

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
Palmer Terrace Rlty /SoFive-HVAC Units-Variance
File #18-116**

I. INTRODUCTION

An application for one bulk variance has been filed with the NJSEA by Aiyana A. Gallardo, Esq., of the firm Waters, McPherson, McNeill, P.C., on behalf of Palmer Terrace Realty Associates, LLC, c/o Marcus Associates, for the premises identified as 2 Palmer Terrace, Block 124, Lot 51, in the Borough of Carlstadt, New Jersey. The subject premises is located in the Light Industrial B zone of the Hackensack Meadowlands District. The bulk variance is sought in connection with the applicant's proposal to install one ground-mounted HVAC unit within the required rear yard setback on the subject property.

The applicant is requesting relief from the following:

1. N.J.A.C. 19:4-5.84(a)3iii, which requires a minimum rear yard setback of 30 feet, whereas a minimum rear yard setback of 14.67 feet is proposed to the HVAC unit concrete pad.

A public hearing was held at the Office of the NJSEA on Tuesday, June 5, 2018. Notice was given to the public and all interested parties as required by law. The public notice for this hearing was published in The Record newspaper. 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 has an area of approximately 2.97 acres and contains frontage on Palmer Terrace to the west and south. Palmer Terrace is a private road in the vicinity of the subject site. The site is currently improved with an existing 55,568-square-foot building containing a commercial indoor recreational facility with eight soccer fields and associated offices and guest areas. The recreational facility received special exception approval in 2014 from the NJSEA (former New Jersey Meadowlands Commission). The applicant is proposing to install two ground-mounted HVAC units, one of which will be located within the required 30-foot rear yard setback, having a setback of 14.67 feet from the unit's concrete pad to the rear lot line.

The surrounding area is primarily developed with industrial uses, including a recently constructed office building located at Block 124, Lot 50, across Palmer Terrace to the south. An undeveloped parcel abuts the site to the east.

B. Response to the Public Notice

There were no written comments in response to the public notice.

III. PUBLIC HEARING (June 5, 2018)

A public hearing was held at the Office of the NJSEA on Tuesday, June 5, 2018. NJSEA staff in attendance 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, Principal Planner; and Mark Skerbetz, 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 image of subject site and surrounding area.
A-2	"HVAC Site Plan," Drawing No. C-02, prepared by L2A Land Design, LLC, dated March 15, 2018, revised through April 25, 2018.

B. Testimony

Eric McCullough, Esq., and Aiyana A. Gallardo Esq., of the firm, Waters, McPherson, McNeill, P.C., represented Palmer Terrace Realty Associates, LLC, c/o Marcus Associates, at the hearing. The following witnesses testified in support of the application:

1. Howard Jester, HVAC expert, MEP Services.
2. William Vogt, Jr., P.E., L2A Land Design, LLC.
3. Charles Lagayette, SoFive.

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 commented on the application.

IV. RECOMMENDATION

A. Standards for the granting of a Bulk Variance from the provisions of N.J.A.C. 19:4-5.84(a)3iii, which requires a minimum rear yard setback of 30 feet, whereas a minimum rear yard setback of 14.67 feet is proposed to the HVAC unit concrete pad.

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

1. *Concerning bulk variances:*

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

The subject property is a narrow, rectangular lot located on Palmer Terrace, a private road that serves only two properties (1 Palmer Terrace and 2 Palmer Terrace). The owners of 1 and 2 Palmer Terrace have an agreement formalizing common rights to the roadway. A 55,568-square-foot commercial indoor recreational facility containing eight soccer fields and associated office and guest areas, exists on the premises. The rear yard of the site is adjacent to the eastern end of the building, which is perpendicular to the terminus of Palmer Terrace. The building's southern exposure, which is parallel to Palmer Terrace, contains its main entrance. Existing on-site parking is located between the building's southern façade and Palmer Terrace.

The applicant proposes to install two ground-mounted HVAC units to cool the indoor soccer fields, the first of which will be placed adjacent to the westerly building façade, in a conforming location outside of the required front yard fronting along Palmer Terrace; while the second unit, which is the subject of this variance request, will be located adjacent to the easterly building façade within the required 30-foot rear yard setback. A rear yard setback of 14.67 feet from the property line to the mounting concrete pad is proposed for this second HVAC unit. Other potential locations to install the second unit with a conforming setback are limited, as there is no available space outside of the required side and rear yards. Also, the available space in the front yard between the southern side of the building and the parking lot is insufficient for

the width of the equipment and would necessitate the removal of four existing parking spaces. The subject commercial recreation, outdoor facility was previously granted a bulk variance (under File No. 14-358) for providing 91 parking spaces, where 96 parking spaces were required by the regulations. In addition, testimony was provided stating that the HVAC units cannot be roof-mounted due to limitations associated with the existing building's roof's pitch and construction type. Additionally, the HVAC units must be located at opposite ends of the building in order to maximize their cooling efficiency for the indoor soccer fields at each end of the building.

The shape of the lot, combined with the location and orientation of the existing building, results in very narrow rear and side yards, thus limiting available locations to place the second HVAC unit within a conforming setback. These unique conditions are not ordinarily found in the Light Industrial B zone, and were not created by any action of the current property owner or the 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 will not adversely affect the rights of neighboring property owners or residents. The surrounding area is primarily developed with industrial uses, and there are no residential properties within the vicinity of the subject site. The area immediately to the east of the site is an undeveloped wetland area. Evergreen screening will be provided between the HVAC unit and the rear property line to shield the view of the

equipment from the north and east. Additionally, existing vegetation and fencing will provide screening between the proposed HVAC unit and the property to the north. Any noise or vibrations emanating from the equipment will be mitigated by attenuation shields, thereby minimizing any potential disturbances to the neighboring properties. As such, the surrounding facilities will be able to continue to operate as they currently do without any negative impacts resulting from the HVAC equipment installed within the required rear yard setback.

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 requiring a minimum 30-foot rear yard setback for the installation of one ground-mounted HVAC unit will result in peculiar and exceptional practical difficulties to and exceptional and undue hardship to the applicant. One ground-mounted HVAC unit is proposed to be located adjacent to the westerly building façade in a conforming location outside of a required front yard setback, while the second unit is proposed to be located adjacent to the easterly building façade within the required 30-foot rear yard setback. The respective locations of the two units have been sited to maximize each unit's operating efficiency to cool the soccer fields within the overall facility. It is not possible to mount either HVAC unit on the building's roof due to limitations associated with the roof's pitch and construction type.

The existing building is set back approximately 30 feet from the rear lot line, leaving essentially no room to achieve the required 30-foot setback for the proposed HVAC equipment. The applicant testified that the HVAC unit must be installed at a minimum of seven feet from the building, which results in a setback of 14.67 feet between the concrete pad and the rear property line. Strict conformance with the required 30-foot setback would place the HVAC unit on the inside of the facility, reducing the width or eliminating the use of one soccer field. As such, the proposed location of the second ground-mounted HVAC unit within the required rear yard setback will allow patrons to utilize the facility's soccer fields within a comfortable, climate-controlled indoor environment while permitting the site to function as intended. Site aesthetics will be enhanced as the equipment will be sufficiently screened with fencing and evergreen plantings from the neighboring properties.

- 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 install a ground-mounted HVAC unit on a concrete pad within the required 30-foot rear yard setback 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 subject HVAC unit, used in conjunction with one additional proposed ground-mounted HVAC unit, will provide a climate-controlled environment for patrons utilizing the indoor soccer fields. Public safety will not be compromised by the placement of the HVAC unit

within the required rear yard setback, as adequate light, air, and open space will be maintained. In addition, there will be no violation of the NJSEA performance standards by the proposed HVAC unit. Finally, indoor recreational facilities such as this facility provide a public health and welfare benefit, where participants may engage in sports and recreational activities in a climate-controlled environment, allowing for year-round exercise and training.

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

The granting of the requested variance will not result in any substantial adverse environmental impacts. Open space will be maintained on the site at approximately 32 percent, in excess of the minimum required 15 percent for the Light Industrial B zone. No environmentally sensitive areas will be disturbed as a result of the placement of the HVAC unit in its proposed location. Also, NJSEA performance standards will not be exceeded for noise, vibration, airborne emissions, glare, hazardous and radioactive materials, and wastewater. Therefore, no substantial adverse environmental impact is anticipated to result from the requested variance.

vi. The variance represents the minimum deviation from the regulations that will afford relief.

The requested variance to install an HVAC unit on a concrete pad adjacent to the building's easterly façade with a rear yard setback of 14.67 feet, whereas a minimum rear yard setback of 30 feet is required, represents the minimum deviation from the regulations that will afford relief. A second ground-mounted HVAC unit will be installed in a conforming location adjacent to the building's westerly façade, outside of the required front yard. The two HVAC units will be installed at opposite ends of the building in order to achieve maximum operating efficiency to cool the indoor soccer fields located at each end of the building.

The distance between the easterly building façade and the rear property line is approximately 30 feet. The applicant testified that the HVAC unit must be installed at a minimum of seven feet from the building, which results in a setback of 14.67 feet between the concrete pad and the rear property line. It is not possible to mount either HVAC unit on the building's roof due to limitations associated with the roof's pitch and construction type.

The concrete pad extends six inches beyond the HVAC unit at each of the two locations. The applicant has provided the greatest possible setback from the pad to the rear property line. There are no alternative locations within the rear or side yards to install the HVAC unit without violating setback requirements because of the narrowness of the site. In addition, the unit cannot be installed in the southerly front yard without eliminating two parking spaces and thereby necessitating an additional bulk variance.

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

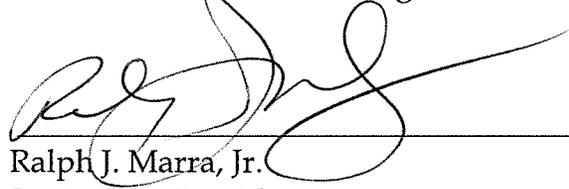
The requested variance to permit the installation of one ground-mounted HVAC unit adjacent to the easterly building façade, within the required 30-foot rear yard setback will not impair the intent and purpose of the regulations. One purpose for prohibiting structures in required rear yards is to minimize the visual impacts to neighboring properties. The property in question is located in the Light Industrial B zone, which is comprised of various industrial and commercial uses. Although the HVAC unit will be located within the required rear yard setback, it will have a minimal visual impact to the surrounding area due to the distance from the proposed HVAC unit to the adjacent developed properties. Also, the equipment will be screened by evergreen vegetation on the three exposed sides. The proposed HVAC unit will be located approximately 130 feet from the Palmer Terrace private road near the southeasterly corner of the lot. Furthermore, the HVAC unit proposed within the rear yard setback, in addition to the HVAC unit proposed to be installed in the conforming location along the westerly building façade, will provide maximum cooling efficiency for the indoor soccer fields that are located at each end of the existing commercial recreation facility. This will allow the facility to operate as intended in an orderly manner, satisfying the intent and purpose of the NJSEA regulations.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.84(a)3iii, which requires a minimum rear yard setback of 30 feet, whereas a minimum rear yard setback of 14.67 feet is proposed to the HVAC unit concrete pad.

Based on the record in this matter, the bulk variance application to permit a minimum rear yard setback of 14.67 feet to the ground-mounted HVAC unit concrete pad on the subject property is hereby recommended for **APPROVAL**.

<u>APPROVAL</u>	<u>7/9/2018</u>	<u></u>
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

<u>Approval</u>	<u>7/9/18</u>	<u></u>
Recommendation on Variance Request	Date	Ralph J. Marra, Jr. Senior Vice President Legal & Regulatory Affairs