

**RECOMMENDATION ON THE VARIANCE APPLICATION OF**

**DDG Realty/105 Amor - Site Improvement & Variance**

**File #12-305**

**I. INTRODUCTION**

An application for one bulk variance has been filed with the New Jersey Meadowlands Commission (NJMC) by Thomas H. Bruinooge, Esq., of the firm Bruinooge & Associates, on behalf of DDG Realty, LLC, for the premises identified as 105 Amor Avenue, Block 123, Lot 11, in the Borough of Carlstadt, Bergen County, New Jersey. Said premises is located in the Commission's Light Industrial B zone. The variance is sought in connection with the applicant's proposal to construct one loading area on the subject premises in the front yard facing Amor Avenue. Specifically, the applicant is requesting variance relief from the following:

1. N.J.A.C. 19:4-8.3(b)1, which does not permit loading in any front yard. One loading area is proposed in the front yard facing Amor Avenue.

Notice was given to the public and all interested parties as required by law. Public notices were published in The Record newspaper. One written comment was received by the Division of Land Use Management during the public comment period from Jane Fontana, Borough of Carlstadt Business Administrator. 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 property in question consists of approximately 2.89 acres. The site has an L-shaped configuration, having a rear lot line significantly longer than the front lot line. The site fronts Amor Avenue to the north and is bordered by the East Riser Ditch to the east and south. There are no easements on the subject property. Properties within the immediate vicinity are developed with a mix of light industrial and warehouse/distribution uses.

The subject property is currently developed with a one-story block warehouse/distribution facility building and associated parking. Direct access to the site is provided by an existing driveway located along Amor Avenue. Seven existing non-conforming size tailboard/roll-up loading doors are located on the northerly, easterly, and southerly sides of the building, all of which are accessed from the driveway along Amor Avenue.

The applicant is proposing to construct one loading door adjacent to an existing loading door on the northerly side of the building in the front yard facing Amor Avenue. The building footprint will be reduced adjacent to the proposed loading area by approximately 200 square feet, to allow the proposed 12-foot by 60-foot loading space to be located completely within the site and permitting the existing non-conforming 12-foot by 54-foot loading space to be converted to a conforming 12-foot by 60-foot loading space. Landscaping will be provided to screen the proposed loading area from adjacent properties. The applicant is in the process of obtaining an easement from the Borough of Carlstadt to construct a curb ramp for the sidewalk within the Amor Avenue public right of way to provide barrier-free access to the office portion of the building. Vehicles will enter the site from the existing driveway along Amor Avenue to access the proposed loading door. No vehicle maneuvering will occur on neighboring properties. Fifteen existing parking spaces located within the required front yard will be removed to provide increased vehicle maneuverability within the site, eliminating a pre-

existing nonconforming condition. Three proposed parking spaces will be striped at the southwesterly corner of the subject property. A total of 63 parking spaces will be provided on site, whereas 62 parking spaces are required. One van-accessible barrier-free parking space will be installed.

**B. Response to the Public Notice**

One written comment was received during the public comment period from Jane Fontana, Borough of Carlstadt Business Administrator.

**III. PUBLIC HEARING (September 27, 2012)**

A public hearing was held on Tuesday, September 27, 2012. 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; Mia Petrou, P.P., AICP, Senior Planner; and Ronald Seelogy, P.E., 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	"Site & Part Plans," Drawing Number SP-100, prepared by the Bilow Garrett Group, dated April 3, 2012, revised through July 31, 2012.
A-2	"Details & Schedules," Drawing Number SP-101, prepared by the Bilow Garrett Group, dated June 15, 2012, revised July 31, 2012.
A-3	"Truck Maneuvering," Drawing Number SK-100, prepared by the Bilow Garrett Group, dated September 19, 2012.

<u>Number</u>	<u>Description</u>
A-4	"Truck Maneuvering," Drawing Number SK-101, prepared by the Bilow Garrett Group, dated September 19, 2012.
A-5	"Parking Stall Detail," Drawing Number SK-200, prepared by the Bilow Garrett Group, dated September 26, 2012.
A-6	Untitled aerial photo of site and surrounding area, prepared by the Bilow Garrett Group, undated.
A-7	Photos of various nearby sites, prepared by the Bilow Garrett Group, undated.

### **B. Testimony**

The applicant was represented at the hearing by Thomas H. Bruinooge, Esq., of the firm Bruinooge & Associates. The following four witnesses testified in support of the application:

1. Jonathon Loew, Design Display Group;
2. David Bilow, AIA, Bilow Garrett Group;
3. Elizabeth Dolan, P.E.; and
4. Anthony Garrett, AIA, P.P., Bilow Garrett Group.

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.

## **IV. RECOMMENDATION**

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.3(b)1, which does not permit loading in any front yard. One loading area is proposed in the front yard facing Amor Avenue.**

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 subject property is irregularly-shaped, in a manner that is not ordinarily found in the Light Industrial B (LI-B) zone. Specifically, the property is L-shaped with an existing front lot line measuring approximately 241 linear feet, whereas the rear lot line measures approximately 429 linear feet. The unique shape of the property was the result of a subdivision perfected by a previous owner in 1974. The site contains frontage along Amor Avenue to the north and is bordered to the east and south by the East Riser Ditch. The property is currently developed with a 64,488 square-foot warehouse/distribution facility that is centrally located on the site. The subject property contains some pre-existing nonconforming conditions related to the size and location of the existing building. The existing building occupies 51 percent of the site, whereas a maximum lot coverage of 50 percent is permitted in the LI-B zone. A side yard setback of 10 feet is provided along the westerly lot lines, whereas a minimum side yard setback of 20 feet is required. Also, the site is configured such that existing loading is provided in the front yard. These pre-existing non-conforming conditions affect the development of the property in question.

NJMC zoning regulations require that loading doors and facilities be located in rear and side yards. However, the configuration of

the existing building on the site limits the provision of new loading areas with adequate and appropriate building access and vehicle circulation that would be in conformance with the regulations.

One new loading door is proposed to be constructed adjacent to an existing loading door in the front yard facing Amor Avenue. Although the property identified 110 Amor Avenue (Block 123, Lot 25) has front yard loading, this is not a condition ordinarily present in the immediate vicinity. Six additional existing loading doors are located on the easterly and southerly sides of the building.

Possible locations for conforming loading areas are limited to the easterly and westerly side yards, and the southerly rear yard. However, the provision of new loading spaces in the easterly side yard or southerly rear yard would cause site circulation conflicts with adjacent vehicle parking areas, and create the need for the construction of additional paved areas. Due to the siting of the existing building and adjacent parking areas, there is no possibility to provide a conforming loading space with adequate maneuvering area on the east or south sides of the subject property. Possible expansion of the paved vehicular use area to the east and south is restricted by the East Riser Ditch and would lead to a sizeable decrease in the amount of open space provided.

Property cannot be acquired from 99 Amor Avenue (Block 123, Lot 12) to the west since the existing structure on this lot is only 74 feet from the common property line, which is not wide enough to provide two 60-foot long loading spaces and a minimum 24-foot wide drive aisle that is required for suitable two-way access to and from Amor Avenue. In addition, this would not be feasible as the

area along the common lot line would have to be re-profiled to address an abrupt change in grade between the two properties. These pre-existing, non-conforming conditions were not created by any action of the applicant or property owner.

- 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 property is located is primarily industrial in nature. There are no residences located nearby. Vehicles will continue to enter the site from the existing driveway on Amor Avenue to utilize the proposed loading door. All loading operations will occur on-site and will not require maneuvering within neighboring properties to access the proposed loading area. The new loading door will reduce truck queuing within the Amor Avenue right of way.

The proposed improvements will not create any negative visual impacts to neighboring properties or impede their ability to function as intended. All properties within the immediate vicinity of the site are already developed. The new loading area will be screened from 99 Amor Avenue and 75 Amor Avenue (Block 123, Lot 1) by evergreen landscaping. The existing loading areas for 100 Amor Avenue (Block 123, Lot 26), which are located directly across Amor Avenue from the proposed loading area, are situated on the east side of the building and will not be affected.

*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 that prohibit front yard loading will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. In balancing the requirements of the LI-B zone with the particular characteristics of the property, the proposed variance is required to ensure a functional warehouse building and parking layout. The proposed loading door will be constructed adjacent to an existing loading area, which represents a consolidated approach to the site's layout.

Five other loading doors are located on the easterly and southerly sides of the building. Due to the current building configuration and site layout, these existing loading areas are only accessible to vans and small box trucks. NJMC regulations require that three 12-foot by 60-foot loading spaces be provided for a building of this size. Testimony was provided that the applicant needs the additional loading door to accommodate their expanding business operations. By reducing the building footprint adjacent to the proposed loading area by approximately 200 square feet, thus setting the loading doors back an additional six feet from the street, the existing 54-foot long loading space in the front yard can be increased to 60 feet. Two 12-foot by 60-foot loading spaces will be provided within the site, thereby reducing the existing degree of nonconformity.

Alternative loading layouts are limited. Constructing the loading areas along the easterly or southerly sides of the building would create site circulation conflicts with adjacent vehicle parking areas. In addition, the installation of additional impervious surface would be required, which is not possible due to the close proximity of the East Riser Ditch. Likewise, constructing the proposed loading area on the west side of the subject property would require an easement from the owner of Lot 12; however, it is not feasible because of an abrupt change in grade with Lot 12. Therefore, the strict application of zoning regulations results in practical difficulties in the functionality of the subject property.

*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 the granting of the requested variance. The placement of the loading area within the front yard facing Amor Avenue, as proposed, will have no adverse impact on public safety or health as adequate light, air, and open space will continue to be supplied. A van-accessible parking space will be added at the rear of the site, and a curb ramp to the sidewalk will be constructed in the Amor Avenue right of way to provide barrier-free access to the building.

The location of the proposed loading area permits vehicles to safely maneuver both on and off the site. Direct access to the site is maintained from the existing driveway on Amor Avenue. Turning

templates indicate that truck movements will not conflict with vehicles parked in the Amor Avenue right of way. In addition, excess noise, odor, vibration, or glare will not be generated as a result of the proposed loading area. The new loading area will decrease the number of trucks queuing in Amor Avenue, reducing engine idling. Testimony was provided that new wall-mounted light fixtures proposed to be installed on the northerly building façade above the loading doors will be shielded and positioned to prevent glare from becoming a hazard or nuisance on site users, adjacent properties, and the traveling public. It is anticipated that the number of vehicle trips generated by the proposed loading area will not cause significant changes to current traffic patterns.

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

The granting of the requested variance will not have any adverse environmental impacts. No additional paved surfaces have been proposed. Landscaping will be provided on the easterly and westerly sides of the loading areas facing Amor Avenue, increasing the amount of open space provided on site to 22.32 percent. No environmentally sensitive areas, such as wetlands or stormwater facilities, will be disturbed. New light fixtures will be shielded and positioned to prevent glare from becoming a hazard or nuisance on site users, adjacent properties, and the traveling public. The new loading area will decrease the amount of trucks queuing in Amor Avenue, reducing engine idling. Therefore, the requested variance to locate the proposed loading area within the front yard facing Amor Avenue will not cause the NJMC'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 represents the minimum deviation from the regulations that will afford relief. The applicant provided testimony that the additional loading door is required to accommodate business operations in a structure of this size. Potential locations to provide an alternative loading area outside of the front yard facing Amor Avenue are limited due to building configuration and existing site layout. The proposed loading area has been situated to ensure safe and efficient operations of the warehouse/distribution facility, necessitating their location facing Amor Avenue.

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

The proposed loading area facing Amor Avenue will not substantially impair the intent and purpose of these regulations. The intent and purpose of front yard loading regulations are rooted in the promotion of public safety and aesthetics. Although this proposal locates a loading area in the front yard, public safety is not adversely impacted. All maneuvering to access the loading area will not impede on-site or off-site circulation. The proposed loading area will not be a significant detriment to area aesthetics, as the proposed loading door is to be located within an existing front yard loading area.

The placement of the proposed loading area within the front yard at this particular location will provide appropriate and functional access for vehicles, including trucks and emergency equipment. This proposal will increase the setback of the existing building from Amor Avenue by six feet, creating two 12-foot by 60-foot loading spaces that conform with NJMC regulations. The site will, therefore, be utilized in a safe and orderly manner.

IV. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.3(b)1, which does not permit loading in any front yard. One loading area is proposed in the front yard facing Amor Avenue.

Based on the record in this matter, the bulk variance application to construct one loading area in the front yard facing Amor Avenue is hereby recommended for approval.

APPROVAL  
RECOMMENDATION ON  
VARIANCE REQUEST

11-7-12  
Date

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

APPROVAL  
RECOMMENDATION ON  
VARIANCE REQUEST

11-8-12  
Date

  
Marcia A. Karrow  
Executive Director