

Z-26-003

#A-21

MEMORANDUM

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To: Bayonne Zoning Board of Adjustment

From: Brian Slaugh, PP, AICP
Donna Miller, PP, AICP, CFM
David Robbins, AICP, ASLA

Re: **The Blvd 1224, LLC**
Application Z-26-003
Expansion of Nonconforming Use
Block 25, Lots 7 & 8
1224-1226 Kennedy Blvd.
R2, Detached Attached Residential District

Date: August 14, 2026

1. APPLICATION DESCRIPTION

1.1 **Applicant's Proposal.** The applicant proposes to modify an existing commercial space in a mixed-use building by adding commercial kitchen facilities and reconfiguring the retail space. The applicant's narrative also states that all changes, with the exception of adding an exterior vent for the kitchen hood and some exterior signage, are strictly to the interior layout of the commercial space. The application materials do not include floor plans or a sign plan. A variance is required pursuant to N.J.S.A. 40:5D-70.d(2) for the expansion of a non-conforming use. Additional variances for signage are required to permit the existing non-conforming signs and any changes to those signs and off-street parking for the existing non-conforming multi-family use. Design exceptions are also required for fencing and street trees.

1.2 **Existing Site Conditions.** The subject property is located at the northeast corner of W. 55th 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. 55th Street and Kennedy Boulevard. The existing building contains apartments on the second floor and a deli with convenience store 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. 55th Street side of the building. There is a second awning with sign on the W. 55th Street frontage associated with the automotive use. Lot 7 adjoins Lot 8 to the north with frontage only on Kennedy Boulevard and is used as vehicle and parts storage for the automotive use on Lot 8. There are two small

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structures on Lot 7 that abut the building on Lot 8 and there is HVAC and other mechanical equipment that is mounted on the existing building which extends onto Lot 7.

- 1.3 **Neighborhood Context.** The property is in the R-2 Detached Attached Residential District, located on the east side of Kennedy Boulevard between W. 55th and W. 56th Streets, across from the Kennedy House apartments. Along 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. 55th Street are typically single-and two-family dwellings.

2. **LEGAL STANDING**

- 2.1 **Prior Application.** The applicant had previously presented an application to the Board to convert part of the existing retail floor area to a pharmacy use, in addition to the installation of an exhaust hood and commercial cooking facilities for the existing deli. New signs for both uses were also proposed. A variance for expansion of a non-conforming use, in accordance with NJSA 40:55D-70.d(2), and 'c' variances for signage, off-street parking were required in addition to design



exceptions for fencing and street trees. That application was denied on December 15, 2025.

- 2.2 **Res Judicata.** Under the doctrine of res judicata, if the same parties seek the same relief in the same factual setting, the case may be dismissed on the grounds that it has already been decided. In order for the doctrine of res judicata to be applicable, it must be shown, among other things, that:

- (1) *The second application is substantially similar to the first;*

The prior application required a variance for expansion of a non-conforming use pursuant to NJSA 40:55D-70.d(2) in order to install an exhaust hood and commercial cooking facility for the existing deli, and conversion of a portion of the existing retail floor area to a pharmacy use. Variance relief was also required for new and existing signage, off-street parking; and design exceptions for existing fencing and street trees.

The current application requires a variance for expansion of a non-conforming use pursuant to NJSA 40:55D-70.d(2) in order to install an exhaust hood and commercial cooking facilities for the existing deli. Additional variance relief is required for signage, for any new signs and to validate the existing, unpermitted signs and for the lack of off-street parking for the existing residential use. Design exceptions for existing fencing and street trees are also required.

- (2) *The same parties or their privies are involved;*

The applicant for the prior application was The Blvd 1224, LLC and the applicant for the current application is also The Blvd 1224, LLC.

- (3) *There must be no substantial change in the application itself or conditions surrounding the property;*

There has been no substantial change to the property since the prior application was denied.

The difference between the prior application and the current one appears to be the lack of a new pharmacy use. A pharmacy is a combined retail sales and service use. No plans have been provided to determine the extent to which the existing retail and deli uses might differ from the prior application, and the specific conditions pertaining to the expansion of those existing uses. In the prior application, an increase in retail floor area was proposed by converting the deli's utility area to commercial kitchen facilities; a new hood, cooking equipment and sinks. Architectural floor plans were provided that



depicted these changes. Part of the existing deli work area was to be converted to the retail pharmacy use within the existing commercial floor area. The current application indicates a new hood and commercial kitchen is proposed to be added for the deli use, but gives no indication as to the specific modifications proposed and if there is a change in the amount of floor area that will be attributed to the kitchen. **We recommend that a schematic floor plan be provided for determining these changes.**

New signage is noted in the current application, but no details or plans have been provided in order to determine the extent to which the proposed signage differs from the prior application's signage or the number of variances attributed to signage. **Testimony must be provided by the appropriate witness.**

- (4) *There must have been an adjudication on the merits in the first case;*

The prior application was denied, with a resolution adopting the denial memorialized on March 16, 2026.

- (5) *Both applications must involve the same cause of action.*

The prior application required a variance for expansion of a non-conforming use pursuant to NJSA 40:55D-70.d(2), due to the increase in the physical floor area to be put into use as commercial kitchen facilities and installation of a new hood and for the existing deli. Additionally, the expansion included the adaptation of a portion of the existing deli and retail floor area to a retail pharmacy use. Variances were required for signage and off-street parking. Design exceptions were required for fencing and street trees.

The current application requires a variance for expansion of a non-conforming use pursuant to NJSA 40:55D-70.d(2), due to the installation of a new hood and commercial kitchen facilities for the existing deli. It is unclear if the proposed commercial kitchen facilities will be created through the conversion of utility floor area or be confined to active retail or deli floor area. Additional variances for signage and off-street parking are also required for the current application, as well as design exceptions for fencing and street trees.

Not only are the number and types of relief for the two applications exactly the same, the proofs required to approve an expansion of a non-conforming use do not rely on whether there is an increase in floor area or the number of uses involved; merely whether the proposal is negligible or insubstantial. The question of whether the changes associated with the deli use, which will result



in it providing more meals, was previously determined to be substantial, hence the denial of the original application.

We recommend that the Board of Adjustment first determine whether the doctrine of *res judicata* applies here, and if it does, then the application must be denied for lack of jurisdiction.

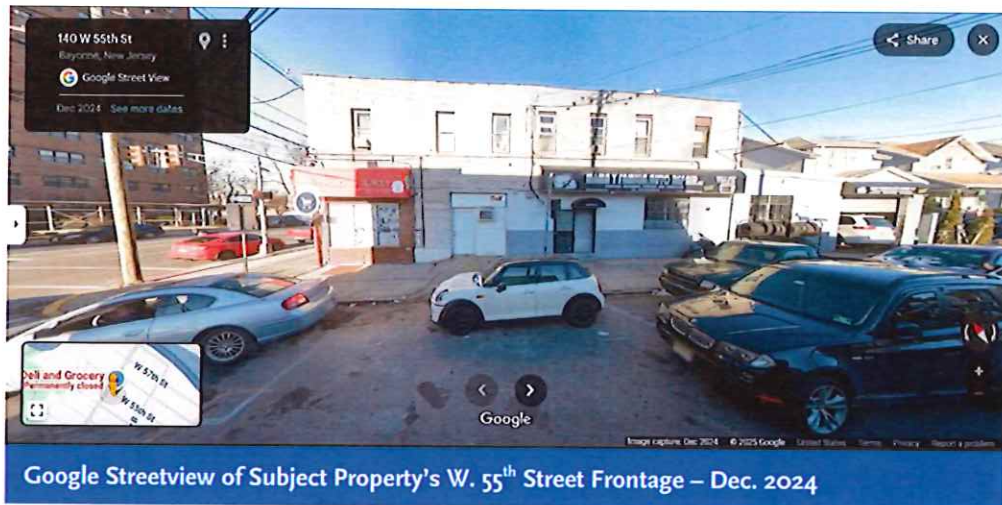
3. ZONING COMPLIANCE

- 3.1 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 change to retail use either through an increase in commercial floor area or via the change in the nature of the business by adding cooking facilities to attract customers seeking a wider variety of prepared food, 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).
- 3.2 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 reducing the non-conformity of the existing conditions and require a consolidation of the two lots since there is a commingling of the functions and uses across the lot line. The properties are also meet a test for consolidation since both are owned by the same entity. At the least, the encroachments onto Lot 7 should be addressed by an easement that permits them to continue as they exist today.
- 3.3 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, the extent of which is dependent on whether any of Lot 7 is feasible for use as off-street parking.



4. SIGNS

- 4.1 **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 canopy¹ sign for the deli that wraps around the building from the Kennedy Boulevard frontage to the W. 55th Street frontage, and two additional canopy signs on the W. 55th Street frontage associated with the auto repair use. The existing Tigers Deli canopy sign and the two projecting signs have been in place since at least 2007. The canopy signs on W. 55th 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). We note the current application does not include any plans which depict the existing signage or indicate proposed signage, although the application states that no exterior changes to the building are proposed except, “some exterior signage”. City records indicate there are no valid permits for the existing signs. Variances for existing signs to remain must be sought.



¹ - 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.



- 4.2 **Proposed Signs.** The current application does not include any plans which depict proposed signage, although the application states that no exterior changes to the building are proposed except, “some exterior signage”. The applicant will have to provide detailed descriptions of changes to the existing signs as well as any proposed signs. **Any new sign will require an additional variance in addition to the variances necessary for the existing signage.**
5. **FENCING AND LANDSCAPING**
- 5.1 **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.**
- 5.2 **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 Kennedy Boulevard or W 55th St. property frontage and none have been proposed. There are multiple overhead utility lines crossing the property’s W. 55th St. frontage, making the selection and siting of an appropriate tree extremely difficult. **A design exception is required; however, we believe one small street tree may be located on the Kennedy Boulevard frontage.**
6. **CONSIDERATION OF THE “-D(2)” VARIANCE**
- 6.1 **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 NJSA 40:55D-70.d(2). The applicant bears the burden of proof in the justification of the variances.
- 6.2 **D2 Variance.** D2 variances have been described as, “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”². Thus, the Board of Adjustment should first determine whether the proposed development

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



is negligible or insubstantial. If it 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 Highlands³ 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.

- 6.3 **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.

7. **CONSIDERATION OF THE "C" VARIANCES AND DESIGN EXCEPTIONS**

- 7.1 **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.

- 7.2 **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;

³ -Lehen v. Atlantic Highlands, 252 N.J. Super. 392 (App. Div. 1991).



- 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.

7.3 **Consideration of the Negative Criteria.** Should the applicant satisfy the positive criteria, they must also demonstrate 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. The properties are significantly non-conforming and the applicant’s proposal is for greater non-conformity.

7.4 **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.



8. APPLICANT AND PROFESSIONALS

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- Owner. St. George Real Estate Inc., 321 Dunhams Corner Road, East Brunswick, NJ 08816
- Attorney. Peter Cecinini, Esq., 1081 Avenue C, Bayonne, NJ 07002. Tel: 201-354-9305. Email: peter@cecininilaw.com
- Architect. Steve Kawalek, RA, 772 ½ Broadway, Bayonne, NJ 07002. Tel: 201-437-0648. Email: steve.kawalek@gmail.com

9. MATERIALS REVIEWED

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

- Application, dated March 2, 2026.
- *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.

10. 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
 - §35-5.3.b.1 Off-street Parking
- Design Exceptions:
 - §33-10.16.a.2 Fence Height
 - §33-10.17.c.1 Street Trees



Clarke Caton Hintz

THE BLVD 1224, LLC | Expansion of Non-Conforming Use and Sign Variances

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

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