



## MEMORANDUM

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### Clarke Caton Hintz

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**To:** Bayonne Zoning Board of Adjustment

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

**Re:** **A&K Jersey Construction of NJ, LLC**  
ZBA Application Z-22-012  
Bulk Variances  
Block 157, Lot 22  
64 West 31<sup>st</sup> Street  
R-2 – Detached/Attached Residential District

**Date:** June 3, 2024

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### 1.0 APPLICATION DESCRIPTION

**1.1. Applicant's Proposal.** The applicant, Kamal Ghobryal, proposes to convert an existing single-family detached dwelling into a two-family dwelling. The proposed dwellings will contain two bedrooms and one bedroom, respectively. The applicant also proposes to convert a portion of the ground floor to an alcove for two automobiles, and a portion of the frontage and right-of-way into a driveway to provide onsite parking. This arrangement will necessitate the construction of a curb cut on W. 31<sup>st</sup> Street. The proposed driveway will result in the loss of one street tree, though the applicant proposes additional landscaping on the site. The proposal requires variance relief for several bulk requirements.

**1.2. Construction Official's Statement.** The Building Construction Official, Joseph Benkert, provided comments relating to the application, as well as a mark-up of the submitted floor plans, along with copies of code violation notices. The comments include the following:

1. *Plans must be revised to show exactly what was constructed on site.*
2. *This building was originally a 1-family dwelling but the owner converted it without proper permits and approval into a 4-dwelling building.*

As this letter is dated April 26, 2024 and the plans were most recently revised on January 11, 2023, the applicant has not revised the submission to show exactly what was constructed on site. Mr. Benkert's mark-up indicates there are four separate apartments in the building, one in the basement, and one each on the first, second,

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and third floors. This differs from the description provided by the applicant in their application and narrative. **We recommend that prior to the matter being heard by the Zoning Board of Adjustment, that the applicant provide this information as part of the evaluation of the application.**

This application to convert a single-family dwelling (or, whatever the current use of the building) to a two-family dwelling brings the property under the spotlight of the Municipality, and will require inspections by the Construction Official prior to the granting of any COO/CCO (or similar document) to determine that what is proposed to the Board is what is ultimately constructed.

### 1.3. Existing Site Conditions.

1.3.1. The site consists of a large residential building on an unusually small lot located near the intersection of Avenue C and W. 31<sup>st</sup> Street. Existing development on the site consist of a dwelling with an open concrete porch and steps leading to the sidewalk. A concrete walk is located on the western side of the building which leads to a small rear yard area. The rear of the house contains a concrete deck with stairs leading to the small yard. A stockade fence is located around the rear porch. The interior of the building contains eight bedrooms according to the submitted architectural drawings. The site is not located near any known contaminated sites. The site is not in a floodplain, nor is it located on or near any wetlands.

1.3.2. The survey and application indicate that this is a 2.5 story building, however, per the definitions of Story, Half Story, Basement, and Ground Floor included in §33-2.2 (at the time the application was submitted on August 22, 2022), the ground floor that is referred to as a basement is a story, while the fourth floor, which contains less than 50% of the livable space of the floor below, is a half story. The zoning ordinance definitions for story, half-story, basement and ground floor are reproduced below for the Board's benefit:

*Story - That portion of a building consisting of a minimum seven feet of vertical height between the surface of any floor and roof/floor above it, that is defined as a livable space and is counted as a full story. Any space between the floor and roof with less than seven feet and is not livable space, as defined herein, shall not be considered a story. Ground story containing livable space behind the garage and consisting of minimum seven feet of vertical height between floor and roof/floor above it shall be considered a story.*



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*Half Story - A space under a roofline at the top of a building, which has vertical distance of minimum seven feet between roof and ceiling and the total area of this livable space is 50% or less of the total area of the floor below it. A half-story may not have its own separate entrance or exit. A half-story, which does not contain an internal staircase, may not have a kitchen, bedroom(s) or plumbing. A half-story, which contains an internal staircase, creating a duplex, may not have a kitchen or bedroom(s) but may include a half-bathroom.*

*Basement - Shall mean a portion of the building partly underground, but having less than 1/2 of its clear height below average contact grade around the periphery of the foundation.*

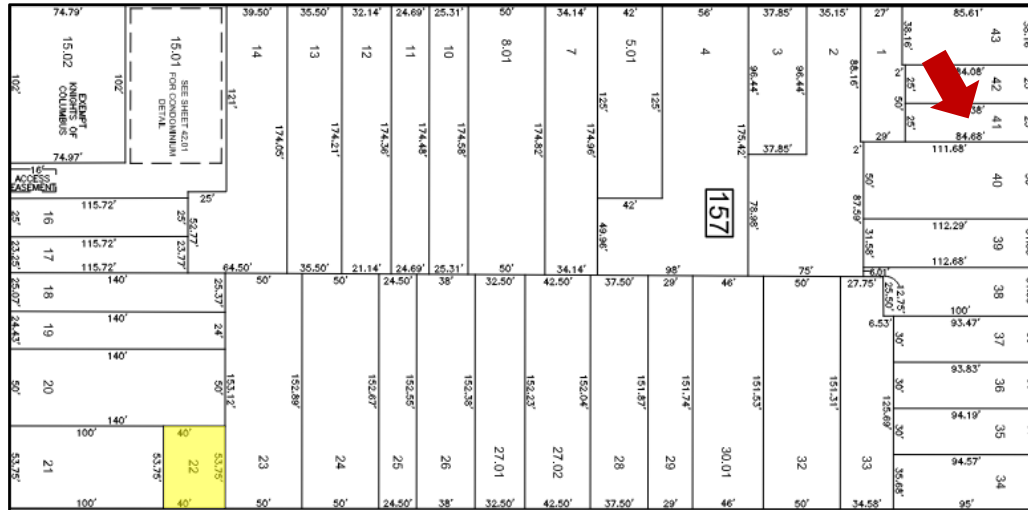
*Ground Floor - Shall mean the first floor of a building other than a cellar or basement.*

As indicated in the following image of Sheet 38 of the Tax Map of the City of Bayonne (subject lot indicated in yellow), the lot has considerably less depth than every other lot within Block 157. It has the least amount of lot area on W. 31<sup>st</sup> Street between Avenue C and J.F.K. Boulevard, and is the third smallest lot by area within Block 157. The lot has been this size since at least February 1<sup>st</sup>, 1950, pursuant to the Hudson County Register (Book 2397, Page 248) which contains the 1950 deed. The 1950 deed states that the “*same premises conveyed...by deed dated November 10, 1928, recorded November 14, 1928 in the Hudson County Register’s office in book 1694 of Deeds, at page 446*”, though the 1928 deed is unavailable for review. As such, obtaining variances for preexisting conditions relating to the lot dimensions that perhaps exist from before the City’s first Zoning Ordinance, would provide the property owner with a Resolution legalizing the nonconforming conditions.



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Portion of Sheet 38 of the Tax Map of the City of Bayonne Containing Block 157

**I.4. Neighborhood Context.** The site is an interior lot located on the south side of West 31<sup>st</sup> Street near the intersection of W. 31<sup>st</sup> Street and Avenue C. While located within the R-2 zone, the immediate area contains a range of uses. The immediate neighbor to the east is a funeral home, and the lot to the rear, while separate from the funeral home, contains a parking lot which appears to service the funeral home, and which borders the subject property to the rear. The immediate neighbor to the west is a residence, as are the remainder of the lots on south side of the street barring the medical office at the corner of W. 31<sup>st</sup> Street and John F. Kennedy Boulevard. On the north side of the street is the Dr. Walter F. Robinson Community School, a kindergarten through eighth grade public school, and the Bayonne Public Library. A medical practice is located across Avenue C to the south, and the Knights of Columbus is located one block to the south along Avenue C. The immediate area along Avenue C, while all being located in the R-2 zone, contains several nonresidential uses and multifamily uses. The site is located near NJ Transit Bus Lines located on Avenue C. The property is slightly more than half a mile from the 34<sup>th</sup> Street Light Rail Station.



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### 2.0 ZONING

- 2.1. **Permitted Use.** Pursuant to §35-5.3.a.2, the proposed detached two-family is permitted in the R-2 district. This office notes that by converting what may be an illegal four-family dwelling to a two-family dwelling, the use will be brought into compliance with the allowed zoned uses.
- 2.2. **Required Accessory Use.** Pursuant to §35-5.3.b, off-street parking is a required accessory use in the R-2 district. The requirement for the two units is three (1 for the one-bedroom unit, and 1.25 for the two-bedroom unit, rounded up to three). Two spaces are proposed. **A variance is required.**



- 2.3. **Bulk Standards.** The R-2 zone area and yard requirements are specific to detached single- and two-family dwellings and further divided into interior and corner lots. The proposed use is a two-family dwelling on an interior lot. These area, lot dimension and building requirements and limitations are presented in Table 1 on the following page.



**Table 1: R-2 Area, Yard and Structure Requirements for 2-Family Dwelling~ §35-5.3e**

Standard	Required	Existing	Proposed	Complies?
<b>Minimum area</b>	<b>3,000 sf.</b>	<b>2,150 sf.</b>	<b>No change</b>	<b>No (Ex)<sup>1</sup></b>
Min. lot frontage	30 ft.	40 ft.	No change	Yes
Min. lot width	30 ft.	40 ft.	No change	Yes
<b>Min. lot depth</b>	<b>100 ft.</b>	<b>53.75 ft</b>	<b>No change</b>	<b>No (Ex)</b>
<b>Min. front yard setback</b>	<b>20 ft.</b>	<b>12 ft. 8 in.</b>	<b>No change</b>	<b>No (Ex)</b>
<b>Min. rear yard setback</b>	<b>20 ft.</b>	<b>6.75 ft.</b>	<b>No change</b>	<b>No (Ex)</b>
<b>Min. side yard setback (east)</b>	<b>3 ft.</b>	<b>1.59 ft.</b>	<b>No change</b>	<b>No (Ex)</b>
Min. side yard setback (west)	3 ft.	3.67 ft.	No change	Yes
<b>Min. side yard setback (aggregate)</b>	<b>6 ft.</b>	<b>5.26 ft.</b>	<b>No change</b>	<b>No (Ex)</b>
Max. bldg. height (feet)	35	32 ft. 2 in	No change	Yes
<b>Max. bldg. height (stories)</b>	<b>2 1/2</b>	<b>3 1/2</b>	<b>No change</b>	<b>No (Ex)</b>
<b>Max. lot coverage</b>	<b>70%</b>	<b>91%</b>	<b>80.5%</b>	<b>No</b>

<sup>(1)</sup> - Refer to item 2.8.1 of this report for discussion; Ex.=Existing Condition

2.4. **Preexisting Nonconformities.** Pursuant to §35-5.3.e, the R-2 zone requires a minimum lot size (for this lot) of 3,000 sf., a lot depth of 100 ft., a front yard setback of 20 ft., a rear yard setback of 20 ft., side yard setbacks of 3 ft. with an aggregate of 6 ft., and a maximum of 2½ stories. Per Table 1, the applicant does not meet these requirements. In reviewing property deeds going back to 1950, it appears that these conditions, particularly those relating to lot dimensions, are preexisting. **In accordance with Board policy, it is recommended that the applicant seek variance relief for these conditions if not granted previously.**

2.5. **Maximum Lot Coverage.** Pursuant to §35-5.3.e, the R-2 zone permits a maximum lot coverage of 70%. The existing lot coverage is 91%. The applicant indicates that the proposed lot coverage is 80.5%. **A variance is required as this is a changed condition, though this office recognizes that lot coverage is being reduced. This office defers to the Board Engineer as to how the applicant reduced lot coverage, as it is assumed this is due to the pervious pavers proposed for the planned driveway.**



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**3.0 VARIANCE PLAN**

**3.1. Proposed Interior Modifications.** The plan proposes modifications to all three and one half stories located within the building. Per the applicant’s plan, these modifications will result in two dwelling units.

**3.1.1.** The first dwelling unit encompasses the first and second floors. The first floor contains a primary bedroom, laundry room, utility room, full bathroom, den, hallway, and water and gas meter closets which combine with a wide hall area that contains the staircase leading upstairs to the second floor. The second floor contains an open concept design with a living room, dining room and kitchen sharing the majority of the floor area. There is a full bathroom and second bedroom on this floor as well. Access to this unit is from a shared vestibule on the second floor, which contains entrances to both units.

**3.1.2.** The second dwelling unit encompasses the third story and the half story on the fourth floor. The third floor contains a similar open concept (with the kitchen in the opposite corner) layout with a living room, dining room, and kitchen. This floor also contains a full bathroom and a bedroom. The fourth floor half story contains a second full bathroom with an attached laundry closet, and two rooms labeled “TV Room”, and “Study”.

**3.2. Questions Regarding Bedrooms – Lower Unit.** The plan indicates that the lower unit will be a two-bedroom unit. This appears to be correct and not alterable due to the layout of the proposed unit. The ground floor contains a bedroom and a tv/den room. §3.2 of this report contains references to the 2021 International Residential Code New Jersey Edition<sup>1</sup>. These references are confined to the dimensional requirements for habitable space and the requirement for ventilation. Any other building code requirements are deferred to the Construction Official or other appropriate Official.

**3.2.1. First/ground floor tv/den room.** The tv/den room does not contain a window. To determine whether this can be made into a bedroom, the applicant should discuss whether the building will contain mechanical ventilation. If mechanical ventilation is proposed, then the room will be

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<sup>1</sup> 2021 International Residential Code NJ Edition, V. Nov. 2022. <https://codes.iccsafe.org/content/NJRC2021Pr>. Specifically R303.1 Habitable Space, R304.1 Minimum Area, R304.2 Minimum Dimensions, R304.3 Height, R303.1 Windows.



able to be converted to a bedroom under the IRC, as it conforms to the dimensional requirements for habitable space (minimum area of 70 sf., minimum dimension of 7 ft., minimum height of 7 ft.). **Testimony should be provided regarding ventilation, and the intentions of this room generally, as an additional bedroom increases the parking requirement for the site.**

- 3.3. **Questions Regarding Bedrooms – Upper Unit.** The plan indicates that the upper dwelling will be a one bedroom apartment. Two of the proposed rooms on the top half-story can be converted to bedrooms, though they are designated as a “Study” and “TV Room”. The following page contains a markup of the floor plan for this floor indicating which areas may be considered habitable, and which may not.
  - 3.3.1. **Study.** The study contains a window, and meets the dimensional requirements for habitable space. **The room will be able to be converted to a bedroom under the IRC. Testimony should be provided regarding ventilation, and the intentions of this room generally, as additional bedrooms impacts the parking requirement for the site.**
  - 3.3.2. **TV room.** Similarly, the TV Room on the top half story meets the dimensional requirements for habitable space and contains a window. **The room will be able to be converted to a bedroom under the IRC. Testimony should be provided regarding ventilation, and the intentions of this room generally, as additional bedrooms impacts the parking requirement for the site.**
- 3.4. **Landscaping.** The plan proposes the removal of one existing street tree. In planters on the elevated concrete porch, the applicant is proposing 12 plantings. These include one Japanese Maple and a four smaller plants including three Hosta Hybrids, three Spirea, and five Hydrangeas.
- 3.5. **Driveway and Parking Spaces.** The plan proposed to create a curb cut, driveway, and two onsite parking spaces partially underneath an alcove protruding from the building façade.





Illustration 1. Fourth Floor Half-Story Mark-Up

- 3.5.1. **Number of parking spaces.** Pursuant to §35-17.6.b, one bedroom apartments require one parking space, and two bedroom apartments require 1.25 parking spaces, or, three total parking spaces as the total is rounded up from 2.25 to three. **A variance is required as only two spaces are provided. Further relief may be required pending testimony relating to the possibility of additional bedrooms as discussed herein.**
- 3.5.2. **Parking stall size.** Pursuant to §35-17.5a, parking spaces for two-family dwellings shall be 10 feet wide and 20 feet deep, though, there is a provision which allows for a depth of 16.5 feet for existing one- and two-family dwellings where a lack of space precludes a depth of 20 feet. The proposed spaces are 16.5 feet deep and 8.5 feet wide. **A variance is required for the width, and possibly for the depth, pending testimony.**



- 3.5.3. **Curb cut width.** Pursuant to §35-17.5a, curb cuts shall not exceed 10 feet in width in residential zones. The R-2 zone is a residential zone. The proposed curb cut is 10 feet wide. The plan complies.

**4.0 CONSIDERATION OF THE “C” VARIANCES**

4.1. **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.

4.2. **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.

4.3. **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. These factors are referred to as the negative criteria.



**5.0 VARIANCE COMMENTS**

- 5.1. Comments on Bulk Variances.** The site is located in the R-2 zone, which is intended for single- and two-family dwellings. Most of the nonconformities have been in existence since at least 1950 and possibly as early as 1928. The exception is the proposed coverage, which is still nonconforming, but is being reduced by 10.5%.

The more significant issue is the current existence of illegal apartments, as detailed in the letter provided by the Construction Official. As such, the applicant being before the Board allows for official review of the site and for the possibility of approval of legal apartments. If the deviations from what is permitted in a resolution are deviated from in the future, and permission for such deviations is not granted, the property owner can be subject to enforcement.

- 5.2. Comments on Parking Variance.** The site has recently been used for as many as four apartments without any onsite parking. The site is unusually small, and by right, may be utilized as a single- or two-family dwelling. The provision of any spaces is an improvement over the lack of spaces, though it is noted that one on-street space will be lost. Given the limited size of the lot, and the large size of the dwelling, the Board may consider any parking spaces to be better than no parking spaces. However, for the Board to make an informed decision, the applicant should testify as to the possibility of the proposed third and top floor apartment being a two- or three-bedroom apartment. While this wouldn't change the number of possible spaces, it would determine the extent of relief necessary. This office notes that if the dwelling were to be utilized as a single-family detached dwelling with numerous bedrooms (the application indicates eight bedrooms), only two parking spaces would be required.

**6.0 APPLICANT AND THEIR PROFESSIONALS**

- Applicant. Kamal Ghobryal, 20 Willowdale Avenue, Montclair NJ 07042. Tel: 201.443.7585. Email: [kamalgobryal@yahoo.com](mailto:kamalgobryal@yahoo.com)
- Owner and Applicant. A&K Jersey Construction of NJ, 20 Willowdale Avenue, Montclair NJ 07042.
- Attorney. John A. Zucker, Esq., Rose & Zucker, LLC, PO Box 95, 613 Broadway, Bayonne, NJ 07002. Tel: 201-436-6161. Email: [jzucker@rosezuckerlaw.com](mailto:jzucker@rosezuckerlaw.com)
- Architect. Andrew L. Ciok, RA, LLC, 1807 N. Bayview Ave., Seaside Park, NJ, 08752. Tel: 201.424.8702. Email: [aciokra@gmail.com](mailto:aciokra@gmail.com)



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- Planner. Michael J. Pessolano, PP, AICP, MJP Land Use Planning LLC, 140 Elmwood Ave., 2<sup>nd</sup> Floor, Bogota, NJ 07603. Tel: 201-290-9460. Email: [pazz@meganet.net](mailto:pazz@meganet.net)

### 7.0 MATERIALS REVIEWED

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

- Application, dated August 18, 2022.
- *Narrative Statement of Applicant*, undated.
- Zoning Officer Letter, July 28, 2022.
- Copy of Property Deed, dated May 2, 2018.
- *Survey of Property for 64 West 31<sup>st</sup> Street*, 1 sheet, prepared by Herbert G. McDonald, PLS, PP, Herbert G. McDonald Associates, Inc., August 11, 2018.
- *Site Plans, Zoning Table, and Architectural Drawings*, 3 sheets, prepared by Andrew L. Ciok, RA, LLC, dated May 28, 2020, revised to January 11, 2023.
- *Letter from Construction Official Joseph Benkert*, dated April 26, 2024.

### 8.0 LIST OF NECESSARY RELIEF

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

#### 8.1. Variances:

- §35-17.6.b Parking space requirements
  - §35-17.5a Parking stall size
  - §35-5.3e Minimum lot size\*
  - §35-5.3e Minimum lot depth\*
  - §35-5.3e Minimum front yard setback\*
  - §35-5.3e Minimum side yard setback (east) \*
  - §35-5.3e Minimum side yard setback (aggregate) \*
  - §35-5.3e Building height in stories\*
  - §35-5.3e Maximum lot coverage
- \* Denotes a preexisting nonconformity.



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### 8.2. Conditions of Approval:

- Payment of any required affordable housing development fees as required by the City's affordable housing regulations.

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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