



## MEMORANDUM

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### Clarke Caton Hintz

Architecture  
Planning  
Landscape Architecture

100 Barrack Street  
Trenton NJ 08608  
clarkecatonhintz.com  
Tel: 609 883 8383  
Fax: 609 883 4044

**To:** Bayonne Zoning Board of Adjustment

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

**Re:** **TPV Property, LLC**  
ZBA Application Z-24-009  
Bulk Variances  
Block 303, Lot 18  
204 Kennedy Boulevard  
Bergen Point/Centerville - 8<sup>th</sup> Street Station Rehabilitation Area Plan  
R-2 Detached/Attached Residential District

**Date:** December 9, 2024

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### 1.0 APPLICATION DESCRIPTION

**1.1. Applicant's Proposal.** The applicant, TPV Property, LLC, proposes to enlarge the second-floor apartment of an existing 2.5-story, two-family detached dwelling. The proposed changes consist of reconfiguring the first floor and second floor units and converting the existing unfinished attic into a third story with a dormer. Two of the existing second floor bedrooms will be relocated to the third story, and a new bathroom, closet space, and a playroom are also proposed in the third story space. The building will remain a two-family residence with a total of six bedrooms. No additional bedrooms are proposed. The applicant requires relief for several bulk requirements.

**1.2. Existing Site Conditions.** The site consists of a two-family detached dwelling on an interior lot with frontage on West 17<sup>th</sup> Street. The lot is rectangular and consists of 3,000 square feet of area. Existing development on the site consists of a two-family detached dwelling that covers most of the site. The dwelling is 2.5 stories in height with a pitched roof, though the rear portion of the dwelling consists of a one-story section with a hip roof and contains one of the bedrooms for the first-floor unit. The front entrance contains an overhang with a porch below it and steps leading to the sidewalk. A decorative wall, planters, and a grass area are located at the front entrance at the bottom of the steps. A concrete driveway is located on the western side of the dwelling. The rear yard consists of block pavers and a concrete area along the rear of the house. A chain link fence is located along the western property line,

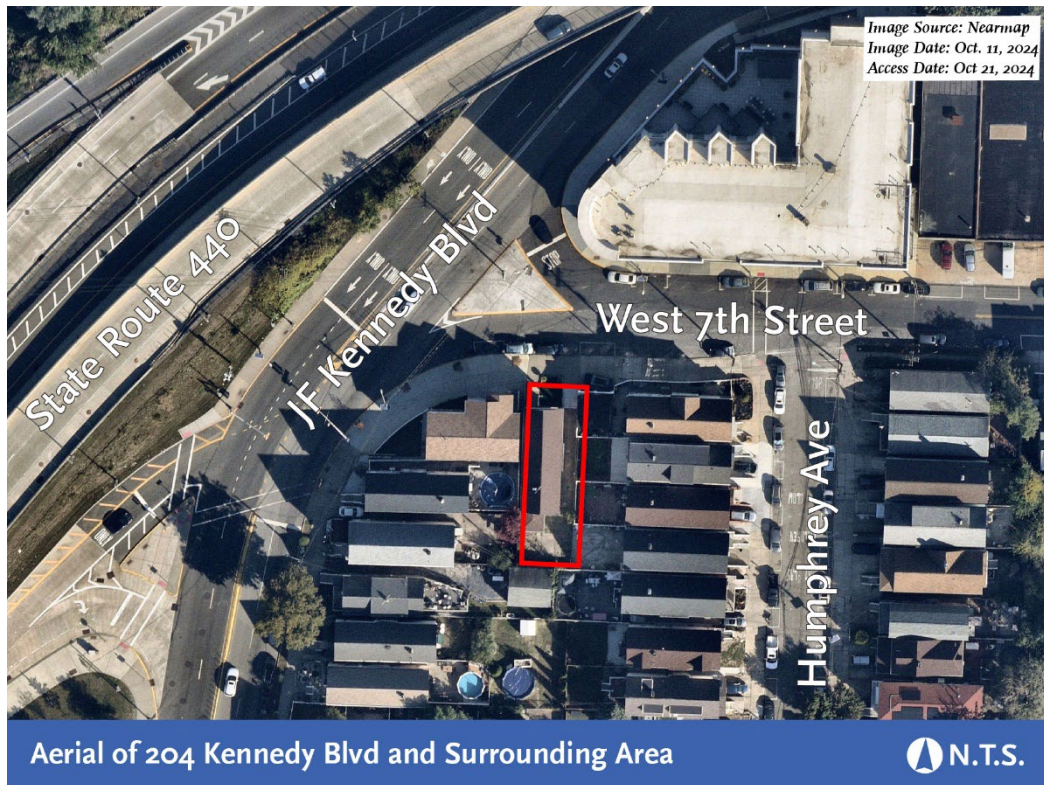
John Hatch, FAIA  
George Hibbs, AIA  
Brian Slaugh, AICP  
Michael Sullivan, AICP  
Michael Hanrahan, AIA  
Mary Beth Lonergan, AICP



and a board-on-board fence extends along the rear portion of the eastern property line from the corner of the building to the rear property line.

The interior of the building contains two separate dwelling units with two separate entrances. Both units consist of three bedrooms, one bathroom, a kitchen, living room, dining room, and closet space. Additionally, the second-floor unit contains stairs leading to an unfinished attic. 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. **Neighborhood Context.** The site is within the Bergen Point Neighborhood between the intersections of John F. Kennedy Boulevard and West 7<sup>th</sup> Street and Humphrey Avenue and West 7<sup>th</sup> Street. The surrounding area is primarily residential with mostly two-family homes located to the south, east, and west, and an apartment building to the north across West 7<sup>th</sup> Street. NJ Rt. 440 borders the site to the west across John F. Kennedy Boulevard. The surrounding area is similarly zoned with the exception of the Kosher Food kitchen supply store to the northeast in the IL-A Light Industrial District.





**2.0 ZONING**

- 2.1. **Bergen Point/Centerville Subarea Zoning.** Pursuant to Sections a - f (p. 30) of the 8<sup>th</sup> Street Station Rehabilitation Area Plan, though the property is in the Bergen Point/Centerville Subarea, where the R-2 Zone underlies the Rehabilitation Area, R-2 Zone use and bulk and special requirements apply.
- 2.2. **Permitted Use.** The application is in compliance. Pursuant to §35-5.3.a.2, the existing detached two-family dwelling is permitted in the R-2 district.
- 2.3. **Required Accessory Use.** The application is in compliance. 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 spaces (1.5 spaces for each 3-bedroom unit). Three spaces are existing.
- 2.4. **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.

<b>Standard</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Complies?</b>
<b>Minimum area</b>	3,000 sf.	3,000 sf.	No change	Yes
Min. lot frontage	30 ft.	30 ft.	No change	Yes
<b>Min. front yard setback</b>	<b>20 ft.</b>	<b>16 ft. 6 in.</b>	<b>No change</b>	<b>No (Ex)</b>
<b>Min. rear yard setback</b>	<b>20 ft.</b>	<b>19 ft. 4 in.</b>	<b>No change</b>	<b>No (Ex)</b>
Min. side yard setback (east)	3 ft.	7 ft 10 in.	No change	Yes
<b>Min. side yard setback (west)</b>	<b>3 ft.</b>	<b>7 ½ in.</b>	<b>No change</b>	<b>No (Ex)</b>
Min. side yard setback (aggregate)	6 ft.	8 ft. 5 ½ in.	No change	Yes
Max. bldg. height (feet)	35	<b>Unknown</b>	35 ft.	Yes
<b>Max. bldg. height (stories)</b>	<b>2 1/2</b>	<b>2 1/2</b>	<b>3</b>	<b>No (V)</b>
<b>Max. lot coverage</b>	<b>70%</b>	<b>97%</b>	<b>97%</b>	<b>No (Ex)</b>

*Note - Refer to item 2.8 of this report for discussion; Ex.=Existing Condition; V = Variance*



- 2.5. **Preexisting Nonconformities.** Pursuant to §35-5.3.e, the R-2 Zone requires a minimum 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 lot coverage of 70%. Per Table 1, the applicant does not meet these requirements. According to the property tax record, the building was built in 1920. Our analysis of the building and streetscape leads us to conclude that the building was constructed before the institution of a zoning ordinance. **In accordance with Board policy, it is recommended that the applicant seek variance relief for these conditions if not granted previously.**
- 2.6. **Maximum Lot Coverage. *Additional information is required.*** Pursuant to §35-5.3.e, the R-2 Zone permits a maximum lot coverage of 70%. Reviewing the zoning schedule on Sheet 1, the applicant is proposing to keep the same lot coverage of 97%. **The applicant should provide a breakdown of the lot coverage calculations. Based on the survey and plans provided, it appears that the existing lot coverage is 100%. It is recommended that the applicant determine if any of the impervious coverage could feasibly be removed to improve the existing condition.**
- 2.7. **Building Height (stories). *Variance relief is required.*** Pursuant to §35-5.3.e, the R-2 Zone permits a maximum of 2½ stories in building height. The existing building is 2½ stories and the applicant is proposing to renovate the half story into habitable attic space. The total floor area proposed for the story is 609 sf., 411 sf. of which contains a ceiling above seven feet. The total floor area proposed for the new habitable attic space with ceiling above seven feet is less than 50% of the total area of the floor below it (1,132 sf.). **While the total floor area proposed complies with the requirements of a half story, the applicant does not comply with the full definition of a half story. It is the practice of the City Zoning office to designate a story developed in this manner as a full story<sup>1</sup>. Thus the applicant is proposing to modify the structure to contain three stories, necessitating variance relief as only 2½ stories are permitted. Under longstanding City interpretation this requires a “-C” bulk variance and not a “-D(6)” variance.**

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<sup>1</sup> - This office notes that Joseph Benkert, the City Construction Code Official, wrote a letter stating “*Newly created habitable attic must comply with N.J.A.C. 5:23-3.21. As per N.J.A.C. 5:23-3.21, the definition of “attic, habitable” is the following: An attic that has a stairway as a means of access and egress and in which the ceiling area at a height of seven feet above the attic floor is not more than one-third of the area of the next floor below.*” While this is a Code issue, rather than a zoning issue, the applicant should be aware that the project may require changes in order to obtain construction permits.



2.8. **Building Height (feet).** *Additional information is required.* Pursuant to §35-5.3.e, the R-2 zone permits a maximum height of 35 feet for principal structures. Per the zoning data on Sheet 1, the applicant is proposing a building height of 35 feet. **However, no building elevations are provided to indicate the existing and proposed building height. The plans should be updated to confirm compliance with this ordinance section.**

**3.0 VARIANCE PLAN**

3.1. **Proposed Interior Modifications.** The plan proposes modifications to each floor within the building. Per the applicant's plan, these modifications will result in the reconfiguration of two dwelling units and the construction of a third story.

3.1.1. The first dwelling unit encompasses the first floor. The applicant is proposing to remove the bedroom next to the kitchen, expand the existing kitchen along the rear, and construct a pantry and laundry room along the rear of the house. The existing living room towards the front of the house will be removed to relocate the bedroom to be removed from the rear. The previous dining room will be reconstructed as a new living room area.

3.1.2. The second dwelling unit encompasses the second floor and the new third floor. The applicant is proposing similar renovations, including an expanded kitchen and a new pantry and laundry room. The existing dining room, living room, and bedroom in the front portion of the unit will be combined into an open concept living room area. The two bedrooms previously in this location, will be relocated to the third floor. The third story will also contain a second full bathroom, a play room, and four closets.

3.2. **Parking stall size.** *Variance relief is required.* 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 existing spaces are 18 feet deep and vary in width between 7 feet 10 inches (from the existing overhang) and 8 feet 10 inches. **A variance is required for the width.**

3.3. **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 district. The existing curb cut is 10 feet wide. The plan complies.

3.4. **Lighting.** 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 the effect on neighboring properties and whether the fixtures will contain shielding. Regardless, lighting illuminating the entrance to the building is recommended if one does not already exist.**

- 3.5. **Landscaping.** The applicant is proposing one street tree, a Trident Maple (*Acer buergerianum*). This is a native, hardy species that can and thrive in an urban environment and in the narrow space in which the tree will be planted (effectively only 4 linear feet per tree). The applicant proposes planting at a size of 2-2½ inches per caliper. While this requires a design exception, the smaller size will improve the ability of the tree to survive the transplantation compared to the comparatively large 3½ inch caliper size requirement which will need a much larger soil pit and specialized care to survive and grow. **A design exception is required, and this office recommends that it be granted.**

#### 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 CONSIDERATION OF THE DESIGN EXCEPTIONS**

**5.1. 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.

**6.0 GENERAL PLAN COMMENTS**

**6.1. Plan Corrections:** The zoning schedule on Sheet 1 of the plans should be revised to correctly indicate the side yard setback to the east measured from the existing overhang, and update the aggregate side yard setback accordingly. The schedule should be corrected as a condition of any approval.



### 7.0 APPLICANT AND THEIR PROFESSIONALS

- Applicant/Owner. TPV Property LLC, 1083 Avenue C, Bayonne, NJ 070002. Tel: 201.339.0924. Email: [firm@RMWlawfirm.com](mailto:firm@RMWlawfirm.com).
- Attorney. Paul N. Weeks, Esq., Raff, Masone & Weeks, P.A., 1083 Avenue C, Bayonne, NJ 07002. Tel: 201.339.0924. Email: [firm@RMWlawfirm.com](mailto:firm@RMWlawfirm.com).
- Architect. Stephen M. Kawalek, RA, PP, Kawalek + Kawalek Architects, LLC, 772 ½ Broadway, Bayonne, NJ 07002. Tel: 201.437.0648.

### 8.0 MATERIALS REVIEWED

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

- Application, dated August 29, 2024.
- *Narrative Statement of Applicant*, undated.
- Zoning Officer Letter, dated August 29, 2024.
- Copy of Property Deed, dated June 12, 2023.
- *Property Survey for Lot 18 Block 303*, 1 sheet, prepared by Edward R. Teunisen, PLS, PP, Teunisen Surveying & Planning Co., Inc., dated June 9, 2023.
- *Site Plan and Details, Existing Floor Plans, and Proposed Floor Plans and Sections*, 3 sheets, prepared by Stephen M. Kawalek, RA, PP, Kawalek + Kawalek Architects, LLC, dated April 22, 2024, revised through August 1, 2024.
- *Letter from Construction Official Joseph Benkert*, dated October 17, 2024.

### 9.0 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.

#### 9.1. Variances:

- §35-5.3e Minimum front yard setback\*
- §35-5.3e Minimum side yard setback (west \*
- §35-5.3e Minimum rear yard setback\*
- §35-5.3e Maximum lot coverage\*
- §35-17.5a Parking stall size
- §35-5.3e Building height in stories





*\* Denotes a preexisting nonconformity.*

9.2. Design Exceptions:

- §33-10.11.c – Minimum tree caliper.

9.3. Recommended Conditions of Approval:

- Payment of any required affordable housing development fees as required by the City's affordable housing regulations.
- Correction of the Zoning Table.
- Reduction in impervious coverage to the extent feasible.

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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