

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
Chestnut Ave. Associates/ 240 Chubb New Residential Building**

FILE #11-349

I. INTRODUCTION

An application for one (1) bulk variance has been filed with the New Jersey Meadowlands Commission (NJMC) by J.G. Petrucci, Inc., on behalf of Chestnut Ave. Associates, LLP, for the premises located at 240 Chubb Avenue, Block 231, Lot 5, in the Township of Lyndhurst, New Jersey. Said premises is located in the Commission's Light Industrial A zone. The variance is sought in connection with the applicant's proposal to construct a 192-unit residential development and associated site improvements on the subject property. The proposed development includes the construction of 153 market rate units and 39 affordable units.

Specifically, the applicant is requesting relief as follows:

1. N.J.A.C. 19:4-8.4(a)27, which requires one parking space per unit for units restricted as affordable; and two parking spaces per market rate unit and one visitor space per four market rate units, resulting in a total of 384 parking spaces required for the development. The applicant is proposing to provide one parking space per unit for affordable units; and 1.5 parking spaces per market rate unit and one visitor space per four market rate units, with a total of 307 parking spaces provided for the development.

A public hearing was held in the Office of the Commission on Thursday, September 8, 2011. 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 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 property, Block 231, Lot 5, contains approximately 7.56 acres and is located in the Light Industrial A zone. It is bounded to the north and south by vacant parcels, to the east by Berry's Creek, and to the west by Chubb Avenue. The site is presently unimproved and contains historic fill. The site was previously the subject of a fill surcharge operation in anticipation of future development. A stormwater drainage ditch with an associated 50-foot-wide New Jersey Department of Environmental Protection (NJDEP) stream buffer is present along the southern property line, while a 100-foot-wide waterway buffer and wetlands adjacent to Berry's Creek are located on the east side of the property. The applicant intends to apply to the NJDEP for buffer disturbance approval since there is minor encroachment of the 50-foot wide buffer along the south side of the property. The surrounding area is primarily comprised of commercial and industrial uses. Avalon Lyndhurst, a residential development, is located further north of the subject property.

On October 26, 2011, by Resolution 11-41, the NJMC Board of Commissioners deemed the subject property to be suitable for residential development, as per the criteria listed in the "Interim Policies Governing Affordable Housing Development in the Meadowlands District," effective July 24, 2008, revised through July 27, 2011. As a result, the applicant is proposing to construct a multi-story 192-unit residential development, inclusive of 39 affordable units, on the subject premises. The proposed building consists of three residential levels with a mix of one, two and three bedroom units over covered parking, as well as surface parking spaces. The market rate units include 84 one-bedroom

units and 69 two-bedroom units, while the affordable units include seven one-bedroom units, 24 two-bedroom units and eight three-bedroom units.

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 (September 8, 2011)

A public hearing was held on Thursday, September 8, 2011. NJMC staff in attendance were Sara Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mark Skerbetz, P.P., AICP, Senior Planner; and Fawzia Shapiro, 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	"Aerial Exhibit," prepared by Bohler Engineering, dated August 30, 2011.
A-2	"As-Built Grading Plan," prepared by Fisk Associates, P.A., dated January 18, 2008 and revised through November 17, 2010.
A-3	"Site Plan," prepared by Bohler Engineering, dated June 1, 2011 and revised through August 29, 2011.
A-4	"A1 Ground Level Plan," prepared by Minno & Wasko, dated June 16, 2011 and revised through September 8, 2011.
A-5	"A2 2 ND - 4 TH Level Plan," prepared by Minno & Wasko, dated June 16, 2011 and revised through September 8, 2011.
A-6	"A4 Perspective," prepared by Minno & Wasko, dated July 25, 2011.

A-7 "Planning Report Parking Reduction Bulk Variance," prepared by Mianecki Consulting Engineers, dated September 8, 2011.

B. Testimony

Thomas J. O'Connor, Esq., of Waters, McPherson, McNeill, P.C., represented J.G. Petrucci, Inc., at the hearing. The following witnesses testified in support of the application:

1. David Wisotsky, P.E., Bohler Engineering;
2. David Minno, AIA, Minno & Wasko;
3. Monica Mianecki, P.E., P.P., Mianecki Consulting Engineers; and
4. Gary Dean, P.E., Dolan & Dean Consulting Engineers.

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

Nicholas Uliano, a resident of Lyndhurst Township, provided oral comments at the public hearing. These comments may be found in the corresponding transcript of the public hearing dated September 8, 2011.

IV. RECOMMENDATION

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.4(a)27, which requires one parking space per unit for units restricted as affordable; and two parking spaces per market rate unit and one visitor space per four market rate units, resulting in a total of 384 parking spaces required for the development. The applicant is proposing to provide one parking space per unit for affordable units; and 1.5 parking spaces per market rate unit and one**

visitor space per four market rate units, with a total of 307 parking spaces provided for the development.

The NJMC Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to permit 307 parking spaces for a residential development, whereas 384 spaces are required, arises from conditions that are unique to the site. The regulation at N.J.A.C. 19:4-8.4(a)27 requires one parking space per unit for units restricted as affordable, and two parking spaces per unit and one visitor space per four units for all other units for multiple family dwellings.

The subject premises contains approximately 7.56 acres and has frontage on Chubb Avenue. The property is undeveloped and contains historic fill. The site was surcharged previously for development purposes and the limit of surcharge fill material delineates the uplands, or developable portion of the property.

Berry's Creek is located along the eastern property line. A man-made drainage ditch conveying runoff to Berry's Creek is located along the southern property line, which is part of an associated 50-foot-wide stream buffer required by the NJDEP. The applicant will apply for an NJDEP permit to allow minor encroachment into the 50-foot wide buffer. The site is further encumbered by wetlands located on the

eastern portion of the property. The delineated wetlands boundary line and the 50-foot-wide stream buffer encompass approximately 3.2 acres of the 7.56 acre parcel, placing constraints on the layout of the site and creating significantly less developable area on the lot than other lots in the same zone. This results in less available area for development and less flexibility in the placement of site improvements, such as parking.

A parcel zoned for development, but containing environmental constraints that render nearly 42 percent of the property as unusable for development, is not a common scenario in the District. This condition was not created by any action of the property owner or 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 to construct 307 parking spaces, whereas 384 spaces are required, will not adversely affect the rights of neighboring property owners or residents.

The properties located to the immediate north and south of the subject site are vacant parcels that contain mostly wetlands and very little uplands. These properties will most likely remain undeveloped and will not be impacted by the proposed residential development. Existing industrial and commercial businesses that are located in the vicinity of the subject site will not be negatively impacted by the residential development or the proposed reduction of required parking spaces on the site. The project traffic engineer

testified that the number of parking spaces proposed is sufficient to support the residential use since more than half of the market rate units are one-bedroom units, thereby reducing the probability of having multiple vehicles per household. Furthermore, parking controls will be in place, and on-site parking will be monitored by the building management office on a full time basis. Per testimony provided, there is no expectation that parking will overflow onto adjacent properties or Chubb Avenue.

There are no improvements planned on the subject premises that could negatively impact the operations of neighboring properties, which can continue to function as they do under present conditions. In addition, residents of Avalon Lyndhurst, a residential development located approximately 1,700 feet north of the subject site, will not be negatively impacted by the proposed improvements since the proposed residential use is a less intense use than other industrial or commercial uses that could be placed on the site. Therefore, the granting of the variance will not adversely affect the rights of neighboring property owners or residents.

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

The strict application of the minimum required parking regulations would result in practical difficulties and undue hardship upon the applicant. Nearly half of the subject lot is encumbered with

wetland areas and stream buffers, creating practical difficulties in accommodating required parking.

The applicant intends to notify prospective tenants that one parking space will be assigned per unit and that additional parking spaces will be available at an additional cost to the tenant. Visitor parking will be accommodated in the surface parking lots in front of the building in the western portion of the site. The applicant's engineer testified that all on-site parking will be supervised and monitored by the building management on a full time basis.

The strict application of the regulations would obligate the applicant to construct additional parking on a site with significantly reduced developable area due to existing environmental constraints. This may result in under-utilized parking, since the project proposes that 55 percent of the market rate units will be one-bedroom units, thereby reducing the probability of having multiple vehicles per household.

Due to environmental constraints, the proposed project does not maximize the development potential of the lot, providing for 41 percent lot coverage, whereas a maximum of 60 percent is permitted, and a 0.67 FAR, whereas a maximum of 2.5 FAR is permitted. Finally, the proposal provides for 59 percent open space while 15 percent open space is required. This project does not represent overdevelopment of the site, but rather, that there are significant lot constraints that present practical difficulties in development of the property that result in undue hardship to the applicant.

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.

The granting of the requested variance to construct a reduced number of parking spaces 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 applicant's engineer has testified that the proposed parking ratio is adequate for a residential development where 55 percent of the market rate units are one-bedroom units, thereby reducing the probability of having multiple vehicles per household. The applicant's professionals testified that building management will provide full time supervision of all on-site parking to ensure there is adequate parking available for visitors and tenants. Per testimony provided, there is no expectation that parking will overflow onto Chubb Avenue and other adjacent lots, or that internal or off-site circulation will be negatively impacted in any way. Therefore, the public health, safety, morals, order, convenience, prosperity, and general welfare will not be compromised.

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

The granting of the requested variance to construct fewer parking spaces than required will not cause the NJMC's environmental performance standards for noise, glare, vibrations, airborne

emissions, or hazardous materials to be exceeded, and will not affect the ongoing site remediation.

The granting of the requested variance to provide 77 fewer parking spaces than required also minimizes the amount of impervious cover on the site that would otherwise be necessary to accommodate required parking. This proposed variance, therefore, minimizes potential impacts on the environment and surrounding wetland areas by maximizing the amount of open space on the site. All drainage and water quality requirements will be met. Therefore, no substantial adverse environmental impact is anticipated to result from the proposed variance.

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

The regulation at N.J.A.C. 19:4-8.4(a)²⁷ requires one parking space per unit for units restricted as affordable, two parking spaces per market rate unit and one visitor space per four market rate units for multiple family dwellings. This results in a minimum of 384 parking spaces required for the development, whereas the applicant is proposing to construct 307 parking spaces.

The applicant's professionals testified that the proposed overall parking ratio of 1.6 spaces per unit, based upon 307 spaces for a 192-unit residential development, is adequate considering that the development contains 91 one-bedroom units. The applicant's professionals also testified that there will be parking controls in place and full time supervision of parking on the premises to

ensure that adequate parking is available for visitors and tenants, with no parking overflow onto Chubb Avenue or adjacent properties.

The project traffic engineer testified that, based on the 2010 Census data, just under 25 percent of the Lyndhurst Township work force do not depend on automobiles for their primary commuting needs, relying instead on other alternatives such as mass transit and carpooling. This Office agrees that mass transit opportunities exist in the vicinity; however, these opportunities are not directly available at this specific site. Various surrounding business and residential uses utilize the existing Meadowlink Lyndhurst Shuttle Service to provide commuters a connection with mass transit train stations and the New York City-bound NJ Transit bus stop at the intersection of Polito and Rutherford Avenues. There are also a few local bus routes that drop off employees who work within the surrounding light industrial center. In order to accommodate residents of a facility with limited parking space availability, the applicant will need to provide an ongoing direct connection to mass transit opportunities. The applicant will need to institute their own shuttle service or coordinate with Meadowlink for the use of the Lyndhurst Shuttle Service.

Public transportation exists in the vicinity of the development and the demographics of the municipality indicate a decreased dependence on automobiles for commuting needs. The applicant's professionals stated that the construction of additional parking may result in underutilized parking spaces. In addition, potential locations for additional onsite parking are severely limited due to

site constraints. As lot coverage and floor area are not maximized at the site, and more open space than the minimum required is provided, the variance represents the minimum deviation from the regulations that will afford relief.

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

Granting the requested variance to permit 307 parking spaces, whereas 384 spaces are required, will not substantially impair the intent and purpose of the NJMC's zoning regulations.

In accordance with N.J.A.C. 19:4-5.72, The Light Industrial A zone is "designed to accommodate on large lots a wide range of industrial, distribution, commercial and business uses that generate a minimum of detrimental environmental effects." In accordance with the "Interim Policies Governing Affordable Housing Development in the Meadowlands District," the subject site has been deemed suitable for residential development by the NJMC Board of Commissioners.

The project provides for the orderly and comprehensive development of the subject site, as the project does not propose wetland disturbance and includes very minimal encroachment of a stream buffer related to a man-made ditch. The proposed variance to provide fewer parking spaces than required, but sufficient parking spaces to serve the proposed development, will result in

the preservation of the critical wetland areas onsite and will ensure that there is no further encroachment into wetlands or stream buffers. The project will also provide for the remediation of a site containing environmentally-sensitive areas.

The intent of the NJMC's parking requirements is to estimate parking demand based on a particular use, in anticipation of the needs of occupants, employees, or patrons of such uses. To that end, sufficient parking needs to be provided for the residents of the proposed development and for their visitors. Testimony has been provided indicating that there will be sufficient parking for tenants based on the demographics of the municipality, mass transit opportunities, and assurances that building management will control the number of parking spaces allocated per residential unit and their assignment. In order to ensure sufficient parking for the residential development, the applicant should institute such controls in accordance with a parking management plan.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.4(a)27, which requires one parking space per unit for units restricted as affordable; and two parking spaces per market rate unit and one visitor space per four market rate units, resulting in a total of 384 parking spaces required for the development. The applicant is proposing to provide one parking space per unit for affordable units; and 1.5 parking spaces per market rate unit and one visitor space per four market rate units, with a total of 307 parking spaces provided for the development.

Based on the record in this matter, the bulk variance application to permit 1.5 parking spaces per market rate unit, whereas two parking spaces per market rate unit are required, is hereby recommended for approval with the following conditions:

1. The residential development shall include a minimum of 84 one-bedroom market rate units and a maximum of 69 two-bedroom market rate units.
2. The applicant shall submit a parking management plan for the residential development that addresses the methodology for the assignment and control of primary parking spaces and additional parking spaces to individual units, as well as the allocation of visitor parking spaces. The plan shall also address how on-site parking will be monitored to ensure adequate parking is available for visitors and tenants. The plan shall be submitted to the NJMC for review and approval prior to the issuance of a zoning certificate for the development.
3. To justify their requested variance for a reduction in the NJMC's residential parking requirements, the applicant contends that they are relying on the Lyndhurst Shuttle Service to provide access to mass transit opportunities in the area. In order to accommodate residents of a facility

with limited parking space availability, the applicant shall provide an ongoing direct connection to mass transit opportunities, including local commuter rail stations, as well as the NJ Transit bus stop at the intersection of Polito and Rutherford Avenues. The applicant shall either institute their own shuttle service or coordinate with Meadowlink for the use of the Lyndhurst Shuttle Service, including the applicant's fair share contribution towards same. The applicant shall provide the NJMC with a plan indicating how they intend to provide an ongoing shuttle service prior to the issuance of any occupancy approvals.

CONDITIONAL APPROVAL 11-15-11
Recommendation On Date
Variance Request



Sara J. Sundell, P.E., P.P.
Director of Land Use Management

Conditional approval 11/15/11
Recommendation On Date
Variance Request



Marcia A. Karrow
Executive Director