

## RECOMMENDATION ON THE VARIANCE APPLICATION OF

### Jaret LLC/Technical Major Subdivision & Variance

FILE # 14-640

#### I. INTRODUCTION

An application for two bulk variances has been filed with the New Jersey Sports and Exposition Authority (NJSEA) by Richard H. Kaplan, Esq., of the firm, Rubin, Kaplan & Associates, on behalf of Jaret, LLC, for the premises located at 1 Barrett Avenue, Block 70, Lot 8, and 100 Grand Street, Block 70, Lot 9, in the Borough of Moonachie, New Jersey. Said premises are located in the Hackensack Meadowlands District's Light Industrial B zone. The variances are sought in connection with the applicant's proposal to subdivide the subject premises into two lots, proposed to be designated as Lots 8.01 and 9.01. In accordance with N.J.A.C. 19:5-5.3(a)2 & (a)4, the proposed subdivision is classified as a technical major subdivision, because bulk variances are requested from the District Zoning Regulations at N.J.A.C. 19:4.

Specifically, the applicant is requesting relief from the following:

1. N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre, whereas a lot area of 0.54 acres is proposed for Lot 8.01.
2. N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard of 20 feet, whereas a setback of 12.10 feet is proposed along the easterly side yard of Lot 8.01.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Record newspaper. No written objections were received. A public hearing was held in the Office of the NJSEA on Tuesday, March 17, 2015. 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 existing lot areas for Lots 8 and 9 are 0.80 acres and 0.79 acres respectively, whereas a minimum lot area of one acre is required in the Light Industrial B zone. Existing Lots 8 and 9 each have two front yards - Lot 8 fronts on Purcell Court to the west and Barrett Avenue to the north, while Lot 9 also fronts on Barrett Avenue to the north and Grand Street to the east. There are no known existing easements on either property, although a 12-inch municipal storm sewer pipe does traverse both properties. A warehouse facility is located to the south of the subject properties. The remainder of the surrounding area is primarily developed with similar warehousing and light industrial uses.

The subject properties are each currently developed with a one-story masonry warehouse building and associated parking and loading facilities. Direct access to both structures is provided from Barrett Avenue. Parking and additional loading facilities for Lot 9 are accessed directly from Grand Street. Secondary access to Lot 8 is provided from Purcell Court. It is noted that the existing building on Lot 9 encroaches beyond the westerly property line onto Lot 8. In an attempt to rectify this situation at the time the buildings were built, a minor subdivision was approved by the Borough of Moonachie Planning Board on July 26, 1962, which relocated the common lot line to be roughly equidistant between both buildings. However, this minor subdivision was never perfected by filing with the Bergen County Clerk's Office within the required timeline.

The applicant proposes to subdivide existing Lots 8 and 9 into proposed Lots 8.01 and 9.01 and thereby re-establish the location of the common property line consistent with the prior July 26, 1962, minor subdivision approval. Each lot

will contain one existing warehouse structure and its respective parking and loading areas. The proposed subdivision of the subject property will not result in any changes to the site or buildings.

Proposed Lot 8.01 will not provide the minimum lot area, nor will it provide the minimum required side yard setback along the easterly property line. However, the area of existing Lot 8 is only 0.80 acres, which is less than the minimum required lot area of one acre. Relocation of the common lot line between proposed Lots 8.01 and 9.01 will increase the side yard setback provided for proposed Lot 9.01 from zero feet to 13.44 feet, thereby decreasing the degree of existing nonconformity. The applicant will contact the Borough of Moonachie regarding the establishment of a proposed drainage easement for the existing 12-inch storm sewer that is located on the southerly portions of proposed Lots 8.01 and 9.01.

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

No written comments were submitted to this Office prior to the public hearing.

### **III. PUBLIC HEARING (March 17, 2015)**

A public hearing was held on Tuesday, March 17, 2015. 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	“Preliminary Plat Technical Major Subdivision, Block 70, Lot 8 & 9,” Sheet 1 of 2, prepared by Job & Job Consulting Engineers, P.A., dated September 23, 2014, revised February 3, 2015.
A-2	“Preliminary Plat Technical Major Subdivision, Block 70, Lot 8 & 9,” Sheet 2 of 2, prepared by Job & Job Consulting Engineers, P.A., dated September 23, 2014, revised February 3, 2015.

**B. Testimony**

Richard H. Kaplan, Esq., of the firm, Rubin, Kaplan & Associates, represented Jaret, LLC, at the hearing. The following witness testified in support of the application:

1. Kenneth J. Job, P.E., P.L.S., P.P.

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**

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

#### IV. RECOMMENDATION(S)

**A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre, whereas a lot area of 0.54 acres is proposed for Lot 8.01.**

The District 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 shape and lot area of existing Lots 8 and 9 were not created by any action of the property owner and are not typical of the properties located in the Light Industrial B zone. Lot 9 contains an existing building that encroaches beyond its westerly property line, onto Lot 8. The combined lot area of both of the subject properties is 1.59 acres, as existing Lot 8 contains 0.80 acres and existing Lot 9 contains 0.79 acres. The existing lot areas are both pre-existing nonconforming conditions. As a result, since the total area of the subject properties is less than the minimum two-acre area required for two lots, there is no manner in which the properties can be divided into two lots each with a minimum lot area of one acre. These circumstances are unique conditions that are not ordinarily found in the Light Industrial B zone.

- 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 undersized lot will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject properties are located is primarily industrial and commercial in nature. No residential properties are located in the immediate vicinity. The character of the neighborhood will not be altered by the creation of a substandard lot, as there will be no physical changes to either of the existing sites. Ingress and egress for both properties will remain unchanged. Existing uses will not be intensified.

- 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 proposed subdivision to relocate the existing lot line, which currently runs through an existing building, is constrained by the location of the existing buildings on the properties, as well as the substandard combined lot area of the subject properties. The areas of existing Lots 8 and 9 are pre-existing nonconformities, containing 0.80 and 0.79 acres, respectively. As the total lot area of both properties is 1.59 acres, there is no manner in which the subject properties can be subdivided to provide two conforming one-acre lots. The proposed subdivision also represents the preferred planning alternative,

which creates two lots that create a more regular site configuration than existing conditions.

*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 granting the requested variance for a lot area less than one acre. Both properties will continue to physically function as they currently exist, as no site improvements or other changes are proposed. There will be no activities or conditions created by the granting of the requested variance resulting in any noise, odor, vibration or glare that could negatively impact public health or safety. Access for firefighting and emergency vehicles will remain unchanged under the proposed lot configuration.

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

There will be no adverse environmental impacts created by the granting of the requested variance to allow one of the two proposed lots to be subdivided to be less than one acre. As no improvements are proposed, the subdivision will not disturb environmentally sensitive areas or stormwater facilities. The variance will not cause the District's environmental performance standards for noise, glare, vibrations, airborne emissions or hazardous materials to be exceeded.

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

The areas of existing Lots 8 and 9 are each currently less than one acre and are pre-existing nonconformities, containing 0.80 and 0.79 acres, respectively. Although the area of proposed Lot 8.01 will be 0.26 acres less than the area of existing Lot 8, the subdivision will create Lot 9.01 with a conforming area of 1.05 acres, thereby eliminating an existing nonconformity. Also, the granting of the requested variance will permit the existing building at 100 Grand Street, which currently straddles the property line between Lots 8 and 9, to be located entirely on proposed Lot 9.01. Potential locations to provide an alternate subdivision line are limited due to the locations of the two existing buildings on the properties. The proposed subdivision line has been placed in an optimal location representing the most regular layout available given the existing site conditions. Therefore, the placement of the proposed lot line approximately equidistant from each of the existing buildings represents the preferred planning alternative for subdivision of the subject properties, as well as the most practical way to allow both properties to function in an orderly manner.

In addition, since the total area of both properties is 1.59 acres, there is no manner in which the properties can be subdivided to provide two conforming one-acre lots. Therefore, the requested variance represents the minimum deviation from the District zoning regulations that will afford relief.

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

The granting of the requested variance for the creation of one lot with a substandard lot size will not substantially impair the intent and purpose of these regulations. The second lot created by the proposed subdivision will thereby comply with the minimum lot size requirement of the Light Industrial B zone. Existing uses of both properties, which are permitted in the Light Industrial B zone, will not be intensified. Access to improved public streets will continue to be provided. Therefore, the proposed subdivision is consistent with sound planning practices and will promote the intent and purpose of these regulations by allowing both subject properties to be utilized in a safe and orderly manner.

**B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard of 20 feet, whereas a setback of 12.10 feet is proposed along the easterly side yard of Lot 8.01.**

The District 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.*

Existing Lots 8 and 9 are each currently improved with a one-story warehouse building. No new structures or site improvements are proposed. Both of the subject properties are owned by the applicant. The existing building on Lot 9 encroaches beyond its westerly property line onto Lot 8. The proposed subdivision to correct the location of the lot line, which currently runs through an existing building, is constrained by the location of the existing buildings, as well as the combined lot area of the subject properties. In order to facilitate the future sale of the subject properties, the applicant is seeking technical major subdivision approval to relocate the common property line between Lots 8 and 9 approximately equidistant from the two existing warehouse buildings. The relocation of the easterly property line for proposed Lot 8.01 results in a side yard setback of only 12.10 feet, whereas a minimum side yard setback of 20 feet is required in the Light Industrial B zone.

The subject properties are amongst the smallest in this portion of the District's Light Industrial B zone. The areas of Lots 8 and 9 are 0.80 acres and 0.79 acres, respectively; whereas a minimum lot area of one acre is required. Additionally, both properties are corner lots with two front yards each. Lot 9 fronts along Grand Street to the east and Barrett Avenue to the north, while Lot 8 fronts along Purcell Court to the west and Barrett Avenue to the north. As a result, each of the subject properties has only one rear yard and one side yard. The distance between the existing buildings is approximately 25 feet, which limits the provision of a conforming side yard setback. This combination of conditions related to the size of the subject properties, the siting of the existing building straddling the boundary between Lots 8 and 9, and a common side yard subject this site to a unique set

of circumstances. These conditions are not ordinarily found in the Light Industrial B zone and were not created by any action of the property owner or the applicant.

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

The granting of the requested variance will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject properties are located in is primarily industrial and commercial in nature. No residential properties are located in the immediate vicinity. The character of the neighborhood will not be altered by the shifting of a lot line, as there will be no physical changes to either of the existing sites. Ingress and egress for both properties will remain unchanged. Existing uses will not be intensified.

- 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 these regulations would require a minimum setback of 20 feet along the easterly property line of proposed Lot 8.01, whereas 12.10 feet is proposed, and would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. Existing Lot 8 is undersized with an area of only 0.80 acres, whereas a minimum lot area of one acre is required in the Light Industrial B zone. Relocating the proposed subdivision line in

order to provide the minimum required setback of 20 feet in the easterly side yard would add 1,422 square feet, or 0.03 acres to proposed Lot 8.01 for an area of 0.57 acres, which would remain undersized.

Also, a relocated subdivision line would conflict with an existing transformer compound that serves the building on existing Lot 9 (proposed Lot 9.01). The siting of the existing transformer compound between proposed Lots 8.01 and 9.01 could hinder the potential sale of either one or both of the subject properties. In balancing the requirements of the Light Industrial B zone with the particular characteristics of the subject properties, the proposed variance is required to provide a functional site layout and to avoid any undue hardship for the property owner related to the future sale of the properties.

*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 impacts to the public health, safety, morals, order, convenience, prosperity or general welfare by granting of the requested variance. The placement of the proposed subdivision line will have no adverse impact on public safety or health, as adequate light, air and open space will continue to be supplied. No residential properties are located in the immediate vicinity. No new structures or site improvements are proposed, therefore the granting of this variance will not result in any increases to current

traffic levels. There will be no changes to current on-site vehicle circulation patterns. All points of ingress/egress will be maintained. Excess noise, odor, vibration or glare will not be generated as a result of the relocated lot line.

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

The granting of the requested variance will not have any adverse environmental impacts. The location of the proposed subdivision line will not cause the NJSEA's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be exceeded. Proposed Lots 8.01 and 9.01 will provide 51.18 percent and 24.67 percent open space, respectively, in compliance with the minimum open space requirements of the Light Industrial B zone. Adequate drainage will continue to be provided.

*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. Locations for the proposed subdivision line are limited due to the existing site and building configuration.

The proposed minimum side yard setback of 12.10 feet along the easterly property line of proposed Lot 8.01 is consistent with the minimum side yard setback requirements for other zones which require smaller lot sizes. The subject properties each contain an

existing building, and, therefore, are constrained in providing a conforming location for the proposed subdivision line that could provide the minimum required side yard setbacks.

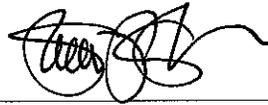
*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

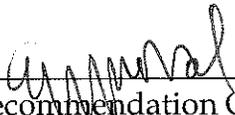
Specific purposes of the District zoning regulations include providing sufficient space in appropriate locations for a variety of uses, and ensuring that such uses are suitably sited and placed in order to relate buildings and uses to each other and to the environment so that the aesthetic and use values are maximized. The proposed easterly side yard setback is consistent with this intent by allowing the site to be utilized in a safe, orderly and efficient manner.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre, whereas a lot area of 0.54 acres is proposed for Lot 8.01.

Based on the record in this matter, the bulk variance application to permit a lot area of 0.54 acres for proposed Lot 8.01, whereas a minimum lot area of one acre is required, is hereby recommended for approval.

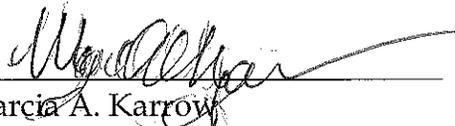
<u>APPROVAL</u>	<u>4.28.15</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

	<u>4/28/15</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. 19:4-5.84(a)3ii, which requires a minimum side yard of 20 feet, whereas a setback of 12.10 feet is proposed along the easterly side yard of Lot 8.01.**

Based on the record in this matter, the bulk variance application to permit a setback of 12.10 feet along the easterly side yard of proposed Lot 8.01, whereas a minimum side yard setback of 20 feet is required, is hereby recommended for approval.

<u>APPROVAL</u>	<u>4.28.15</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

<u>Approval</u>	<u>4/28/15</u>	
Recommendation on Variance Request	Date	Marcia A. Karrow Executive Director