

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
North Bergen MUA/Minor Subdivision
FILE # 14-705**

I. INTRODUCTION

An application for two bulk variances has been filed with the New Jersey Sports and Exposition Authority (NJSEA) by Frank Pestana, Executive Director, North Bergen Municipal Utilities Authority (NBMUA), for the premises identified as Block 452.04, Lot 6.04, in the Township of North Bergen, New Jersey. Said premises are located in the Hackensack Meadowlands District's (District) Public Utilities zone. The bulk variances are sought in connection with the applicant's proposal to subdivide existing Block 452.04, Lot 6.04 into proposed Lots 6.05 and 6.0401. In accordance with N.J.A.C. 19:5-5.3(a)4, the proposed subdivision is classified as a technical major subdivision, as 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. 19:4-5.112(a)1, which provides for maximum lot coverage of 50 percent, whereas proposed Lot 6.0401, which includes the existing NBMUA sewage treatment plant building, proposes 53 percent lot coverage.
2. N.J.A.C. 19:4-5.112(a)3ii, which requires a minimum side yard of 20 feet, whereas a minimum side yard setback of five feet is proposed to the existing structures to remain from the northerly lot line of proposed Lot 6.05.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Jersey Journal newspaper. No written objections were received. A public hearing was held in the Office of the

NJSEA on Tuesday, January 26, 2016. 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 applicant proposes to subdivide the subject 3.29-acre property, owned by the NBMUA and identified as 4300 West Side Avenue, Block 452.04, Lot 6.04, into proposed Lots 6.0401 and 6.05. The area of proposed Lot 6.0401 is 1.69 acres and the area of proposed Lot 6.05 is 1.61 acres.

Properties along West Side Avenue are primarily industrial in nature, and include a number of intermodal facilities due to the presence of the NYS&W freight rail line located to the east of the subject property. This freight rail line forms the District's easterly jurisdictional boundary line. Properties to the north and south are located in the District's Intermodal B zone, and properties to the west include PSE&G right-of-way (ROW) across West Side Avenue, with a large vacant tract of land zoned both Environmental Conservation and Regional Commercial to the west of the ROW.

The subject property is currently improved with structures and equipment associated with the NBMUA's sewerage facilities. Proposed Lot 6.0401 contains a structure formerly housing the NBMUA sewage treatment plant, which was decommissioned in 2010, and proposed Lot 6.05 contains various improvements related to the current day operations of the NBMUA, including a pump station, an electrical building housing pump station controls, and an electrical substation. An existing 483-square-foot lunch building on proposed Lot 6.0401 is proposed to be demolished.

The proposed subdivision is deemed a technical major subdivision, as defined in N.J.A.C. 19:5-3.1(b), as bulk variances are required from provisions of

the Hackensack Meadowlands District zoning regulations at N.J.A.C. 19:4 et seq. Specifically, a minimum side yard setback of five feet is proposed to existing structures on proposed Lot 6.05 from its proposed northerly lot line, whereas a minimum side yard setback of 20 feet is required. Additionally, maximum lot coverage of 50 percent is permitted in the zone, whereas proposed Lot 6.0401, which includes the existing NBMUA treatment plant building, will have lot coverage of 53 percent.

B. Response to the Public Notice

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

III. PUBLIC HEARING (January 26, 2016)

A public hearing was held on Tuesday, January 26, 2016. NJSEA 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; and Mia Petrou, 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	“Boundary Survey, Tax Map Lot 6.04, Block 452.04,” Sheet 1 of 1, prepared by Frank M. Kupinski, P.L.S., Boswell McClave Engineering, dated August 26, 2015, revised through November 23, 2015.

- A-2 "Technical Major Subdivision, Tax Map Lot 6.04, Block 452.04," Sheet 1 of 1, prepared by Frank M. Kupinski, P.L.S., Boswell McClave Engineering, dated August 25, 2015, revised through December 29, 2015.
- A-3 "Site Plan," Sheet 1 of 2, prepared by Jeffrey L. Morris. P.E., Boswell McClave Engineering, dated November 20, 2015, revised through January 11, 2016.
- A-4 "Lighting and Landscape Plan," Sheet 2 of 2, prepared by Jeffrey L. Morris. P.E., Boswell McClave Engineering, dated November 20, 2015, revised through January 11, 2016.
- A-5 Photo exhibit, seven photos, submitted by Jeffrey L. Morris. P.E., Boswell McClave Engineering, undated.
- A-6 "Hackensack Meadowlands District Zoning Map," Sheet 1 of 1, prepared by Jeffrey L. Morris. P.E., Boswell McClave Engineering, dated January 2016.

B. Testimony

Salvatore Alfieri, Esq. of the firm Cleary, Giacobbe, Alfieri, Jacobs, LLC represented the NBMUA at the hearing. The following witness testified in support of the application:

1. Jeffrey Morris, P.E., P.P., Boswell McClave Engineering.

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. RECOMMENDATIONS

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.112(a)1, which provides for maximum lot coverage of 50 percent, whereas proposed Lot 6.0401 proposes 53 percent lot coverage.

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 subject property to be subdivided is located in the Public Utilities zone of the Hackensack Meadowlands District. The subdivision is intended to separate the existing lot into two proposed lots. The NBMUA's utility improvements associated with its existing pump station will be located on proposed Lot 6.05 to the south and an existing vacant structure will be located on proposed Lot 6.0401 to the north. The existing vacant structure was formerly utilized by the NBMUA as a sewage treatment plant, which was decommissioned in 2010. The NBMUA is seeking to divest the land and structure located on proposed Lot 6.0401, as it does not intend to utilize the property in the future. The sewage formerly processed in the treatment plant is currently being pumped to Passaic Valley Sewerage Commission (PVSC) facilities via the pump station and associated improvements to remain on proposed Lot 6.05.

The proposed subdivision line is configured to separate the portion of the site proposed as Lot 6.05, which contains the operational NBMUA pump station improvements, from the vacated portion of the site proposed as Lot 6.0401. The requested variance to exceed the maximum permitted lot coverage is solely the result of the placement of the proposed subdivision line, and no building expansion or additional improvements are proposed that would increase the floor area currently existing on the site. Rather, an existing 483-square-foot lunch building on proposed Lot 6.0401 is to be demolished to maximize the ability of the proposed lot to conform to the lot coverage requirements of the Public Utilities zone.

The existing configuration of the improvements on the property is a unique circumstance that impacts the ability to position a subdivision line that would result in a compliant lot coverage calculation for the two proposed lots. Nonetheless, the location of the proposed subdivision line results in a reasonable division of the property in relation to the existing improvements, circulation, and access points on the site, and the resulting lot coverage of 53 percent on proposed Lot 6.0401 is not excessive.

- 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 increase in the maximum permitted lot coverage will not adversely affect the rights of neighboring property owners or residents. The NBMUA

will continue to own the properties both to the north and to the south of proposed Lot 6.0401. The neighborhood in which the subject property is located is primarily industrial in nature, containing a number of intermodal facilities and waste transfer stations both inside and out of the District. The NYS&W rail line is located to the east adjacent to the property in question, and a PSE&G right-of-way is located to the west across West Side Avenue. No residential properties are located in the immediate vicinity. The character of the neighborhood will not be altered by the proposed subdivision resulting in lot coverage larger than permitted on proposed Lot 6.0401, as there will be no physical expansion to the footprint of the existing building to remain on proposed Lot 6.0401.

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 subject property, along with adjoining Lot 6.03 to the north, are currently owned by the NBMUA and are the only two properties located within the Public Utilities zone in this portion of the Hackensack Meadowlands District along West Side Avenue. The permitted uses in the Public Utilities zone include light and heavy public utility uses and intermodal facilities. Most of the permitted uses in this zone are intended to be operated by a public or quasi-

public entity. The application of the bulk regulation requiring a maximum lot coverage of 50 percent would result in an exceptional practical difficulty as it would require demolition of a 1,900-square-foot portion of the existing building on the site, which is not practicable. The proposed subdivision and resulting lot coverage remain reasonable in the context of the particular existing site 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 from District lot coverage requirements. The physical configuration of structures on the proposed lots will continue as they currently exist, with the exception of the demolition of a 483-square-foot lunch building, which will bring the lot coverage of proposed Lot 6.0401 closer to compliance than would otherwise exist post-subdivision. There will be no detrimental impacts to light, air or open space by the resulting lot coverage in the proposed subdivision.

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

There will be no substantial adverse environmental impacts created by the granting of the requested variance to permit 53 percent lot coverage on proposed Lot 6.0401. As no physical expansions to the

building footprint are proposed, the subdivision will not affect drainage facilities or impact environmentally sensitive areas. The proposed lot coverage of 53 percent on proposed Lot 6.0401 is offset by the significantly smaller lot coverage of seven percent on proposed Lot 6.05 to the south. Furthermore, the requested 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 requested variance to provide a maximum lot coverage of 53 percent on proposed Lot 6.0401, whereas a maximum 50 percent is permitted, represents the minimum deviation from the regulations that will afford relief. There are currently two structures existing on proposed Lot 6.0401, consisting of a 38,662-square-foot decommissioned sewage treatment facility, currently vacant, and a detached 483-square-foot accessory structure utilized as a lunch building. The NBMUA proposes to demolish the lunch building in order to provide the maximum degree of compliance with the lot coverage requirements as can practicably be achieved for Lot 6.0401. Additional opportunities to reduce the proposed lot coverage are not reasonably available.

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

The proposed variance request to exceed the maximum permitted lot coverage will not substantially impair the intent and purpose of the District's lot coverage requirements. The exceedance of the maximum lot coverage is not caused by any physical expansions to any structures on the site. The proposed lot coverage is a result of the placement of the subdivision line, which is optimally positioned to separate the NBMUA's functioning facility improvements from the portion of the site it no longer utilizes. The proposed subdivision is consistent with sound planning practices and will promote the intent and purpose of these regulations by relating the type, design and layout of the proposed subdivision to both the particular site and surrounding environs.

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.112(a)3ii, which requires a minimum side yard of 20 feet, whereas a minimum side yard setback of five feet is proposed to the existing structures to remain from the northerly lot line of proposed Lot 6.05.

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 subject property to be subdivided is located in the Public Utilities zone of the Hackensack Meadowlands District. The subdivision is intended to separate the NBMUA's functioning pump station improvements on proposed Lot 6.05 from the improvements on proposed Lot 6.0401 on the northerly portion of the site, which contains an existing vacant structure formerly utilized by the NBMUA as a sewage treatment plant prior to its decommissioning in 2010. The NBMUA is seeking to divest the land and structure on proposed Lot 6.0401, as it does not intend to utilize the property in the future. The sewage formerly processed in the treatment plant is currently being pumped to Passaic Valley Sewerage Commission (PVSC) facilities via the active pump station and associated improvements to remain on proposed Lot 6.05.

The proposed subdivision line is positioned to separate the portion of the site containing the operational NBMUA pump station improvements on proposed Lot 6.05 from the vacated portion of the site proposed as Lot 6.0401. The requested variance to provide a minimum side yard setback of five feet, whereas 20 feet is required in the Public Utilities zone, is the result of the proposed placement of the subdivision line. The existing location and configuration of the improvements on the property are unique circumstances that impact the ability to position a subdivision line that would result in a compliant side yard setback to existing improvements. Nonetheless, the proposed subdivision line results in a reasonable division of the property in relation to the existing improvements, circulation, and access points on the site.

- 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 proposed subdivision line is centrally located, evenly dividing the property to the extent possible, with a jog in the proposed lot line corresponding with the layout of existing improvements. The NBMUA will continue to own the properties both to the north and to the south of proposed Lot 6.0401. The neighborhood in which the subject property is located is primarily industrial in nature, containing a number of intermodal facilities and waste transfer stations. The NYS&W rail line is located to the east adjacent to the property in question, and a PSE&G right-of-way is located to the west across West Side Avenue. No residential properties are located in the immediate vicinity. The character of the neighborhood will not be altered by the proposed subdivision resulting in a side yard setback of five feet from existing improvements on proposed Lot 6.05 to the proposed subdivision line to the north.

- 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 requires a minimum side yard setback of 20 feet to the proposed northerly property line of Lot 6.05, whereas five feet is proposed from the existing electrical building and substation on the site. A conforming subdivision,

providing a minimum distance of 20 feet between structures and the interior subdivision line, would result in exceptional practical difficulties to the property owner. Such placement would result in the positioning of the subdivision line in the middle of an existing drive aisle, and also would result in parking spaces, allocated for use by the structure to remain on proposed Lot 6.0401, instead being located on proposed Lot 6.05. The proposed subdivision line is optimally positioned to ensure the functionality of the improvements on proposed Lot 6.05 and thus avoid conflicts with existing improvements on the site. A minimum distance of 45 feet would continue to exist between the structures on proposed Lots 6.0401 and 6.05.

Therefore, the strict application of the requirement to provide a minimum 20-foot setback between the existing structures on Lot proposed 6.05 and the proposed subdivision line would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

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. There exists a minimum distance of 45 feet between existing structures on proposed Lot 6.05 and the former treatment plan on proposed Lot 6.0401. 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.

- 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 requested variance is solely related to the subdivision of developed property containing existing improvements. 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.

- 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 proposed subdivision line is positioned to avoid conflicts with existing access driveways and parking spaces. Alternative locations for the placement of the proposed subdivision line are limited due to the configuration of existing structures and site improvements.

The existing structures and utility improvements on the subject are constraints in providing a conforming location for the proposed subdivision line that meets the minimum required side yard setbacks. A conforming subdivision line would bisect the existing site driveway and reassign parking spaces serving the former treatment

plant building to proposed Lot 6.05, which includes the pump station improvements. If the line were drawn thus, the existing on-site circulation would be compromised and the District parking requirements for the existing structure would not be met.

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

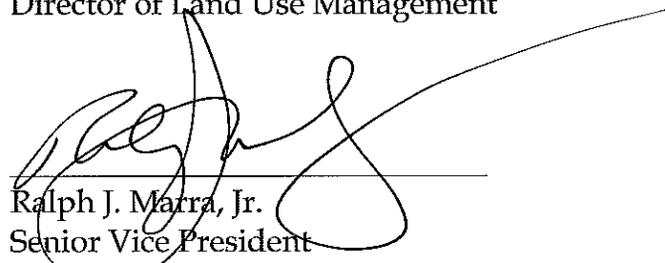
Specific purposes of the District zoning regulations include providing sufficient space in appropriate locations for a variety of uses, and ensuring that such uses are suitably sited and placed in order to relate buildings and uses to each other and to the environment so that the aesthetic and use values are maximized. The proposed side yard setback is consistent with this intent by allowing the site to continue 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. 19:4-5.112(a)1, which provides for maximum lot coverage of 50 percent, whereas proposed Lot 6.0401 proposes 53 percent lot coverage.

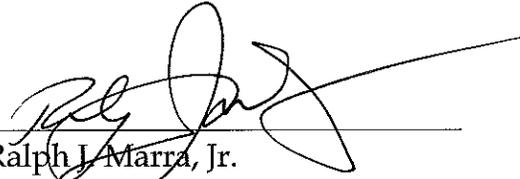
Based on the record in this matter, the bulk variance application to permit a maximum lot coverage of 53 percent for proposed Lot 6.0401, whereas a maximum lot coverage of 50 percent is permitted, is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>3/7/16</u>	
Recommendation on Bulk Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

<u>Approval</u>	<u>3/7/16</u>	
Recommendation on Bulk Variance Request	Date	Ralph J. Marra, Jr. Senior Vice President Legal & Regulatory Affairs

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.112(a)3ii, which requires a minimum side yard of 20 feet, whereas a minimum side yard setback of five feet is proposed to the existing structures to remain from the northerly lot line of proposed Lot 6.05.

Based on the record in this matter, the bulk variance application to permit a minimum setback of five feet along the northerly side yard of proposed Lot 6.05, whereas a minimum side yard setback of 20 feet is required, is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>3/7/16</u>	
Recommendation on Bulk Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management
<u>approved</u>	<u>3/7/16</u>	
Recommendation on Bulk Variance Request	Date	Ralph J. Marra, Jr. Senior Vice President Legal & Regulatory Affairs