

**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 PES&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 aesthetical 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.

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| <u>APPROVAL</u> | <u>6.26.14</u> |  |
| Recommendation On Variance Request | Date | Sara J. Sundell, P.E., P.P. Director of Land Use Management |

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|---------------------------------------|----------------|--|
| <u>approval</u> | <u>6/27/14</u> |  |
| Recommendation On Variance Request | Date | Marcia A. Karrow Executive Director |