

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
Terreno/Xpedited Services - Fence/Variance
FILE # 17-214**

I. INTRODUCTION

An application for one bulk variance has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by Xpedited Services for the premises located at 248 Paterson Plank Road, identified as Block 121, Lot 1.03, in the Borough of Carlstadt, New Jersey. The subject premises is located in the Hackensack Meadowlands District (District) within the Commercial Gateway Center of the Paterson Plank Road Redevelopment Area. The bulk variance is sought in connection with the applicant's proposal to install an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the required front yard facing Paterson Plank Road (NJ Route 120) on the subject premises.

Specifically, the applicant is requesting bulk variance relief from the following regulation:

1. N.J.A.C. 19:4-8.10(a)1, which prohibits fences or screening walls in excess of 24 inches in required front yards, whereas an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire are proposed within the required front yard facing Paterson Plank Road.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Record newspaper. A public hearing at the Office of the Commission commenced on Tuesday, September 18, 2018, and continued on Tuesday, September 18, 2018. 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 5.23-acre property is located within the Paterson Plank Road Redevelopment Area and is irregularly-shaped with frontage to the south along Paterson Plank Road. The property is bordered by Peach Island Creek and Berry's Creek to the north, radio station transmission towers to the east, and light industry to the west.

The subject property contains an existing 31,415-square-foot truck terminal building with associated parking. The site is accessed by a driveway off of Paterson Plank Road. Traveling westbound on Paterson Plank Road, the elevation of the roadway rises relative to the subject property, with a maximum elevation differential of nine feet. The property is encumbered by a varying width slope easement located adjacent to the Paterson Plank Road right of way.

The applicant is proposing to install an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the 25-foot-wide required front yard facing Paterson Plank Road. The fence will be located along approximately 160 feet of the site's 525-foot frontage, or approximately one third the site's front property line. The proposed fence, which will provide security for the site's existing operations and equipment, will be located a minimum setback of 3.2 feet from the front property line. The existing t-shaped building includes a 65-foot-wide office section that projects out along its 419-foot width. There is an existing non-conforming front yard loading area and paved vehicular use area to the west of the office projection and the proposed fencing will be located along the perimeter of that area. The proposed swing gate will be installed at an approximate 90-degree angle from the six-foot-high chain link fence proposed along the site's frontage and will tie into the southwest corner

of the office projection. No other improvements to the building or site are proposed.

B. Response to the Public Notice

One written objection dated July 11, 2018, was received from Jane Fontana, Esq., Legislative Research Officer for the Borough of Carlstadt. Thereafter, the applicant met with Ms. Fontana, who later advised the NJSEA Division of Land Use Management via email on September 17, 2018, that the Borough had no issue with the variance application being granted and that it had no further comments on the matter.

III. PUBLIC HEARING (July 17, 2018 and September 18, 2018)

A public hearing commenced in the Office of the Commission on Tuesday, July 17, 2018, at which time the applicant requested to postpone their testimony. The public hearing was continued on September 18, 2018, as announced on the record at the hearing on July 17, 2018. NJSEA staff in attendance on both hearing dates were Sara J. 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, 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	"Aerial of Site," Drawing Number AR-1, prepared by the Bilow Garrett Group, undated.

- A-2 "Site Plan," Drawing Number SP-100, prepared by the Bilow Garrett Group on September 11, 2017, last revised on June 28, 2018.
- A-3 "Site Details," Drawing Number SP-101, prepared by the Bilow Garrett Group on February 28, 2018.
- A-4 "Photo Array," Drawing Number PH-1, prepared by the Bilow Garrett Group, undated.
- A-5 "ALTA/NSPS Land Title Survey for 248 Paterson Plank Road, Block 121, Lot 1.03, Borough of Carlstadt, Bergen County, New Jersey," Sheet 1 of 1, prepared by Control Layouts, Inc., on August 19, 2016, last revised on April 17, 2017.

B. Testimony

Jason Tuvel, Esq., of Prime Law, represented the applicant at the hearing. The following witness testified in support of the application:

1. Anthony Garrett, RA, of the Bilow Garrett Group.

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(S)

- A. **Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.10(a)1, which prohibits fences or screening walls in**

excess of 24 inches in required front yards, whereas an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire are proposed within the required front yard facing Paterson Plank Road.

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.*

The requested variance to permit an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the required 25-foot front yard setback arises from conditions that are unique to the site. The subject premises is an irregularly-shaped lot that fronts along Paterson Plank Road to the south. The site is currently improved with a 31,415-square-foot truck terminal building with associated parking and site improvements. The proposed 160-foot section of fence will take up about one third of the site's frontage and the proposed gate will connect it, at a right angle, to the southwest corner of projecting portion of the t-shaped building. The proposed fence will surround an existing paved vehicular use area and be located at a minimum setback of 3.2 feet from the Paterson Plank Road/NJ Route 120 right of way.

A 65-foot-wide projecting portion of the 419-foot-wide t-shaped building is located approximately 33 feet from the Paterson Plank Road right of way line. Within the 33-foot building setback, there is an 18-foot-wide drive aisle, a six-foot-wide landscaped strip, and an existing stairway to access the building. The site contains a pre-existing non-conforming front yard loading area to the west of the building projection. The applicant is proposing to install the fence and gate with a minimum setback of 3.2 feet from the front property line, so as not to impede loading operations and vehicular circulation throughout the site.

District zoning regulations restrict fences from being placed within required front yards. The property is configured and improved in such a way that limits potential conforming locations for fencing that would not impact vehicular circulation around the site or within the pre-existing non-conforming loading area. The proposed locations of the fence and gate will preserve the established logistical functions while ensuring the security of the site. These circumstances 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.*

The granting of the requested variance to permit an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the required 25-foot front yard setback adjacent to a public right of way will not adversely affect the rights of neighboring property owners or residents. The site is located within a fully-developed industrial area. There are no

residential properties located within the immediate vicinity of the subject premises.

The proposed fence and gate, which will be set back a minimum of 3.2 feet from the front property line, will not be highly visible from Paterson Plank Road due to the rising elevation of the roadway relative to the existing grade of the subject property, which ranges from 2 feet at the start of the fence to approximately 9 feet at the southwest corner of the site. In addition, the proposed fence will be screened by natural vegetation growing along the slope between the roadway and the subject property. The proposed fence will therefore not create any negative visual impacts to neighboring properties or impede their ability to function as intended. The location of the new fence and gate on site will be 280 feet from the site driveway and will not require trucks to queue within the Paterson Plank Road right of way. 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 regulations will result in peculiar and exceptional practical difficulties to, and exceptional and undue hardship upon, the property owner. Locating the fence and gate at the 25-foot front yard setback line would place it in the middle of an existing drive aisle and vehicular use area, which are integral to both emergency vehicle access around the perimeter of the building

and to the circulation/maneuverability of trucks within the existing loading areas. The strict application of the regulations would render the perimeter drive aisle and existing loading area to the west of the office as inoperable. The proposed location of the fence and gate will allow the site to continue to function as intended, and will not negatively impact aesthetics in the neighborhood.

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 requested variance. The surrounding neighborhood properties on the westbound side of Paterson Plank Road principally consist of industrial uses. The applicant proposes to install an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the required 25-foot front yard setback facing Paterson Plank Road for security purposes. The fence and gate are proposed to be set back a minimum of 3.2 feet from the front property line.

To minimize any potential conflicts to the existing vehicular circulation within the paved vehicular use and loading areas that would result from installing a fence and gate in a conforming location and to provide security for the site, the fencing is proposed to be set back a minimum of 3.2 feet at its closest point to the front property line. The applicant's professional testified that the

location of the new fence and gate on site will be 280 feet from the site driveway and will not require trucks to queue within the Paterson Plank Road right of way. In addition, the gate will have a knock box to ensure that vehicles utilized for emergency services purposes will continue to have access around the perimeter of the facility.

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

The granting of the requested variance to permit an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the required 25-foot front yard setback facing Paterson Plank Road will not have any adverse environmental impacts. The location of the proposed fence and gate within the required front yard facing Paterson Plank Road will not violate the District's performance standards for noise, vibrations, airborne emissions, hazardous materials, glare or water quality. Environmentally sensitive areas, such as the Peach Island Creek and Berry's Creek waterway buffers on the northerly portion of the site, will not be disturbed by the proposed placement of the fence and gate within the required front yard.

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 fence and gate will be installed on a fully-developed lot where potential locations to provide a functional gate and fence without altering the vehicular

circulation and safe operations of the truck terminal are limited. The fence and gate are proposed to be installed at a minimum setback of 3.2 feet from the Paterson Plank Road right of way line. The fence and gate as proposed ensures adequate vehicle movement within the site without compromising the use of existing loading and parking areas for vehicle circulation and maneuvering.

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

The requested variance to permit an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the required 25-foot front yard setback facing Paterson Plank Road will not impair the intent and purpose of the regulations. An intent of the regulation that prohibits fences in required front yards is to minimize adverse visual impacts to neighboring properties. The property in question is located in an area comprised of various industrial uses. Although the fence and gate will be installed within the required front yard setback, the rising elevation of the Paterson Plank Road roadway surface relative to the subject property, which varies from two to nine feet along the length of proposed fence, along with vegetative growth along the resulting slope, will result in a minimal visual impact to the surrounding area. Furthermore, the fence and gate at the proposed locations will provide a level of security for Xpedited Services' loading and truck parking areas while maintaining the overall functionality of the site.

V. SUMMARY OF CONCLUSIONS

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.10(a)1, which prohibits fences or screening walls in excess of 24 inches in required front yards, whereas an eight-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire are proposed within the required front yard facing Paterson Plank Road.

Based on the record in this matter, the bulk variance application to install an 8-foot-high chain link fence swing gate and a six-foot-high chain link fence topped with barbed wire within the required front yard facing Paterson Plank Road is hereby recommended for APPROVAL.

<u>APPROVAL</u> Recommendation on Variance Request	<u>10/4/2018</u> Date	 Sara J. Sundell, P.E., P.P. Director of Land Use Management
<u>APPROVAL</u> Recommendation on Variance Request	<u>10/4/18</u> Date	 Frank Leanza, Esq. Senior Vice President Chief of Legal & Regulatory Affairs