

**SEMERARO
& FAHRNEY LLC**
ATTORNEYS AT LAW

Mark J. Semeraro, Esq. †
R. Scott Fahrney, Esq.
Dustin F. Glass, Esq.

Stephen G. Piccininni, Esq.
Megan H. McMurtrie, Esq.

Richard A. Herman, Esq., *Of Counsel*

†Licensed in NY

155 Route 46, Suite 108
Wayne, New Jersey 07470
Telephone: 973-988-5070
Facsimile: 973-988-5533

90 E. Halsey Road, Suite 333
Parsippany, New Jersey 07054
Telephone: 973-988-5070

225 West 35th Street, 5th Floor,
New York, New York 10001

Reply to:
Mark J. Semeraro, Esq.
msemeraro@semerarolaw.com
Direct Dial: 973-988-5066

June 19, 2025

Via Email

Jane Wondergem, Board Secretary
Village of Ridgewood
131 N. Maple Avenue
Ridgewood, NJ 07450

**Re: Les Dann, LLC
246-264 South Broad Street
Ridgewood, NJ 07450
Block 3905, Lots 12, 13, and 14**

Dear Ms. Wondergem:

I have prepared a memorandum of law and facts with respect to the above-referenced application. I respectfully request that you distribute this to the Board Attorney and the members of the Board and make the same part of my client's file and record.

As always, we thank you for your kind consideration.

Sincerely,

Mark J. Semeraro

MARK J. SEMERARO

MJS/dfg

cc: Client
Bruce E. Whitaker, Esq. (via email)

Memorandum of Law & Facts

Please accept this memo as an explanation of the various relief requested by the applicant, how and why the applicable standards have been satisfied, and why the application should be approved.

As you are aware, the applicant seeks preliminary and final site plan approval along with associated relief which consists of D variance, C variance (subsumed) and design waiver relief, in order to consolidate three contiguous lots along South Broad Street, lots 12, 13 & 14 of Block 3905. Lots 12 and 14 have been deemed by this Board to be lawful pre-existing nonconforming uses for autobody repair facilities with associated outdoor storage. Lot 13, which lies in the middle, has a 20+ year history of being used as part of the auto body repair facilities on lots 12 and 14 and it also has a residential building in front.

The application seeks to consolidate all three lots by deed and have them all dedicated to an auto body repair facility use with outside storage (for automobiles only), to upgrade the facilities, set all facilities further away from neighboring residential uses than they currently are, and beautify the properties with enhanced green space and buffering. A chart detailing the existing versus proposed conditions, which are **improving** with this application is attached hereto as Exhibit "A" and incorporated herein by reference.

RELIEF REQUIRED

1. D(2) expansion of a pre-existing nonconforming use lots 12 and 14;
2. D(1) use variance lot 13;
3. C variances (subsumed in the D Variance relief):
 - A. 2- side yard setback (improvements over existing conditions)
 - B. 2-impervious coverage (improvements over existing conditions)
 - C. 2 sign variances
 - D. Parking variance (89 required, 85 with EV credit proposed)
4. 2 Design waivers for stall size and drive aisle width (tandem spaces)

STANDARDS FOR RELIEF & HOW THEY ARE SATISFIED

1. D(2) Expansion of pre-existing nonconforming uses:

A. The Positive criteria is that there exists special reasons.

It is clear that in pursuing a D(2) variance, **a lesser showing of special reasons will suffice than is traditionally applicable to a D(1) variance.** *Burbridge v. Governing Body of the Township of Mine Hill*, 117 N.J. 376, 393 (1990). Also see, *Grasso v. Borough of Spring Lake Heights*, 375 N.J. Super. 341, 41,49 (App.Div. 2004). For example, in *Burbridge*, **the board granted the D(2) variance with the sole benefit being that the application approved aesthetics only.** As such, when considering a D(2) variance, aesthetics in and of themselves are sufficient to satisfy special reasons. Also, in *Jacoby v. Zoning Board of Adjustment of Englewood Cliffs*, 442 N.J. Super. 450 (App.Div. 2015) the appellate division held that enhanced buffers and/or stormwater management also could be sufficient enough to be considered a special reason in evaluating a D(2) variance.

In this case, the application does all of the above. Not only does it greatly enhance aesthetics, but it creates substantially larger side yard and front yard setbacks than currently exist and creates substantial buffering and substantial stormwater management where none currently exist at all. In addition, it proposes to modify operations which will conceal operations from the public and reduce the possibility of any noise or odor. Also see the comparative analysis chart delineating the aesthetics and improvements as well as the diminished impacts of the proposed project attached hereto as Ex. "A".

In the case of an expansion of a pre-existing nonconforming use, the Supreme Court has held that special reasons are satisfied if despite the deviations, the property continues to be an appropriate site for the proposed use. In this particular case, as proposed to be modified, the site is better suited for the use than the existing arrangement. The *Coventry* court held that boards are to consider how the property functions as a whole **and whether or not the detriments caused by the deviations can be accommodated on site without off site impact, such is the case here.** *Coventry Square Inc. v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994). Through the course

of this hearing not one offsite impact has been identified to be a result of this proposed project. It is very clear that this site as proposed will function much better than it currently exists and that any and all potential impacts from the use will be greatly mitigated from what they currently are, due to enhanced buffering and setbacks.

Another special reason to grant this variance, although not needed, is that the property is also particularly suited for the proposed use. It is particularly suited as each individual lot is considerably larger than the minimum size lot for the zone (especially when consolidated) and each of the properties is adjacent to railroad tracks and has been used as an autobody repair shop. In fact, the properties are within the impact corridor of the railroad system, a system that brings with it both noise and odor as well as an unattractive aesthetic that far exceeds¹ anything the applicant would ever do. This is true as the operations currently exist and will be even more true after they are consolidated all into one building set back 100 feet from S. Broad St.

- B. The negative criteria for such a variance is that the approval can be granted without substantial detriment to the public good and without impairing the intent and purpose of the zone plan and zoning ordinance.

As explained through various witnesses, side yard and front yard setbacks green space, and buffering are greatly enhanced with all of the other benefits set forth in Ex. "A". It is undeniable that all of these improvements enhance the public welfare, especially the stormwater management and the fact that operations are pushed back further into the impact corridor of the existing railway, which means in all likelihood, operations will not even be detectable from off site.

Moreover, the application will consolidate three driveways into one, moving the one proposed driveway further away from intersecting streets and providing a much safer traffic pattern with fewer conflicts—much fewer than currently exist. The traffic engineer also provided evidence that the increased traffic, if any, will not serve as a substantial detriment or degrade the operations of intersections on the corridor.

¹ We know this to be true from the common operations, and this is even evident from the fact that the Applicant has received no complaints or notices of violations of any sort, as testified to.

Furthermore, there is no substantial impairment to the intent and purpose of the zoning ordinance as the improvements are reconcilable with the zone. See *TSI East Brunswick v. East Brunswick Board of Adj.* 215 N.J. 26, 43-46 (2013). The Applicant has demonstrated throughout this application that the site plan proposed brings many of the conditions on site, closer into compliance with the applicable zoning standards than they currently are. As a result, **the application actually advances the intent and purpose of the code, as opposed to impairing it.**

The proposed application:

- i. Pushes the building back 5 times further from S. Broad St. than it is now;
- ii. Removes outside storage of parts;
- iii. Removes outside work on vehicles;
- iv. Moves the storage of all vehicle storage to behind the building;
- v. Dramatically increases front and side yard setbacks (300-500%);
- vi. Dramatically increases green space and reduces impervious coverage (25-30%);
- vii. Enhances aesthetics;
- viii. Greatly reduces storm water runoff (more than NJDEP requires); and
- ix. Repositions all garage doors, so that none face S. Broad St.

All of these factors plainly demonstrate that this project actually furthers the public good and certainly does not negatively impact it at all and the same is true with the zoning code.

2. D(1) Use Variance Lot 13

- A. The Positive criteria is satisfied in particular cases and for special reasons.

The courts have held that the special reason that must be advanced in a D(1) variance is that the site is particularly suited for the proposed use. In this regard, our courts have held that evidence of the fact that a particular property had been previously used for a proposed use, **even without the necessary approvals** to do so, can be considered evidence as to whether or not the property is **particularly suited for the proposed use.** See *Burbridge*.

In this particular case, evidence was put before the Board that lot 13 and its garage had been **used for the storage of autobody** repair material supplies

and parts **for over twenty (20) years** and that the **rear of the property is one large parking lot and driveway linking lots 12 and 14 together.**

Furthermore, this lot is sandwiched between two industrial properties which have been found by this Board to be preexisting non-conforming autobody shops. Not only does that, the property lies within the impact corridor of an active railroad. These factors make this property particularly suited for an autobody repair use and also simultaneously makes it unsuitable for the residential use for which it is zoned.

- B. The negative criteria for a D(1) variance is that the approval can be granted without posing a substantial detriment to the public good and no substantial impairment to the intent and purpose of the zoning ordinance.

For the reasons set forth above under the D(2) analysis, this application does neither. As a result, the applicant satisfies both the negative and positive criteria for the same.

3. C or bulk variance

This application presents two (2) side yard setback variances, two (2) impervious coverage variances and two (2) signage variances and one (1) parking variance.²

As explained to the Board and supported by the Board's own planner, C variances are subsumed in granting the D variances due to the fact that the bulk standards are inapplicable for a non-permitted use. Meaning that, here, the standards at issue were established and intended to apply to residential uses when in fact the application is for an industrial use and, as a result, are inapplicable. See *Puleio v. Zoning Board of Adjustment*, 375 N.J.Super. 613 (App. Div. 2005)

² For the reasons stated in this memo, these variances are subsumed by the D variances and are not to be individually considered. Also, the Courts have held that the number of variances is not to be considered as a factor in determining whether relief should be granted as each variance “must stand or fall on its own peculiar factual circumstances.” *World Wheat Found., Inc. v. Plan. Bd. of Twp. of Saddle Brook*, 2017 WL 3081779, at *1 (Unpub. App. Div. July 20, 2017)(referring to *Kohl v. Mayor & Council of Fair Lawn*, 50 N.J. 268, 276 (1967)); See also, Cox & Koenig, *New Jersey Zoning and Land Use Administration*, § 29–2.7 at 429 (2025).

However, even if the Board were to consider these variances independently, the applicant would satisfy the applicable standards.

- A. Positive Criteria, an applicant must show that, as to a “specific piece of property,” the purposes of the MLUL would be advanced and the benefits of the variance would substantially outweigh any detriments. See *Kaufmann v. Warren Township Planning Board*, 110 N.J. 551, 562 (1988). A court may consider aesthetics, access, landscaping or safety improvements as valid considerations as to whether to grant relief. See *Urban v. Planning Board of Borough of Manasquan*, 124 N.J. 651 (1991).

Here, the Applicant satisfies the positive criteria standard because the majority of the bulk variances sought actually reduce the extent of the existing nonconformities. See Ex. “A”. To that end, the two set back variances and two impervious coverage variances actually further the goals of the master plan as they substantially reduce the existing nonconformities, greatly enhance aesthetics, and reduce existing detriments associated with the same and the operations of the businesses in question.

The remaining two variances relate to signage. Again, the Board's own planner acknowledged that these variances may be considered to be subsumed by the D variances. However, even if the Board were to conclude to the contrary, these C variances nonetheless do advance health and safety due to traffic and wayfinding considerations.

Additionally, the granting of the C variance relief advances the purposes of the MLUL, namely purposes (a), (c), and (g) as follows:

Purpose (a): **Encourage municipal action** to guide appropriate use of land. An approval will consolidate the auto body shops into one larger building with all work being performed in the building, thus, eliminating outdoor work on vehicles. The application also improves aesthetics and reduces the number of driveways, thus demonstrating, also a superior visual environment and good civic design (both of which are additional purposes of the MLUL).

Purpose (c): **Will provide for light, air and open space.** The application improves the existing setback to S. Broad St., while also greatly increasing the setback to the three-story community home and shifts the off-street parking to behind the landscape buffer.

Purpose (g): Provide **sufficient space in appropriate locations** for a variety of uses. This proposal is an appropriate site for re-purposing of existing commercial space at this specific location, resulting in superior site design with more controlled circulation patterns.

- B. Negative Criteria, is that granting the approval will not present a substantial detriment to the public good or impairment to the zone plan and zoning ordinance.

The focus in a C(2) variance is on the “characteristics of the land that **present an opportunity for improved zoning and planning** that will benefit the community.” *Kaufman v. Planning Board for Warren Twp.*, 110 N.J. 551 (1988). Improving nonconformities, even if variance relief is necessitated, demonstrates that the proposal improves zoning and planning in a way that benefits the community as a whole. Clearly, increasing the front yard setbacks and reducing the impervious coverage will improve the neighborhood by concealing operations and improving stormwater runoff. As such, there can be no substantial detriment to the public good or zoning plan.

So far as the signage variances are concerned, they are necessary for the operation of business and the need is amplified by result of enhanced setbacks and enhanced buffering. The signs are proposed in an aesthetic fashion and unobtrusive (particularly when considering the current appearance of the properties and their multiple existing signs).

For all the reasons set forth above, and those set forth throughout this memo, this application does not present any substantial detriments to the public welfare or zoning code and ordinance.

- C. With regard to the parking variance, the evidence before the Board is that the parking ratio set forth by the Village’s code requires more parking than is needed for the use. Evidence has also demonstrated that by providing less parking the applicant was able to increase green space on the site, which reduces impervious coverage, thus satisfying the positive criteria.

This was evidenced through testimony of the applicant’s expert, who testified that, according to the Institute of Traffic Engineers and his examination of the site and another site, that the proposed parking space count is sufficient parking for the use.

The expert also advised that the Village's parking code groups all commercial uses together into a single parking ratio, which is really inapplicable to the proposed use. This is because unlike other commercial uses, the proposed use has fewer customers and all arrivals on site are by appointment only. As a result, the evidence clearly confirms that the parking demand will never exceed the number of parking spaces proposed and as a result will not have any negative impact at all, never mind a substantial one.

Notwithstanding the foregoing, the applicant advised the Board that it could comply with parking, but it **would necessitate a reduction in the front yard and consequently its buffer**. It would also **increase impervious coverage**. After consideration of all of these factors, the applicant believes that the Board would favor granting the variance as opposed to increasing impervious coverage and moving the builder closer to S Broad St., thus, reducing the front yard. Last, but not least, given the fact that avoiding this variance was possible, if the applicant felt that it needed the additional parking spaces it certainly would have designed the project accordingly as it had the room—it simply is not needed.

5. Waivers for parking stall size and drive aisle

- A. The standard for relief is that it is impracticable to comply with the standard or would pose a hardship to the applicant to do so. *N.J.S.A. 40:55D-51*.

The evidence before the Board is that to comply with both of these requirements would require additional pavement (increasing impervious coverage) and reduced green space on the property. Additionally, the proposed conditions are the norm for autobody repair facilities. As such, it is impractical and would pose a hardship to the applicant to comply with the same.

Additionally, it is noteworthy that none of the parking spaces on the property are high turnover spaces. As the traffic engineer testified there is a relationship between the frequency of turnover and the size of the parking stall. The proposed stall size is acceptable at the lower frequency of turnover for the proposed use.

The drive aisle only applies to the tandem parking spaces which are only used for the storage of vehicles which are under repair. **These are not parking spaces where customers or employees would park and are certainly not**

subject to high turnover. As a consequence, there is no need to bifurcate that particular parking field with a drive aisle. To do so would only increase pavement and move the building closer to S. Broad St.

CONCLUSION

As stated above, the Board must review this application in its totality and consider how the site functions as a whole. As a practical matter, the pre-existing non-conforming uses have the unfettered right to continue as they currently exist with the right to park cars and store parts up to all of the property lines on lots 12 and 14.

We believe that we have demonstrated to the Board all of the positive attributes of the project and how it will enhance the public welfare, public safety, and aesthetics in Ridgewood. We have satisfied both the negative and positive criteria for all relief requested and respectfully request that the Board grant the application.

Exhibit "A"

Application of Les Dann, LLC
Before the Village of Ridgewood Zoning Board of Adjustment
Table of Existing vs Proposed Conditions

	Existing Lot 12	Existing Lot 13	Existing Lot 14	Existing Consolidated	Proposed (Consolidated)*
Side Yard Setback	2.8ft (south)	0.4ft (south)	10.7ft (south)	10.7ft (south – outer lots only)	34.9ft (south) (+300%)
	10.5ft (north)	8.8ft (north)	3.7ft (north)	10.5ft (north – outer lots only)	40.0ft (north) (+400%)
				21.2ft (total)	
Combined Side Yard Setback	12.28ft	42.68ft	16.18ft	28.46ft (combined – outer lots only)	74.9ft (+260%)
Front Yard Setback	20.2ft	23.3ft	117.7ft	20.2ft	100ft (+500%)
Rear Yard Setback	131.6ft	219.6ft	5.2ft	5.2ft	73.60ft
Max Improvement Coverage (Total)	100%	76.01%	94%	91.93%	68.82% (+25%)
Max Improvement Coverage within 140 feet of lot line	100%	30.18%	85.7%	85.29% Front yard	57.46% (+32%)
Front Yard Buffer	0ft	17.1ft (to pavers)	13.2ft (to gravel)	None	52.0ft
Side Yard Buffer	0ft (north)		0ft (south)	None	9.3ft (south) 1.2ft (north)
Outside Storage of Work in Progress	Yes - All Yards	Yes - Rear Yard Only	Yes - All Yards		Yes – Rear Yard Only
Outside Storage of Parts	Yes - Rear Yard	Yes - Rear Yard	Yes - All Yards		No
Outside Work on Vehicles	Yes	Yes	Yes		No
Garage Doors Total				19	11 (-8)
Garage Doors facing South Broad Street				7	0 (-7)
Buildings				6	1 (-5)
Number of Driveways	1	1	1	3 (total)	1 (-2)