

RECOMMENDATION ON THE VARIANCE APPLICATION OF

Hartz/Bergen Ave. - Major Subdivision

FILE # 17-097

I. INTRODUCTION

An application for six bulk variances has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by Hartz Kearny, LLC, for the premises located along Bergen Avenue, identified as Block 286, Lot 4, in the Town of Kearny, New Jersey. The subject property is located within the Light Industrial Center of the Kearny Area Redevelopment Area. The variances are sought in connection with the applicant's proposed major subdivision of existing Lot 4 into five lots, identified as proposed Lots 4.02, 4.03, 4.04, 4.05 and 4.06.

Specifically, the applicant is requesting relief from the following:

1. N.J.A.C. 19:4-3.16, which requires that every principal building shall be built upon a lot with access to an improved street. Four individual bulk variances are requested from this regulation for proposed Lots 4.02, 4.03, 4.04, and 4.05, which do not have access to an improved street, and are proposed to be accessed as follows:
 - a) Proposed Lot 4.02 is proposed to be accessed from Bergen Avenue by an access easement across proposed Lot 4.06, and by unrecorded ground leases through proposed Lots 4.04 and 4.03;
 - b) Proposed Lot 4.03 is proposed to be accessed from Bergen Avenue by an access easement across proposed Lot 4.06, and by an unrecorded ground lease through proposed Lot 4.04;
 - c) Proposed Lot 4.04 is proposed to be accessed from Bergen Avenue by an access easement across proposed Lot 4.06; and
 - d) Proposed Lot 4.05 is proposed to be accessed from Bergen Avenue by an access easement across proposed Lot 4.06, and by an unrecorded ground lease through proposed Lot 4.04.

2. Section IV.C, Table 1 - Bulk Requirements, of the Kearny Area Redevelopment Plan, last revised June 25, 2014, requires a minimum side yard setback of 30 feet, whereas a minimum side yard setback of 1.6 feet is proposed to an existing concrete shed on proposed Lot 4.05; and
3. Section IV.C, Table 1 - Bulk Requirements, of the Kearny Area Redevelopment Plan, last revised June 25, 2014, requires a minimum lot area of 3 acres, whereas the area of proposed Lot 4.05 is 0.13 acres.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Jersey Journal. One written comment regarding this application, dated October 23, 2017, submitted by James P. Bruno, Esq., of the firm Castano Quigley, LLC, attorneys for the Town of Kearny, was received via email by the Division of Land Use Management on October 23, 2017. A public hearing was held in the Office of the Commission on Tuesday, October 24, 2017. 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, Block 286, Lot 4, contains approximately 30.8 acres. The Bergen Avenue right-of-way (ROW) is located west of the subject property. The site is bordered by the Conrail Corporation railroad to the north and the New Jersey Turnpike ROW to the east. A trucking facility is located south of the subject property.

The subject property, formerly a landfill owned and operated by the Town of Kearny, was divided into two distinct parcels as the result of a 1988 Stipulation of Settlement between Sonee Urban Renewal Corporation (formerly known as

Hudson Meadows Urban Renewal Corp. or Mimi Development Corp.) and Hartz Mountain Industries, Inc. The subject property was under the ownership of the Town of Kearny, however, the Stipulation of Settlement assigned development rights of a 25.8-acre portion of the property (hereinafter referred to as the "Hartz Parcel") to Hartz Mountain Industries, Inc., and a five-acre parcel adjacent to Bergen Avenue (hereinafter referred to as the "Mimi Parcel") to Sonee Urban Renewal Corporation. The Mimi Parcel, identified as proposed Lot 4.06, effectively cut off access to Bergen Avenue for the Hartz Parcel. The Stipulation of Settlement included a 35-foot-wide access easement from Sonee Urban Renewal Corporation to Hartz Mountain Industries, Inc., to provide access from the Hartz Parcel to Bergen Avenue across the Mimi Parcel. This ingress and egress easement has since been more definitively set forth and defined with a metes and bounds description in an Easement Agreement dated July 27, 2017, between the Town of Kearny and Hartz Kearny. LLC.

The subject property is currently developed with three principal buildings and associated parking. The western portion of the lot, within the area of proposed Lot 4.06, contains a masonry sanitary sewer pump station that is owned and operated by the Town of Kearny. A newly-constructed commercial warehouse and office building, presently occupied by Cummins Diesel, is sited on the easterly portion of the subject property, within the area of proposed Lot 4.03. Centrally-placed between both structures, within the area of proposed Lot 4.05, there is a small concrete shed that houses a leachate collection lift station owned and operated by the applicant. Both the leachate lift station shed and the Cummins Diesel site are accessed from Bergen Avenue via an improved common driveway. In addition to the common driveway in the aforementioned access easement across proposed Lot 4.06, a number of other easements for access and utilities also exist on the subject premises, including a pump station easement that surrounds the Town of Kearny's sanitary sewer pump station on proposed Lot 4.06.

On September 8, 2017, the Town of Kearny conveyed ownership of the portion of the subject property previously identified as the Hartz Parcel to Hartz Kearny, LLC. The applicant proposes to subdivide existing Lot 4 into proposed Lots 4.02, 4.03, 4.04, 4.05, and 4.06. Only proposed Lot 4.06, which comprises the Mimi Parcel and contains the existing sanitary sewer pump station, will remain under the Town of Kearny's ownership. Proposed Lot 4.05 contains the existing concrete shed housing the leachate collection lift station. The existing Cummins facility is located on proposed Lot 4.03. Proposed Lot 4.04 will contain a 189,467-square-foot warehouse distribution facility to be occupied by Preferred Freezer Services, which was recently approved by the Town of Kearny Planning Board in Resolution No. 542 on October 4, 2017. According to the applicant, the existing, undeveloped portion of the property designated as proposed Lot 4.02 will remain vacant.

Proposed Lot 4.06 will have direct access to Bergen Avenue; however, proposed Lots 4.02, 4.03, 4.04, and 4.05, which collectively comprise the Hartz Parcel, will not have frontage along Bergen Avenue. Access is proposed to be provided from Bergen Avenue to proposed Lot 4.04 by an access easement across proposed Lot 4.06, with unrecorded ground leases granting further access to the remaining proposed lots in the Hartz Parcel. The applicant also proposes a Declaration of Zoning Restriction joining proposed Lots 4.02, 4.03, 4.04, and 4.05 with existing Lot 4.01 for zoning purposes, so that the aforementioned lots can be utilized as a united parcel for zoning purposes.

B. Response to the Public Notice

One written comment regarding this application, dated October 23, 2017, submitted by James P. Bruno, Esq., of the firm Castano Quigley, LLC, attorneys for the Town of Kearny, was received via email by the Division of Land Use Management on October 23, 2017. The Town of Kearny's position is that subdivision jurisdiction rests with the Town of Kearny Planning Board. It is

noted however, that the Hackensack Meadowlands Agency Consolidation Act at N.J.S.A. 5:10A-13(a) reads in part, “that the constituent municipal approval authority shall defer taking final decision on the subdivision application until receipt of the NJSEA’s report thereon.” Also, as per N.J.S.A. 5:10A-15, the County Clerk or register of deeds and mortgages shall not accept for filing any subdivision plat for land in the District, unless it bears a certification of approval of the NJSEA in addition to other requirements for filing the subdivision plat.

III. PUBLIC HEARING (October 24, 2017)

A public hearing was held on Tuesday, October 24, 2017. NJSEA staff in attendance were Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon A. Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mia A. Petrou, P.P., AICP, CFM, Principal Planner; and Ronald Seelogy, P.E., P.P., Principal 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	“Major Subdivision Map Prepared for Hartz Mountain Industries – Harrison Avenue Landfill, Block 286, Lot 4, Sheet M9, Town of Kearny, Hudson County, New Jersey,” prepared by Azzolina & Feury Engineering, Inc., on December 22, 2016, last revised September 7, 2017.
A-2	Easement Agreement between the Town of Kearny and Hartz Kearny, LLC, dated July 27, 2017.
A-3	Deed for the aforementioned Hartz Parcel, dated September 8, 2017.

B. Testimony

James P. Rhatican, Esq., of Hartz Mountain Industries, Inc., represented the applicant at the hearing. The following witness testified in support of the application:

1. John Loch, P.E., P.L.S., Azzolina and Feury Engineering, Inc.; and
2. Kristine Kalfas, P.E., P.P., Hartz Mountain Industries, Inc.

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

- A. Standards for the Granting of Bulk Variances from the Provisions of N.J.A.C. 19:4-3.16, which requires that every principal building shall be built upon a lot with access to an improved street, whereas access is proposed to be provided from Bergen Avenue to proposed Lot 4.04 via an access easement across proposed Lot 4.06, with access to proposed Lots 4.02, 4.03, and 4.05 proposed to be provided via unrecorded ground leases among these properties.**

The Hackensack Meadowlands 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 Lot 4 was the subject of a 1988 settlement agreement that divided the Town of Kearny property into two distinct development parcels, the Mimi Parcel (proposed Lot 4.06) and the Hartz Parcel (comprising proposed Lots 4.02, 4.03, 4.04, and 4.05), with development rights for each assigned to two different entities. As a result, development rights to the Hartz Parcel were created on a portion of the existing lot with no frontage along Bergen Avenue. The proposed subdivision is intended to support the implementation of the settlement agreement and provide legal property designations for both the Mimi Parcel and the Hartz Parcel, which is proposed to be further divided into four distinct areas. Existing Lot 4 is currently developed with three separate and distinct structures in the form of a sanitary sewer pump station, leachate collection facility, and the Cummins warehouse facility, which as a result of the proposed subdivision, will each be placed on separate tax lots. These conditions are unique to the property in question.

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

Neighboring property owners will not be adversely affected by the granting of the requested variances. Proposed Lots 4.03, 4.04, 4.05 and 4.06 will ultimately each contain one structure, two of which will house existing utility functions in the form of a pump station

(proposed Lot 4.06) and a leachate collection shed (proposed Lot 4.05). According to testimony provided by the applicant, proposed Lot 4.02 will remain undeveloped.

Proposed Lot 4.06 will have direct access to Bergen Avenue, an improved public street. Although proposed Lots 4.02, 4.03, 4.04, and 4.05 will not have frontage along Bergen Avenue, access is proposed to be provided from Bergen Avenue to proposed Lot 4.04 by an access easement across proposed Lot 4.06, with unrecorded ground leases granting further access to the remaining proposed lots within the Hartz Parcel. The applicant offered testimony that unrecorded ground leases are proposed to provide access rights amongst the proposed lots in the Hartz Parcel, as an easement cannot legally be granted to the same entity (i.e., Hartz cannot grant an easement to Hartz). However, if any proposed lots within the Hartz Parcel are to be conveyed to an affiliate or any other entity in the future, that affiliate or entity would be required to dedicate an easement across the conveyed property or properties to grant access to the other lots within the Hartz Parcel. In addition, the applicant is proposing to join proposed Lots 4.05, 4.04, 4.03, and 4.02 with existing Lot 4.01 for zoning purposes through the recording of a Declaration of Zoning Restriction, pursuant to N.J.A.C. 19:4-3.22. The proposed zoning lot of record will allow for the usage of open space, parking, and other site-related amenities to be shared amongst all parcels.

The granting of the requested variances to permit the subdivision of property in a manner that creates lots without access to an improved street will not negatively impact neighboring properties.

No portion of neighboring properties will be utilized for ingress or egress, and access will be available to the subdivided properties within the Hartz Parcel via an access easement and lease agreements.

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 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.

Subdivision of the property is affected by the 1988 Stipulation of Settlement agreement that created two distinct development parcels, one of which has no direct access to Bergen Avenue. There are no available alternative subdivision configurations that could provide direct access from Bergen Avenue to the Hartz Parcel. No additional property can be acquired to provide this access from the north due to the presence of an existing active rail line, nor to the east due to a grade difference with the New Jersey Turnpike ROW.

The proposed subdivision configuration represents the preferred planning alternative for subdivision of the property, as the granting of the four requested variances will permit the orderly development of the subject property, in a manner which provides an alternate form of access to a public street.

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 the granting of the four requested variances. There will be no activities or conditions created by the granting of these variances, such as noise, odor, vibration, or glare, that could negatively impact public health and safety. The location of the proposed subdivision lines, the provision of the access easement on proposed Lot 4.06, the applicant's unrecorded ground leases, and the creation of the proposed zoning lot of record, will allow for the continuation of existing circulation patterns and access from Bergen Avenue to all lots, thereby not affecting public safety. Access for firefighting and emergency vehicles will be provided.

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

There will be no adverse environmental impacts created by the granting of the four requested variances. The proposed major subdivision will not disturb any environmentally sensitive areas, such as wetlands or stormwater facilities, as access to all proposed lots will be provided by a paved driveway. Minimum open space requirements will be met on all properties. The proposed variances will not cause the Hackensack Meadowlands 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.

Hackensack Meadowlands District zoning regulations require that every principal building be constructed upon a lot having access to an improved street. Proposed Lots 4.05 and 4.03, which each contain existing structures, in addition to proposed Lots 4.02 and 4.04, which are both vacant, will have access to Bergen Avenue via the access easement across proposed Lot 4.06 and by unrecorded ground leases for proposed Lots 4.03 and 4.04. The proposed variances stem from the property development configurations resulting from the 1988 Stipulation of Settlement that created the Hartz Parcel with no frontage along Bergen Avenue.

There are no alternative subdivision configurations available that would provide direct access from Bergen Avenue to the Hartz Parcel. The proposed subdivision lines have been placed in the optimal locations representing the most regular layout available given the existing site conditions. Therefore, the requested variances represent the minimum deviation from the Hackensack Meadowlands 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 four requested variances will not substantially impair the intent and purpose of these regulations. The existing and proposed uses are permitted in the Light Industrial Center of

the Kearny Area Redevelopment Area Plan. Access to an improved public street for the proposed lots within the Hartz Parcel will be provided by an access easement across proposed Lot 4.06, lease agreements, and a Declaration of Zoning Restriction merging proposed Lots 4.02, 4.03, 4.04, and 4.05 with existing Lot 4.01 for zoning purposes. Therefore, the proposed subdivision is consistent with sound planning practices and will promote the intent and purposes of the Hackensack Meadowlands District zoning and subdivision regulations by allowing for the site to be utilized in a safe and orderly manner.

B. Standards for the Granting of a Bulk Variance from the Provisions of Section IV.C, Table 1 - Bulk Requirements, of the Kearny Area Redevelopment Plan, which requires a minimum side yard setback of 30 feet, whereas a minimum side yard setback of 1.6 feet is proposed to an existing concrete shed on proposed Lot 4.05.

The Hackensack Meadowlands 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 Lot 4 was the subject of a 1988 settlement agreement that divided the Town of Kearny property into two distinct development parcels, with development rights for each assigned to a different entity. The proposed subdivision is intended to

implement the settlement agreement and provide legal property designations for the distinct development areas on the overall site. Existing Lot 4 is currently developed with three separate and distinct structures, one of which is a small concrete shed housing a lift station for leachate collection, which is sited on proposed Lot 4.05. Proposed Lot 4.05 will solely house a leachate utility structure that is required as part of the remediation of the former landfill located on the overall Hartz Parcel.

The Planning Board of the Town of Kearny recently approved an application for the construction of an 189,467-square-foot warehouse distribution facility with associated site improvements on adjacent proposed Lot 4.04. In order to facilitate the future development of proposed Lot 4.04, the applicant is seeking major subdivision approval to place the existing concrete utility shed on a separate tax lot. The proposed subdivision will result in a minimum side yard setback of 1.6 feet from the southerly lot line to the concrete shed, whereas a minimum side yard setback of 30 feet is required in the Light Industrial Center of the Kearny Area Redevelopment Area Plan.

The area of proposed Lot 4.05 will be 0.13 acres, whereas a minimum lot area of three acres is required. Additionally, both proposed Lots 4.05 and 4.04 will have no frontage along an improved street. As a result, all yards will be designated as side yards. The future development of proposed Lot 4.04 limits the provision of a conforming side yard setback on proposed Lot 4.05. This combination of conditions subjects this site to a unique set of

circumstances that are not ordinarily found in the Light Industrial Center of the Kearny Area Redevelopment Area.

- 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 and commercial in nature. No residential properties are located within the immediate vicinity. The character of the neighborhood will not be altered by the proposed setback. Ingress and egress for the property will be provided by an easement across proposed Lot 4.06 and via an unrecorded ground lease. The existing utility use on proposed Lot 4.05 will not be intensified. The proposed Declaration of Zoning Restriction will ensure adequate access to the building within the reduced side yard for the future maintenance of the existing concrete shed exterior.

- 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 30 feet along the southerly property line of proposed Lot 4.05, whereas 1.6 feet is proposed, and would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. Proposed Lot 4.05 is undersized with an area of 0.13 acres, whereas a minimum lot

area of three acres is required in the Light Industrial Center within the Kearny Area Redevelopment Area Plan. Relocating the proposed subdivision line in order to provide the minimum required setback of 30 feet in the southerly side yard would add approximately 3,600 square feet, or 0.08 acres to proposed Lot 4.05 for a resulting area of 0.21 acres, which would still result in a nonconforming lot with respect to lot size. In addition, a variance would continue to be required for a proposed side yard setback of four feet in the easterly side yard.

A relocated subdivision line would detrimentally affect the future development of proposed Lot 4.04. The purpose of creating proposed Lot 4.05 is to provide a separate tax lot for an existing utility structure that addresses leachate collection throughout the Hartz Parcel, and not for future development. In balancing the requirements of the Light Industrial Center of the Kearny Area Redevelopment Area 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 development of proposed Lot 4.04.

- 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 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. An existing security fence around the concrete shed will remain in place. The concrete shed's personnel door is located along the structure's northerly façade and, therefore, access to the lift station equipment located therein will not be restricted by location of the property lines resulting from the proposed subdivision. No residential properties are located in the immediate vicinity. The point of ingress/egress from and to Bergen Avenue will be maintained. Excess noise, odor, vibration or glare will not be generated as a result of the proposed subdivision.

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 Hackensack Meadowlands District's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be exceeded. The existing utility shed on proposed Lot 4.05 will continue to collect leachate from within an area delineated by a slurry wall running across proposed Lots 4.02, 4.03, 4.04 and 4.05, which comprise the Hartz Parcel, thus preventing pollution from the former landfill site from reaching other properties. No new impervious surfaces are proposed on proposed Lot 4.05. 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 recently-approved development for proposed Lot 4.04. Proposed Lots 4.05 and 4.04 will each contain a building and, therefore, are constrained in provision of 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.

The granting of the requested variance for the creation of a lot with a substandard side yard setback will not substantially impair the intent and purpose of these regulations. Specific purposes of the Hackensack Meadowlands 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. Therefore, the substandard setback proposed for the existing utility structure as part of the proposed subdivision is consistent with sound planning practices and will promote the intent and purpose of these regulations by allowing the subject properties to be utilized in a safe and orderly manner.

C. Standards for the Granting of a Bulk Variance from the Provisions of Section IV.C, Table 1 - Bulk Requirements, of the Kearny Area Redevelopment Plan, which requires a minimum lot area of 3 acres, whereas the area of proposed Lot 4.05 is 0.13 acres.

The Hackensack Meadowlands 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 Lot 4 was the subject of a 1988 settlement agreement that divided the Town of Kearny property into two distinct development parcels, with development rights for each assigned to a different entity. The proposed subdivision is intended to implement the settlement agreement and provide legal property designations for the distinct development areas on the overall site. Existing Lot 4 is currently developed with three separate and distinct structures, one of which is a small concrete shed housing a lift station for leachate collection, which is sited on proposed Lot 4.05. The lift station processes the leachate collected within an area delineated by a slurry wall running across proposed Lots 4.02, 4.03, 4.04 and 4.05, which comprise the Hartz Parcel. Proposed Lot 4.05 will solely house a leachate utility structure that is required as part of the remediation of the former landfill located on the Hartz Parcel.

The Planning Board of the Town of Kearny recently approved an application for the construction of an 189,467-square-foot warehouse distribution facility with associated site improvements on adjacent proposed Lot 4.04. In order to facilitate the future development of proposed Lot 4.04, the applicant is seeking major subdivision approval to locate the existing concrete utility shed on a separate tax lot. The proposed subdivision will result in a lot area for proposed Lot 4.05 of 0.13 acres, whereas a minimum lot area of three acres is required in the Light Industrial Center of the Kearny Area Redevelopment Area.

The future development of proposed Lot 4.04 limits the provision of a conforming lot area for proposed Lot 4.05. This combination of conditions subjects this site to a unique set of circumstances that are not ordinarily found in the Light Industrial Center of the Kearny Area Redevelopment Area.

- 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 the creation of an undersized lot will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject property is 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. Ingress and egress to and from Bergen Avenue will be maintained. Although proposed Lot 4.05 will be undersized, a compliant lot coverage of only two percent is

proposed. The area of proposed Lot 4.05 is proportional to the size of the leachate utility's existing concrete shed located thereon. The proposed Declaration of Zoning Restriction will ensure adequate space for the future maintenance of the existing concrete shed exterior.

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. Proposed Lot 4.05 is undersized with an area of 0.13 acres, whereas a minimum lot area of three acres is required in the Light Industrial Center of the Kearny Area Redevelopment Area Plan. Relocating the proposed subdivision line in order to provide the minimum required lot area for proposed Lot 4.05 would require the relocation of an existing paved driveway to within close proximity of an environmentally sensitive area on proposed Lot 4.04.

Also, a relocated subdivision line would detrimentally affect the future development approved on proposed Lot 4.04. The purpose of creating the undersized lot is to provide a separate tax lot for an existing utility structure that addresses leachate collection throughout the Hartz Parcel, and not for future development. In balancing the requirements of the Light Industrial Center of the Kearny Area Redevelopment Area with the particular characteristics of the subject properties, the proposed subdivision

configuration resulting in one undersized lot represents the preferred planning alternative.

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 creation of a lot with an area less than three acres. Proposed Lot 4.05 will continue to function as it currently exists, 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 a lot area of less than three acres. The existing utility shed on proposed Lot 4.05 will continue to collect leachate from within an area delineated by a slurry wall running across proposed Lots 4.02, 4.03, 4.04 and 4.05, which comprise the Hartz Parcel, thus preventing pollution from the former landfill site from reaching other properties. As no additional improvements are proposed for proposed Lot 4.05, no

environmentally-sensitive areas or stormwater facilities will be disturbed. The variance will not cause the Hackensack Meadowlands 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 represents the minimum deviation from the regulations that will afford relief. The proposed subdivision line has been placed in the optimal location representing the most regular layout available given the existing and proposed site conditions. Although proposed Lot 4.05 is undersized, a lot coverage of only two percent is proposed, which is significantly less than the maximum 50 percent lot coverage permitted for the zone. The area of proposed Lot 4.05 is proportional to the size of the existing concrete shed located thereon.

The granting of the requested variance will permit the existing leachate collection building to be located entirely on proposed Lot 4.05 and allow for the future development of proposed Lot 4.04. Potential locations for the proposed subdivision line are limited due to the recently-approved development for proposed Lot 4.04, as well as an existing paved driveway located north of proposed Lot 4.05 on proposed Lot 4.04. Therefore, the proposed subdivision configuration represents the preferred planning alternative for the subdivision of the subject property, as well as the most practical way to allow all proposed lots to function in an orderly manner.

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. Four of the five lots created by the proposed major subdivision will comply with the minimum lot size requirements of the Light Industrial Center within the Kearny Area Redevelopment Area Plan. Existing and proposed uses are permitted. Access to an improved public street will continue to be provided by an access easement across proposed Lot 4.06, lease agreements, and a Declaration of Zoning Restriction merging proposed Lots 4.02, 4.03, 4.04, and 4.05 with existing Lot 4.01 for zoning purposes. Therefore, the proposed subdivision is consistent with sound planning practices and will promote the intent and purpose of these regulations by allowing the subject properties to be utilized in a safe and orderly manner.

IV. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of Four Bulk Variances from the Provisions of N.J.A.C. 19:4-3.16, which requires that every principal building shall be built upon a lot with access to an improved street, whereas access is proposed to be provided from Bergen Avenue to proposed Lots 4.02, 4.03, 4.04, and 4.05 by an access easement across proposed Lot 4.06, with access to proposed Lots 4.02, 4.03, and 4.05 proposed to be provided via unrecorded ground leases among these properties.

Based on the record in this matter, the four bulk variance applications to provide a subdivision resulting in the creation of each of four lots (proposed Lots 4.02, 4.03, 4.04, and 4.05) with no access upon an improved street are hereby recommended for APPROVAL SUBJECT TO THE FOLLOWING CONDITIONS:

1. The applicant shall establish existing Lot 4.01 in Block 286 and proposed Lots 4.02, 4.03, 4.04, and 4.05 in Block 286 as a single Zoning Lot of Record pursuant to N.J.A.C. 19:4-3.22 by recording a Declaration of Zoning Restriction in the Office of the Hudson County Registrar.
2. Should the applicant convey proposed Lots 4.02, 4.03 and/or 4.04 to an affiliate or any entity, that affiliate or entity shall provide a recorded access easement across the property or properties to be conveyed in order to ensure continued formal access rights to Bergen Avenue.

CONDITIONAL APPROVAL

Recommendation on
Variance Requests

12/4/2017

Date



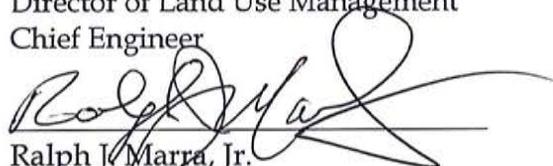
Sara J. Sundell, P.E., P.P.
Director of Land Use Management
Chief Engineer

CONDITIONAL APPROVAL

Recommendation on
Variance Requests

12/4/2017

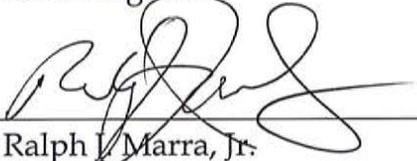
Date



Ralph J. Marra, Jr.
Senior Vice President
Legal & Governmental Affairs

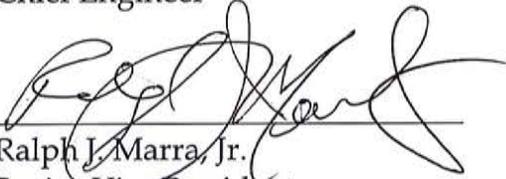
B. Standards for the Granting of a Bulk Variance from the Provisions of Section IV.C, Table 1 - Bulk Requirements, of the Kearny Area Redevelopment Plan, which requires a minimum side yard setback of 30 feet, whereas a side yard setback of 1.6 feet is proposed to an existing concrete shed on proposed Lot 4.05.

Based on the record in this matter, the bulk variance application to permit a minimum setback of 1.6 feet along the southerly side yard of proposed Lot 4.05, whereas a minimum side yard setback of 30 feet is required, is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>12/4/2017</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management Chief Engineer
<u>APPROVAL</u>	<u>12/4/2017</u>	
Recommendation on Variance Request	Date	Ralph J. Marra, Jr. Senior Vice President Legal & Governmental Affairs

C. Standards for the Granting of a Bulk Variance from the Provisions of Section IV.C, Table 1 - Bulk Requirements, of the Kearny Area Redevelopment Plan, which requires a minimum lot area of 3 acres, whereas the area of proposed Lot 4.05 is 0.13 acres.

Based on the record in this matter, the bulk variance application to permit a minimum lot area of 0.13 acres for proposed Lot 4.05, whereas a minimum lot area of three acres is required, is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>12/4/2017</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management Chief Engineer
<u>APPROVAL</u>	<u>12/4/2017</u>	
Recommendation on Variance Request	Date	Ralph J. Marra, Jr. Senior Vice President Legal & Governmental Affairs