

**RECOMMENDATION ON THE VARIANCE APPLICATION OF  
TTOO, LLC - Bio Compression Systems, Inc. - Addition (Variances)  
FILE # 22-046**

**I. INTRODUCTION**

An application for one bulk variance has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by Robert Freidenrich of TTOO, LLC for the premises located at 110 West Commercial Avenue (Block 60, Lot 6) and 120 West Commercial Avenue (Block 60, Lot 7), in the Borough of Moonachie, New Jersey. The subject premises is located within the District's Light Industrial B zone. The bulk variance is sought in connection with the construction of a 5,116-square-foot building addition and associated improvements on the subject property.

Specifically, the applicant is requesting variance 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 the applicant is proposing to construct a building addition in the Light Industrial B zone with a minimum rear yard setback of 3.03 feet from the rear property line.

Notice was given to the public and all interested parties as required by law. The public notice was published The Record newspaper. 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, January 24, 2023. 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 consists of two lots, identified as Block 60, Lots 6 and 7, that are located in the District's Light Industrial B zone. The lots, which will be combined as a single zoning lot of record pursuant to N.J.A.C. 19:4-3.22, total 45,414 square feet. The site's combined lot frontage along West Commercial Avenue totals 235 feet.

The parcel at Lot 6 is currently developed with a 7,899-square-foot warehouse building, and the parcel at Lot 7 contains an 11,732-square-foot light industrial building, in gross area. Asphalt pavement covers the majority of the remainder of the project site, and a drainage ditch abuts the property to the south. In 2010, bulk variances were granted to construct an addition to the structure on Lot 7 within the lot's required side and rear yards.

The subject property's rear property line adjoins the municipal boundary between the Borough of Moonachie and the Borough of Carlstadt. Neighboring properties in both Moonachie and Carlstadt are predominantly light industrial and warehouse and distribution facilities.

The existing buildings on the site are occupied by Bio Compression Systems, Inc., a manufacturer of medical devices. The applicant proposes to consolidate and expand their operations at the premises by constructing a 5,116-square-foot addition that will connect the two existing structures on Lots 6 and 7, and associated site improvements. A bulk variance is requested to construct the addition at a minimum 3.03-foot setback from the rear lot line, within the required rear yard setback of 30 feet, to align with the rear building line of the existing building on Lot 7.

### **B. Response to the Public Notice**

No written objections were received prior to the public hearing.

### III. PUBLIC HEARING (January 24, 2023)

A virtual public hearing was held on Tuesday, January 24, 2023, using Zoom video conferencing. 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, Supervising Planner; and William Moran, 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	"Floor Plan with Proposed Addition", Dwg. A-1.0, prepared by Piero Gabucci, AIA, Axis Architectural Group, dated April 15, 2022, last revised November 3, 2022.
A-2	"Exterior Elevations", Dwg. A-2.0, prepared by Piero Gabucci, AIA, Axis Architectural Group, dated April 15, 2022, last revised November 3, 2022.
A-3	Site Plan Set consisting of 10 sheets, prepared by Michael E. Dipple, P.E., L2A Land Design, LLC, dated January 27, 2022, last revised November 17, 2022.
A-4	"Topographic Survey of Property", prepared by Jeffrey S. Grunn, P.L.S., Lakeland Surveying, LLC, dated March 18, 2021.
A-5	Undated aerial photograph showing the property and surrounding properties.
A-6	Colored rendering of the Site Plan, Sheet C-03, prepared by Michael E. Dipple, P.E., L2A Land Design, LLC, dated January 27, 2022, last revised November 17, 2022.

- A-7 NJDEP Land Use Permit No. 0237-22-0002.1 issued January 20, 2023.
- A-8 "Courtyard Elevations and Sections through Addition", prepared by Piero Gabucci, AIA, Axis Architectural Group, last revised November 3, 2022.

**B. Testimony**

Wendy Berger, Esq., of Cole Schotz, PC represented TTOO, LLC at the hearing. The following three witnesses testified in support of the application:

1. William R. Vogt, Jr., P.E., L2A Land Design, LLC;
2. Piero F. Gabucci, AIA, Axis Architectural Group; and
3. Steve Lydon, P.P., Burgis Associates, 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**

There were no members of the public in attendance at the public hearing.

**IV. RECOMMENDATION**

1. 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, the applicant is proposing to construct a building addition in the Light Industrial B zone with a minimum rear yard setback of 3.03 feet from the rear property line.

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 applicant proposes to connect the existing structures on Lots 6 and 7 within Block 60 by constructing a 5,116-square-foot addition, with a minimum 3.03-foot-wide rear yard setback. The project site is a slightly irregularly shaped parcel, containing 235 feet of frontage on West Commercial Avenue and 219 feet of width along the rear property line, resulting in a skewed easterly property line. There are a number of existing nonconforming conditions on each existing parcel, including the minimum lot area of each lot, the minimum rear yard setback on Lot 7 (3 feet), the minimum easterly side yard setbacks on Lot 6 (4.22 feet) and Lot 7 (9.5 feet), the minimum open space requirements for each lot, the presence of front yard loading on Lot 7, and the location of paved vehicular use areas within the front yard of each lot. These unique conditions affect the ability of the applicant to construct a fully conforming addition joining the two existing nonconforming structures on the two existing nonconforming lots. However, through the implementation of a zoning lot of record, and the resulting utilization of both parcels as a single parcel for the purposes of zoning, a conforming lot area exceeding the minimum one acre requirement will be provided, and the easterly side yard setback of the existing structure on Lot 7 will no longer be classified as a nonconforming condition.

These conditions are unique to the property in question, are not ordinarily found in this portion of the Light Industrial B zone, and were not created by any action of the 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 bulk variance to construct a 5,116-square-foot addition with a minimum 3.03-foot-wide rear yard setback will not adversely affect the rights of neighboring property owners. There are no residential properties in the vicinity of the subject property. Adjoining neighbors consist of warehouse and industrial uses.

Most properties in the vicinity of the subject premises appear to contain buildings situated close to their rear property lines. The most impacted parcel is the adjacent neighbor to the south, located at 110 Asia Place, Block 126, Lot 79, in the Borough of Carlstadt. This property provides a 15-foot-wide setback to the coincident rear property line, within which a drainage ditch is located. Thus, a total of 18 feet will remain open between the two neighboring structures. Additionally, there are no windows located along the rear building façade on the neighboring property to the south. Therefore, the proposed addition will not substantially decrease the amount of light and air available to the building in the rear.

Furthermore, the addition will comply with the required side yard setback to the neighboring property to the east, and will replace existing pavement within the easterly required side yard setback with open space. Additional open space with landscaping will also be installed along the site's frontage. The proposal will result in a



decrease in the overall impervious coverage on the property and improve area aesthetics through the restoration of green space in a location where asphalt currently exists.

Therefore, the granting of the requested 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 requires a minimum 30-foot-wide rear yard setback. However, the nonconforming conditions of the subject property detailed in Section *i.* above, as well as the location of the existing structures and parking and loading areas on the site, present significant challenges to providing a conforming and functional building addition.

The application of the minimum rear yard setback requirement would reduce the area of the addition by approximately one-half and result in the addition having a depth of approximately 22.5 feet at its narrowest point on the southeasterly portion of Lot 6, making it impracticable to accommodate the proposed operations on the site.

The northerly portion of the site is unavailable to accommodate the building addition, as this area is necessary for the site's parking spaces and loading operations. The proposed addition is situated at the minimum northerly extent necessary to allow access from each of the existing structures into the proposed addition. The southerly rear extent of the addition, proposed at 3.03 feet from the southerly

lot line, matches the rear setback line of the existing building on Lot 7, which is located at a 3-foot setback from the rear lot line.

Therefore, the proposed addition could not be constructed in a feasible manner if the minimum required 30-foot setback were applied, and the existing site conditions and constraints result in exceptional practical difficulties in the ability to comply with the rear yard setback requirements.

- 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.*

Approval of the requested variance to permit the construction of the 5,116-square-foot addition with a minimum 3.03-foot-wide rear yard setback, whereas a minimum rear yard setback of 30 feet is required, 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 proposed addition will comply with all other bulk requirements of the Light Industrial B zone, including lot coverage and floor area ratio (FAR) regulations, and will provide a sufficient number of parking spaces to accommodate the site's operations.

The location of the proposed addition will not cause a substantial negative impact to the provision of light or air in the neighborhood. The elimination of paved areas in the front and southeasterly side yards will improve area aesthetics and reduce the amount of existing impervious surfaces on the site. Furthermore, facilitating the construction of the proposed addition joining the two existing structures will allow Bio Compression Systems, Inc. to remain and



grow in its current location of more than 30 years, by efficiently consolidating and expanding its existing operations within one building, thereby promoting neighborhood stability and prosperity.

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

The granting of the requested variance to construct a 5,116-square-foot addition with a minimum 3.03-foot rear yard setback will not result in adverse environmental impacts. Open space and landscaping will be added to the property through the elimination of asphalt areas, thus lessening the degree of intensity of the site's preexisting nonconforming open space by increasing landscaped areas from 7.2 percent to 10.3 percent of lot area. There will be no significant detrimental impact to the existing drainage ditch to the south of the proposed addition, and runoff from existing paved surfaces will be replaced with cleaner roof water. The applicant also proposes to address floodplain management concerns by waterproofing the building slab and floodproofing the building openings to a minimum elevation of one foot above the base flood elevation, as the building addition is not deemed to be a substantial improvement in accordance with the District Flood Plain Management regulations and FEMA requirements, based on information provided to NJSEA staff by the applicant's professionals.

Furthermore, the proposed addition will not cause the District 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 granting of the requested variance to construct a 5,116-square-foot addition with a minimum rear yard setback of 3.03 feet, where 30 feet is required, represents the minimum deviation from the District zoning regulations that will afford relief. Due to the challenges inherent in constructing an addition between two existing buildings, the proposed addition could not be constructed in a feasible manner if the required 30-foot setback were applied. Locating the proposed addition at a minimum 3.03 feet from the southerly rear property line will continue the rear building line of the existing structure on Lot 7 and result in a usable facility.

The size of the proposed addition is not excessive, and presents a reasonable approach to infill development given the subject property's unique nonconforming conditions and siting of existing structures. The proposal will comply with all other bulk and parking requirements of the District zoning regulations. Finally, the provision of additional landscaping and open space will decrease the impervious coverage on the property and improve area aesthetics.

Therefore, the proposed location of the building addition, at a minimum rear yard setback of 3.03 feet, maintains consistency with the rear yard setback of the existing building on Lot 7 while enabling the property to operate efficiently.

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

The granting of the requested variance to construct a 5,116-square-foot addition with a minimum 3.03-foot-wide rear yard setback will not impair the intent and purpose of the District zoning regulations. The purpose of the Light Industrial B zone is "to accommodate a wide range of industrial, distribution, and commercial uses that generate a minimum of detrimental environmental effects."

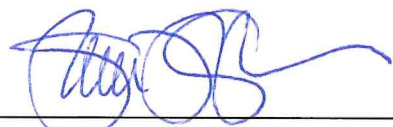
Granting the requested variance will allow the rear building line to remain consistent with the rear yard setback of the existing building on Lot 7, which is similar to the development pattern of neighboring properties. The current manufacturing and warehouse facility will be able to remain at its current location, where it has been located for more than 30 years, through the development of a functional addition joining the two existing structures on the site. In addition, the additional open space and installation of landscaping, which will replace paved surfaces along the site's frontage and in the southeasterly side yard, will decrease the impervious coverage on the property and provide environmental and aesthetic benefits to the neighborhood.

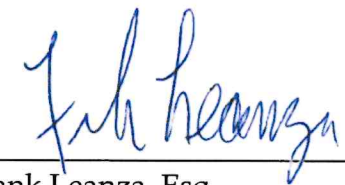
Therefore, by balancing the proposed development with the site's particular constraints, this proposal supports the purpose of the District zoning regulations to "promote development in accordance with good planning principles that relates the type, design, and layout of such development to both the particular site and surrounding environs."

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 the applicant is proposing to construct a building addition in the Light Industrial B zone with a minimum setback of 3.03 feet from the rear property line.

Based on the record in this matter, the bulk variance application to construct a 5,116-square-foot building addition and associated improvements with a minimum setback of 3.03 feet from the rear property line on the subject premises is hereby recommended for APPROVAL.

<u>APPROVAL</u>	<u>3/10/2023</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>3/10/2023</u>	
Recommendation on Variance Request	Date	Frank Leanza, Esq. Senior Vice President Chief of Legal and Regulatory Affairs