

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
120 Chubb LLC/ New Residential Development & Variance
FILE #14-588**

I. INTRODUCTION

Pursuant to Public Law 2015, Chapter 19, The New Jersey Meadowlands Commission (NJMC) has become part of the New Jersey Sports and Exposition Authority (NJSEA), effective February 5, 2015.

An application for one bulk variance has been filed with the NJSEA by JERC Partners XXVIII, LLC, for the premises located at 120 Chubb Avenue, Block 231, Lot 2, in the Township of Lyndhurst, New Jersey. Said premises is located within the Hackensack Meadowlands District's Light Industrial A zone. The variance is sought in connection with the applicant's proposal to construct a 218-unit residential development and associated site improvements on the subject property. The proposed development includes the construction of 174 market-rate units and 44 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 436 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 349 parking spaces provided for the development.

A public hearing was held in the NJSEA Office on Tuesday, March 31, 2015. 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 2, contains approximately 6.96 acres and is located in the Light Industrial A zone. It is bounded to the north by a vacant parcel, to the south by an office development, to the east by Berry's Creek, and to the west by Chubb Avenue. The site, which has been vacant since 2007 per the applicant's testimony, is currently improved with a 51,000-square-foot office and warehouse building consisting of approximately 81,000 square feet of total floor area and related parking and site improvements. There is historic fill on the site and the proposed development will act as a cap, designed in accordance with the NJDEP standards for residential uses, to isolate the fill. In addition, a deed notice will be filed upon completion of the development by the applicant's LSRP. Wetlands are present along the north and east side of the property, proximate to the limit of the existing improvements. All tidelands claims on the property have been cleared through the prior issuance of tidelands grants from the New Jersey Department of Environmental Protection (NJDEP) Bureau of Tidelands Management and therefore, do not impact the proposed development. A stormwater drainage ditch with an associated 50-foot-wide NJDEP stream buffer is present along the southern property line, while a 100-foot-wide waterway buffer adjacent to Berry's Creek is located on the east side of the property. Existing improvements, including portions of the driveway and parking areas, are located within the 50-foot-wide stream buffer along the south side. Similarly, the proposed improvements on the south end of the site, which are located within the existing disturbed limit, will also encroach within the aforementioned 50-foot-wide stream

buffer. The surrounding area is primarily comprised of commercial and industrial uses. The Avalon Lyndhurst residential development is located further north of the subject property and the Station at Lyndhurst residential development is located approximately 700 feet south of the subject site.

On May 14, 2015, by Resolution 2015-25, the NJSEA Board of Commissioners deemed the subject property to be suitable for residential development, subject to certain conditions, 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 demolish the existing structure on the premises to construct a multi-story 218-unit residential development, inclusive of 44 affordable units. The proposed building consists of four 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 109 one-bedroom units and 65 two-bedroom units, while the affordable units include eight one-bedroom units, 27 two-bedroom units and nine 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 (March 31, 2015)

A public hearing was held on Tuesday, March 31, 2015. NJSEA 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 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 March 30, 2015.
A-2	"ALTA/ACSM Land Title Survey- 120 Chubb Avenue," prepared by Control Point Associates, Inc., dated June 30, 2014 and revised through July 29, 2014.
A-3	"Overall Site Plan Rendering," prepared by Bohler Engineering, dated September 24, 2014 and revised through February 13, 2015.
A-4	"Garage Floor Plan," prepared by Minno & Wasko, dated March 23, 2015.
A-5	"Second Floor Plan," prepared by Minno & Wasko, dated March 23, 2015.
A-6	"Third & Fourth Floor Plan," prepared by Minno & Wasko, dated March 23, 2015.
A-7	"Concept Elevation," prepared by Minno & Wasko, dated March 31, 2015 (rendering).
A-8	"Site Suitability Analysis," prepared by Mianecki Consulting Engineers, dated October 14, 2014.
A-9	Six photographs (A-F) showing pedestrians walking along Lyndhurst roads, provided at the prior suitability hearing by Chief O'Connor.
A-10	"Planning Report - Parking Reduction Bulk Variance," prepared by Mianecki Consulting Engineers, dated March 31, 2015.

B. Testimony

Thomas J. O'Connor, Esq., of Waters, McPherson, McNeill, P.C., represented JERC Partners XXVIII, LLC, at the hearing. The following witnesses testified in support of the application:

1. Bradford Bohler, 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 Beth Calderone, Certified Court Reporter.

C. Public Comment

No members of the public provided comments at the public hearing.

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 436 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 349 parking spaces provided for the development.

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

1. Concerning bulk variances:

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

The requested variance to permit 349 parking spaces for a residential development, whereas 436 spaces are required, arises from conditions that are unique to the site. 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 6.96 acres and has frontage on Chubb Avenue. The property is currently developed with a 51,000-square-foot building and related site improvements, which are proposed to be removed to construct a four-story multifamily residential development.

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. Existing improvements, including portions of the driveway and parking areas, are located within the 50-foot wide stream buffer along the south side. Similarly, the proposed improvements on the south end of the site, which are situated within the existing disturbed limit, will also encroach within the 50-foot-wide stream buffer along the south side. The site is further encumbered by wetlands that are located on the northern and eastern portion of the property. The delineated wetlands boundary line coincides with the limit of the existing parking improvements and the disturbance limit along the north and east side of the property. The wetlands boundary line, stream areas and related stream buffers comprise approximately 2.6 acres of the 6.96-acre parcel, resulting in substantial 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 limited area available for

development and less flexibility in the placement of site improvements, such as parking.

A parcel containing environmental constraints that render nearly 37 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 349 parking spaces, whereas 436 spaces are required, will not adversely affect the rights of neighboring property owners or residents.

The property located north of the subject site is an undeveloped parcel that contains wetlands and waterways. This property will most likely remain undeveloped and will not be impacted by the proposed residential development. The property located immediately south of the site is an office development with sufficient on-site parking. The residential development located further south of the site, the Station at Lyndhurst, has an equivalent parking ratio for market-rate units as that proposed for the subject project, with no perceptible parking impact to the surrounding area. Since there is no expectation that parking will overflow onto adjacent properties or Chubb Avenue, other 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 architect testified that the number of parking spaces proposed is sufficient to support the residential use since more than 60 percent of the market-rate units are one-bedroom units. The high percentage of one-bedroom units greatly reduces the need for additional parking. Furthermore, parking controls will be in place and monitored by the building management office. Per testimony provided, rental leases will explicitly assign one parking space per unit, with an added charge for any additional parking spaces. The applicant testified that this parking surcharge creates a financial disincentive for renters with multiple vehicles from leasing units on the premises. Another residential development in the District, the Monarch, located on the Route 3 East - South Service Road similarly averages one car per unit. The residential development, the Station at Lyndhurst, operates with an equivalent parking ratio as that proposed for the subject project. Public transit opportunities will also be available to the future occupants of the site, which will decrease parking demand on the site.

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 and the Station at Lyndhurst will not be negatively impacted by the proposed improvements since the proposed residential use is similar in nature to the existing residential development in the area and represents a less intense use than the previous office and warehouse development that operated 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. Approximately 37 percent of the subject lot is encumbered with wetland areas, streams, and stream buffers, creating practical difficulties in accommodating development and required improvements, such as parking, on the site. The proposed improvements are located within the existing limits of disturbance, and expanding the development footprint to construct additional parking spaces would require encroachment into environmentally sensitive wetland and stream buffer areas.

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 added cost to the tenant. Visitor parking will be accommodated in the surface parking lots at the south and southwest side of the building.

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 would require encroachments into environmentally sensitive areas and could result in underutilized parking. The project proposes that

60 percent of the market-rate units will be one-bedroom units, thereby reducing the probability of having multiple vehicles per household.

The proposed project does not maximize the development potential of the lot, providing for 44 percent lot coverage, whereas a maximum of 60 percent is permitted, and a 0.89 FAR, whereas a maximum 2.5 FAR is permitted. Finally, the proposal provides for 55 percent open space while only 15 percent open space is required. This project does not represent overdevelopment of the site, but rather, the site is subject to significant environmental constraints that present practical difficulties in the layout and 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 60 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 supervision of all on-site parking to ensure there is

adequate parking available for visitors and tenants. The nearby residential development, the Station at Lyndhurst, functions using a parking ratio that is equal to that proposed for the subject development, with no perceptible adverse parking impacts to the surrounding area. Public transit opportunities will also be available to residents, thereby reducing parking demand for the project. There is no expectation that parking from the proposed development 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. Rather, the project will allow for the capping of a site containing historic fill, in accordance with the NJDEP requirements for residential uses.

The granting of the requested variance to provide 87 fewer parking spaces than required also minimizes the amount of impervious cover on the site that would otherwise be necessary to accommodate required parking. Furthermore, the project maintains the existing limit of disturbance/development footprint, with no further encroachment into wetlands or buffers. The 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 those 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 436 parking spaces required for the development, whereas the applicant is proposing to construct 349 parking spaces.

The applicant's professionals testified that the proposed parking ratio of 1.5 spaces per market-rate unit is adequate considering that the development contains a high mix of one-bedroom units. Specifically, 60 percent of the market-rate units are one bedroom units. The applicant's professionals also testified that there will be parking controls in place. Rental agreements will allocate one parking space per unit, with an added fee for any additional parking spaces. The applicant further testified that the cap on available parking fosters a lifestyle choice for prospective tenants who elect to reside at the proposed development.

The project traffic engineer testified that mass transit opportunities exist in the immediate vicinity, which decrease dependence on

automobiles for commuting needs. A bus shelter is located within walking distance, approximately 200 feet north of the site on Chubb Avenue, and provides access to three different New Jersey Transit bus lines. In addition, the applicant intends to contract with Meadowlink's Lyndhurst Shuttle Service to accommodate additional commuting needs. The Meadowlink Lyndhurst Shuttle Service would provide commuters at the site an ongoing direct connection to nearby bus and rail mass transit opportunities.

Therefore, it is expected that prospective tenants will not rely solely on automobiles for commuting needs. As such, the construction of additional parking may result in underutilized parking spaces. Furthermore, potential locations for additional onsite parking are severely limited due to site constraints, and would require disturbance of wetland and environmental buffer areas. Since lot coverage and floor area are not maximized at the site, and more than half of the site will remain open space, 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 349 parking spaces, whereas 436 spaces are required, will not substantially impair the intent and purpose of the NJSEA'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 conditionally suitable for residential development by the NJSEA Board of Commissioners.

The project provides for the orderly and comprehensive development of the subject site, as the project maintains the existing limit of disturbance/development footprint and does not propose wetland disturbance. 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 and buffer areas onsite and will ensure that there is no further encroachment into wetlands or stream buffers. The project will also provide for the capping of a site containing historic fill.

The intent of the NJSEA’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 and visitors since building management will oversee parking controls. Tenant leases will allocate one parking space per unit, with an added charge for any additional parking spaces. The parking surcharge creates a financial disincentive for renters with multiple vehicles from leasing a unit on the premises. Furthermore, there are mass transit opportunities available in the

area, and the applicant intends to contract with Meadowlink to provide commuters at the site with an ongoing direct shuttle connection to nearby bus and rail mass transit opportunities.

In order to ensure sufficient parking for the residential development, the applicant should institute controls in accordance with a parking management plan and provide proof of contracting with Meadowlink for the use of the Lyndhurst Shuttle Service.

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 436 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 349 parking spaces provided for the development.

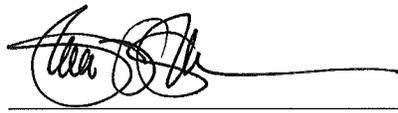
Based on the record in this matter, the bulk variance application to permit 1.5 parking spaces per market-rate unit, whereas two parking spaces per market-rate unit are required, is hereby recommended for approval with the following conditions:

1. A minimum of 60 percent of the market-rate units shall be one-bedroom 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 NJSEA for review and approval prior to the issuance of a zoning certificate for the development.

3. 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 NJSEA with a plan indicating how they intend to provide an ongoing shuttle service prior to the issuance of any occupancy approvals.

CONDITIONAL APPROVAL 5/29/15
Recommendation on Date
Variance Request



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

Conditional Approval 5/29/15
Recommendation on Date
Variance Request



Marcia A. Karrow
Executive Director