

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
M-Industries/Mack Management & Construction Corp. (Use Variance)
FILE # 21-005**

I. INTRODUCTION

An application for one use variance has been filed with the New Jersey Sports and Exposition Authority (NJSEA) by Paul Jerkovich, on behalf of Mack Management & Construction Corp., for the premises located at 925 Paterson Plank Road and 50 Terminal Road, Block 158, Lots 1, 2, 3, 4, and 5, in the Town of Secaucus, New Jersey. The subject property is located within the Hackensack Meadowlands District's Regional Commercial zone. The use variance is sought in connection with the applicant's proposal for an interior alteration related to a change in use of existing retail space to warehouse and office space at the subject premises.

Specifically, the applicant is requesting use variance relief from the following:

1. N.J.A.C. 19:4-5.52(a), whereas a warehouse use is not listed as a permitted use in the Regional Commercial zone.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Jersey Journal newspaper and posted on the NJSEA website. No written objections were submitted to the Division of Land Use Management. An electronic public hearing was held virtually using Zoom video conferencing on Tuesday, October 26, 2021. 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 is a 13.3-acre site with frontage along westbound New Jersey State Highway Route 3 Service Road North ("Route 3 Service Road"), NJ State Highway Route 3 Ramp "K" ("Ramp K"), and Paterson Plank Road, also identified as County Road 681. The subject property is comprised of five lots within a zoning lot of record, established pursuant to N.J.A.C. 19:4-3.22, and filed in the Hudson County Deed Register at Book 5684, Page 172 *et seq.* on September 25, 2000.

The subject property is located in the Regional Commercial zone of the Hackensack Meadowlands District, and is currently improved with an existing 246,228-square-foot multi-tenanted building, consisting of both warehouse/distribution space (Arrowpac) and two big-box retail tenants (Ashley Furniture and Best Buy). Specifically, the existing building contains 140,785 square feet of warehouse space, 94,233 square feet of retail space, and 11,210 square feet of accessory office space.

Both of the site's retail tenants are in the process of relocating from the premises, and the applicant proposes to convert the existing retail space to warehouse/distribution and accessory office uses. As part of this conversion, the applicant proposes to add one overhead door and five interior loading spaces to the existing drive-in loading area on the easterly building façade, and minor site improvements to accommodate trailer parking spaces on existing pavement and additional open space. The proposed breakdown of uses in the building would include 234,190 square feet of warehouse/distribution space and 12,038 square feet of accessory office space. Therefore, a use variance is required to convert the existing retail space on the premises to warehouse/distribution space, as the proposal represents an expansion of an existing nonconforming use.

Cromakill Creek runs within the property along the site's southerly border. Adjoining properties include an Extra Space self-storage facility to the east, a BP gas station to the southwest, and the NJ Transit Meadowlands Maintenance Facility located within the Township of North Bergen to the south. Other properties in the

vicinity of the subject property include a hotel within the Harmon Meadow complex and vacant land to the north across Paterson Plank Road, and an existing hotel and new warehouse facility under construction to the west across Route 3.

Access to the site is available via an entrance driveway from the Route 3 WB Service Road; a signalized intersection at Paterson Plank Road; and, a right-turn-in/right-turn-out driveway further east along Paterson Plank Road to access the easterly portion of the site containing the majority of the building's loading areas. No internal access route is available between the easterly and westerly portions of the site.

B. Response to the Public Notice

No written objections were received prior to the public hearing.

III. PUBLIC HEARING (October 26, 2021)

A public hearing was held via Zoom on Tuesday, October 26, 2021. 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; and Mia A. Petrou, P.P., AICP, CFM, Supervising 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	"Existing Ground Floor Plan", Dwg. EX.1, prepared by William Dahn, R.A., Dahn & Krieger, PC, dated 08/05/2021, last revised 09/27/2021.

- A-2 "Proposed Ground Floor Plan", Dwg. SK.1, prepared by William Dahn, R.A., Dahn & Krieger, PC, dated 08/05/2021, last revised 09/27/2021.
- A-3 "Boundary, Topographical, & Utility Survey", prepared by James D. Sens, P.L.S., Control Point Associates, Inc., dated 02/12/2021.
- A-4 Site plan set consisting of the following 3 sheets, prepared by Richard J. Adehlson, P.E., Frank H. Lehr Associates, Inc., dated 08/13/2021:
- Sheet C-1 entitled "Cover Sheet";
 - Sheet C-2 entitled "Site Plan"; and
 - Sheet C-3 entitled "Turning Template".
- A-5 "Aerial Map", prepared by Langan Engineering and Environmental Services, Inc., dated 10/15/2021.
- A-6 "Photographic Log", prepared by Langan Engineering and Environmental Services, Inc., dated 10/08/2021.
- A-7 Planning Report, prepared by Sean F. Moronski, P.P., AICP, Langan Engineering and Environmental Services, Inc., dated 10/15/2021.

B. Testimony

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

1. William Dahn, R.A., Dahn & Krieger, PC;
2. Richard J. Adehlson, P.E., Frank H. Lehr Associates, Inc.;
3. Paul Jerkovich, Mack Management & Construction Corp.; and
4. Sean F. Moronski, P.P., AICP, Langan Engineering and Environmental Services, 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

Public comment on the application was provided by the following:

1. Gary Jeffas, Administrator, Town of Secaucus.

IV. RECOMMENDATION

A. Standards for the Granting of a Use Variance from the Provisions of N.J.A.C. 19:4-5.52(a), which does not list a warehouse use as a permitted use in the Regional Commercial zone.

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 use variances:*
 - i. *The strict application of these regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The applicant proposes to convert existing retail space on the site to warehouse and distribution space. This proposal represents an expansion of the existing warehouse use of the subject premises, which currently accounts for 57 percent of the building's total floor area, inclusive of warehouse space accessory to the existing retail uses on the site.

The existing retail tenants, comprised of a Best Buy store of approximately 72,000 square feet and an Ashley Furniture store of

approximately 48,800 square feet, are vacating the subject property. Both existing retail tenants are relocating from the subject premises due to the contraction of the “big box” retail format, which had been installed at the subject site in the mid-1980s, and, consequently, the building’s inability to accommodate smaller retail tenant spaces to retain these tenancies. The existing building on the site, originally constructed as a warehouse, is not physically able to accommodate a smaller retail format of prospective tenants which, according to the applicant’s testimony, range from 10,000 to 20,000 square feet. Specifically, the significant distance between the site’s existing retail frontage on the westerly façade, and loading areas servicing these tenant spaces located on the easterly façade, makes it impracticable to accommodate smaller retail tenant spaces at the property. The ability to provide additional loading areas to service smaller retail tenant spaces is constrained by the presence of Cromakill Creek to the south, and by NJSEA District Zoning Regulations prohibiting front yard loading along the site’s three front yards. Division of the existing retail space into multiple, smaller retail tenant spaces, or other permitted commercial uses in the Regional Commercial zone, is further constrained due to the site’s dependence on the use of sanitary holding tanks, which limits the number of occupants that could be accommodated within the building.

Despite having three front yards and proximity to Route 3, the site’s access characteristics also represent a constraint for retail uses. Access to the site is available via entrance driveways on the Route 3 WB Service Road and Paterson Plank Road. However, visibility of the site’s Route 3 WB Service Road entrance is somewhat obscured by the presence of the adjacent gas station and

vegetation on the site itself. In addition, there is no direct site exit to Route 3. The site's southerly exit driveway is located at a signalized intersection with Paterson Plank Road, which provides access to Route 3. These constraints also affect the viability of retail uses on the premises.

Therefore, due to these constraints, the strict application of the regulations will result in exceptional practical difficulties and undue hardship to the property owner.

- ii. *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 permit the expansion of the existing warehouse use on the subject property will not result in a substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

The area of the proposed alteration in the easterly portion of the site currently contains five loading spaces within an interior loading bay, with five exterior overhead loading doors. In the proposed condition, the interior loading bay will accommodate 10 loading spaces within the same footprint, and six exterior overhead loading doors, due to the conversion of the rear storefront entrance of the Best Buy tenant space to an overhead loading door. Trailer parking spaces will be provided on the site over existing pavement, and no off-site queuing of trucks entering the site is anticipated to occur.

It is anticipated that the proposed change of use will not significantly impact motorists or traffic conditions on surrounding roadways during peak periods, as traffic associated with warehouse uses generally occurs outside of peak commuting periods in order to facilitate the movement of goods in an efficient manner. Retail uses also require a larger number of parking spaces to support their operation; therefore, parking demand will also be significantly reduced on the site, by 380 spaces.

Finally, public safety on the site will be improved, as the proposal will result in a greater separation of trucks from passenger vehicles on the site through the conversion of car parking spaces in the vicinity of loading areas to trailer parking spaces in the easterly portion of the site. Additionally, the proposal would eliminate the potential for conflicts between trucks utilizing the existing loading doors in the westerly portion of the site near the Paterson Plank Road signalized intersection and the vehicles of retail patrons unfamiliar with the building layout. While the westerly parking area will continue to be utilized by employees' passenger vehicles, it can be reasonably anticipated that they would be more aware of the loading operations at the site than the occasional retail patron.

iii. Adequate infrastructure, including storm and sanitary sewers, utilities, access roads, will be provided and shall be so designed to prevent and/or minimize negative impacts upon the existing infrastructure. In addition, the proposed use will not decrease the ability of said infrastructure to perform in a safe and efficient manner.

The granting of the requested variance to permit the expansion of the warehouse use at the subject premises will not result in significant negative impacts to existing infrastructure.

No building expansion or additional impervious surfaces that could impact drainage infrastructure are proposed. Rather, the applicant proposes to convert approximately 2,450 square feet of existing pavement to open space in a portion of the site along Cromakill Creek, which will provide additional vegetated buffer area to that waterway.

Furthermore, warehouse uses typically generate less demand for water and sewer usage than commercial uses, and the proposed use will not decrease the ability of said infrastructure to perform in a safe and efficient manner. The proposed change to warehouse use will result in reduced use of the site's existing 2,000-gallon sanitary holding tank servicing the portion of the building in question, as compared to existing retail or other uses permitted in the Regional Commercial zone.

Finally, the proposal is not anticipated to negatively impact area roadways, as most traffic associated with warehouse uses generally occurs outside of peak commuting periods. All truck queuing and parking areas will be located on the site.

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

The granting of the requested variance to permit the expansion of warehouse use at the subject premises will not result in substantial adverse environmental impacts.

The proposed change of use will occur within the existing building footprint, and no building footprint expansion or expansion of impervious areas is proposed. No wetlands or other environmentally-sensitive areas located on the site will be disturbed. Rather, an approximately 2,450-square-foot area of pavement in the southerly area of the site along Cromakill Creek will become open space, providing additional vegetated buffer area to that waterway, and increasing the site's existing nonconforming open space percentage from 14.25 to 14.68 percent, whereas 20 percent is the minimum amount of open space required in the Regional Commercial zone.

The site's loading operations to service the proposed warehouse space will occur within an existing interior loading bay, and additional open space and landscaped screening will be provided to screen proposed truck parking areas to be installed over existing pavement. Therefore, there will be no significant impact to visual aesthetics in the area as a result of the requested variance.

NJSEA environmental performance standards will not be exceeded for noise, vibration, glare, air emissions, and hazardous and radioactive materials.

v. The variance will not substantially impair the intent and purpose of these regulations.

The intents and purposes of the District Zoning Regulations include to provide sufficient space in appropriate locations for a variety of uses, and to promote development in accordance with

good planning principles that relate the type, design and layout of such development to both the particular site and surrounding environs.

The proposed warehouse use is an expansion of the existing warehouse use already occurring at the premises. Approximately 57 percent of the building floor area consists of warehouse use, and the site is located adjacent to other compatible uses, such as a bus maintenance facility and self-storage facility. The proposal to convert the entire building to warehouse space, inclusive of accessory office space, can be accommodated on the site consistent with good planning principles, including the addition of open space on the site to serve as a buffer adjacent to Cromakill Creek.

The purpose of the Regional Commercial zone is “to accommodate a range of commercial uses serving a regional market area. Development in the zone should incorporate regional retail facilities and large-scale commercial employment centers.” Although not commercial in nature, the proposed warehouse expansion satisfies the intent of the zone to create employment opportunities on a significant portion of the site being vacated.

Therefore, the requested use variance will not substantially impair the intent and purpose of the regulations.

vi. The variance at the specified location will contribute to and promote the intent of the District Master Plan.

A specified goal of the Hackensack Meadowlands District Master Plan Update 2020 is to promote a suitable array of land uses that

encourages economic vitality with job creation and supports the public health, safety, and general welfare. The requested use variance will respond to the strong market demand for warehouse space in the Hackensack Meadowlands District on an appropriate site in an appropriate location, with access to regional and state highway transportation routes. Furthermore, the Master Plan Update's Land Use Plan designates the subject premises as a part of the District's Commercial Center Planning Area, which includes a goal to encourage a mix of uses within the area with varying peak hours of travel in an effort to minimize traffic impacts. The requested use variance will convert existing retail space to warehouse space, which typically generates traffic demand at off-peak hours of travel.

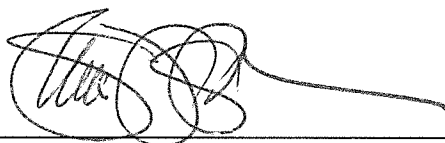
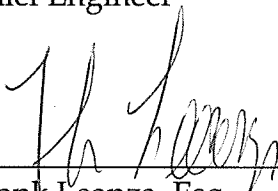
With respect to the appropriateness of the site for retail or other commercial uses permitted in the Regional Commercial zone, the viability of these uses on the site is constrained by the practical difficulties described in Section *i.* above. Additionally, the subject site is isolated from other retail uses. According to the applicant's testimony, Ashley Furniture, a vacating retail tenant, expressed a preference for locating near other commercial uses, and has opened a store in the nearby Harmon Meadow commercial complex on Mill Creek Drive. The rise of e-commerce as a retail trend, as discussed in the master plan and accelerated by the COVID-19 pandemic, has resulted in retailers seeking smaller tenant spaces, and it has been demonstrated that smaller commercial tenants cannot be accommodated at the subject premises due to site constraints.

Therefore, the requested use variance to provide for an expansion of the warehouse use on the subject premises will contribute to and promote the intent of the NJSEA Master Plan.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Use Variance from the Provisions of N.J.A.C. 19:4-5.52(a), which does not list a warehouse use as a permitted use in the Regional Commercial zone.

Based on the record in this matter, the use variance application to permit the conversion of existing retail space to warehouse and distribution space at the subject premises, resulting in an expansion of the existing, nonconforming warehouse use of the site, is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>1/12/2022</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management and Chief Engineer
<u>Approval</u>	<u>1/12/2022</u>	
Recommendation on Variance Request	Date	Frank Leanza, Esq. Senior Vice President Chief of Legal & Regulatory Affairs