

## RECOMMENDATION ON THE VARIANCE APPLICATION OF

### Mack Ind./Triangle Distribution - Bulk Variance

File #12-034

#### I. INTRODUCTION

An application for one bulk variance has been filed with the New Jersey Meadowlands Commission (NJMC) by Paul Jerkovich, on behalf of M-Industries, LLC, for the premises identified 7373 Westside Avenue, Block 453.05, Lots 4 and 7, in North Bergen, New Jersey. Said premises are located in the Commission's Light Industrial A zone. The bulk variance is sought in connection with the applicant's proposal to construct 24 loading areas on the subject property in the front yard facing the Public Service Electric and Gas (PSE&G) right-of-way in the vicinity of 74<sup>th</sup> and 75<sup>th</sup> Streets, which are private roads accessed from West Side 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. A total of 24 loading areas are proposed in the front yard facing the PSE&G right-of-way.

Notice was given to the public and all interested parties as required by law. Public notices were published in The Jersey Journal newspaper. No written comments regarding this application were received by the Division of Land Use Management during the public comment period. 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 two parcels, Lots 4 and 7, within Block 453.05, totaling approximately 34.36 acres, which are joined as a zoning lot of record. Lot 7 is a large, triangularly-shaped parcel consisting of 30.7 acres in area. It is currently improved with a 715,257-square-foot warehouse and distribution facility, with parking located along the building perimeter and in the easterly portion of the site. The majority of the building's existing loading areas are located in the northerly and southerly portions of the site. Lot 7 contains frontage on the PSE&G right-of-way in the vicinity of 74<sup>th</sup> and 75<sup>th</sup> Streets at its northeasterly property boundary, and also contains frontage, but not access, along the New Jersey Turnpike's eastern spur to the west.

Lot 4 is a paved lot, rectangular in shape, totaling 3.69 acres in area. This property contains frontage on 71<sup>st</sup> Street at its southerly property line and access to adjacent Lot 7 via a driveway at its northerly boundary. The property is used for the parking of trailers associated with the warehouse and distribution activities of the tenants occupying the building on Lot 7.

Properties within the immediate vicinity are developed primarily with a mix of warehouse/distribution and light industrial uses. The adjacent PSE&G right-of-way is improved with electric transmission lines and towers.

The applicant is proposing to install 24 loading doors along the easterly face of the building on Lot 7, as part of improvements to the property that include the conversion of approximately 64,000 square feet of office space to warehouse space, a 1,641-square-foot warehouse addition, and parking area site improvements.

### B. Response to the Public Notice

No written comments or objections were received during the public comment period.

### III. PUBLIC HEARING (December 20, 2012)

A public hearing was held on Thursday, December 20, 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; 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	Aerial photo.
A-2	"Overall Floor Plan," Dwg. A-1, prepared by Kwest Professional Services, dated 04/03/2012, revised through 07/07/2012.
A-3	"Existing Site Plan," Dwg. SP-1, prepared by Kwest Professional Services, dated 04/03/2012, revised through 07/07/2012.
A-4	"Proposed Site Plan & Details," Dwg. SP-2, prepared by Kwest Professional Services, dated 04/03/2012, revised through 11/26/2012.

#### B. Testimony

The applicant was represented at the hearing by William C. Sullivan, Esq., of Scarinci & Hollenbeck. The following two witnesses testified in support of the application:

1. Trevor Flowers, P.E., Kwest Professional Services; and
2. Jeffrey Carr, P.P., Lindstrom, Diessner & Carr

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. Twenty-four loading areas are proposed in the front yard facing the PSE&G right-of-way in the vicinity of 74<sup>th</sup> and 75<sup>th</sup> Streets.**

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 consists of two lots, Lot 4 and Lot 7, joined together as a zoning lot of record. Whereas Lot 4, a paved lot used for trailer parking, is rectangular in configuration, Lot 7 is an irregularly-shaped triangular parcel. The property's triangular configuration is due to the alignment of the adjacent 150-foot-wide PSE&G right-of-way, containing electric transmission lines and towers, which traverses the property's northeasterly boundary line. This boundary line is the subject property's front lot line, as it borders a public right-of-way. The New Jersey Turnpike right-of-way is located along the property's western boundary, which is also classified as a front yard. West Side Avenue, the public road

most proximate to the subject property's easterly front lot line, is accessed via 74<sup>th</sup> and 75<sup>th</sup> Streets, private roads which appear on the Township of North Bergen tax maps as access easements across the PSE&G right-of-way.

Although many properties along the western side of West Side Avenue are affected by the presence of the PSE&G right-of-way situated between them and West Side Avenue, the subject property is not similarly located in relation to that right-of-way. The majority of the other properties along West Side Avenue have their easterly boundary, i.e. their front lot line, parallel to the PSE&G right-of-way and West Side Avenue. In this instance, the PSE&G right-of-way forks sharply to the northwest, resulting in a front lot line that does not parallel West Side Avenue. At the point that the PSE&G right-of-way forks to the northwest at Lot 7, there are several properties situated between the PSE&G right-of way and West Side Avenue. This configuration results in a front lot line on Lot 7 that exceeds 1,700 feet in length, which technically functions as a side yard. The properties on the opposite side of the PSE&G right-of-way to the northeast, although also containing angular southwesterly lot lines, contain direct access onto a public road that leads to West Side Avenue, which the subject property does not contain.

Finally, whereas most of the buildings in the area are generally rectangular in shape, the faces along the east side of the subject building are staggered due to the irregular shape of the property. These are conditions uniquely affecting this property.

- ii. The granting of the 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. The right-of-way that results in the classification of the northeasterly portion of the site as a front yard is a PSE&G right-of-way that accommodates electric transmission towers, which is not accessible by the general public. The proposed loading area will be located at a distance of over 765 feet from West Side Avenue, the right-of-way traveled by the general public. Due to this distance, the loading activities on the site will not be readily visible by the traveling public or occupants of neighboring properties. Consequently, the impact of the proposed loading areas on neighborhood aesthetics will not be significant. Therefore, the granting of the requested 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 regulations that prohibit front yard loading will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

NJMC zoning regulations require that loading areas be located in rear or 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.

The bulk of the building is concentrated at the widest portion of the lot in the western portion of the site. Existing loading areas are present along the buildings northerly and southerly elevations. The applicant is in the process of converting approximately 64,000 square feet of office space, which had been vacant for nine years, into warehouse and distribution space in the easternmost portion of the building. The area of this conversion cannot be feasibly served by the existing loading areas in the northerly and southerly side yards due to the building's internal configuration.

In balancing the requirements of the Light Industrial A zone with the particular characteristics of the property, the proposed variance is required to provide a functional building layout.

*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 areas within the front yard facing the PSE&G right-of-way, as proposed, will have no adverse impact on public safety or health, and adequate light, air, and open space will continue to be supplied.

Other improvements proposed as part of this application include the relocation of parking spaces for passenger vehicles from Lot 7 to the northerly portion of Lot 4, which will provide for less travel distance for employees and visitors to the building, and result in

the minimization of conflicts between pedestrians and vehicles on the property. Site lighting will also be provided in the easterly portion of the site. These improvements promote the public safety and more efficient circulation patterns on the site.

*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 environmentally sensitive areas, such as wetlands or stormwater facilities, will be disturbed. The required amount of open space will be provided. The requested variance to locate the proposed loading areas within the front yard facing the PSE&G right-of-way 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. Potential locations to provide alternative loading areas outside of the easterly front yard facing the PSE&G right-of-way are limited due to the existing site layout and building configuration. The location of the existing loading areas in the northerly and southerly portions of the site are not reasonably accessible for use by the new warehouse space in the easterly portion of the building due to the building's internal layout. The proposed loading areas have been situated to enable the warehouse and distribution facility to function in a feasible manner.

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

The proposed loading areas facing the PSE&G right-of-way 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.

The northeasterly property line is classified as a front lot line due to its location along a public utility right-of-way, and not a public road. Although this proposal locates loading areas in the front yard, public safety and aesthetics are not adversely impacted due to the distance of these loading areas of over 700 feet from a public road.

On-site circulation will function safely and efficiently. All truck maneuvering will occur on site, and in an improved manner due to applicant's reconfiguration of the parking areas on the site resulting in the separation of truck traffic from passenger vehicles. The site will, therefore, be utilized in a safe and orderly manner.

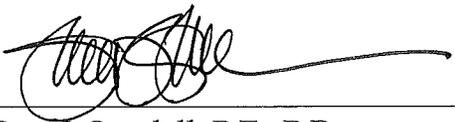
IV. SUMMARY OF CONCLUSIONS

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. Twenty-four loading areas are proposed in the front yard facing the PSE&G right-of-way in the vicinity of 74<sup>th</sup> & 75<sup>th</sup> Streets.

Based on the record in this matter, the bulk variance application to construct a loading area containing a maximum of 24 loading doors in the front yard facing the PSE&G right-of-way is hereby recommended for approval.

APPROVAL  
RECOMMENDATION ON  
VARIANCE REQUEST

2-6-13  
Date

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

Approval  
RECOMMENDATION ON  
VARIANCE REQUEST

2/6/13  
Date

  
Marcia A. Karrow  
Executive Director