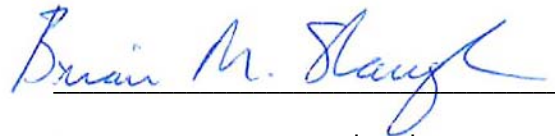


## Review 2

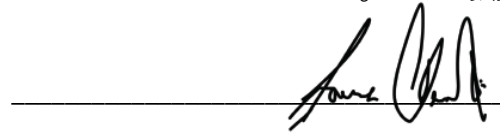
# Application P-23-029 Minor Subdivision John and Maryann LLC

229 Avenue B  
Block 55, Lot 25

*Prepared for the City of Bayonne by:*



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October 29, 2024



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## INTRODUCTION

### 1. Project Summary and Site Description

- 1.1. Proposal.** The applicant is requesting minor subdivision approval with bulk variances to subdivide the subject property (Lot 25) into two lots (proposed Lots 25.01 and 25.02), each of which will be developed with a three-story, two-family residential house. The existing lot is a corner lot, thus the subdivision will create one corner lot and one interior lot. We note however, that Board jurisdiction does not extend to the approval of two-family dwellings under the MLUL. Consequently, we have only reviewed the minor subdivision application. Each proposed building contains two dwellings: the first two floors contain one unit consisting of three bedrooms, two and one-half bathrooms, and a one-car garage. The third floor contains the second living unit, consisting of three bedrooms and two bathrooms. Both living units are accessible from Avenue B with a shared exterior entrance that leads to a common vestibule space (though the ground level unit can also be accessed from the garage). Both units are equipped with a front and rear balcony. Additional, exterior improvements to the two proposed residential properties will include a two-car driveway area, backyards covered with grass, and two street trees.



Aerial Image of Block 55, Lot 25 and Surrounding Area<sup>1</sup>

<sup>1</sup> - Image source: Google Maps.

- 1.2. **Existing Conditions.** The subject property is a 5,000-square foot corner lot parcel located on the southwestern corner of the Avenue B and West 50<sup>th</sup> Street intersection. The lot contains frontage on Avenue B and West 50<sup>th</sup> Street. The site currently contains a two-and one-half story frame building situated at the southern corner of the lot, occupied by a two-family dwelling, with the remaining portions comprising a side and rear yard and one small parking space with access from West 50<sup>th</sup> Street. This house would be demolished to build this project.



Source: Google Streetview

**Subject Property in Center of Image**

- 1.3. **Neighborhood Context.** The subject property is in a primarily residential neighborhood within the R-2 zone. The uses surrounding the subject property within the R-2 district predominantly consist of a range of dwelling types, including single- and two-family dwellings and multifamily dwellings. An automotive repair shop is located on the opposite corner of the adjacent intersection, and Café Talya is located on the corner of Avenue B and West 49<sup>th</sup> Street to the south. Washington School, a K-8 public school, is located two blocks south, also on Avenue B. Like much of the R-2 zone in Bayonne, the side streets contain primarily single- and two-family dwellings, with some exceptions). The main avenues contain some multifamily development and the occasional nonresidential use.
- 1.4. **Minor Subdivision.** The application is classified as a minor subdivision per §33-5.2 of the City Planning and Development Regulations. Minor subdivisions are required to meet the following criteria:
- The subdivision results in no more than three lots (it results in two).
  - The subdivision fronts on existing streets (the subdivided lots will front on the existing Avenue B and one will have frontage on W. 50<sup>th</sup> Street);

- The subdivision does not involve the construction or substantial reconstruction of any new or existing street (the plan does not indicate either construction or substantial reconstruction of streets), and;
- The subdivision does not involve the extension of any off-tract improvement.

In conclusion, **the plan qualifies as a minor subdivision.**

**ZONING – R-2 DETACHED/ATTACHED RESIDENTIAL DISTRICT**

**2. Use Standards**

- 2.1. **Permitted Uses.** Permitted uses in the R-2 District include detached single and two-family dwellings, home occupations, family day care homes, and essential services. Two, two-family dwellings are proposed, one on each lot. **The plan complies.**
- 2.2. **Required Accessory Uses.** Per §35-5.3.b.1, off-street parking is a required accessory use in the R-2 District and should comply with §35-17. The proposed parking complies with §35-17. **The plan complies.**

**3. Area, Yard & Structure Requirements**

- 3.1. **Bulk Requirements.** Compliance with the bulk and lot standards of the R-2 District is summarized below in Table 1.0. **Several variances are required.**

Lot and Bulk Requirements §35-5.3.e				
Standard	Required	Existing	Proposed	
		Lot 25	Lot 25.01 (interior lot)	Lot 25.02 (corner lot)
Min. Lot Area	4,000 sf (corner lot) / 3,000 sf (int. lot)	5,000 sf	2,500 sf <sup>(v)</sup>	2,500 sf <sup>(v)</sup>
Min. Lot Frontage	30 ft	50 ft	25 ft <sup>(v)</sup>	25 ft <sup>(v)</sup>
Min. Front Yard Setback	20 ft	9 ft.	20 ft	20 ft
Min. Rear Yard Setback	20 ft	45 ft. 4 in.	20 ft	20 ft
Min. Side Yard Setback (one yard/both yards) <sup>(1)</sup>	3 ft / 6 ft	1 ft. 2 in.	3 ft, 1 in / 6 ft, 2 in	3 ft, 1 in / 6 ft, 2 in
Max. Structure Height (feet / habitable stories)	35ft / 2 ½ stories	25ft / 2 stories	35ft / 3 stories <sup>(v)</sup>	35ft / 3 stories <sup>(v)</sup>
Max. Lot Coverage	70%	62%	67.41%	67.23%
<sup>(v)</sup> - Variance required.				
<sup>(1)</sup> - The combination of both side yards must be at least 6 feet.				

- 3.2. **Minimum Lot Area Variance – Lot 25.01.** The proposed lot area for Lot 25.01 is 2,500 sf. where 3,000 sf. is required. **A variance is required. However, see our Comment 5.1 on legislative intent.**
- 3.3. **Minimum Lot Area Variance – Lot 25.02.** The proposed lot area for Lot 25.02 is 2,500 sf. where 4,000 sf. is required due to this lot being a corner lot. **A variance is required. However, see our Comment 5.1 on legislative intent.**
- 3.4. **Minimum Lot Frontage Variances – Both Lots.** The proposed lot frontage for Lot 25.01 and 25.02 is 25 ft. where 30 ft. is required. **Two variances are required. However, see our Comment 5.1 on legislative intent.**
- 3.5. **Maximum Story Heights – Both Lots.** The proposed story heights for each building is proposed to be three stories tall, whereas the district requirement permit no more than 2½ stories. **Two variances are required. Under longstanding City interpretation this requires a “-C” bulk variance and not a “-D(6)” variance.**
- 3.6. **Maximum Lot Coverages – Both Lots.** The proposed lot coverage for each new property is 67.41% and 67.3% where a maximum lot coverage of 70% is permitted. While this is conforming, it is unclear based on the submitted plan where the pavement ends and the grass begins. **The applicant should prepare an exhibit to share at the Planning Board hearing clearly indicating the pervious and impervious portions of the plan.**

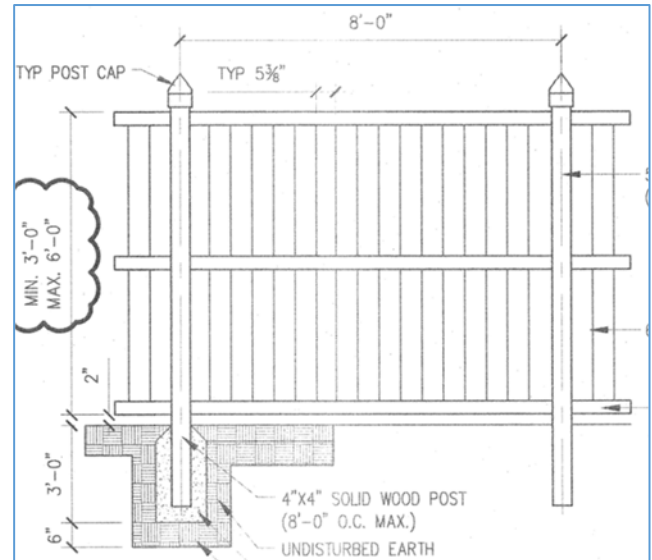
#### 4. Zoning Review

- 4.1. **Roof Form.** Per §33-10.2.1, all roofs on one- and two-story principal buildings in residential districts should be pitched. Flat roofs shall not be permitted. **The plan complies** as pitched roofs are proposed.
- 4.2. **Minimum Parking Requirement.** Per §35-17.6.b, 1½ parking spaces are required for each two-family dwelling unit containing three bedrooms. For each two-family residence, the plan indicates three off-street parking spaces, including one in each garage and two in each driveway. The garage parking space is reserved for the living unit on the lower level, and the driveway is shared between both living units. **The plan complies.**
- 4.3. **Parking Stall Dimensions.** Per §35-17.5.a, the minimum parking stall size for single, two-family and townhouse residential structures is required to be 10 feet in width by 20 feet in depth. Each residential property is proposed to contain a two-car concrete driveway measuring approximately 20 feet in width<sup>2</sup> and 20 feet in length from the building to the property line. The driveways to each dwelling measure 10 feet wide. **The plan complies.**
- 4.4. **Parking in Yard Requirements.** Per §35-17.5.c.1, accessory parking for two-family dwellings may be located in any yard, provided that front yard parking be limited to no more than two spaces. **The plan complies.**

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<sup>2</sup> Although this measurement is not provided on this plan, this office estimated the driveway width at approximately 20 feet.

- 4.5. **Fences.** Per 35-4.14.a.1, fences and walls on any side or rear property line shall not exceed six feet in height, and pursuant to §35-34.14.a.4, fences on corner lots may be permitted a height of six feet for ½ the lot depth of the side property line containing street frontage, though the length of the fence from that midpoint to the front property line shall be no higher than three feet in height. The plan indicates a six-foot tall fence around Lot 25.01, and a fence around Lot 25.02 that is six feet in the rear and half of the side lot line along West 50<sup>th</sup> Street, while the remaining half extending to the corner of West 50<sup>th</sup> Street and Avenue B is three feet in height. **The plan complies.**



- As indicated in the image to the right, the fence is a board-on-board style PVC fence, colored off-white.
- 4.6. **Plantings.** Per 33-10.11, shade trees shall be provided as part of a residential subdivision at a rate of one tree per lot and located on the street line. Two lots are proposed as part of the subdivision, and two street trees are proposed. The plan complies. The tree species is not proposed at this time. This office recommends that the applicant plant Trident Maples (*Acer buergerianum*). This species is recommended due to the narrow space in which the tree will be planted (effectively only 3.3 feet per tree). We also recommend planting at a size of 2-2½ inches per caliper and granting the applicant a design exception since this smaller size will improve the ability of the tree to survive the transplantation compared to the comparatively large 3½ -4 inch caliper trees required by the applicant. Such a size will require specialized care to survive and grow.
- 4.7. **Street Tree Spacing.** Per 33-10.17.c, street trees shall be spaced approximately 40 feet apart. The proposed street trees are 40 feet from the one existing street tree. **The plan complies.**
- 4.8. **Trash/Recycling.** Per 33-10.13.a, all development applications shall demonstrate facilities suitable for separation of recyclable materials in accordance with the Municipal Recycling Ordinance. Refuse areas are indicated on the plan. **While this appears to comply, the applicant should provide testimony as to how waste storage and disposal is expected to occur in the proposed buildings.**
- 4.9. **Lighting at the Property Line.** Per §33-10.10b, lighting at property lines shall not exceed one footcandle and lighting shall be installed with shielding to direct light away from adjoining properties. No lighting appears to be proposed. **The applicant should testify as to whether any outdoor lighting is planned.** If so, the applicant should testify as to whether it will affect the neighboring properties and whether it will contain shielding. Regardless, lighting illuminating each entrance to the building is recommended.

## 5. Subdivision Plan Review

- 5.1. **Lot Size.** Per §35-5.3.e, the proposed lot area for Lots 25.01 and 25.02 is 2,500sf., but the zoning requirement is 3,000 sf. for interior lots (25.01) and 4,000 sf. for corner lots (25.02). The majority of lots in this area of Bayonne, as indicated in the exhibit on the following page, are on lots that are 25' x 100' like the proposed lots.

There is no additional land that the applicant may be able to acquire on either side of the lot to add 5 feet in width to create conforming lots. In addition, §35-16.6 recognizes certain situations where two-family dwellings may be erected on nonconforming lots. This section sets forth these conditions:

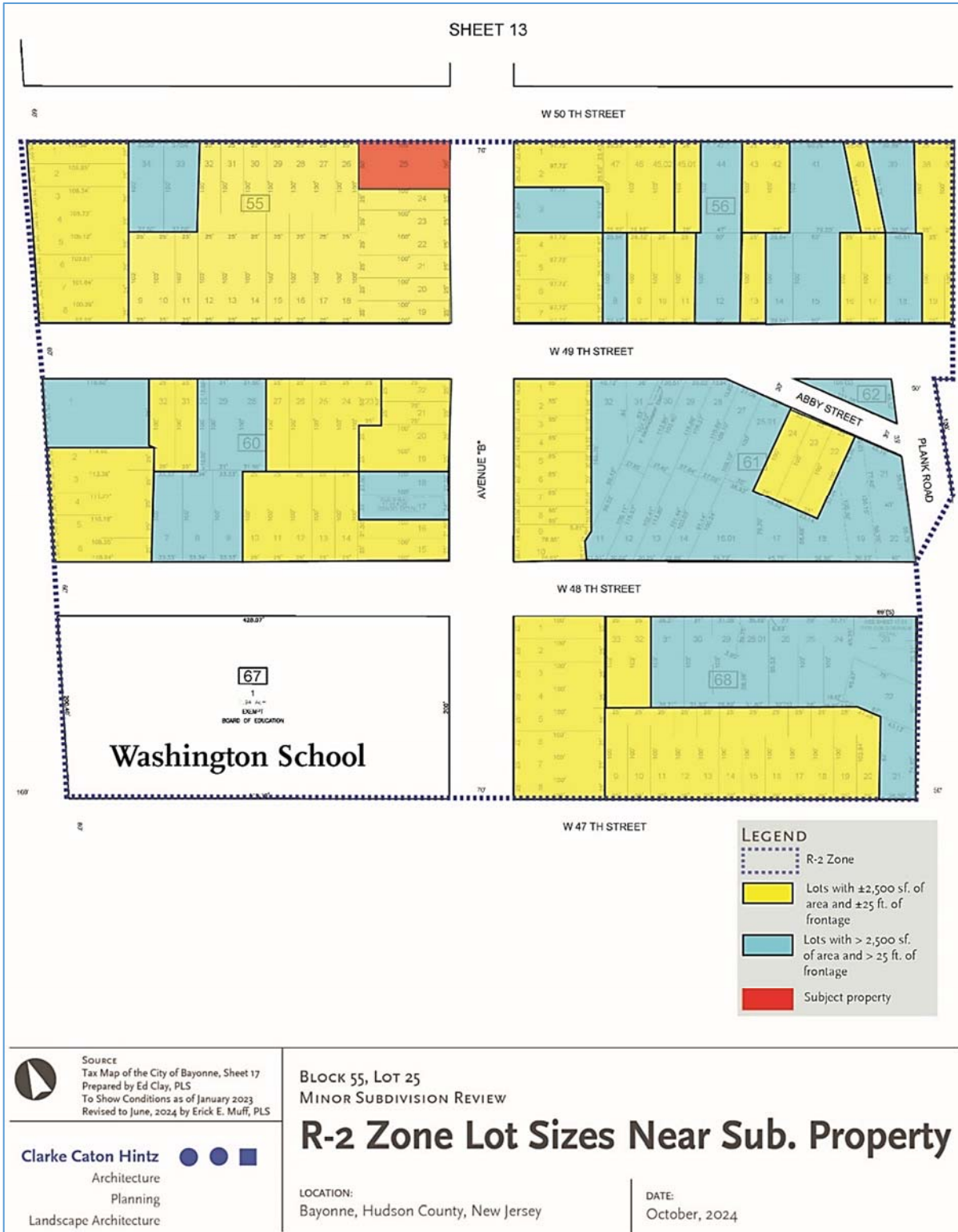
- The total lot area is 2,500 sf. or larger;
- The applicant has been unable, upon a good faith effort, to purchase at fair market value any adjacent available vacant lot or a portion of any adjacent land, whether vacant or not, which would render the applicant's lot conforming;
- Required front, rear and side yards are met; and
- Off-street parking is provided in accordance with the zoning ordinance.

The subject lot abuts other residences to the west and south, and the public right-of-way to the north. In theory, adjacent developed lots could be acquired to create a conforming lot size. **The applicant should testify as to whether a good faith effort has been made to purchase a portion any adjoining property.** We note that acquiring all, or a portion of, this land would eliminate an existing residence, or make the lots to be purchased more nonconforming, which would likely result in no net new units to the applicant. The submitted application materials have demonstrated the remaining three criteria for nonconforming lots to be built on without variance relief – if the lots were already in existence. These factors may assist the Planning Board in considering whether or not to grant the variances necessary for this application to be approved.

## 6. Consideration of the “C” Variance

- 6.1. **Overall Comment.** 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.
- 6.2. **Consideration of the Positive Criteria.** 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:

- 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.

**6.3. Consideration of the Negative Criteria.** 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.

- Impact to the public health, safety and welfare. Impact to the public, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. Substantial detriments are usually nuisance related such as noise, dust, trash, parking, traffic, visual distraction, light, runoff, vegetation removal and aesthetics that cannot be adequately mitigated. The applicant should address any impacts to the character of the neighborhood resulting from the proposed position of the swimming pool and related structures.
- Impact to the zone plan. The applicant must show that the relief can be granted without substantially impairing the zone plan and zoning ordinance. In evaluating the negative criteria as it relates to the zoning ordinance and zone plan, the Board should consider the manner in which this application could impact the overall fulfillment of the AR zone.

The applicant should provide testimony in support of the variances, and be prepared to discuss any potential negative impacts on neighboring properties and the zone plan.

**6.4. Variance Discussion.** The application requires eight variances, four for each proposed lot.

- Regarding the minimum lot size, see Comment 5.1 for further discussion. This office notes that the existing lot is conforming, and as such, one option is to not to subdivide the lot. This could also apply to all of the bulk variances required for the application, which are created by the subdivision proposal.
- Regarding the variance for exceeding the maximum permitted stories, the applicant should be prepared to discuss this as a “-c(2)” variance, as there does not appear to be any hardship that would require the building to exceed the allowed number of stories.



## 7. Consideration of Design Exceptions

- 7.1. **Overall Comment:** The Board may also grant deviations from site plan standards, often referred to as “design exceptions.” These criteria are distinguished from variances, as they are not deviations from requirements related to use or other zoning criteria, but rather from the ordinance requirements for site plans (and subdivisions). These deviations are generally evaluated pursuant to N.J.S.A. 40:55D-51. b, which states:

*“The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.”*

This standard is similar to a ‘c(1)’ variance, except that the applicant is not required to demonstrate that there will be no substantial detriment to the public good or impairment of the intent and purpose of the zone plan (negative criteria). The applicant should identify the degree to which the requirements are impracticable/cause hardship and also what peculiar site conditions might exist that prevent compliance.

## 8. Relevant Policy

- 8.1. **Master Plan Goals.** The 2000 Master Plan for Bayonne included several goals which are relevant to the Board’s consideration of this application. The following issues and objectives can be found in the 2017 Master Plan Reexamination Report:

- *Single Family: Preserve the current density levels of 11 units to the acre. Reduce the potential for encroaching commercial and multi-family uses in these areas (page 5).*
- *Detached/Attached Residential: Maintain the existing density for detached/attached residential within interior blocks at 15 to 35 units per acre (page 5).*
- *Provide for adequate parking to serve established residential and commercial areas. Incorporate adequate parking into new developments (page 8).*
  - *Parking has still been a significant issue today within the City, especially within the residential areas. There is an ordinance that allows parallel parking in front of driveways to maximize on-street parking. Parallel parking in residential areas is still a significant issue. The City divided many neighborhoods into zones for on street parking in response to the impact of commuter vehicles into residential areas. The City created the residential permit parking areas “to alleviate and restrict the unfavorable parking conditions outside the flow of commuter traffic to said residential neighborhoods” As stated under the Parking and Permits section of the Bayonne Website. However the City can also issue parking permits to those who work but do not live within the City. These people are assigned a permit and can only park in their designated parking zone (page 30).*

- *Preserve established residential character wherever possible by preventing the intrusion of incompatible commercial and industrial uses and promoting the rehabilitation of substandard units (page 15).*
- *Provide a broad range of housing to meet the needs of all residents including low and moderate income housing, middle-income housing and market rate or luxury housing (page 15).*

The proposed development is a densification of the existing zoning district regulations even though it would be similar to the pattern of development that is found in the surrounding neighborhood.

## SUMMARY

### 9. Applicant / Owner / Consultants

- 9.1. **Applicant/Owner.** John and Maryann LLC, 140 Bleeker Street, Jersey City, NJ 07307. Tel: 201.413.9000.
- 9.2. **Attorney.** Michael Higgins, Esq., Castano, Quigley, Cherami, 236A Newark Avenue, Jersey, NJ 07302. Tel: 201.413.9000. Email: MHiggins@cqclaw.com.
- 9.3. **Architect.** Raul Cabato, 761 Montgomery Street, Jersey City, NJ 07306.

### 10. Materials Reviewed

- 10.1. *City of Bayonne Application for Development Form (P-23-029)*, with attachments, dated July 15, 2023.
- 10.2. *Statement of the Applicant*, prepared by Michael Higgins, Esq., dated April 26, 2024.
- 10.3. Property Deed for 229 Avenue B(Block 55, Lot 25), dated January 2, 2019.
- 10.4. *Survey for Property Located at 229 Avenue B*, 1 sheet prepared by William B. Klapper, PLS, and Jeremy A. Klapper, PLS, Behar surveying Associates, PC, dated November 20, 2018.
- 10.5. *Proposed Minor Subdivision Located at 229 Avenue B*, 1 sheet prepared by William B. Klapper, PLS, and Jeremy A. Klapper, PLS, Behar surveying Associates, PC, dated February 14, 2024.
- 10.6. *Site Plan for 229 A&B Ave B Located at 229 Avenue B*, 8 sheets prepared by RA Design and Consultants LLP, dated February 18, 2020, revised to August 7, 2024.
- 10.7. Building Construction Official Recommendations, dated September 4, 2024, prepared by Joseph Benkert.
- 10.8. Fire Sub-Code Official Recommendations, dated September 4, 2024, prepared by Joseph Coughlin.
- 10.9. Tax Assessor Recommendations, dated September 4, 2024, prepared by Michele Hennessey.

## 11. Relief Required

### 11.1. Variances:

- §35-5.3.e Minimum Lot Area (Lot 25.01)
- §35-5.3.e Minimum Lot Area (Lot 25.02)
- §35-5.3.e Minimum Lot Frontage (Lot 25.01)
- §35-5.3.e Minimum Lot Frontage (Lot 25.02)
- §35-5.3.e Maximum Building Height in Stories (Lot 25.01)
- §35-5.3.e Maximum Building Height in Stories (Lot 25.02)

### 11.2. Design Exceptions:

- §33-10.17.c Street Tree Spacing (if the Board requires that the applicant provide additional street trees)

Note that additional variances and exceptions may be identified by the Board or the other professionals employed by the Board. The same applies to the conditions of approval.

## 12. Conditions of Approval

- 12.1. **Affordable Housing Fees for Residential Development.** As a condition of approval, any required residential affordable housing fees required by the City ordinance should be paid.
- 12.2. **Planting of Additional Street Trees.** This office recommends that additional street trees be planted. It is also recommended that, if the Board agrees that this should be a condition, that the applicant provide the recommended trees at the recommended size.

We would be pleased to answer any questions regarding this report.

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