



*Amended SP 261-1
w/ use V3479*
9 Allen Street
Toms River, NJ 08753
O: (732) 286-9220
F: (732) 505-8416

March 5, 2025

Ms. Dawn D'Agostino, Zoning Board Clerk
Jackson Township Zoning Board
95 West Veterans Highway
Jackson Township, New Jersey 08527

FILE

Re: Amended Site Plan Application #261-1 / Use Variance Application #3479 / Escrow #Z32505
Amended Site Plan and Use Variance – Review #2
James Hughes
Location: 280 Faraday Avenue
Zone: I – Industrial Zone
Block 22112, Lot 2
Our File: 1512-Z-501

Dear Ms. D'Agostino & Zoning Board Members:

REMINGTON & VERNICK ENGINEERS has received the above captioned Application for review. The Applicant seeks an Amended Site Plan & Use Variance Approval to include a second use on the property to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property in the I – Industrial Zone.

The subject parcel is located at the southwesterly intersection of Faraday Avenue and Sterling Avenue. The site also has a frontage along Edison Avenue. The 2.3-acre site is located within the I – Industrial Zone. The site is not within the Pinelands Area.

The site is currently developed with 2 – 1 story metal buildings for The Applicant's plumbing & heating business. The existing improvements include a paved parking area, concrete walkway, and bollards in the front of the building along Faraday Avenue and fenced in gravel parking areas along Sterling Avenue. There are fence encroachments into the right-of-way of Edison Avenue and onto adjacent Lot 3.

The proposed site improvements include 3 separate fenced gravel areas with individual gate access. Two of the fenced areas have access to Sterling Avenue, and the remaining fenced area has access to Edison Avenue. The most westerly fenced area contains the existing rear metal garage. The other 2 fenced areas have hatched areas labeled as "maintain clear drive aisle/access typ." The improvements include a flood light, a rain garden, and evergreen trees.

This report consists of our review of the Subject Application for conformance with the Jackson Township Land Use and Development Regulations Ordinance (Chapter 244) and is limited to planning issues. Engineering and legal issues shall be deferred to the Board Engineer and Solicitor, respectively.

Comments are limited to the information presented to date. Applicant may present additional information and testimony at the Board hearing.

I. OWNER & APPLICANT INFORMATION

Owner/Applicant
James Hughes 1901 Route 539 Manchester, NJ 08759 732-364-3636

II. SUBMITTALS

Title / Description	Prepared / Signed / Sealed By	Date	Date Last Revised
Letter of Transmittal	Dawn D'Agostino Zoning Board Clerk	9/27/2023	
Email Submission		1/21/2025	
Certificate for Zoning Permit	Jeffery Purpuro Zoning Officer	8/11/2022	
200 ft Property Owners List	Peter Maher, CTA Tax Assessor	9/28/2023	
Land Development Application	Applicant	Undated	
Land Development Checklist		Undated	
Variance Application		7/19/2023	
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Escrow Agreement		7/19/2023	
Partnership Disclosure Form		9/13/2023	
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Certification by Owner/Applicant		7/19/2023	
Consent of Owner		7/19/2023	
Right of Entry Consent Form		7/19/2023	
Request Waiver of Outside Agency Approvals		Undated	
Proof of Taxes Paid		8/4/2023	
Survey of Property	William Schemel, P.L.S. FWH Associates, P.A.	1/24/2023	
Land Use Disclosure Statement	Lino DeAlmeida III, P.E. 3D Engineering & Construction	Undated	
Use Variance Plan		4/27/2023	
Set of Site Plans consisting of 5 sheets		5/14/2024	11/6/2024

III. ZONING

A. Use

The subject property is located in the I – Industrial Zone District.

The Applicant seeks Amended Site Plan and Use Variance Approval to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property. Parking and storage not related to the principal use is not a permitted use in the I – Industrial Zone.

- Per §244-63A the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property not related to the principal use is not a permitted use. The Applicant requires ‘d-1’ use variance relief.

B. Area & Bulk Standards for I – Industrial Zone Per §244-63D:

<u>ITEM</u>	<u>REQUIRED</u>	<u>EXISTING</u>	<u>STATUS</u>
Lot Requirements			
Min. Lot Area	2.0 ac	2.3 ac	Conforms
Min. Lot Width	200 ft	200 ft	Conforms
Min. Lot Frontage	125 ft	200 ft	Conforms
Min. Lot Depth	200 ft	505 ft	Conforms
Principal Building			
Min. Front Yard Setback	100 ft	98.7 ft (EV) ^(d)	Variance
Min. Rear Yard Setback	50 ft	N/A	N/A
Min. Side Yard Setback	30 ft	46.4 ft	Conforms
Min. Total Side Yard Setback	75 ft	N/A	N/A
Max. Building Height	50 ft	<35 ft	Conforms
Accessory Building			
Min. Front Yard Setback	Not Permitted	Setback 113.8 ft from Sterling Avenue	Conforms
Min. Rear Yard Setback	30 ft	N/A	N/A
Min. Side Yard Setback	25 ft	44.9 ft	Conforms
Max. Building Height	25 ft	<25 ft	Conforms
Max. Building Coverage	40%	7.6%	Conforms

ITEM	REQUIRED	EXISTING	STATUS
Max. Impervious Coverage	75%	<75%	Conforms
Parking Requirements			
Plumbing & Heating Showroom & Supply (7,696 sf)	1 space/400 sf = 4,000 sf/400 sf = 10 spaces plus 3,696 sf/800 sf = 5 spaces		
Total Parking Required	15 spaces	12 spaces (V) ⁽²⁾	Variance
Accessible Parking Required	1 space	0 spaces ⁽³⁾	Not Compliant with ADA

EV – Existing Non-conforming Condition V – Variance

- (1) Per §244-63D the required minimum front yard setback for a principal structure is 100 ft, whereas 98.7 ft is existing.
- (2) Per §244-197N the required parking for a furniture and appliance stores or similar types of uses requiring large amounts of storage is 1 for each 400 square feet up to 4,000 square feet, plus 1 parking space for each 800 square feet of gross floor area above 4,000 square feet. The required parking is 15 parking spaces, whereas there are 12 existing parking spaces. A variance may be required.
- (3) There are no accessible parking spaces provided; this does not comply with ADA requirements.

C. Other Provisions and Requirements Per §244-63E

1. Each use located in the I Zone shall provide truck loading and unloading facilities on the same lot and in other than the required front yard so as to permit the transfer of goods in other than a public street. **The site has frontage along 3 streets. Testimony shall be provided to determine compliance with this requirement.**
2. No required off-street loading areas shall be located in any required front setback. **The site has frontage along 3 streets. Testimony shall be provided to determine compliance with this requirement.**
3. Where the I Zone abuts a residential zone, whether along a property line or across a street, there shall be provided a one-hundred-foot buffer screening strip as set forth in §244-193. **This requirement is not applicable to this application.**
4. Each use permitted in the I Zone shall be served by a public sewage disposal system or by a private disposal system which meets the approval of the State and Township Boards of Health and the Jackson Township Municipal Utilities Authority. Any private disposal system shall be so designed as will, in the opinion of the Township Engineer, enable the system to be efficiently connected to the prospective public disposal system when constructed. **This requirement does not apply to the proposed use.**
5. All industrial activities or processes shall take place within a completely enclosed building.

- Incidental storage out-of-doors shall be shielded from any street or adjacent residential zone by fencing, landscaping or other appropriate measure. **The Applicant shall provide testimony to discuss compliance with this requirement for the existing and proposed uses.**
- 6. Industrial parks containing such permitted uses as set forth herein shall have a total area of not less than 20 acres. All streets within industrial parks shall be private, and there shall be adequate provisions for repair and maintenance so as to relieve the Township of Jackson from any responsibility for the upkeep of such streets. **This requirement is not applicable to this application.**
- 7. No use shall be conducted in such a way as to discharge any treated or untreated industrial waste, except as shall be approved by the Health Officer, Jackson Township Municipal Utilities Authority and any applicable state agency having jurisdiction in such matters. **The Applicant shall provide testimony to discuss compliance with this requirement for the existing and proposed uses. The Applicant shall indicate if any maintenance of the vehicles, heavy equipment, or storage trailers will take place on-site.**

IV. VARIANCE PLAN ISSUES

With the exception of the following, site plan issues are deferred to the Board Engineer.

- A. The Applicant should be prepared to address the impact of the application on the following:
 - 1. Compatibility of the proposed use with surrounding uses.
 - 2. Mitigating factors for the use variance.
- B. The Applicant should be prepared to address the following items with the Board to evaluate the impact of the proposed application on the neighboring properties and the Township:
 - 1. That the use will not be a detriment or detract from the use of the neighboring property.
 - 2. That the use will not detract from the character of the neighborhood.
 - 3. That the use of the property adjacent to the area included in the plan is adequately safeguarded.
 - 4. That the property is suitable for the intended use.
 - 5. That the use will serve the best interests of the Township.
 - 6. That the use will not adversely affect public sewers and facilities such as water, sewer, police, and fire protection.
 - 7. That the use will not adversely affect the drainage facilities in the adjacent neighborhood.
 - 8. That the use will not adversely affect the safe flow of highway traffic and that adequate roadway access is provided to protect roadways from undue congestion and hazards
- C. The Applicant is seeking Amended Site Plan & Use Variance approval to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property not related to the principal use. The Applicant shall describe in detail the existing use as well as the proposed use.
- D. The Applicant should discuss with the Board any previous approvals for this site including the variances and design waivers previously granted.

- E. Per §244-197G the perimeter of all parking areas and internal islands within all parking areas open to the general public shall have continuous cast-in-place concrete curbing, whereas curbing is not provided.
- F. Per §244-197H all parking areas shall provide pavement, whereas the existing parking areas along Sterling Avenue and Edison Avenue are gravel. Testimony shall be provided. A waiver may be required.
- G. Proposed parking area #1 for the storage of vehicles, heavy equipment, and storage trailers would access the site from Sterling Avenue. Currently Sterling Avenue consists of an approximately 19 ft to 25 ft wide gravel road from Faraday Avenue to the site access. Testimony shall be provided to discuss the need to improve Sterling Avenue.
- H. Proposed parking area #1 for the storage of vehicles, heavy equipment, and storage trailers would access the site from Edison Avenue. Currently Edison Avenue consists of an approximately 25 ft wide gravel road from Sterling Avenue to the site access. Testimony shall be provided to discuss the need to improve Edison Avenue.
- I. The plans indicate Proposed Parking Area #1 and Proposed Parking Area #2. It should be noted on the plans if these areas are intended to be leased.
- J. The plans should clearly indicate the edge of gravel, and the edge of grass area, or any other existing or proposed surface.
- K. Testimony shall be provided to discuss the condition of the existing gravel parking lot where the proposed vehicles, heavy equipment, and storage trailers will be parked. If permitted to remain gravel, the thickness of the gravel may be required to be increased.
- L. There are hatched areas on the plans for both Proposed Parking Area #1 and Proposed Parking Area #2 that are labeled "maintain clear drive aisle/access typ." The Applicant shall provide testimony to indicate how these areas will be delineated in the field and how they will be enforced.
- M. Per §244-203A sidewalks and curbing shall be required along all street frontages as a condition relating to any development for which approval is granted by the Planning Board or Board of Adjustment, whereas no sidewalk or curb is provided along Faraday Avenue, Sterling Avenue, or Edison Avenue. Sidewalk and curb shall be provided, or the Applicant shall request a waiver and provide contribution to the Jackson Township Pedestrian Safety Fund.
- N. Per §244-197N the required parking for the existing use has been determined as follows: for a furniture and appliance stores or similar types of uses requiring large amounts of storage is 1 for each 400 square feet up to 4,000 square feet, plus 1 parking space for each 800 square feet of gross floor area above 4,000 square feet. The required parking is 15 parking spaces, whereas there are 12 existing parking spaces. A variance may be required.
- O. There are no accessible parking spaces provided for the existing use, and this does not comply with ADA requirements. The building is open to the public. A van accessible parking space should be provided.
- P. The Applicant shall provide testimony to discuss where solid waste and recyclables are stored and how they are removed from the site.
- Q. The Applicant is proposing 1 flood light on the easterly side of the metal building in the rear. An isofootcandle pattern or point-by-point shall be provided to demonstrate the lighting levels proposed. A detail of the proposed light shall be provided.

- R. The Applicant shall provide testimony to discuss the overall lighting of the site with regard to safety and security.
- S. The Applicant is proposing a rain garden. The location of the rain garden shall be shown on the plans. The plantings shall be shown and labeled and the plant schedule updated accordingly.
- T. Typical planting notes shall be provided on the plans for plant selection, plant installation, plant maintenance, and a 2-year maintenance guarantee on all plant material.
- U. The landscape plan shall be revised to label the proposed plantings and a plant schedule provided.
- V. It is highly recommended that more than one species of evergreen in groups of 3 to 5 plants be proposed as a result of various issues one species may have. The evergreens shall be spaced in order to provide a solid screen.
- W. The existing/proposed tree line appears to indicate that the entire area is wooded. Revise the tree line accordingly.
- X. All tree removal shall be in accordance with Chapter 405 of the Township of Jackson Ordinance.
- Y. A Landscape & Tree Save Plan shall be reviewed and approved by the Jackson Township Certified Tree Expert.
- Z. The Applicant shall provide testimony regarding any Affordable Housing obligations associated with the project.

V. VARIANCES & WAIVERS

- A. Applicant requests use variance relief under N.J.S.A. 40:55D-70(d) (commonly referred to as a "Use" variance) in order to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property not related to the principal use.
- B. Applicant may require variance relief for the existing conditions under N.J.S.A.40:55D-70(c); commonly referred to as a 'c' or "bulk" variance for minimum front yard setback and minimum required parking.
- C. Additional 'c' variance or waiver relief may be required pending Applicant's response to the issues identified in the body of this report and during site plan application.

In order for the Board to grant a 'd' variance, The applicant has the burden of demonstrating "Special Reasons" for granting the use variance as well as offering an "enhanced quality of proof" which states that the variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance (Positive Criteria). The applicant should also demonstrate that the requested relief can be granted without substantial detriment to the public good and will not impair the intent and purpose of the zone plan and zoning ordinance (Negative Criteria).

"Special Reasons", the applicant should demonstrate that the proposed use carries out the purposes of zoning as listed in 40:55D-2 of the Municipal Land Use Law or that the refusal to allow the project would impose an undue hardship on the applicant. The applicant must present support for the first test within a Statement of Reasons contending that the proposed use promotes the purpose of zoning. In lieu of the Statement of Reasons, the applicant should provide a statement regarding the undue hardship which must relate to the land in question or unique conditions of the site.

With respect to the first portion of the Negative Criteria, the applicant must demonstrate that the requested relief can be granted without substantial detriment to the public good. The applicant must

demonstrate that the proposed use will not have a negative impact on the adjacent properties, and that it will not cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good”. The applicant shall provide testimony at the Zoning Board hearing.

In the second prong of the Negative Criteria, the applicant must demonstrate that the requested relief will not impair the intent and purpose of the zone plan and zoning ordinance. Testimony should be provided as to why the proposal will not impair the intent and purpose of the I Zone and the Jackson Township Master Plan.

The MLUL defines “peculiar and exceptional practical difficulties” and “exceptional and undue hardship” as:

- (a) *[where] by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation... would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property... [N.J.S.A. 40:55D-70c(1)]*

Under N.J.S.A. 40:55D-2, the MLUL enumerates as its purposes:

- a. *To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;*
- b. *To secure safety from fire, flood, panic, and other natural and man-made disasters;*
- c. *To provide adequate light, air, and open space;*
- d. *To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county, and the State as a whole;*
- e. *To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;*
- f. *To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;*
- g. *To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all NJ citizens;*
- h. *To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;*
- i. *To promote a desirable visual environment through creative development techniques and good civic design and arrangement;*

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- j. *To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;*
- k. *To encourage planned unit developments which incorporate the best features of design and relate the type, design, and layout of residential, commercial, industrial, and recreational development to the particular site;*
- l. *To encourage senior citizen community housing construction;*
- m. *To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;*
- n. *To promote utilization of renewable energy resources;*
- o. *To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.*

Variance Justification

Applicant has indicated that the permitted uses are not viable uses for this lot. ***Applicant is asked to address these issues within the context of the requirements for variance relief detailed above.***

Any resubmissions in response to this report should be accompanied by a point-by-point response to all items, *with revisions on the plans clouded or highlighted to indicate changes*. In order to facilitate the Board's decision-making process, Applicants are strongly encouraged to resolve as many items as possible prior to the hearing on this matter.

As always, Board members, Applicants and their professionals should feel free to contact me if they have any questions or require additional information.

God Bless America,

REMINGTON & VERNICK ENGINEERS



Ernest J. Peters, Jr., PE, PP, CME
Board Planner

MMG/EJP:mr

cc: Mr. Jeff Purpuro - Zoning Officer
Ms. Jean Cipriani, Esq. – Zoning Board Attorney
Mr. Mark Rohmeyer, P.E. – Zoning Board Engineer
Mr. James Hughes – Applicant and Owner (jimhughesplbg@aol.com)
Mr. Lino DeAlmeida III, P.E. – Applicant's Engineer (idealmeida@3dengineering.com)



**REMINGTON
& VERNICK
ENGINEERS**

*Amended SP261-1 w/
use v 3479*
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January 30, 2024

Ms. Dawn D'Agostino, Zoning Board Clerk
Jackson Township Zoning Board
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Location: 280 Faraday Avenue
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The Applicant seeks an Amended Site Plan & Use Variance Approval to include a second use on the property to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property in the I – Industrial Zone.

The variance plan does not indicate any proposed site improvements.

The site is currently developed with a 2 – 1 story metal buildings for The Applicant's plumbing & heating business. The existing improvements include a paved parking area, concrete walkway, and bollards in the front of the building along Faraday Avenue and fenced in gravel parking areas along Sterling Avenue. There are fence encroachments into the right-of-way of Edison Avenue and onto adjacent Lot 3.

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Owner/Applicant
James Hughes 1901 Route 539 Manchester, NJ 08759 732-364-3636

1512Z501 Use Variance

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III. ZONING

A. Use

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The Applicant seeks Amended Site Plan and Use Variance Approval to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property. Parking and storage not related to the principal use is not a permitted use in the I – Industrial Zone.

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Min. Side Yard Setback	30 ft	46.4 ft	Conforms
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Max. Building Height	50 ft	<35 ft	Conforms
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Max. Building Coverage	40%	7.6%	Conforms
Max. Impervious Coverage	75%	<75%	Conforms
Parking Requirements			
Plumbing & Heating Showroom & Supply (7,696 sf)	1 space/400 sf = 4,000 sf/400 sf = 10 spaces plus 3,696 sf/800 sf = 5 spaces		
Total Parking Required	15 spaces	TBD ⁽²⁾	TBD ⁽²⁾
Accessible Parking Required	1 space	0 spaces ⁽³⁾	Not Compliant with ADA

EV – Existing Non-conforming Condition V – Variance

- (1) Per §244-63D the required minimum front yard setback for a principal structure is 100 ft, whereas 98.7 ft is existing.
- (2) Per §244-197N the required parking for a furniture and appliance stores or similar types of uses requiring large amounts of storage is 1 for each 400 square feet up to 4,000 square

feet, plus 1 parking space for each 800 square feet of gross floor area above 4,000 square feet. The required parking is 15 parking spaces. The existing parking spaces should be delineated on the plan. It appears that approximately 13 spaces are provided.

- (3) There are no accessible parking spaces provided, this does not comply with ADA requirements.

IV. VARIANCE PLAN ISSUES

With the exception of the following, site plan issues are deferred to the Board Engineer.

- A. The Applicant should be prepared to discuss surrounding land uses in relation to the property in question.
- B. The Applicant is seeking Amended Site Plan & Use Variance approval to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property not related to the principal use. The Applicant shall describe in detail the existing use as well as the proposed use.
- C. The Applicant should discuss with the Board any previous approvals for this site including the variances and design waivers previously granted.
- D. Per §244-197G the perimeter of all parking areas and internal islands within all parking areas open to the general public shall have continuous cast-in-place concrete curbing, whereas curbing is not provided.
- E. Per §244-197H all parking areas shall provide pavement, whereas the existing parking areas along Sterling Avenue are gravel. Testimony shall be provided. A waiver may be required.
- F. The proposed parking and storage of vehicles, heavy equipment, and storage trailers would access the site from Sterling Avenue. Currently Sterling Avenue consists of an approximately 19 ft to 25 ft wide gravel road from Faraday Avenue to the site access. Testimony shall be provided to discuss the need to improve Sterling Avenue.
- G. The variance plan should delineate the areas intended for lease.
- H. Testimony shall be provided to discuss the condition of the existing gravel parking lot where the proposed vehicles, heavy equipment, and storage trailers will be parked. If permitted to remain gravel, the thickness of the gravel may be required to be increased.
- I. There are fence encroachments into the right-of-way of Edison Avenue and onto adjacent Lot 3. The fence in these areas shall be relocated onto the Applicant's property.
- J. Per §244-203A sidewalks and curbing shall be required along all street frontages as a condition relating to any development for which approval is granted by the Planning Board or Board of Adjustment, whereas no sidewalk or curb is provided along Faraday Avenue, Sterling Avenue, or Edison Avenue. Sidewalk and curb shall be provided, or the Applicant shall request a waiver and provide contribution to the Jackson Township Pedestrian Safety Fund.
- K. Per §244-197N the required parking for the existing use has been determined as follows: for a furniture and appliance stores or similar types of uses requiring large amounts of storage is 1 for each 400 square feet up to 4,000 square feet, plus 1 parking space for each 800 square feet of gross floor area above 4,000 square feet. The required parking is 15 parking spaces. The existing parking spaces should be delineated on the plan. It appears that approximately 13 spaces are provided.

- L. There are no accessible parking spaces provided for the existing use, and this does not comply with ADA requirements. The building is open to the public. A van accessible parking space should be provided.
- M. The Applicant shall provide testimony to discuss where solid waste and recyclables are stored and how they are removed from the site.
- N. The Applicant shall provide testimony regarding any Affordable Housing obligations associated with the project.

V. VARIANCES & WAIVERS

- A. Applicant requests use variance relief under N.J.S.A. 40:55D-70(d) (commonly referred to as a "Use" variance) in order to permit the parking and storage of vehicles, heavy equipment, and storage trailers within a leased portion of the property not related to the principal use.
- B. Applicant may require variance relief for the existing conditions under N.J.S.A. 40:55D-70(c); commonly referred to as a 'c' or "bulk" variance for minimum front yard setback and minimum required parking.
- C. Additional 'c' variance or waiver relief may be required pending Applicant's response to the issues identified in the body of this report and during site plan application.

In order for the Board to grant a 'd' variance, an Applicant must demonstrate, to the Board's satisfaction, that: (1) such action will relieve peculiar and exceptional practical difficulties or exceptional and undue hardship upon the developer of the subject property resulting from the strict application of the zoning ordinance (typically known as a Hardship Variance); **OR** (2) that granting a variance to allow departure from the zoning ordinance would advance one of the purposes of the *Municipal Land Use Law* (N.J.S.A. 40:55d-1 et seq. [MLUL]) and that the benefits of the deviation would substantially outweigh any detriment (typically known as the Special Reasons). Collectively, these are known as the Positive Criteria.

An Applicant must also demonstrate, to the Board's satisfaction, that such variance can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. This is known as the Negative Criteria.

Both the Positive Criteria and Negative Criteria must be satisfied in order for the Board to grant 'd' variance relief. The granting of a 'd' variance requires five (5) affirmative votes.

In order for the Board to grant a 'c' variance, an Applicant need only satisfy the Positive Criteria (although no variance may be granted which will be detrimental to the public good or the City's Zone Plan). The granting of a 'c' variance requires the affirmative vote of a majority of the Board members present at the hearing.

The MLUL defines "peculiar and exceptional practical difficulties" and "exceptional and undue hardship" as:

- (a) *[where] by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation... would result in peculiar and*

exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property... [N.J.S.A. 40:55D-70c(1)]

Under N.J.S.A. 40:55D-2, the MLUL enumerates as its purposes:

- a. *To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;*
- b. *To secure safety from fire, flood, panic, and other natural and man-made disasters;*
- c. *To provide adequate light, air, and open space;*
- d. *To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county, and the State as a whole;*
- e. *To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;*
- f. *To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;*
- g. *To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all NJ citizens;*
- h. *To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;*
- i. *To promote a desirable visual environment through creative development techniques and good civic design and arrangement;*
- j. *To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;*
- k. *To encourage planned unit developments which incorporate the best features of design and relate the type, design, and layout of residential, commercial, industrial, and recreational development to the particular site;*
- l. *To encourage senior citizen community housing construction;*
- m. *To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;*
- n. *To promote utilization of renewable energy resources;*
- o. *To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices*

designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.

Variance Justification

Applicant has indicated that the permitted uses are not viable uses for this lot. *Applicant is asked to address these issues within the context of the requirements for variance relief detailed above.*

Any resubmissions in response to this report should be accompanied by a point-by-point response to all items, *with revisions on the plans clouded or highlighted to indicate changes.* In order to facilitate the Board's decision-making process, Applicants are strongly encouraged to resolve as many items as possible prior to the hearing on this matter.

As always, Board members, Applicants and their professionals should feel free to contact me if they have any questions or require additional information.

God Bless America,

REMINGTON & VERNICK ENGINEERS



Ernest J. Peters, Jr., PE, PP, CME
Board Planner

MMG/EJP:mr

cc: Mr. Jeff Purpuro - Zoning Officer
Mr. Ryan Murphy, Esq. - Zoning Board Attorney
Mr. Evan Hill, P.E. - Zoning Board Engineer
Mr. James Hughes – Applicant and Owner (jimhughesplbg@aol.com)
Mr. Lino DeAlmeida III, P.E. – Applicant's Engineer (ldealmeida@3dengineering.com)