

JOHN H. ALLGAIR, PE, PP, LS (1983-2001)
DAVID J. SAMUEL, PE, PP, CME
JOHN J. STEFANI, PE, LS, PP, CME
JAY B. CORNELL, PE, PP, CME
MICHAEL J. McCLELLAND, PE, PP, CME
GREGORY R. VALES, PE, PP, CME



TIM W. GILLEN, PE, PP, CME (1991-2019)
BRUCE M. KOCH, PE, PP, CME
LOUIS J. PLOSKONKA, PE, CME
TREVOR J. TAYLOR, PE, PP, CME
BEHRAM TURAN, PE, LSRP
LAURA J. NEUMANN, PE, PP
DOUGLAS ROHMEYER, PE, CFM, CME
ROBERT J. RUSSO, PE, PP, CME
JOHN J. HESS, PE, PP, CME

MEMO TO: City of Bayonne Zoning Board

FROM: Malvika Apte, PP/AICP 
Consulting City Planner

DATE: August 23, 2022

RE: 646 JFK LLC
Use & Bulk Zoning Variance Relief
Planning Report # 1
Block 188 Lot 40
646 John F. Kennedy Boulevard
Bayonne, New Jersey
Our File: PBYZ0188.01
Application # Z-22-003

As per your request, we have reviewed the aforementioned referenced application. The following documents were reviewed:

1. Application Form;
2. Narrative Statement of Applicant for Use and Bulk Variances;
3. Official tax record prepared by the City of Bayonne Tax Department dated April 13, 2022;
4. Copy of Deed for the subject property dated August 21, 2015 and recorded by the Hudson County Clerk on September 4, 2015;
5. Certificate of Completeness issued by the City of Bayonne Engineer's Office dated July 19, 2022;
6. One (1) sheet of "Plan of Survey 646 JF Kennedy LLC City of Bayonne Hudson County, New Jersey Block 188, Lot 40", prepared by Brunswick West, Inc., dated November 30, 2020;



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7. One (1) sheets of site plan entitled "Site Plan, Existing 1 St. Floor Plan, Proposed 1st. Floor Plan, Front Elevation, Side Elevation, Photograph", prepared by Alan Feld Architect, dated January 19, 2021.

We offer the following comments for the Board's consideration:

1. Summary of Application

The applicant, 646 JFK LLC, is seeking zoning variance relief related to the subject property, identified as Block 188, Lot 40 in the City Tax Maps. This property is a corner lot at the intersection of West 25th Street and John F. Kennedy Boulevard and is 1,266 square feet in area. The property is currently fully developed with a 3-story frame building currently used as a mixed-use building with a commercial use on the ground floor and residential uses on the upper two floors. There is currently no on-site parking existing on the subject site.

This Applicant seeks variance relief to allow for the conversion of the existing ground-floor commercial use into a residential use, thus converting the existing building into an attached three-family dwelling. Applicant is proposing to convert the existing pizza restaurant on the ground floor into a two-bedroom, one-bathroom residential dwelling unit. No additions or subdivisions are proposed a part of this application. No additional parking facilities or stalls are being proposed as part of this application.

The application was deemed incomplete by the City Engineer's Office on April 17, 2022. The certificate of completeness noted that both a sealed copy of the site survey and an official property owners list from the Tax Assessor's office would be required. The application was then deemed complete on July 19, 2022 after those conditions were satisfied.

2. Use, Bulk, and Supplemental Variances:

- (a) Use: The subject property is located in the R-2 Detached/Attached Residential District, in which commercial facilities are **not** a permitted use. The existing use is a non-conforming use. Also, within the R-2 Detached/Attached Residential District, attached three-family dwellings are **not** a permitted use. **The proposed use is not permitted, and a use variance is required.**
- (b) Bulk Standards: The following table notes the existing and proposed development's compliance/non-compliance with the bulk requirements of the R-2 Detached/Attached Residential District, found at **§35-5.3** and Schedule 1 of the Planning and Development Regulations (PDR).



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R-2 Detached/Attached Residential District			
Bulk Standard	Requirement – Corner Lot	Existing	Proposed
Min. Lot Area (sq. ft.)	4,000	1,266	1,266 (E)
Min. Lot Frontage (ft.)	40	17	17 (E)
Min. Lot Width (ft.)	40	17	17 (E)
Min. Lot Depth (ft.)	100	73	73 (E)
Min. Front Yard Setback (ft.)	20	0	0 (E)
Min. Rear Yard Setback (ft.)	20	0	0 (E)
Min. Single Side Yard Setback (ft.)	3	0	0 (E)
Min. Combined Side Yard Setback (ft.)	6	0	0 (E)
Max. Principal Building Height (sty / ft.)	2.5 / 35	3 / 32.5	3 (E) / 32.5
Max. Accessory Building Height (sty / ft.)	1.5 / 15	N/A	N/A
Max. Lot Coverage	70%	100%	100% (E)
Add. Parking Spaces	3	0	0 (V)

V – variance required
E – existing non-conformity
N/A – not applicable

- i. There are ten (10) existing non-conforming bulk conditions related to the subject property itself (minimum lot area, minimum lot frontage, minimum lot width, and minimum lot depth) and the principal building (minimum front yard setback, minimum, rear yard setback, minimum single side yard setback, minimum combined side yard setback, maximum building stories, and maximum lot coverage). None of these conditions will be exacerbated by the proposed improvements.
- ii. The current ground-floor use of a pizza restaurant is an existing non-conforming use as commercial uses are not permitted within the R-2 Detached/Attached Residential District.

(c) *Variances Required:*

- i. The Applicant is proposing to convert an existing non-conforming use (a pizza restaurant) into a residential dwelling. While residential dwellings are permitted within the R-2 zoning district, this conversion would trigger a variance as the entire property would consist of a three-family



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dwelling which is also **not** considered a permitted use within the zoning district. **Thus, a use variance is required for the proposed development.**

- ii. A d-1 use variance is required to permit three-family uses in the R-2 district. In order to grant a use variance, the Applicant has an enhanced burden of proof to demonstrate that both the positive and negative criteria can be satisfied.
 - a. Positive Criteria – There must be special reasons to grant the variance. Special reasons can be found in one of three ways: 1) That there is a practical hardship in using the property for one of the listed permitted uses; 2) that the proposed use is inherently beneficial; or 3) that the proposed use will advance the purposes of zoning as outlined in the Municipal Land Use Law.
 - b. For any use that is not considered inherently beneficial, the Applicant must also show that the site is particularly suitable for the proposed use. This means that there is a need for new three-family residences in the area, and that there is something unique about this property that lends itself to being used for a three-family multi-family dwelling rather than one of the permitted residential uses.
 - c. Negative Criteria – The Applicant must demonstrate that the variance can be granted without substantial detriment to the general welfare of the community, and that in granting the variance it would not cause substantial impairment to the intent and purpose of the zoning ordinance.
 - d. To address the second prong of the negative criteria - not causing substantial impairment of the zoning ordinance, the Board must consider whether permitting multi-family dwelling on this lot would significantly reduce the amount of lands available for residential development within the City to the point where new residential development would be severely limited.
- iii. §35-16.2d of the City Zoning Ordinance states that “*No nonconforming use shall be substituted with another nonconforming use*”. As noted above, the conversion of the existing restaurant would be considered substituting an existing nonconforming use into another nonconforming use. **A variance is required.**



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(d) Parking Requirements:

- i. The subject property as currently developed does not provide any off-street parking. With the proposed first floor unit, the building would contain three (3) residential units requiring a total of 4 parking spaces (1.25 spaces/unit). No parking on site is provided. Applicant should discuss how this deficiency is to be met. **A variance is required.**

(e) Conversion of First Floor Commercial Uses to a Dwelling Unit

- i. Per §33-10.19 of the City Planning and Development Regulations, *"If ... a first floor commercial use is proposed to be converted to a dwelling unit ... the design features of the storefront architecture shall be preserved to the maximum degree possible. Storefront display windows shall be maintained."* The Applicant is proposing several alterations to the front of the building where the existing first-floor commercial use is proposed to be converted to two-bedroom unit. These alterations include: One (1) new window, two (2) enlarged windows, and a new light brown stucco façade in the northeastern corner of the building. While the intent of the ordinance is to promote the appearance of the commercial interactive street, the proposed residential use privacy is to be maintained. Applicant should discuss how this is achieved and the **adequacy of these proposed alterations to the exterior of the first floor of the building as it pertains to §33-10.19 of the City Design Standards.**

(f) Planning Comments

- i. There are several bulk variances from the City's Zoning Regulations that may be required as part of this application. However, in the case of use variances, bulk variances are considered to be subsumed within the consideration of the 'd' variance. This is due to the bulk requirements for the R-2 district being designed to regulate single-family and two-family uses rather than a multi-family use that is not permitted. In these circumstances the Board has the authority to determine appropriate bulk standards at its discretion based on the unique conditions of the property and the proposed use and impose those conditions on the development if it acts to grant the use variance.
- ii. Applicant should state if any additional lighting on the site is proposed as part of the application in order to determine compliance with §33-10.10 of the City Design Standards.



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- iii. Applicant should state if any other additional improvements to the site such as awnings, roofs, utilities, landscaping, etc. are also being proposed as part of this application in order to determine compliance with the relevant sections of the City's Zoning Ordinance and Design Standards.

If you should have any questions with regard to the above matter, please do not hesitate to call.

cc: Alicia Losonczy, Planning/Zoning Board of Adjustment Administrator
Richard N. Campisano, Esq., Board Attorney
Robert J Russo, PE, PP, CME, City Engineer
Tracey Tuohy, Zoning Officer
Suzanne Mack PP, AICP, City Planner
Thomas P. Leane, Esq, Applicant's Attorney
John McDonough, LA, PP, AICP, Applicant's Planning Consultant
Alan Feld Architect, Applicant's Architect