

## RECOMMENDATION ON THE VARIANCE APPLICATION OF

### Ditobarbi/ZLOR, Site Improvement & Use Variance

FILE # 09-772

#### I. INTRODUCTION

An application for one (1) use variance has been filed with the New Jersey Meadowlands Commission (NJMC) by Jeffrey A. Zenn of the firm Sokol, Behot & Fiorenzo, on behalf of Ditobarbi & Co., for the premises identified as 1 Avenue A, Block 130, Lot 4; 217 Washington Avenue, Block 130, Lot 14; 1 A Street, Block 130, Lot 15; 2 A Street, Block 130, Lot 16; and 3 A Street, Block 130, Lot 18, in the Borough of Carlstadt, Bergen County, New Jersey. Said premises are located in the Commission's Light Industrial A zone. The applicant is requesting a use variance to allow outdoor storage as a principal use on the subject properties.

Specifically, the applicant is requesting relief from the following:

1. N.J.A.C. 19:4-5.73(a), where outdoor storage is not listed as a permitted use in the Light Industrial A zone. The applicant is requesting a use variance to allow outdoor storage on the subject properties as a principal use.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Record. One written objection was received from Joseph R. Pagano, Counselor at Law, on behalf of Funds Service Facility, Inc., 440 Barell Avenue, Carlstadt, New Jersey. A public hearing was held in the Office of the Commission on Tuesday, November 25, 2014. 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 application proposes outdoor storage usage of commonly-owned properties in the Borough of Carlstadt identified as 1 Avenue A (Block 130, Lot 4); 217 Washington Avenue (Block 130, Lot 14); 1 A Street (Block 130, Lot 15); 2 A Street (Block 130, Lot 16); and 3 A Street (Block 130, Lot 18). The applicant is seeking to combine the aforementioned properties into one zoning lot of record through an NJMC Declaration of Zoning Restriction, pursuant to N.J.A.C. 19:4-3.22. The subject properties have the following areas: Lot 4 - 34,865 square feet (0.8 acre); Lot 14 - 41,299 square feet (0.94 acre); Lot 15 - 39,723 square feet (0.91 acre); Lot 16 - 113,776 square feet (2.61 acres); Lot 18 - 101,904 square feet (2.34 acres); and Lot 20 - 57,500 square feet (1.32 acres). The proposed zoning lot of record would have a combined area of approximately 8.92 acres.

Current access to the properties is provided through a series of 30-foot-wide private roadways, which are owned by Ditobarbi and Co., identified as "A," "B," and "C" Streets (Block 130, Lot 20), which would remain unchanged in the current proposal. "A" Street contains direct access to and from Washington Avenue.

The existing and proposed use of the properties are as follows:

- Lot 4 contains a 6,618-square-foot multiple-bay truck terminal and proposes 10,530 square feet of outdoor storage area.
- Lot 14 is improved with a 7,642-square-foot multiple-bay truck terminal and proposes 10,189 square feet of outdoor storage area.
- Lot 16 contains a 5,628-square-foot multiple-bay truck terminal and proposes 45,779 square feet of outdoor storage area.
- Lot 18 contains a 9,600-square-foot multiple-bay truck terminal and proposes 21,131 square feet of outdoor storage area.

- Lot 15 is a vacant lot presently used for the outdoor storage of trucks and trailers.

Vehicular use areas exist throughout the site, which include a mix of surface materials ranging from gravel, dirt, stone and concrete. Existing open space is less than the required minimum of 15 percent of the zoning lot of record area. Although not permitted uses in the Light Industrial A zone, the truck terminals on Lots 4, 14, 16 and 18 and the outdoor storage on Lot 15 are pre-existing nonconforming uses.

The applicant is proposing to utilize a portion of the subject properties for the outdoor storage of all items that can be transported by truck. All outdoor storage is proposed to be located on areas that will be resurfaced with asphalt. The NJMC recently approved zoning certificate ZC-09-772 for the resurfacing of portions of Lots 4, 14, 15, 18, and the portion of Lot 20 identified as "B" Street, including the provision of proposed stormwater management measures. As of the date of this recommendation, the construction of the approved site improvements has not commenced. No new buildings or building additions are proposed.

#### **B. Response to the Public Notice**

One written objection was received from Joseph R. Pagano, Counselor at Law, on behalf of Funds Service Facility, Inc., the property owner of 440 Barell Avenue, Carlstadt, New Jersey.

### **III. PUBLIC HEARING (November 25, 2014)**

A public hearing was held on Tuesday, November 25, 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 Ronald Seelogy, P.E., P.P., Senior Engineer.

**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	"Cover Sheet," Drawing Number S-1, prepared by Koestner Associates, undated.
A-2	"Zoning Lot of Record Plan," Drawing Number S-2, prepared by Koestner Associates, dated May 11, 2009, revised through August 5, 2014.
A-3	"Zoning Lot of Record Plan," Drawing Number S-3, prepared by Koestner Associates, dated May 11, 2009, revised through August 5, 2014.
A-4	"Open Space & Traffic Plan," Drawing Number S-4, prepared by Koestner Associates, dated September 9, 2009, revised through November 14, 2014.
A-5	"Open Space & Traffic Plan," Drawing Number S-5, prepared by Koestner Associates, dated December 16, 2008, revised through August 5, 2014.
A-6	"Open Space & Traffic Plan," Drawing Number S-6, prepared by Koestner Associates, dated May 18, 2012, revised through August 5, 2014.
A-7	"Open Space & Traffic Plan," Drawing Number S-7, prepared by Koestner Associates, dated December 17, 2008, revised through August 14, 2013.
A-8	"Cover Sheet," Drawing Number S-1, prepared by Koestner Associates, undated; "Drainage Plan," Drawing Number S-2, prepared by Koestner Associates, dated September 9, 2009, revised through April 7, 2014; "Drainage Plan," Drawing Number S-3, prepared by Koestner Associates, dated

December 16, 2008, revised through April 7, 2014; "Drainage Plan," Drawing Number S-4, prepared by Koestner Associates, dated December 21, 2006, revised through March 12, 2014; "Drainage Plan," Drawing Number S-5, prepared by Koestner Associates, dated December 17, 2008, revised through March 12, 2014; "Drainage Plan Details," Drawing Number S-6, prepared by Koestner Associates, dated December 17, 2008, revised through April 7, 2014.

A-9 Certification of Thomas Barrett, dated November 19, 2014.

**B. Testimony**

Jeffrey A. Zenn, Esq., of the firm Sokol, Behot & Fiorenzo, represented Ditobarbi & Co., at the hearing. The following two witnesses testified in support of the application:

1. Steven L. Koestner, P.E., L.S., Koestner Associates.
2. Raymond Moraski, Koestner Associates.

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

**C. Public Comment**

Joseph R. Pagano, Counselor at Law, commented on the application on behalf of Funds Service Facility, Inc., 440 Barell Avenue, Carlstadt, New Jersey. James Harper, of Sheet Metal Workers Fund Services, 440 Barell Avenue, Carlstadt, also commented on the application.

#### IV. RECOMMENDATION

A. Standards for the Granting of a Use Variance from the Provisions of N.J.A.C. 19:4-5.73(a), where outdoor storage is not listed as a permitted use in the Light Industrial A zone. The applicant is requesting a use variance to allow outdoor storage on the subject properties as a principal use.

The NJMC Zoning Regulations at N.J.A.C. Section 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 use variances:*

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

The strict application of these regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. The applicant testified that areas for outdoor storage are required due to a lack of storage space provided inside the existing buildings on each of the subject properties. The existing structures have small building footprints and low ceiling heights, thereby limiting interior storage capacity. The ability to expand the existing buildings on the properties to accommodate additional storage within the buildings is affected by the nature and configuration of existing improvements on the properties. There are practical difficulties in the expansion of the truck terminals, which exhibit narrow building widths and cross-dock configurations, while maintaining adequate building setbacks and functional circulation patterns for truck maneuvering and

trailer staging. In addition, the subject properties have strong similar features to the Heavy Industrial-zoned areas in the District, which permit outdoor storage, in that they are located within an isolated, defined area not visible from the main thoroughfare.

- ii. *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.*

The granting of the requested variance to permit outdoor storage on the subject properties 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. Outdoor storage is currently permitted as a pre-existing nonconformity on Lot 15 and the property identified as Block 129, Lot 9, which is also owned by the applicant. In all, the owner of the subject properties owns five out of ten properties fronting "A" Street in Carlstadt.

Potential negative aesthetic impacts to the surrounding properties, as a result of the outdoor storage, will be avoided through proper site screening techniques, as well as limitations to the height of stored items on the properties. Currently, no visual screening is provided. The applicant proposes to screen the proposed outdoor storage at the subject sites by installing landscaping and fencing of a sufficient height around the perimeter of each property. It is not anticipated that the proposed outdoor storage areas will be visible from Washington Avenue due to the difference in elevation and the presence of existing structures between the subject properties and

that roadway. In order to ensure that the visual impacts of the proposed outdoor storage uses do not cause a detriment to the public good, this report recommends that the maximum height of outdoor storage areas be limited to 25 feet. The report also recommends that outdoor storage areas be maintained in an orderly manner on each lot and be delineated by striping pursuant to an approved site plan. Through the introduction of screening and the maintenance of existing site circulation patterns, the public good will not be adversely impacted. In order to ensure a safe and efficient site layout, the applicant testified that existing loading doors on Lot 4 will become inactive to avoid possible site circulation conflicts with the proposed outdoor storage areas, and fewer vehicle trips are expected due to the reduction in loading doors.

Finally, in accordance with approved zoning certificate ZC-09-772, the subject properties will be resurfaced from their existing deteriorated condition, which will accommodate the proposed outdoor storage use, and drainage improvements consisting of storm sewers and stormwater detention structures will be constructed, which will positively impact neighborhood drainage.

*iii. Adequate infrastructure, including storm and sanitary sewers, utilities, access roads, will be provided and shall be so designed to prevent and/or minimize negative impacts upon the existing infrastructure. In addition, the proposed use will not decrease the ability of said infrastructure to perform in a safe and efficient manner.*

The granting of the requested variance to permit outdoor storage on the subject properties will not impact the existing utility infrastructure. The proposed use of the site will not result in any structures that would generate demand for additional water, sewer, or energy utility services. As the subject properties are located in an existing industrial area, certain infrastructure, including utilities and sanitary sewers, is in place. In addition, the NJMC recently approved drainage improvements for all of the subject properties that will reduce the peak runoff rate after resurfacing and will provide enhanced water quality.

This report also recommends that certain restrictions be placed upon the type and placement methodologies of the proposed outdoor storage. Caution shall be taken in order to prevent hazardous substances from spilling on the ground surface or entering the stormwater system, water courses or ditches in the vicinity. Hazardous waste or substances shall not be transported over or stored upon the subject properties except in strict compliance with applicable laws. In addition, raw materials, such as sand, stone, gravel, topsoil, cement and/or similar materials stored out in the open should be contained, covered, and secured in a manner that does not allow for the erosion of product outside of containment areas or for stormwater infiltration of the stored product. Subject to these limitations, the proposed use will not decrease the ability of the existing or proposed infrastructure to perform in a safe and efficient manner.

No significant impact to traffic in the surrounding area is anticipated. Adjacent roadways are capable of handling the traffic that will be associated with the proposed use.

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

The granting of the requested variance to permit outdoor storage on the subject properties will not result in any adverse environmental impacts. NJMC environmental performance standards will not be exceeded for noise, vibration, glare, airborne emissions, hazardous or radioactive materials. No environmentally sensitive areas are proposed to be disturbed. Upon construction, recently approved drainage improvements will reduce peak runoff rates and will provide enhanced water quality.

However, in order to protect the surrounding environment from potential environmental impacts, all future tenants or occupants of the subject premises who utilize the site for outdoor storage shall take precautions during operations at the site. Caution shall be taken in order to prevent hazardous substances from spilling on the ground surface or entering water courses or ditches in the vicinity. Hazardous waste or substances shall not be transported over or stored upon the subject properties except in strict compliance with applicable laws.

Placing raw materials directly on the ground could compromise the surrounding environment. Therefore, raw materials, such as sand, stone, gravel, topsoil, cement and/or similar materials stored out in the open should be contained, covered, and secured in a manner

that does not allow for the erosion of product outside of containment areas or for stormwater infiltration of the stored product. The use of pallets and/or racking is recommended to be utilized for bulkier materials, such as bricks, pavers, concrete block, pipes, lumber, steel or scaffolding that might otherwise be stored on the ground.

In addition, the utilization of portions of the subject property for outdoor storage shall not conflict with required open space, parking and loading areas, and vehicular circulation. As such, specific areas for outdoor storage shall be delineated with striping on the asphalt surface.

Outdoor storage shall not include any use that may be classified as either a solid waste, recycling, or salvage facility. A salvage facility involves the storage of vehicles, equipment, and/or similar items which are no longer intended or in condition for legal use according to their original purpose.

*v. The variance will not substantially impair the intent and purpose of these regulations.*

Use limitations for the Light Industrial A zone restrict outdoor storage to accessory outdoor display areas connected to retail sales for the staging of new products and outdoor storage and operations for studio uses. Although the parking and storage of trucks and trailers is permitted as a pre-existing nonconformity on Lots 4, 14, 15, 16 and 18, any other type of outdoor storage is prohibited within the Light Industrial A zone.

One intention of the exclusion of outdoor storage in the Light Industrial A zone is to avoid the function of such facilities that are more suited for the Heavy Industrial and Intermodal B zones. Lots in the Heavy Industrial or Intermodal B zones, where outdoor storage is permitted, tend to be larger and in more remote locations, where visual intrusion into the surrounding properties is less conspicuous.

The typical outdoor storage associated with a truck terminal is often comprised of trucks and trailers. Due to the small building footprints and low ceiling heights on the subject property, the applicant testified that the proposed outdoor storage on the subject properties is necessary for day-to-day business operations. Fencing and landscaped screening is proposed to counteract/offset any negative visual and aesthetic effects of the outdoor storage on the surrounding streets and properties. Testimony was provided that the applicant would agree to a condition that any storage containers on site would not be stored more than two containers high.

Accordingly, the granting of the variance to permit outdoor storage on the subject properties would not impair the intent and purpose of these regulations. Sufficient space will remain for the existing truck terminal use. Areas allocated for the proposed outdoor storage are appropriately located and do not conflict with vehicle circulation.

*vi. The variance at the specified location will contribute to and promote the intent of the NJMC Master Plan.*

Truck terminals are centralized distribution facilities for warehousing/manufacturing businesses that use trucks as the main transportation mode. The region's roadways have historically encouraged the development of truck terminals within the District. The subject properties have direct access to Washington Avenue, defined by the NJMC Master Plan as an arterial roadway, which connects local streets to Paterson Plank Road/Route 120. Such major truck routes provide access to freight facilities in the larger regional area.

The NJMC Master Plan designates the subject properties as part of the District's Employment Center planning area. These centers include a mix of land uses such as warehouse-distribution and industrial facilities. Transportation facilities are also encouraged within the Employment Center planning area. As has been previously mentioned, transportation facilities like truck terminals often provide a link between warehouse-distribution/industrial and freight facilities. While the NJMC Master Plan's planning areas do not constitute zoning districts, their descriptions provide the foundation for the NJMC District Zoning Regulations.

The regulations reflect the spirit and intent of the NJMC Master Plan and are the mechanism by which the policies and principles of the NJMC Master Plan are implemented and enforced, in accordance with smart growth policies. The subject properties are located within the Commission's Light Industrial A zone. There

are a total of 26 different land uses that are permitted in the zone, although outdoor storage is not permitted. However, the proposed use is similar to certain aspects of a warehouse-distribution or industrial facility and the outdoor storage element can be visually mitigated. While outdoor storage is only a permitted use in the Heavy Industrial zone, the subject properties have strong similar features to the Heavy Industrial-zoned areas in the District, in that they are located within an isolated, defined area not visible from the main thoroughfare.

Another goal of the NJMC Master Plan is to promote an array of land uses that encourage economic vitality and support the public health, safety, and welfare. Other businesses, particularly in the warehouse-distribution and industrial fields, will benefit from the convenience of having a series of truck terminals nearby with additional space allocated on site for outdoor storage. And as stated previously, subject to the recommended conditions, the proposed outdoor storage use will not result in substantial detriment to the public health, safety and welfare. Accordingly, the proposed outdoor storage use will contribute to and promote the intent of the NJMC Master Plan.

## V. SUMMARY OF CONCLUSIONS

### A. Standards for the Granting of a Use Variance from the Provisions of N.J.A.C. 19:4-5.73(a), where outdoor storage is not listed as a permitted use in the Light Industrial A zone. The applicant is requesting a use variance to allow outdoor storage on the subject properties as a principal use.

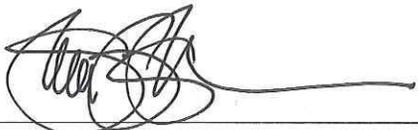
Based on the record in this matter, the use variance application to permit outdoor storage on the subject properties is hereby recommended for approval subject to the following conditions:

1. All future tenants or occupants of the subject premises shall comply with the terms and conditions set forth in the New Jersey Industrial Site Recovery Act (ISRA).
2. Any occupant shall not cause or permit, either intentionally or unintentionally, the releasing, spilling, leaking, pumping, pouring, emitting or dumping of a hazardous substance as defined by any environmental law.
3. Any occupant shall not transport or store hazardous waste or hazardous substances, as defined by any environmental law, except in strict accordance with applicable laws.
4. Outdoor storage areas shall be maintained in an orderly manner, and shall comply with the provisions of the New Jersey Uniform Fire Code at N.J.A.C. 5:18.
5. Outdoor storage may occur only in delineated locations indicated on an approved site plan pursuant to an NJMC zoning certificate approval. Outdoor storage areas shall be delineated on the site with four-inch-wide striping, at minimum, which shall be maintained and visible at all times. Any change to the

configuration and/or dimension of approved delineated outdoor storage areas shall require new NJMC zoning certificate approval.

6. Outdoor storage shall not occur within required open space, parking, and loading areas, or outside of the delineated area, nor shall the location of outdoor storage areas conflict with vehicle circulation.
7. Products, materials, and/or other items stored within outdoor storage areas shall not exceed 25 feet in height. Outdoor storage of containers shall be limited to a total of two containers per stack or a maximum height of 25 feet above grade level, whichever is less.
8. Outdoor storage of raw materials such as sand, stone, gravel, topsoil, cement and/or similar materials shall not be placed directly on the ground, but shall be contained, covered and secured in a manner that does not allow for the erosion of product outside of containment areas or for stormwater infiltration of the stored product. The method of containment shall be subject to the approval of the Chief Engineer. It is recommended that the storage of items such as bricks, pavers, concrete block, pipes, lumber, steel, scaffolding, or similar large, bulky materials be placed upon pallets or racks.
9. The applicant shall close off the existing loading doors located adjacent to any area allocated for outdoor storage if the outdoor storage is proposed adjacent to said loading doors on the approved site plan.
10. Outdoor storage shall not include any use that may be classified as either a solid waste, recycling, or salvage facility. A salvage facility involves the storage of vehicles, equipment, and/or similar items which are no longer intended or in condition for legal use according to their original purpose.

11. Outdoor storage areas shall maintain a minimum setback of seven (7) feet from any exterior lot line of the zoning lot of record and from any interior lot line of the zoning lot of record adjacent to "A" Street.
12. The applicant shall combine the subject properties identified as Block 130, Lots 4, 14, 15, 16, 18 and 20 into one zoning lot of record through an NJMC Declaration of Zoning Restriction pursuant to N.J.A.C. 19:4-3.22.

CONDITIONAL APPROVAL    2/4/15      
Recommendation on    Date    Sara J. Sundell, P.E., P.P.  
Variance Request       Director of Land Use Management and  
Chief Engineer

Conditional Approval    2/4/15      
Recommendation on    Date    Marcia A. Karrow  
Variance Request       Executive Director