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MEMO TO: City of Bayonne Zoning Board

FROM: Malvika Apte, PP/AICP
Consulting City Planner 

DATE: April 16, 2021

RE: **Vito Spano**
Use Variance and Major Site Plan
Planning Report # 1
Block 64 Lot 33
16 A West 49th Street
Bayonne, New Jersey
Our File: PBYZ0064.01
Application # Z-20-009

As per your request, our office has reviewed the above referenced application. The following documents were reviewed for this application:

- Application Form, Development Application Checklist and Statement;
- Location Survey prepared by Irwing C. Johnson, Land Surveyor dated September 22, 1997
- One (1) sheets titled "Use Variance", prepared by Kawalek and Kawalek Architects, LLC, dated June 11, 2020 and latest revised March 4, 2021

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

1. **Summary of Application:**

The application is for a property that is located at 16 A on West 49th street. The site is currently developed with a one story commercial building. The site is located in the R-2 Detached/Attached Residential District. The existing building is approximately 1,150 square feet and occupies approximately 50% of the property. The rear of the property is currently vacant. **Applicant should clarify what the rear is used for.**



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Subject site view from W 49th Street
Source: Google maps 2018

2. Zoning and Bulk Variances:

(a) **Use:** The subject property is located in the R-2 district detached/attached residential district. Per the Zoning office letter dated December 23, 2020, the subject site was recognized as a pre-existing non-conformity with a prior use as a warehouse for storage purposes. It is our understanding currently the site is vacant. Applicant must clarify. With this application applicant is proposing to use the property as Sign and Awning manufacturing use. Per the narrative statement, applicant intends to receive and store material and create and install signage and awnings for businesses. This is identified as identified as light fabrication, manufacturing and assembly use and is not permitted in the zone.

With this proposal applicant is proposing a light manufacturing and assembly use within a residential R-2 district. A use variance commonly known **as d (1) variance is required**. The Applicant must seek "Special Reasons" Use Variance pursuant to NJSA 40:55D-70d. Per the State Supreme Court's decision in the case of *Medici v. BPR Co.*, the Applicant must be



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prepared to provide testimony demonstrating that there are special reasons to permit the nonconforming use and that the site in question is particularly suited to the use. In the case of *Price v. Himeji, LLC*, the Supreme Court of New Jersey, the Court held that a Zoning Board should not determine that a property is particularly suited to the use simply because it is the most suitable site in the municipality for the use. The use should be appropriate and especially beneficial based on the unique conditions of the site and its surrounding area. The Applicant shall provide testimony demonstrating the following:

Positive Criteria

- i) There are special reasons that allow a departure from the zoning regulations in this particular case. In general, to show special reasons, the grant of a variance must be shown to implement one or more of the purposes of the Municipal Land Use Law (NJSA 40:55D(2)), and should promote the purposes of the municipality's Master Plan and the State Development and Redevelopment Plan.

Negative Criteria

- ii) That the variance can be granted without substantial detriment to the public good. This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.
- iii) That the variance can be granted without substantially impairing the Master Plan, Zone Plan or Zoning Ordinance.

Additionally, the applicant for a use variance is obligated to address the planning issues raised in the New Jersey Supreme Court case *Medici V. BPR. Co.*, 1071 NJ (1987). In accordance with the guideline set forth in *Medici*, an applicant for a use variance must demonstrate that special reasons are satisfied by either showing that the proposed use is one which "inherently serves the public good" or that the proposed use promotes the general welfare because the proposed site is particularly suitable for that use. The *Medici* decision provides that in conjunction with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the grant of the requested use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.



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(b) **Bulk regulations:** The following is noted:

Bulk and Yard Standards: R-2 Detached/Attached Residential District			
	Requirements	Existing/Proposed	HC District
Minimum Lot Area (sq. ft.)	3,000 sq. ft.	2,483	2
Minimum Lot Frontage (ft.)	30	25	200
Minimum Lot Width (ft.)	30	25	200
Minimum Lot Depth (ft.)	100	92	150
Minimum Front Yard Setback (ft.)	20	8	40 from CL
Minimum Rear Yard Setback (ft.)	20	46	25
Minimum Side Yard Setback (ft.) (one/both)	3/6	0/1	10/25
Maximum lot coverage	70%	53	65
Maximum Height (ft./ sty)	2.5/35	1/17	4/50

(V) Variance

(e) Pre-existing non-conformity

As per Case Law in Puleo v. North Brunswick Board of Adjustment found that generally the bulk requirements designed for the that zone cannot be applicable to the proposed non-permitted use. The Court found that a “c” variance and a “d” variance cannot co-exist if the application for a use that is not permitted in the zone is proposed.

In this case, a light manufacturing use was not contemplated for this zone; therefore, bulk requirements for a light manufacturing use in R-2 zone do not exist, however, the Zoning Board, is permitted to consider different bulk standards from the current district standards when considering a use variance application. The Board at its discretion may determine bulk standards that it feels would be appropriate for proposed use on this site, considering it is rehabilitation of an existing building on site.



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3. Review:

(a) **Parking:**

Type of Use	Requirement	Required Number	Proposed
Manufacturing	1 space/1,000 square feet or 200 employees	1	*

(V) Variance

Applicant has noted on the plan that one (1) parking space is provided, however it is not clear where this space is provided. Per 35-17.5 a, parking stall requirement is 9 x 18 feet. Applicant should show the location of the parking space. Additionally, applicant has noted, one (1) employee on the site, applicant should confirm the business operations, if there will be additional visitors or office employees to the site.

- (b) **Refuse:** The Applicant should provide testimony regarding the garbage and trash recycling operations of the building and where the refuse is to be stored for the week and who will be responsible for bringing it to the front.
- (c) **Overhead Garage Door-** Applicant should discuss the loading and unloading requirements of site. Although per 35-17.8 c, for the size of the building none is required, it appears applicant will receive merchandise that will be delivered and picked up. Applicant should discuss the frequency of deliveries and pick up. If this is to occur inside the building through overhead garage, details on type of truck, its length and height should be discussed.
- (d) **Utilities:** Applicant should discuss the existing utilities on site.
- (e) **Signage:** No details on signage of the use or building is provided. Signage shall not be considered part of this application.
- (f) **Street Trees:** Per §33-10.17 c, street trees shall be approximately 40 feet apart. The site has 25 frontage. No trees exist and none is provided. We defer to Board Engineer to determine compliance with this requirement.



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- (g) **Curb Cut:** Per § 35-17.5 only one curb cut not exceeding 10 feet shall be permitted. The existing development curb cut appears to exceed. Applicant must confirm. **A variance is required.**
- (h) The applicant should be prepared to discuss whether any additional permits/approval are required by outside agencies.

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

cc: Board Secretary
Board Attorney
City Engineer
Zoning Officer
City Planner