

**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.

<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>approval</u>	<u>7/1/14</u>	
Recommendation on Variance Request	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