



## MEMORANDUM

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**To:** Bayonne Zoning Board of Adjustment

**From:** Brian Slaugh, PP, AICP  
Donna Miller, PP, AICP, CFM

**Re:** **The Blvd 1224, LLC**  
**Application Z-25-005**  
**Expansion of Nonconforming Use**  
Block 25, Lots 7 & 8  
1224-1226 Kennedy Blvd.  
R2, Detached Attached Residential District

**Date:** September 7, 2025

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### 1. APPLICATION DESCRIPTION

1.1 **Applicant's Proposal.** The applicant proposes to modify an existing commercial space in a mixed-use building by converting an existing utility space to a kitchen and increasing the existing counter area. A variance is required pursuant to N.J.S.A. 40:5D-70.d(2) for the expansion of a non-conforming use.

1.2 **Existing Site Conditions.** The subject property is located at the northeast corner of W. 55<sup>th</sup> Street and Kennedy Boulevard and consists of two lots containing a total of 4,000 sf. Lot 8 is developed with a two-story building that faces both W. 55<sup>th</sup> Street and Kennedy Boulevard. The existing building contains apartments on the second floor and a deli, pharmacy and auto repair facility on the ground floor. There are two projecting signs on the Kennedy Boulevard frontage and an awning sign that extends across the storefront on Kennedy Boulevard and wraps around to the W. 55<sup>th</sup> Street side of the building. There is a second awning with sign on the W. 55<sup>th</sup> Street frontage associated with the automotive use. Lot 7 adjoins Lot 8 to the north and has frontage only on Kennedy Boulevard. Lot 7 is used as parking and vehicle and parts storage for the automotive use on Lot 8. There are two small structures on Lot 7 that abut the building on Lot 8 and there is HVAC and other mechanical equipment on the building on Lot 8 which extend onto Lot 7.

1.3 **Neighborhood Context.** The property is in the R-2 Detached Attached Residential District, on the west side of Rt. 440 near the interchange with I-78. The property is located across Kennedy Boulevard from the Kennedy House apartments. Along

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



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Kennedy Boulevard there is a mix of residential uses, including high density multi-family buildings, medical office and other commercial and mixed-use buildings. Land uses on W. 55<sup>th</sup> Street are typically single-and two-family dwellings.

### 2. ZONING COMPLIANCE

- 2.1 **Existing Non-Conforming Use.** The R2 District does not permit multi-family apartments or any commercial uses. The existing uses in the building are presumed to be legal, pre-existing non-conforming uses, based on the age of the structure and general history of the property. The proposed increase in commercially used floor area by the existing deli constitutes an expansion of the non-conforming use. **An expansion of a non-conforming use variance is required pursuant to N.J.S.A. 40:5D-70.d(2).**
- 2.2 **Existing Nonconforming Structure.** The existing building is non-conforming for front, side and rear yard setbacks and lot coverage. Additionally, there are accessory structures and building appurtenances which extend onto Lot 7. **These conditions will not be affected by the proposal, however the Board should consider**



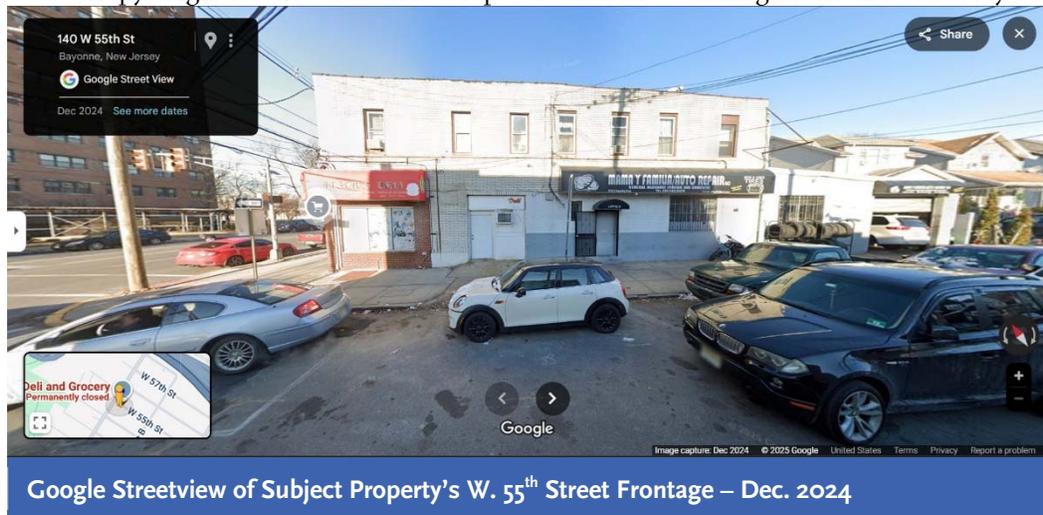
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validating the non-conforming conditions via variance and require a consolidation of the two lots since there is a commingling of the functions and uses across the lot line as well as their common ownership.

- 2.3 **Required Accessory Use.** Pursuant to §35-5.3.b.1, off-street parking is a required accessory use in the R-2 District. The application does not indicate the number of bedrooms in each existing dwelling unit; however, the maximum number of spaces required for the residential uses would likely be three spaces. The automobile repair use requires 13 spaces (one space per 200 sf. for 2,500 sf. of floor area). There is no parking requirement for the retail uses. The property is served by an existing driveway from Kennedy Boulevard to the part of the property where the auto use stores vehicles and used tires. **The property could accommodate some off-street parking on Lot 7, although it would not be fully compliant with the City's parking design standards. A variance for insufficient parking is required, which in turn is dependent on whether any of Lot 7 would be used for off-street parking. On the other hand, we are not aware of any complaints with how the property functions.**

### 3. SIGNS

- 3.1 **Existing Non-conforming Signs.** The existing building has multiple signs for the commercial uses in the building; two projecting signs on the Kennedy Boulevard frontage – one associated with the auto repair use and one for the existing deli, a canopy<sup>1</sup> sign for the deli that wraps around the building from the Kennedy



Google Streetview of Subject Property's W. 55<sup>th</sup> Street Frontage – Dec. 2024

<sup>1</sup> - Canopy sign is defined as a sign on or attached to a permanent overhanging shelter which projects from the face of a building and is supported only partially by the building.



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Boulevard frontage to the W. 55<sup>th</sup> Street frontage, and two additional canopy signs on the W. 55<sup>th</sup> Street frontage associated with the auto repair use. We note the plans do not reflect the existing auto-related projecting sign on Kennedy Boulevard. The existing Tigers Deli canopy sign and the two projecting signs have been in place since at least 2007. The canopy signs on W. 55<sup>th</sup> Street appear to have been replaced between 2022 and 2024. None of these signs are permitted in the R-2 District. We note that projecting signs are only permitted to project 12 inches from the building, whereas the existing deli projecting sign extends approximately eight feet from the building. Signs permitted in residential districts are limited to temporary, non-illuminated real estate signs not exceeding 12 sf., church bulletin signs which are limited to 20 sf., home professional office signs limited to one sf. and in the R-3 and R-M districts, building identification signs for multi-family developments limited to 10 sf. in area (see §35-25.3). **As far as is known from a search of City records, these signs do not have valid permits. If the applicant cannot produce approvals for the existing signs, then variances for the signs must also be sought.**

- 3.2 **Proposed Signs.** The applicant proposes to replace the existing sign face in the deli projecting sign with a new sign face and install a new, larger canopy sign that advertises the proposed deli and pharmacy use. The canopy sign will retain its existing height and length on the Kennedy Boulevard frontage, but the canopy sign on the W. 55<sup>th</sup> Street frontage will be extended from approximately 10 feet in length to 27 feet per the elevation plans. The sign detail indicates a total length of 324 inches, minus 42 inches for the corner section, which totals 23.5 feet. The applicant should clarify the total length of the new canopy. **Variances are required to permit the proposed signs.**
- 3.3 **Proposed Sign Area.** The sign area of a flat sign includes the area of the backing to which the lettering and/or symbol is applied and the area of a projecting sign includes both sides of the projecting sign.
  - A. Kennedy Boulevard projecting sign area is 30 sf on each side;
  - B. Kennedy Boulevard canopy sign area is approximately 120 sf.;
  - C. W. 55<sup>th</sup> Street sign area is approximately 94 – 108 sf., depending on the actual length of the canopy;
  - D. The corner sign area is approximately 11 sf.

For reference, signs permitted in business districts are limited to 20% of the sign façade area, which is the floor-to-floor height of a building façade fronting on a public right-of-way occupied by a single occupant. For the deli/pharmacy, that



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area is approximately 350 sf. on Kennedy Boulevard, which would permit a 71 sf. sign, and approximately 340 sf. on W. 55<sup>th</sup> Street, which would allow a 68 sf. sign.

**4. FENCING AND LANDSCAPING**

4.1 **Fencing.** §33-10.16.a.2 restricts fences to four feet in height in front yards, between the front facade of the principal building and the street line. There is an existing six-foot chain link fence with two gates on the Kennedy Boulevard frontage. **A design exception is required to permit a fence higher than four feet in the front yard.**

4.2 **Street Tree.** Street trees are required to be shown on all development applications per §33-10.17.c.1. Trees are required to be depicted on site development plans approximately 40 feet apart and located between the front yard line and the street right-of-way if possible and not closer than 25 feet from any existing or proposed streetlight or street intersection. There are no existing street trees on either the Kenedy Boulevard or W 55<sup>th</sup> Street property frontage and none have been proposed. There are multiple overhead utility lines crossing the property's W. 55<sup>th</sup> Street frontage, making the selection and siting of an appropriate tree extremely difficult. **A design exception is required, however we believe one small street tree can be located on the Kennedy Boulevard frontage.**

**5. CONSIDERATION OF THE “-D(2)” VARIANCE**

5.1 **Context for Review.** While this office defers to the Board Attorney in advising the Board on the application of relevant variance criteria, this report identifies the use variance criteria for purposes of establishing a framework for review. The “-d(2)” designation is related to its codification in the Municipal Land Use Law (MLUL) at 40:55D-70.d(2). The applicant bears the burden of proof in the justification of the variances.

5.2 **D2 Variance.** The land use treatise by Cox and Koenig, though not having any official status, is often used as a compendium of case law and practice on the administration of land use in New Jersey. In this instance on non-conforming uses, it states, “Although the owner of a lawfully created preexisting nonconforming use is allowed to continue it and to do necessary maintenance, he or she may not enlarge or modify the use without a variance, except where the change is negligible or insubstantial”<sup>2</sup>. Thus, the Board of Adjustment should first determine whether the proposed development is negligible or insubstantial. If it

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<sup>2</sup> -Cox & Koenig, *New Jersey Zoning and Land Use Administration* (GANN, 2023), p. 501.



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is the case that it is neither negligible nor insubstantial, the applicant then needs to satisfy the positive and negative criteria.

Additionally, in the Lehen v. Atlantic Highlands<sup>3</sup> case, the Court found that:

*Nonconforming uses may not be enlarged as of right except where the change is so negligible or insubstantial that it does not warrant judicial or administrative interference. Town of Belleville v. Parrillo's, 83 N.J. 309, 316 (1980). If there is doubt whether the extension of the use is substantial, the extension should be disapproved. The inquiry must focus on "the quality, character and intensity of the use, viewed in [its] totality and with regard to their overall effect on the neighborhood and the zoning plan." *Id.* At 314. This involved an appraisal of the use, both before and after the change.*

- 5.3 **Special Reasons.** To satisfy the positive criteria, also known as "special reasons," the applicant must demonstrate that a proposed project carries out a purpose of zoning OR that there is a substantial practical hardship to the development of a conforming structure on the property. As discussed in *New Jersey Zoning and Land Use Administration*, for an expansion of a nonconforming use variance, the applicant is not required to "go back" and prove that the variance could have been properly granted to create the initial use, but that the area of expansion can be addressed by application of the positive and negative criteria.

## 6. CONSIDERATION OF THE "-C" VARIANCES AND DESIGN EXCEPTIONS

- 6.1 **Context for Review.** The following sections summarize framework for review and criteria for variances and design exceptions. The applicant bears the burden of proof. 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;

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<sup>3</sup> Lehen v. Atlantic Highlands, 252 N.J. Super. 392 (App. Div. 1991).



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- 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. These factors are referred to as the negative criteria.

6.4 **Design Exceptions.** 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.



**7. APPLICANT AND PROFESSIONALS**

- Applicant. The Blvd 1224, LLC, Fahad Farooqi, 1224 Kennedy Blvd., Bayonne, NJ 07002. Tel: 551-208-5984. Email: [fahadfarooqi@gmail.com](mailto:fahadfarooqi@gmail.com) and [hybfl1224@gmail.com](mailto:hybfl1224@gmail.com)
- Owner. St. George Real Estate Inc., 321 Dunhams Corner Road, East Brunswick, NJ 08816
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- Architect. Steve Kawalek, RA, 772 ½ Broadway, Bayonne, NJ 07002. Tel: 201-437-0648. Email: [steve.kawalek@gmail.com](mailto:steve.kawalek@gmail.com)

**8. MATERIALS REVIEWED**

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

- Application, dated June 18, 2025.
- *Narrative Statement of Applicant*, undated.
- *Property Deed*, dated May 19, 2015.
- *Survey of Property*, prepared by Brian T. Yuro, PLS, dated April 30, 2025, consisting of one sheet.
- *Alteration for Adeel Aslam, 1224-1226 John F. Kennedy Boulevard, Bayonne, NJ*, prepared by Stephen M. Kawalek, RA, Kawalek and Kawalek Architects, LLC, dated May 30, 2025, consisting of four sheets.
- *Zoning Determination Letter*, prepared by Tracey Tuohy, Zoning Officer, dated April 3, 2025.
- *Completeness Review* letter, prepared by Robert Russo, PE, dated July 30, 2025.

**9. 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.

- Variances:
  - N.J.S.A. 40:5D-70.d(2) Expansion of Non-conforming Use
  - §35-25.3 Non-permitted Signs



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- §35-5.3.b.1 Off-street Parking
- Design Exceptions:
  - §33-10.16.a.2 Fence Height
  - §33-10.17.c.1 Street Trees

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

Cc. Alicia Losonczy, Land Use Administrator  
Richard N. Campisano, Esq., Board Attorney  
Suzanne T. Mack, PP, AICP, CTP, FITE, AHP, City Planner  
Tracey Tuohy, Zoning Officer  
Applicant and Applicant's professional team

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