

NEW JERSEY MEADOWLANDS COMMISSION
AGENDA

DATE: July 23, 2014
TIME: 10:00 a.m.
PLACE: Lyndhurst, New Jersey
RE: MONTHLY MEETING

1. Pledge of Allegiance
2. Sunshine Law Statement
3. Roll Call
4. REVIEW OF MINUTES - June 25, 2014
5. PUBLIC PARTICIPATION ON RESOLUTIONS
6. SOLID WASTE

Resolution No. 14-31	Resolution Approving An Amendment to the New Jersey Meadowlands Commission Solid Waste Management Plan
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7. VARIANCES

Resolution No. 14-32	Consideration of a Resolution Regarding the Application for Two Bulk Variances For E & W Realty, LLC (File #14-054, E & W Realty/44 Mehrhof Road-Addition/Variances)
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Resolution No. 14-33	Consideration of a Resolution Regarding the Application for One Bulk Variance for National Water Main Cleaning Company (File #14-057, 1806 Harrison/National Water Main-Fence/Variance)
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NEW JERSEY MEADOWLANDS COMMISSION
AGENDA

MONTHLY MEETING

Pg. 2

8. REPORTS

- A. Commissioners
- B. Executive Director
- C. Directors
- D. HMMC Executive Director

9. NEW BUSINESS

10. PUBLIC PARTICIPATION

11. CLOSED SESSION

- A. Adopt Resolution No. 14-34 to hold Closed Session.
- B. Adjournment to Closed Session. The Commission Reserves the Right to Reconvene into Public Session, if necessary, to take Action on Closed Session Items.

PLEASE CONTACT THE NJMC OFFICE (201-460-1700) PRIOR TO MEETING IF
SPECIAL REQUIREMENTS ARE NEEDED UNDER ADA

NEW JERSEY MEADOWLANDS COMMISSION

DATE: June 25, 2014
TIME: 10:00 a.m.
PLACE: Lyndhurst, NJ
RE: MONTHLY MEETING MINUTES

COMMISSIONERS PRESENT:

Paul Macchia, Acting Chairman
Jay C. Nadel
Mauro DeGennaro
James V. Bocchino
Albert E. Cameron
Thomas Quirico

STAFF PRESENT:

Marcia Karrow, Executive Director
Bernard Nangle, Deputy Executive Director
Edward Bulmer, Director of Finance/Chief Financial Officer
Sara Sundell, Director Land Use Management
Thomas Marturano, Director of Natural Resources
Adam Levy, Director of Legal Affairs
Francisco Artigas, Director of MERI
Regina Egea, Director of Governor's Authorities Unit
Peter Simon, Assistant Counsel to the Governor
Sean Moriarity, DAG
Fred Dressel, HMMC
Lynn Johnson, Executive Assistant

1. Pledge of Allegiance
2. Executive Director Karrow read the Notice of Meeting required under the Sunshine Law.
3. Roll Call
4. REVIEW OF MINUTES

Minutes of the May 28, 2014 open session were moved by Commissioner DeGennaro, seconded by Commissioner Bocchino and carried with all in favor.

5. PUBLIC PARTICIPATION ON RESOLUTIONS - None6. REORGANIZATION

Resolution No. 14-25- Resolution to adopt Annual Schedule of Meetings.

Motion to adopt the resolution was made by Commissioner Bocchino, seconded by Commissioner Quirico and unanimously carried.

Motion to appoint Commissioner Nadel as vice chairman was made by Commissioner DeGennaro, seconded by Commissioner Quirico with all in favor.

Motion to appoint Commissioner Quirico as treasurer was made by Commissioner Bocchino, seconded by Commissioner Cameron with all in favor.

Designation of Committees:

Personnel/Budget & Operations: Commissioner Richard Constable, Chairman
Commissioners Mauro DeGennaro and Thomas Quirico

Audit & Investment: Commissioner Jay Nadel, Chairman
Commissioners Richard Constable and Tomas Quirico

Environmental Center/Environmental Education:
Commissioners James Bocchino, Albert Cameron and Robert Dowd

Mayor's Committee Liaison: Commissioner James Bocchino

Zoning/Development/Transportation: Commissioner Mauro DeGennaro, Chair
Commissioner Thomas Quirico

Solid Waste: Commissioners, James Bocchino, Albert Cameron and
Robert Dowd

Park Planning: Commissioner Mauro DeGennaro, Chairman
Commissioners Albert Cameron and Jay Nadel

Motion to adopt Committee Designations was made by Commissioner DeGennaro, seconded by Commissioner Quirico with all in favor.

7. MEADOWLANDS ENVIRONMENTAL RESEARCH INSTITUTE (MERI)

Resolution No. 14-26- Resolution to enter into a contract for the acquisition of hyperspectral data for the Hackensack Meadowlands District.

Motion to adopt the resolution was made by Commissioner DeGennaro, seconded by Commissioner Quirico and unanimously carried.

8. VARIANCE

Resolution No. 14-27- Resolution issuing a decision on the use variance and bulk variance applications submitted as part of File No. 13-359, GKA/Billboard-Variance, Block 107.03, Lot 11 in East Rutherford.

Motion to adopt the resolution was made by Commissioner Quirico, seconded by Commissioner DeGennaro and unanimously carried with all in favor.

9. REDEVELOPMENT

Resolution No. 14-28 - Resolution to adopt an amendment to the Kearny Area Redevelopment Plan, File No. SP-717.

Motion to adopt the resolution was made by Commissioner Quirico, seconded by Commissioner Bocchino and unanimously carried with all in favor.

10. RAMAPO COLLEGE

Resolution No. 14-29 - Resolution authorizing the Executive Director to execute an amendment to the MOU between the NJMC and Ramapo College of New Jersey and the Ramapo College Foundation.

Motion to adopt the resolution was made by Commissioner Cameron, seconded by Commissioner Bocchino and unanimously carried with all in favor.

11. LEACHATE FORCE MAIN

Resolution No. 14-29 - Resolution authorizing the Executive Director to enter into an agreement with Bergen County Utilities Authority for transfer of the Kingsland Park Sanitary Landfill Leachate Force Main to NJMC for incorporation into the Kingsland Redevelopment Area project (KRA).

Motion to adopt the resolution was made by Commissioner Cameron, seconded by Commissioner Quirico and unanimously carried with all in favor.

12. REPORTS

Executive Director Karrow announced that the Commission is delighted to have with us today the director of the Governor's Authorities Unit, Regina Egea.

13. NEW BUSINESS - None
14. PUBLIC PARTICIAPTION -
- Ken Sass, founding partner of GKAP Corporation, spoke on Resolution 14-27.
15. CLOSED SESSION - None

Motion to adjourn the meeting was made by Commissioner Bocchino, seconded by Commissioner Quirico with all in favor.



 MARCIA A. KARROW, SECRETARY

RESOLUTION#	14-25	14-26	14-27	14-28	14-29
Acting Chairman Macchia	Y	Y	Y	Y	Y
Comm. Bocchino	Y	Y	Y	Y	Y
Comm. DeGennaro	Y	Y	Y	Y	Y
Comm. Nadel	--	--	--	--	--
Comm. Quirico	Y	Y	Y	Y	Y
Comm. Cameron	Y	Y	Y	Y	Y
Robert J. Dowd	--	--	--	--	--

Y = Yes A = Abstain
 R = Recuse N = No
 -- = Absent

**RESOLUTION APPROVING AN AMENDMENT TO THE
NEW JERSEY MEADOWLANDS COMMISSION
SOLID WASTE MANAGEMENT PLAN**

WHEREAS, the New Jersey Meadowlands Commission's Solid Waste Management Plan was approved on July 31, 1980, with subsequent Plan Updates approved on March 4, 1983, October 9, 1985, and April 10, 2007 and various Plan Amendments since that time; and

WHEREAS, since January 2009, the NJMC has operated the NJMC Keegan Landfill located at 437 Bergen Avenue, Block 205, lots: 18, 19.02, 24, 27, 28, 29, 30, 31, 32, and 33 in the Town of Kearny, Hudson County, New Jersey for NJDEP waste types: ID 13 (bulky wastes, with the exception of automobiles, trucks, trailers, large vehicle parts, drums and appliances), ID 13C (construction and demolition wastes), ID 23 (vegetative wastes), and 27 (dry industrial wastes); and

WHEREAS, prior to the NJMC remediation efforts, the site consisted of approximately 100 acres of a former private landfill operation that was closed in the early 1970's. No environmental controls were ever installed, and only haphazard remedial work had been performed. Over the years, remediation efforts on this site had concentrated on controlling regular underground fires fueled by the underlying decaying garbage. In addition, there had been no control of the leachate from the site, which resulted in the pollution of both Frank's Creek and the adjacent Kearny Freshwater Marsh; and

WHEREAS, in order to remediate this uncontrolled pollutant loading and prepare the site for landfill operations, in 2008 the NJMC undertook a massive site remediation, which included the construction of extensive pollution controls; including a perimeter leachate collection system and cutoff wall, perimeter runoff controls, and numerous site improvements. The leachate from the site is collected and discharged to the Passaic Valley Sewage Commission located in Newark, New Jersey through a series of pumps and pumping stations largely financed by the NJMC; and

WHEREAS, operations at the site began in 2009 and we continue to provide the lowest price alternative for solid waste disposal, and

WHEREAS, this Plan Amendment proposes to increase the final elevation of the site from 60 feet to 100 feet navd, providing additional capacity from an original projected closure of June, 2016 to a projected capacity date of December, 2019.

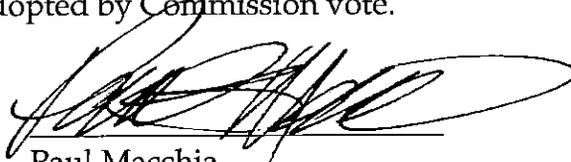
WHEREAS, a legal notices were published in the Jersey Journal and the Bergen Record as required by NJDEP regulations, and a public hearing was held at the Commission offices on July 10, 2014, which no members of the public or municipal officials attended; and

WHEREAS, the Solid Waste Division has reviewed the available information and recommends that the proposed expansion of the NJMC Keegan Landfill be included in the NJMC Solid Waste Management Plan subject to NJDEP approval (see attached memorandum); and

WHEREAS, the NJMC currently has waste flow contracts with Hudson, Essex and Union Counties, and the proposed expansion will enable them to continue to benefit from this in-state regional facility.

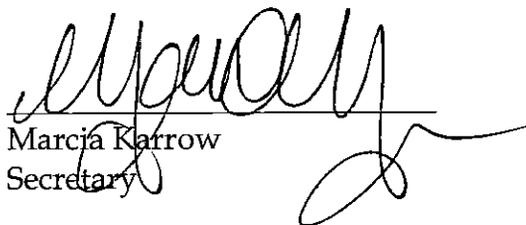
NOW, THEREFORE BE IT RESOLVED that the Director of Solid Waste shall forward to the NJDEP all relevant information pursuant to the New Jersey Solid Waste Management Act and required procedures for Plan Amendments including this resolution and the attachments recommending adoption of this Plan Amendment.

The foregoing resolution was adopted by Commission vote.



Paul Macchia
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at their meeting of July 23, 2014.



Marcja Karrow
Secretary

Resolution 14-31

Motion ___ Second ___ Roll ___

Memorandum

New Jersey Meadowlands Commission

NJMC Commissioners and Marcia A. Karrow, Executive Director

To: _____ Date: July 23, 2014
Thomas R. Marturano
From: _____
Solid Waste Management Plan Amendment
Subject: _____

A public hearing was held on July 10, 2014 to receive comments relative to a proposed Solid Waste Management Plan Amendment to expand the NJMC Keegan Landfill located at 437 Bergen Avenue, Block 205, lots: 18, 19.02, 24, 27, 28, 29, 30, 31, 32, and 33 in the Town of Kearny, Hudson County, New Jersey from a final elevation of 60 feet to a proposed elevation of 100 feet navd (North American Vertical Datum). Note that there will be no expansion of the Keegan Landfill beyond the current perimeter boundaries of the site, and all perimeter environmental controls currently in place will remain.

The NJMC Keegan Landfill opened on January 3, 2009 and accepts NJDEP waste types: ID 13 (Bulky Wastes, with the exception of automobiles, trucks, trailers, large vehicle parts, drums and appliances), ID 13C (construction and demolition wastes), ID 23 (vegetative wastes), and 27 (dry industrial wastes). Trucks are weighed in at the site on NJ certified scales prior to and after they dump their waste. Access to the landfill for solid waste disposal is limited to the following hours: Monday through Friday from 6:00 a.m. to 4:00 p.m., and Saturday from 6:00 a.m. to 1:30 p.m.

Based on the current approved final elevation of 60 feet navd, the Keegan Landfill would be at or near capacity in June, 2016. This proposed vertical expansion would extend the life of the site until December, 2019.

In the 3 ½ years since the landfill commenced operations, there have been no violations at the site. Access to the site is limited to Bergen Avenue, and the official truck routing takes trucks on State and County roads before they access Bergen Avenue. NJMC currently contracts with Essex, Hudson and Union Counties for their waste types as described above, and the landfill accepts other non-contract waste from northern New Jersey communities.

Legal notices were placed in the Bergen Record and Jersey Journal as required by NJDEP. No members of the public or municipal officials were present at the public hearing. A letter was received from Glen Van Olden, Director of the Hudson-Essex-Passaic Soil Conservation District stating that "...planned enlargements in elevation or scope must...maintain a soil erosion and sediment control certification." He also noted that the daily operations of the landfill are not regulated by his office.

The planned vertical expansion does not include any construction work. It is simply a continuation of the daily operations relative to the placement and covering of

the waste. Once the daily operations reach a certain elevation and the side slopes are again covered and seeded, a Soil Erosion Sediment Control permit will be submitted for approval. Once received we will go out to bid to place the final cover at the site.

Based on our review of the above, the Solid Waste Division recommends approval of this amendment.

**RESOLUTION ISSUING A DECISION ON THE VARIANCE APPLICATION
SUBMITTED AS PART OF FILE NO. 14-054
E&W REALTY/44 MEHRHOF RD. - ADDITION/VARIANCES
BLOCK 82, LOT 25.11, IN THE BOROUGH OF LITTE FERRY**

WHEREAS, an application for two (2) bulk variances was filed with the New Jersey Meadowlands Commission (NJMC) by Nelson Zabransky of E&W Realty, LLC, for the property identified as 44 Mehrhof Road, Block 82, Lot 25.11, in the Borough of Little Ferry, New Jersey; and

WHEREAS, the premises is located in the Commission's Low Density Residential zone; and

WHEREAS, the variances are sought in connection with the applicant's proposal to raise the existing occupied spaces in the structure to a finished floor elevation of 9.0 feet NAVD88, which is one foot above the FEMA base flood elevation; and

WHEREAS, the applicant requested relief from N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet, whereas the applicant is proposing to maintain the existing 13.8 foot westerly side yard setback for the raised structure; and

WHEREAS, the applicant also requested relief from N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet, whereas the applicant is proposing to maintain the existing 15.1 foot easterly side yard setback for the raised structure; and

WHEREAS, notice of the requested variance relief was given to the public and all interested parties as required by law and was published in The Record newspaper; and

WHEREAS, a public hearing was held in the Office of the NJMC on Tuesday, May 13, 2014, before Sara Sundell, Director of Land Use Management and Chief Engineer; Sharon Mascaró, Deputy Director of Land Use Management and Deputy Chief Engineer; Mia Petrou, Senior Planner; and Brandon Alviano, Senior Planner; and

WHEREAS, a comprehensive report dated July 1, 2014, has been prepared indicating the recommendations of the Director of Land Use Management and the Executive Director in this matter; and

WHEREAS, a copy of the recommendation and comprehensive report was provided to the applicant on July 2, 2014; and

WHEREAS, the report recommends approval of the requested bulk variance from N.J.A.C. 19:4-5.29(a)3iii(2), to maintain an existing 13.8 foot westerly side yard setback for the raised structure, whereas a 20 foot side yard setback is required; and

WHEREAS, the report recommends approval of the requested bulk variance from N.J.A.C. 19:4-5.29(a)3iii(2), to maintain an existing 15.1 foot easterly side yard setback for the raised structure, whereas a 20 foot side yard setback is required; and

WHEREAS, the members of the NJMC have reviewed the full record including the transcripts of the public hearings, recommendations on the application by the Director of Land Use Management and by the Executive Director, and the submissions of the applicant; and

WHEREAS, the members of the NJMC concur with the recommendations of the Director of Land Use Management and the Executive Director; and

WHEREAS, the NJMC hereby determines that the requested variance from N.J.A.C. 19:4-5.29(a)3iii(2), to maintain an existing 13.8 foot westerly side yard setback for the raised structure, whereas a 20 foot side yard setback is required, conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e); and

WHEREAS, the NJMC hereby determines that the requested variance from N.J.A.C. 19:4-5.29(a)3iii(2), to maintain an existing 15.1 foot easterly side yard setback for the raised structure, whereas a 20 foot side yard setback is required, conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e).

NOW, THEREFORE, BE IT RESOLVED, by the New Jersey Meadowlands Commission, that the E&W Realty/44 Mehrhof Rd.-Addition/Variance application for one bulk variance from N.J.A.C. 19:4-5.29(a)3iii(2), to maintain an existing 13.8 foot westerly side yard setback for the raised structure, whereas a 20 foot side yard setback is required, is hereby **APPROVED** for the reasons set forth in the recommendation dated July 1, 2014.

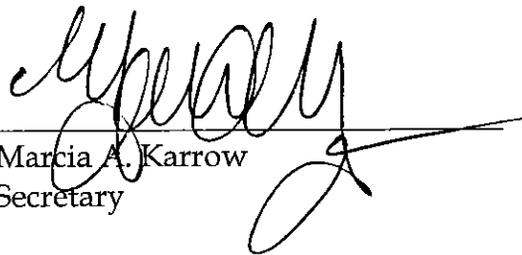
BE IT FURTHER RESOLVED, by the New Jersey Meadowlands Commission, that the E&W Realty/44 Mehrhof Rd.-Addition/Variance application for one bulk variance from N.J.A.C. 19:4-5.29(a)3iii(2), to maintain an existing 15.1 foot easterly side yard setback for the raised structure, whereas a 20 foot side yard setback is required, is hereby **APPROVED** for the reasons set forth in the recommendation dated July 1, 2014.

The foregoing was adopted on Commission vote.



Paul Macchia
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 23, 2014.



Marcia A. Karrow
Secretary

Resolution No. 14-32

Motion Second Roll

Memorandum

New Jersey Meadowlands Commission



NJMC Commissioners and Marcia A. Karrow, Executive Director

To: _____

From: Sara Sundell

Date: July 23, 2014

Subject: Variance Recommendation- E&W Realty/44 Mehrhof Rd. - Addition/Variations (File #14-054)

An application for two (2) bulk variances has been filed with the New Jersey Meadowlands Commission (NJMC) by Nelson Zabransky of E&W Realty, LLC., for the premises located at 44 Mehrhof Road, Block 82, Lot 25.11 in the Borough of Little Ferry, New Jersey. Said premises are located in the Commission's Low Density Residential zone.

The variances were sought in connection with the applicant's proposal to raise the existing occupied spaces in the existing building on the premises to a finished floor elevation of 9.0 feet NAVD88, which is one foot above the FEMA base flood elevation.

The applicant requested variance relief from the following:

1. N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 13.8 foot westerly side yard setback for the raised structure.
2. N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 15.1 foot easterly side yard setback for the raised structure.

A public hearing was held in the Office of the NJMC on Tuesday, May 13, 2014.

In a comprehensive report dated July 1, 2014, the Director of Land Use Management and the Executive Director recommended the approval of the bulk variances requested in Items 1 and 2 above.

At this time, the Commission is required to issue a decision on the variance application described above. A resolution requesting the same is attached for your consideration.

RECOMMENDATION ON THE VARIANCE APPLICATION OF
E&W Realty/44 Mehrhof Road Addition/Variances

FILE #14-054

I. INTRODUCTION

An application for two (2) bulk variances has been filed with the New Jersey Meadowlands Commission (NJMC) by Nelson Zabransky of E&W Realty, LLC, for the premises located at 44 Mehrhof Road, Block 82, Lot 25.11 in the Borough of Little Ferry, New Jersey. Said premises are located in the Commission's Low Density Residential zone. The variances are sought in connection with the applicant's proposal to raise the existing occupied spaces in the structure to a finished floor elevation of 9.0 feet North American Vertical Datum of 1988 (NAVD88), which is one foot above the Federal Emergency Management Agency's (FEMA) base flood elevation.

Specifically, the applicant is requesting relief as follows:

1. N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 13.8 foot westerly side yard setback for the raised structure.
2. N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 15.1 foot easterly side yard setback for the raised structure.

A public hearing was held at the Office of the Commission on Tuesday, May 13, 2014. Notice was given to the public and all interested parties as required by law. The public notice of this hearing was published in The Record newspaper. No written objections were submitted to the Division of Land Use Management. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

II. GENERAL INFORMATION

A. Existing and Proposed Use

The subject premises consists of 9,321 square feet and is located in the Low Density Residential (LDR) zone. There is an existing one-story brick building, with a full basement, on the site, which is being utilized as the office facility for Zabransky Mechanical.

Due to repetitive loss damages from flooding, and in particular extreme flooding damage caused by Superstorm Sandy, the applicant proposes to fill in the present basement and to raise the existing occupied spaces in the structure to be at or above the required one foot above the FEMA base flood elevation.

B. Response to the Public Notice

No written comments or objections were submitted to this Office regarding this application prior to the public hearing.

III. PUBLIC HEARING (May 13, 2014)

A public hearing was held on Tuesday, May 13, 2014. NJMC staff in attendance were Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mia Petrou, P.P., AICP, Senior Planner; and Brandon Alviano, Senior Planner.

A. Exhibits

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Existing Floor Plans," Dwg. No. E1, prepared by Robert Zampolin, AIA, dated August 12, 2013;
A-2	"Existing Elevations," Dwg. No. E2, prepared by Robert Zampolin, AIA, dated August 12, 2013;

- A-3 "Preliminary Floor Plans," Dwg. No. A1, prepared by Robert Zampolin, AIA, revised through March 24, 2014;
- A-4 "Elevations," Dwg. No. A2, prepared by Robert Zampolin, AIA, revised through March 24, 2014;
- A-5 "Aerial Photo," Dwg. No. AP-1, prepared by Matthew Greco, P.E., dated November 12, 2013;
- A-6 "Site Plan/Soil Erosion & Sediment Control Plan," Dwg. No. SP-1, prepared by Matthew Greco, P.E., revised through March 21, 2014; and
- A-7 "Open Space Plan," Dwg. No. OP-1, prepared by Matthew Greco, P.E., revised through March 21, 2014.

B. Testimony

Thomas J. O'Connor, Esq., of the firm, Waters, McPherson, McNeill, P.C., represented E&W Realty, LLC. The following witnesses testified in support of the application:

1. Robert Zampolin, AIA., Zampolin & Associates;
2. Perry Frenzel, P.E., P.P., McNally Engineering, LLC;
3. Nelson Zabransky, E&W Realty, LLC.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Susan Bischoff, Certified Court Reporter.

C. Public Comment

No members of the public were present at the public hearing.

IV. RECOMMENDATION

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 13.8 foot westerly side yard setback for the raised structure.**

The NJMC Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to maintain the existing 13.8 foot westerly side yard setback, whereas 20 feet is required, arises from conditions that are unique to the site. The subject property is a 9,321 square foot rectangular lot, fronting on a private right-of-way off of Mehrhof Road. The site contains an existing one-story brick building with a first floor elevation of 5.8 feet NAVD88, where an elevation of 9 feet NAVD88 is required for new construction by FEMA and NJMC regulations. The existing building also has a full basement. The structure was constructed in the 1960's prior to the inception of NJMC regulations and is thereby considered to be pre-existing, nonconforming with respect to several bulk requirements and the finished floor elevation. The building is currently being utilized as office space with accessory storage for Zabransky Mechanical.

NJMC zoning regulations in the LDR zone require a side yard setback of 20 feet from the structure to the property line. Due to repetitive losses caused by reoccurring area-wide flooding, the applicant has proposed to fill in the present basement and to raise the existing lowest floor to the required elevation of 9 feet NAVD88. In order to recapture the lost square footage of the basement, the applicant is proposing to add a level above the first floor, while

maintaining the existing 13.8 foot westerly side yard setback. These circumstances are unique to the property in question.

- ii. The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to maintain the existing 13.8 foot westerly side yard setback will not adversely affect the rights of neighboring property owners or residents. The site is located within a fully developed commercial and residential neighborhood. Properties located immediately west of the premises are zoned Low Density Residential and consist of a variety of two and three-story homes. The adjacent residential structure to the west is located approximately 25 feet from the property line. By maintaining the existing 13.8 foot side yard setback on the west side of the subject structure, there will be no change in the approximate 40 foot distance separating the two buildings.

The proposal to raise the existing structure to the FEMA-required finished floor elevation, and replace the floor area from the basement, will bring the overall height of the structure to 34.25 feet, where a maximum height of 35 feet is permitted. The increase in the height of the building, while maintaining the existing setback, will not adversely affect the adjacent properties to the west. The height of the proposed raised building will not exceed the height of the residence to the west and, as such, will blend in with the character of the existing structures in the neighborhood.

iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. The applicant proposes to raise the existing first floor elevation in compliance with NJMC and FEMA regulations, thereby reducing the potential for future flood damage to the structure. Consequently, the applicant will lose interior square footage within the building as a result of filling in the existing basement. In an effort to recapture that occupied square footage, the applicant proposes to add a second level to the structure, while maintaining the existing 13.8 foot westerly side yard setback. If the applicant was required to meet the 20 foot setback on the westerly side of the structure, the second floor of the structure would have to be set back an additional 6.2 feet from the existing side of the building. The resulting building would have a smaller floor area than the existing, which would hinder the operation of the business. The subject property is small, measuring approximately 9,300 square feet, and as such, there is no additional space on the site on which to construct the difference in floor area without compromising the parking and circulation around the building. Thus, if the strict application of the side-yard setback requirements were to be applied, the applicant's operation would be negatively affected.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse effects to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The surrounding neighborhood properties principally consist of residential dwellings and commercial uses. Due to repetitive losses caused by recurring area-wide flooding, the applicant proposes mitigation by raising the first floor of the existing building to elevation 9.0 NAVD88, which is one-foot above FEMA's base flood elevation, while maintaining the original square footage of the structure. The applicant has proposed to raise the first floor of the existing structure, fill in the existing basement, and add a second level to retain the equivalent occupied square footage of the existing structure. This action will bring the building's finished floor elevation into compliance with current NJMC and FEMA regulations. The structure's existing 13.8 westerly side yard setback is proposed to be maintained for the second level. The proposed setback will allow the structure to be visually similar to the existing building, while maintaining the functionality of the business. Circulation and parking at the facility will not be changed as a result of the construction. The vertical expansion of the 13.8 foot side yard setback will not affect the use of the neighboring properties. Eliminating one of the area's repetitive loss properties, as characterized by FEMA, will increase public safety and general welfare.

- v. *The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance will not have any adverse environmental impacts. Maintaining the existing 13.8 foot westerly side yard setback for the raised structure will not cause the NJMC's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be exceeded.

- vi. *The variance represents the minimum deviation from the regulations that will afford relief.*

The requested variance represents the minimum deviation from the regulations that will afford relief. The variance to maintain the existing 13.8 foot westerly side yard setback is sought in connection with the applicant's proposal to raise the existing occupied spaces of the structure to a finished floor elevation of 9.0 feet NAVD88, which is one foot above the FEMA base flood elevation. In order to achieve this requirement, the applicant must fill in the basement and raise the existing structure to the required elevation. As a result of losing the occupied space of the basement, the applicant has proposed to recapture the square footage with the addition of a second level. To preserve the original architectural design and functionality of the building, the applicant has requested to maintain the existing 13.8 foot westerly side yard setback for the raised structure. An increase in the side yard setback would result in a loss of operational area for the existing business, which could not be constructed elsewhere on site without compromising the parking and circulation around the building. This represents minimum deviation from the regulations that will afford relief.

vii. Granting the variance will not substantially impair the intent and purpose of these regulations.

The requested variance to permit a side yard setback of 13.8 feet will not impair the intent and purpose of the regulations. The intent of requiring a setback is to ensure that the use of a site and its structures does not infringe on the rights of neighboring properties. After experiencing significant damage due to flooding from Superstorm Sandy, the applicant has proposed to elevate the existing building to one foot above the FEMA-required finished floor elevation, as required by the NJMC for all new structures, to minimize future losses due to flooding. The raising of structures to provide a first floor elevation above the base flood elevation is a commonly accepted measure to reduce repetitive flood losses in a community. The requested variance to maintain the existing 13.8 foot westerly side yard setback is for the purpose of raising the structure out of the flood zone within its current footprint. The expansion of the building will only be vertical in nature and will not increase the building's footprint or overall square footage of the existing structure or encroach further into the side yard toward the adjacent residential property.

The approval of the variance request will contribute to and promote the intent of the NJMC Master Plan by elevating a structure within a flood zone to the required finished floor elevation, thereby decreasing the potential losses due to future area-wide flooding.

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 15.1 foot easterly side yard setback for the raised structure.

The NJMC Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to maintain the existing 15.1 foot easterly side yard setback, whereas 20 feet is required, arises from conditions that are unique to the site. The subject property is a 9,321 square foot rectangular lot, fronting on a private right-of-way off of Mehrhof Road. The site contains an existing one-story brick building, with a first floor finished elevation of 5.8 feet NAVD88, where an elevation of 9 feet NAVD88 is required for new construction by FEMA and NJMC regulations. The existing building also contains a full basement. The structure was constructed in the 1960's prior to the inception of NJMC regulations and is thereby considered to be pre-existing, nonconforming with respect to several bulk requirements and the finished floor elevation. The building is currently being utilized as office space with accessory storage for Zabransky Mechanical.

NJMC zoning regulations in the LDR zone require a side yard setback of 20 feet from the structure to the property line. Due to repetitive losses caused by reoccurring area-wide flooding, the applicant has proposed to fill in the present basement and to raise the existing lowest floor to the required elevation of 9 feet NAVD88. In order to recapture the lost square footage of the basement, the applicant is proposing to add a level above the first floor, while maintaining the existing 15.1 foot easterly side yard setback. These circumstances are unique to the property in question.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to maintain the existing 15.1 foot easterly side yard setback will not adversely affect the rights of neighboring property owners or residents. The site is located within a fully developed commercial and residential neighborhood. The property located immediately east of the premises is zoned Low Density Residential and contains a warehouse property owned by the applicant, which is utilized for the storage of equipment and products for the Zabransky Mechanical business. The adjacent warehouse structure is located approximately 55 feet from the property line and pre-dates NJMC regulations, as does the office building in question. By maintaining the existing 15.1 foot side yard setback on the east side of the subject structure, there will be no change in the approximate 70 foot distance separating the two buildings.

The proposal to raise the existing office structure to the FEMA-required finished floor elevation and replace the floor area from the

basement, will bring the overall height of the structure to 34.25 feet, where a maximum of 35 feet is permitted. The increase in the height of the building, while maintaining the existing setback, will not adversely affect the adjacent properties to the west. The height of the proposed raised building will not exceed the height of the residence to the west, and as such, will blend in with the character of the existing structures in the neighborhood.

The increase in the height of the building, while maintaining the existing setback, will not adversely affect the functionality or logistics of the existing warehouse to east. Properties located to the east of the Zabransky Mechanical warehouse are comprised of industrial and warehouse uses and are separated by dense vegetation. These properties will be unaffected by the requested variance.

iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. The applicant proposes to raise the existing first floor elevation in compliance with NJMC and FEMA regulations, thereby reducing the potential for future flood damage to the structure. Consequently, the applicant will lose interior square footage within the building as a result of filling the existing basement. In an effort to recapture that occupied square footage, the applicant proposes to add a second level to the structure, while maintaining the existing 15.1 easterly side yard

setback. If the applicant was required to meet the 20 foot setback on the easterly side of the structure, the second floor of the structure would have to be set back an additional 4.9 feet from the existing side of the building. The resulting building would have a smaller floor area than the existing, which would hinder the operation of the business. The subject property is small, measuring approximately 9,300 square feet, and as such, there is no additional space on the site on which to construct the difference in floor area without compromising the parking and circulation around the building. Thus, if the strict application of the side-yard setback requirements were to be applied, the applicant's operation would be negatively affected.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse effects to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The surrounding neighborhood properties principally consist of residential dwellings and commercial uses. Due to repetitive losses caused by recurring area-wide flooding, the applicant proposes mitigation by raising the first floor of the existing structure to elevation 9.0 NAVD88, which is one-foot above FEMA's base flood elevation, while maintaining the original square footage of the structure. The applicant has proposed to raise the first floor of the existing structure, fill in the existing basement, and add a second level to retain the equivalent occupied square footage of the existing structure. This action will bring the

building's finished floor elevation into compliance with current NJMC and FEMA regulations. The structure's existing 15.1 foot easterly side yard setback is proposed to be maintained for the second level. The proposed setback will allow the structure to be visually similar to existing buildings in the neighborhood, while maintaining the functionality of the business. Circulation and parking at the facility will not be changed as a result of the construction. The vertical expansion of the 15.1 foot side yard setback will not affect the use of the neighboring properties. Eliminating one of the area's repetitive loss properties, as characterized by FEMA, will increase public safety and general welfare.

- v. *The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance will not have any adverse environmental impacts. Maintaining the existing 15.1 foot westerly side yard setback for the raised structure will not cause the NJMC's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be exceeded.

- vi. *The variance represents the minimum deviation from the regulations that will afford relief.*

The requested variance represents the minimum deviation from the regulations that will afford relief. The variance to maintain the existing 15.1 foot easterly side yard setback is sought in connection with the applicant's proposal to raise the existing occupied spaces of the structure to a finished floor elevation of 9.0 feet NAVD88,

which is one foot above the FEMA base flood elevation. In order to achieve this requirement, the applicant must fill in the basement and raise the existing structure to the required elevation. As a result of losing the occupied space of the basement, the applicant has proposed to recapture the square footage with the addition of a second level. To preserve the original architectural design and functionality of the structure, the applicant has requested to maintain the existing 15.1 easterly side yard setback of the raised building. An increase in the side yard setback would result in a loss of operational area for the existing business, which could not be constructed elsewhere on site without compromising the parking and circulation around the building. This represents minimum deviation from the regulations that will afford relief.

vii. Granting the variance will not substantially impair the intent and purpose of these regulations.

The requested variance to permit a side yard setback of 15.1 feet will not impair the intent and purpose of the regulations. The intent of requiring a setback is to ensure that the use of a site and its structures does not infringe on the rights of neighboring properties. After experiencing significant damage due to flooding from Superstorm Sandy, the applicant has proposed to elevate the existing building to one foot above the FEMA-required finished floor elevation, as required by the NJMC for all new structures, to minimize future losses from flooding. The raising of structures to provide a first floor elevation above the base flood elevation is a commonly accepted measure to reduce repetitive flood losses in a community. The requested variance to maintain the existing 15.1 foot easterly side yard setback is for the purpose of raising the

structure out of the flood zone within its current footprint. The expansion of the building will only be vertical in nature and will not increase the building's footprint or the overall square footage of the existing structure or encroach further into the side yard toward the adjacent commercial property.

The approval of the variance request will contribute to and promote the intent of the NJMC Master Plan by elevating a structure in a flood zone to the required finished floor elevation, thereby decreasing the potential losses due to future area-wide flooding.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 13.8 foot westerly side yard setback for the raised structure.

Based on the record in this matter, the bulk variance application to maintain the existing 13.8 foot westerly side yard setback for the raised structure, whereas 20 feet is required, is hereby recommended for approval.

APPROVAL

Recommendation on
Variance Request

7.1.14

Date



Sara J. Sundell, P.E., P.P.
Director of Land Use Management

approval

Recommendation on
Variance Request

7/1/14

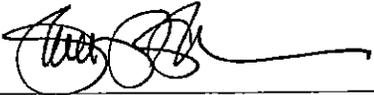
Date



Marcia A. Karrow
Executive Director

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.29(a)3iii(2), which requires a minimum side yard setback of 20 feet. The applicant is proposing to maintain the existing 15.1 foot easterly side yard setback for the raised structure.

Based on the record in this matter, the bulk variance application to maintain the existing 15.1 foot easterly side yard setback for the raised structure, whereas 20 feet is required, is hereby recommended for approval.

<u>APPROVAL</u>	<u>7.1.14</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

<u>approved</u>	<u>7/1/14</u>	
Recommendation on Variance Request	Date	Marcia A. Karrow Executive Director

**RESOLUTION ISSUING A
DECISION ON THE BULK VARIANCE APPLICATION
SUBMITTED AS PART OF FILE NO. 14-057
1806 HARRISON/NATIONAL WATER MAIN-FENCE/VARIANCE
BLOCK 286, LOT 40, IN THE TOWN OF KEARNY**

WHEREAS, an application for one (1) bulk variance was filed with the New Jersey Meadowlands Commission (NJMC) by William F. Harrison, Esq., of the firm Genova Burns Giantomasi Webster, on behalf of National Water Main Cleaning Company for the premises located at 775 Harrison Avenue, Block 286, Lot 40, in the Town of Kearny, New Jersey; and

WHEREAS, the premises is located in the Commission's Intermodal A zone; and

WHEREAS, the bulk variance is sought in connection with the applicant's proposal to construct an eight (8)-foot high, chain-link fence and security gate on the subject premises within the required front yard setback along a public utility right-of-way; and

WHEREAS, the applicant requested relief from N.J.A.C. 19:4-8.10(a)1, which does not permit fences in required front yards; and

WHEREAS, notice of the requested bulk variance relief was given to the public and all interested parties as required by law and was published in The Jersey Journal newspaper; and

WHEREAS, a public hearing was held in the Office of the NJMC on Tuesday, May 6, 2014, before Sara Sundell, P.E., P.P, Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; and Mark Skerbetz, P.P., AICP, Senior Planner; and

WHEREAS, a comprehensive report dated June 27, 2014, has been prepared indicating the recommendations of the Director of Land Use Management and the Executive Director in this matter; and

WHEREAS, a copy of the recommendation and comprehensive report was provided to the applicant on June 30, 2014; and

WHEREAS, the report recommends approval of the bulk variance, requested from N.J.A.C. 19:4-8.10(a)1, to permit an eight (8)-foot high, chain-link fence and security gate on the subject premises within the required front yard setback along a public utility right-of-way; and

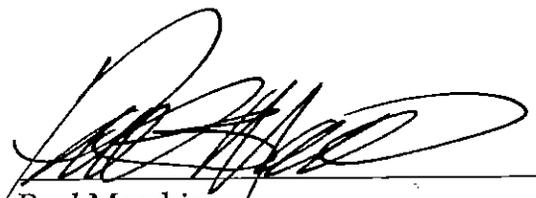
WHEREAS, the members of the NJMC have reviewed the full record including the transcripts of the public hearings, recommendations on the application by the Director of Land Use Management and by the Executive Director, and the submissions of the applicant; and

WHEREAS, the members of the NJMC concur with the recommendations of the Director of Land Use Management and the Executive Director; and

WHEREAS, the NJMC hereby determines that the bulk variance, requested in accordance with N.J.A.C. 19:4-8.10(a)1, to permit a fence within the required front yard, conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e).

NOW, THEREFORE, BE IT RESOLVED, by the New Jersey Meadowlands Commission, that the 1806 Harrison/National Water Main-Fence/Variance application for one bulk variance from N.J.A.C. 19:4-8.10(a)1, to permit an eight (8)-foot high, chain-link fence and security gate within the required front yard setback along a public right-of-way is hereby **APPROVED** for the reasons set forth in the recommendation dated June 27, 2014.

The foregoing was adopted on Commission vote.



Paul Macchia
Acting Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 23, 2014.



Marcia A. Karrow
Secretary

Resolution No. 14-33

Motion ___ Second ___ Roll ___

Memorandum

New Jersey Meadowlands Commission

NJMC Commissioners and Marcia A. Karrow, Executive Director

To: _____
From: Sara J. Sundell _____ Date: July 23, 2014
Subject: Variance Recommendation: 1806 Harrison/National Water Main-Fence/Variance (File #14-057)

An application for one bulk variance was filed with the New Jersey Meadowlands Commission (NJMC) by William F. Harrison, Esq., of the firm Genova Burns Giantomasi Webster, on behalf of National Water Main Cleaning Company, for the property located at 775 Harrison Avenue, Block 286, Lot 40, in the Town of Kearny, New Jersey. The subject premises are located in the Commission's Intermodal A zone.

The variance is sought in connection with the applicant's proposal to construct an eight (8)-foot high, chain-link fence and security gate within the required front yard setback along a public utility right-of-way.

The applicant requested bulk variance relief from the following:

1. N.J.A.C. 19:4-8.10(a)1, which does not permit fences in required front yards, whereas the applicant is proposing construct an eight (8)-foot high, chain-link fence and security gate on the subject premises within the required front yard setback along a public right-of-way.

A public hearing was held in the Office of the NJMC on Tuesday, May 6, 2014.

In a comprehensive report dated June 27, 2014, the Director of Land Use Management and the Executive Director recommended the approval of the requested bulk variance to permit a an eight (8)-foot high, chain-link fence and security gate within the required front yard setback along a public utility right-of-way.

A copy of the comprehensive report and variance recommendation was provided to the applicant on June 30, 2014.

At this time, the Commission is required to issue a decision on the bulk variance application described above. A resolution requesting the same is attached for your consideration.

RECOMMENDATION ON THE VARIANCE APPLICATION OF
1806 Harrison/National Water Main-Fence/Variance

FILE # 14-057

I. INTRODUCTION

An application for one (1) bulk variance has been filed with the New Jersey Meadowlands Commission (NJMC) by William F. Harrison, Esq., of the firm Genova Burns Giantomasi Webster, on behalf of National Water Main Cleaning Company, for the property located at 775 Harrison Avenue, Block 286, Lot 40, in the Town of Kearny, New Jersey. The subject premises is located in the Commission's Intermodal A zone. The variance is sought in connection with the applicant's proposal to construct an eight (8)-foot high chain-link fence and security gate within the required front yard setback along a public utility right-of-way.

Specifically, the applicant is requesting variance approval pursuant to:

1. N.J.A.C. 19:4-8.10(a)1, which does not permit fences in required front yards. The applicant is proposing to construct an eight (8)-foot high chain-link fence and security gate within the required 30-foot front yard setback along a public right-of-way. The fence is proposed to be set back six (6) inches from the front property line.

A public hearing was held at the Office of the Commission on Tuesday, May 6, 2014. Notice was given to the public and all interested parties as required by law. The public notice of this hearing was published in The Jersey Journal. No written objections were submitted to the Division of Land Use Management.

All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

II. GENERAL INFORMATION

A. Existing and Proposed Use

The subject premises is an irregularly-shaped 5.17-acre lot, utilized as a contractor's yard. There is a 72,062-square-foot associated building with paved parking and related site improvements on the property. In addition, a sanitary sewage pump station, owned and operated by the Kearny Municipal Utilities Authority, exists on a leased area in the southwesterly corner of the site. The property is located in the Commission's Intermodal A zone in the southwesterly portion of the Hackensack Meadowlands District. While the property has a Harrison Avenue address, the front lot line is adjacent to a PSE&G public utility right-of-way. Harrison Avenue is located adjacent to, and south of, the PSE&G right-of-way. The site is bounded to the north by the NJMC's closed 1-A Landfill, to the east by the Amtrak Northeast Corridor rail line, and to the west by a light industrial property. Undeveloped marshland exists to the south across Harrison Avenue. There are no residential properties located within the immediate vicinity of the subject premises.

The applicant is proposing to construct an eight (8)-foot high, chain-link fence and security gate within the required 30 foot front yard setback along the PSE&G public right-of-way line. The fence is proposed to be located six (6) inches from the front property line. The applicant's business is a municipal maintenance service specializing in the video inspection and light cleaning of underground pipelines such as water lines and sewer lines. Various pieces of equipment and vehicles utilized in the daily operation of the business are stored on site. The fence will provide security for the premises and the equipment stored on site. No other improvements are proposed.

B. Response to the Public Notice

No written comments or objections were submitted to this Office regarding this application prior to the public hearing.

III. PUBLIC HEARING (May 6, 2014)

A public hearing was held on Tuesday May 6, 2014. NJMC staff in attendance were Sara Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; and Mark Skerbetz, P.P., AICP, Senior Planner.

A. Exhibits

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Site Plan and Details," Drawing No. SP-100, prepared by Bilow Garrett Group Architects and Planners, P.C. dated August 26, 2013, revised through April 21, 2014.
A-2	"Photo Array," prepared by Bilow Garrett Group Architects and Planners.

B. Testimony

William F. Harrison, Esq., of the firm Genova Burns Giantomasi Webster represented National Water Main Cleaning Company at the hearing. The following witnesses testified in support of the application:

1. Salvatore Perri, National Water Main Cleaning Company
2. Anthony Garrett, R.A., P.P., Bilow Garrett Group Architects and Planners, P.C.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Beth Calderone, Certified Court Reporter.

C. Public Comment

No members of the public were present at the public hearing.

IV. RECOMMENDATION

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.10(a)1, which does not permit fences in required front yards. The applicant is proposing to construct an eight (8)-foot high chain-link fence and security gate within the required 30-foot front yard setback along a public right-of-way. The fence is proposed to be set back six (6) inches from the front property line.

The NJMC Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. Concerning bulk variances:

- i. The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to permit an eight (8)-foot high chain-link fence and security gate within the required 30 foot front yard setback arises from conditions that are unique to the site. The subject premises is an irregularly-shaped 5.17-acre lot, fronting on a PES&G public utility right-of-way to the south. The site is currently improved with a 72,062-square-foot contractor's building and associated paved parking and site improvements. The PSE&G right-of-way exists between the property and Harrison Avenue. The fence and gate will be located approximately 80 feet from the Harrison Avenue right-of-way.

NJMC zoning regulations restrict the placement of fences within required front yards. The property is configured and improved in such a way that limits potential locations for the fence without negatively affecting vehicular movements into and around the site and jeopardizing security. There are approximately 57 feet from the edge of the parking lot curb along the PSE&G right-of-way to the building. Within this area are parking spaces, a drive aisle and maneuvering space for vehicles, including trucks traversing to the rear of the site, where truck parking and loading areas are located. The applicant is proposing to install the fence behind the curb at a minimum of six (6) inches from the front yard property line, so as not to impede vehicular circulation through the site. However, the fence will be positioned in such a way that it will be set back over 38 feet at its most westerly point. The proposed location of the fence will preserve the established logistical functions of the site. These circumstances are unique to the property in question.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to permit an eight (8)-foot high chain-link fence and security gate within the required front yard setback along a public right-of-way will not adversely affect the rights of neighboring property owners or residents. The site is located within a fully developed industrial area. Properties immediately located to the east, west, and south of the premises are zoned Intermodal A and consist of a variety of industrial uses. NJMC's closed 1-A Landfill is located to the north of the site in the Environmental Conservation zone. There are no residential

properties located within the immediate vicinity of the subject premises.

The proposed fence, which shall be set back a minimum of six (6) inches from the front property line will not be highly visible from the road as the PSE&G right-of-way exists between the site and Harrison Avenue. The fence will be located approximately 80 feet from the Harrison Avenue right-of-way.

The proposed fence will not create any negative visual impacts to the neighboring properties or impede their ability to function as intended. Therefore, the granting of the variance will not adversely affect the rights of neighboring property owners or residents.

iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

The strict application of the regulations will result in peculiar and exceptional practical difficulties to, and exceptional and undue hardship upon, the property owner. The site and building have been recently improved by the National Water Main Cleaning Company to be utilized as a contractor's yard. The approved site layout has been designed to utilize the entire premises in a safe and efficient manner. The strict application of the required 30-foot front yard setback places the fence in the middle of the paved vehicular area, thus rendering the easterly parking areas and drive aisle essentially inoperable. This drive aisle is integral to the circulation of trucks to the loading and truck parking areas located around the building. The proposed location of the fence will allow the site to

continue to function as intended, while maintaining the aesthetics of the neighborhood due to the 80-foot distance between the proposed fence and the Harrison Avenue.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse effects to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The surrounding neighborhood properties principally consist of warehouse and distribution uses. The applicant proposes to construct an eight (8)-foot high chain-link fence and security gate within the required 30-foot front yard setback along the PSE&G public utility right-of-way, which is adjacent to Harrison Avenue. The fence is proposed to be set back six (6) inches from the front property line.

To minimize any potential vehicular conflicts that would result from installing the fence in a conforming location, and to provide security for the site, the fence is proposed to be set back a minimum of six (6) inches at its closest point to the property line. However, the proposed setback increases to approximately 38 feet from the front property line as the fence is angled in a northwesterly direction to ensure proper vehicular movements within the access driveway. As the property fronts a PSE&G right-of-way, the fence will be located approximately 80 feet from the Harrison Avenue right-of-way, negating any potential adverse aesthetic impacts to

surrounding properties, as well as allowing additional queuing space for vehicles turning off of Harrison Avenue to access the site.

- v. *The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance to permit an eight (8)-foot high chain-link fence and security gate within the required front yard setback will not have any adverse environmental impacts. The location of the proposed fence within the required front yard along the PSE&G public utility right-of-way, and approximately 80 feet distant from Harrison Avenue, will not violate NJMC's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality. In addition, no environmentally sensitive areas will be disturbed by the placement of the fence.

- vi. *The variance represents the minimum deviation from the regulations that will afford relief.*

The requested variance represents the minimum deviation from the regulations that will afford relief. The subject premises fronts on a PSE&G right-of-way, which separates the subject property from Harrison Avenue. Potential locations to provide a fence without altering the safe operation and layout of the contractor's yard are limited. The fence is proposed to be set back six inches from the property line at its closest point, which is behind the curblin along the front of the property and at the eastern corner of the access driveway that connects the property to Harrison Avenue. The distance from the fence to the front property line increases to approximately 38 feet as the fence extends to the northwest across the

driveway. The fence as proposed ensures proper vehicular movements within the access driveway without compromising the use of the existing paved area for parking, circulation and maneuvering.

vii. Granting the variance will not substantially impair the intent and purpose of these regulations.

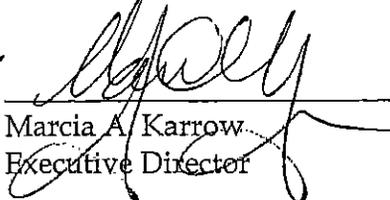
The requested variance to permit an eight (8)-foot high chain-link fence and security gate within the required front yard setback along the PSE&G public utility right-of-way, adjacent to Harrison Avenue, will not impair the intent and purpose of the regulations. One intent of prohibiting fences in required front yards is to minimize the visual impacts to neighboring properties. The property in question is located in the Intermodal A zone, which is comprised of various industrial and commercial uses. Although the fence will be located in the required front yard setback, it will have a minimal visual impact to the surrounding area due to the distance of the fence from the Harrison Avenue travelled right-of-way. As the property fronts the PSE&G right-of-way, the fence will be located approximately 80 feet from the Harrison Avenue right-of-way, thus allowing additional queuing space for vehicles turning off of Harrison Avenue to access the site. Furthermore, the fence at the proposed location will provide a level of security for National Water Main Cleaning Company while maintaining overall logistical functionality of the site.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.10(a)1, which does not permit fences in required front yards. The applicant is proposing to construct an eight (8)-foot high chain-link fence and security gate within the required 30-foot front yard setback along a public right-of-way. The fence is proposed to be set back six (6) inches from the front property line.

Based on the record in this matter, the bulk variance application to permit the installation of an eight (8)-foot high chain-link fence and security gate at a minimum of six (6) inches from the PES&G public utility right-of-way, where fences are not permitted in the required front yard setback, is hereby recommended for approval.

APPROVAL 6.26.14 
Recommendation On Date Sara J. Sundell, P.E., P.P.
Variance Request Director of Land Use Management

approval 6/27/14 
Recommendation On Date Marcia A. Karrow
Variance Request Executive Director