR Co.* The applicant will need to demonstrate and the Board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use (positive criteria). Approving the use also requires "an enhanced quality of proof, as well as clear and specific findings by the board of adjustment, that the grant of a use variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance" (the negative criteria). As a short hand guide, we have listed for the Board's consideration several questions that are commonly asked in use variance applications:

SPECIAL REASONS (POSITIVE CRITERIA)

- Does the site have characteristics which make it peculiarly (but not uniquely) suited for the proposed use?
- Are there unusual circumstances regarding the applicant and/or property which would result in undue hardship if a use variance were not granted?
- Does the use promote the purposes of zoning? Typically, the Board would need to find that one of the purpose statements of the municipal land use law applies to the application.

NEGATIVE CRITERIA

- Would substantial detriment occur to the public health, safety and welfare if a use variance were granted?
- Would an impairment of the intent and purpose of the Master Plan or the Zoning Ordinance and Zone Plan (Zoning Map) result if a use variance were granted?



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- 3.2. **Consistency with the Master Plan and Zoning Ordinance.** The land use plan element of the Master Plan adopted in 2000 identifies this area for one and two-family dwellings at a density of up to 35 units per acre (as calculated out). The 2017 Reexamination Report recommended adding to the master plan documents, the TDO designation. The applicant's proposal is consistent with the land use policy of the City.
- 3.3. **Negative Criteria on Use Variance.** The applicant will need to demonstrate that the adverse effects of the lack of compliance with the City's zoning regulations ordinance will not have a substantially negative impact either on the neighborhood or from the effect it has on the master plan and zoning ordinance. The largest effect would appear to be from the parking impact. A four-bedroom dwelling does not have a specific parking requirement, but using the three-bedroom dwelling requirement of 1.5 parking spaces, the increase in required off-street parking is one space. The applicant proposes two off-street overnight parking spaces at Melanie's Deli.
- 3.4. **Comment on Bulk Variances.** The following sections summarize the "c" variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the "c" variances. The applicant must justify the "c" variances separately and each variance must satisfy both parts. We defer to the Board Attorney for any additional comment on the "c" variance criteria.
- 3.5. **Consideration of the Positive Criteria for "C" Variances.** To satisfy the positive criteria for a "c" variance, the applicant has two choices. First, known as "c(1)" variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:
- By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
 - By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
 - By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
 - Alternatively, and known as "c(2)" variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:



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- Where in an application or appeal relating to a specific piece of property to purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

3.6. Consideration of the Negative Criteria for “C” Variances. Should the applicant satisfy the positive criteria, it must also be demonstrated that that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan. These factors are referred to as the negative criteria.

4. ANALYSIS OF APPLICANT’S PROPOSAL

4.1. Consideration of the Variances. The use is similar to other uses in the neighborhood, including the building to which it is attached to the north. Other single and two-family homes, as well as multifamily homes (particularly a four story multifamily building received approval to be developed on the nearby northwestern corner of the intersection Prospect Avenue and East 21st Street).

The variances for minimum lot size, lot frontage, front yard setback, and gross habitable floor area are due to the inclusion of the site in the TDO, rather than the R-2, due to the dwelling technically being a type of two-family townhouse, rather than a detached single-family dwelling.

The applicant proposes to mitigate the parking variance by providing off-site parking spaces at the corner business also owned by the property owner. This arrangement, if required by the Board, should be formalized through a licensing agreement for a span of 10 – 15 years. Additionally, the proximity of the site to public transportation in the form of the nearby Light Rail Station and bus routes located on Broadway may factor into the Board’s decision to grant the variance.

5. APPLICANT AND THEIR PROFESSIONALS

- Applicant/Owner. Henry Budny, 37 East 21st Street, Bayonne NJ 07002. Telephone: 511-689-8383.
- Attorney. John A. Zucker, Esq., Rose & Zucker, LLC. 613 Broadway PO Box 95, Bayonne, NJ 07002. Tel: 201-436-6161. Fax: 201-436-3355. Email: jzucker@rosezuckerlaw.com.



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- Planner. Michael J. Pessolano, PP/AICP, MJP Land Use Planning LLC. 140 Elmwood Avenue, Floor 2, Bogota NJ 07603. Tel: 201-290-9460. Email: pazz@meganet.net

6. MATERIALS REVIEWED

The following materials were reviewed in the preparation of this report:

- Application, dated August 4, 2021.
- *Zoning Officer Letter*, prepared by Tracey Tuohy, dated March 7, 2023.
- *Narrative Statement of Applicant*, undated.
- Copy of Property Deed, dated April 27, 2017
- Property Survey, 1 sheet, prepared by Thomas G. Stearns III, GB Engineering, LLC, dated February 9, 2023.
- Site Plan, 2 sheets, prepared by Orestes Valella, AIA PC., dated July 11, 2021, last revised April 5, 2023.

7. LIST OF NECESSARY RELIEF

Based on our review, the following variances and exceptions are required based on the additional information submitted by the applicant. This list is not exhaustive and may be augmented by analysis performed by other Board professionals.

7.1. Variances:

- §35-5.15.a. Use variance for a principal use: two-family townhouse not meeting the definition of same in the Bayonne ordinance
- §35-5.15.b. Use variance for an accessory use: off-street parking, unless ameliorated by §35-5.17.6.b or -17.7
- §35-5.15.e.1 Minimum lot size
- §35-5.15.e.2 Minimum lot frontage
- §35-5.15.e.3 Minimum front yard setback*
- §35-5.15.e.7 Minimum gross habitable floor area of first floor
- §35-17.6.b Minimum parking space number

* Denotes a preexisting nonconformity.



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We would be pleased to answer any questions concerning this review.

Cc. Alicia Losonczy, Land use Administrator
Richard N. Campisano, Esq., Board Attorney
Robert J. Russo, PE, PP, CME, Board Engineer
Suzanne T. Mack, PP, AICP, CTP, FITE, AHP, City Planner
Tracey Tuohy, Zoning Officer

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