



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CATHERINE R. McCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

Division of Land Resource Protection
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625-0420
www.nj.gov/dep/landuse

August 27, 2020

Emerson Leasing Co. III, LLC
c/o Sanford Weiss
300 Coles Street, Suite #2
Jersey City, NJ 07310

RE: Denial Letter: Flood Hazard Area Individual Permit
File and Activity No.: 0906-20-0006.1 LUP200001
Applicant: Emerson Leasing Co. III, LLC, c/o Sanford Weiss
Project: Emerson Lofts Phase III
Block(s) and Lot(s): [6903, 3.04]
Municipality: Jersey City; County: Hudson

Dear Mr. Weiss:

The Division of Land Resource Protection (Division) has reviewed the above-referenced application for the “substantial improvement” of an existing building which includes the reconstruction of an existing five (5) story building for the construction of a five (5) story mixed use-building consisting of residential units, retail space and a basement parking garage all within the tidal flood hazard area of the Hudson River, on Lot 3.04 of Block 6903, in the City of Jersey City, Hudson County, New Jersey. Based upon the regulated activities proposed, the Division has determined that the proposed project does not meet the applicable standards set forth under the Flood Hazard Area Control Act (N.J.A.C. 58:16A-50). Therefore, authorization under this application is **hereby denied** by the Division of Land Resource Protection, acting under the provisions of the Flood Hazard Area Control Act (N.J.A.C. 58:16A-50), and the Rules and Regulations governing flood hazard areas at N.J.A.C. 7:13-1.1 et seq.

The following analysis sets forth the principle reasons and conclusions for this denial, citing the specific standards of the Rules which the subject application has failed to meet. Please note that the language taken verbatim from the Rules is shown in italics. In addition, to reduce the complexity of this letter, the Division has omitted certain sections and subsections of the Rules which are either inapplicable to the proposed project or adequately addressed by the proposed project. (A courtesy copy of the complete text of the Rules is available at www.nj.gov/dep/rules).

Analysis

The Division has determined that the proposed regulated activities do not meet the following regulatory requirements:

1. **N.J.A.C. 7:13-12.5 Requirements for a building**

(k) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing building that has not been subject to substantial damage as a result of fire,

flooding, or other natural disaster only if the following requirements are satisfied:

3. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (p) below.

(p) The Department shall issue an individual permit to construct an enclosure that lies below the lowest floor of a habitable building, or to construct an enclosure that lies below the flood hazard area design flood elevation that is either attached to or detached from a habitable building and is intended to be used as a garage or parking area, only if the following requirements are satisfied:

2. The floor of the enclosure is situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area;

As mentioned above, the applicant is proposing to convert an existing basement into a parking garage (an enclosure beneath the lowest floor of the building). The Flood Hazard Area Control Act Rules specifically prohibits the existence of such an enclosure as per N.J.A.C. 7:13-12.5(p)2, since the basement enclosure is not situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area.

Based on the submitted plans, specifically “GRADING AND DRAINAGE PLAN, EMERSON BUILDING COMPLEX PHASE III BLOCK 6903, PROPOSED LOT 3.03 326 15TH STREET, JERSEY CITY, HUDSON COUNTY, NEW JERSEY” the proposed surrounding grade of the exterior of the building adjacent to the proposed access to the basement garage is 10.6 feet NAVD88 with a ramped up high point of 12.10 feet NAVD88. As mentioned above, the lowest floor elevation of the basement enclosure is set at 0.67 feet NAVD88. The proposed basement is therefore below grade along all adjoining exterior walls. The applicant has not demonstrated that the project is in compliance with N.J.A.C. 7:13-12.5(p)2. Subsequently, the applicant has requested a hardship exception from strict compliance with N.J.A.C. 7:13-12.5(p)2 which is described in more detail below.

2. N.J.A.C. 7:13-15.1 Hardship exception for an individual permit

(a) The Department shall issue an individual permit for a project or regulated activity that does not comply with one or more of the requirements at N.J.A.C. 7:13-11 and 12 only if:

- 1. One or more of the requirements at (b) below are satisfied; and*
- 2. All of the requirements at (c) below are satisfied.*

(b) A project or regulated activity is eligible for a hardship exception under this section only if one or more of the following apply:

- 1. The Department determines that there is no feasible and prudent alternative to the proposed project or regulated activity, including not pursuing the project or regulated activity, which would avoid or substantially reduce the anticipated adverse effects of the project or regulated activity, and that granting the hardship exception would not compromise the reasonable requirements of public health, safety, and welfare, or the environment;*
- 2. The Department determines that the cost of compliance with the requirements of this chapter is unreasonably high in relation to the environmental benefits that would be achieved by compliance; or*
- 3. The Department and applicant agree to one or more alternative requirements that, in the judgment of the Department, provide equal or better protection to public health, safety, and welfare and the environment.*

(c) In addition to meeting at least one of the requirements in (b) above, a project or regulated activity is eligible for a hardship exception under this section only if the applicant demonstrates that:

- 1. Due to an extraordinary situation of the applicant or site condition, compliance with this chapter would result in an exceptional and/or undue hardship for the applicant and/or would adversely impact public health, safety, and welfare;*
- 2. The proposed project or regulated activities will not adversely affect the use of contiguous or nearby property; and*
- 3. The proposed project or regulated activities will not pose a threat to the environment, or to public health, safety, and welfare.*

The applicant has applied for a hardship exception for an individual permit for non-compliance with the requirement to construct an enclosure of the building below grade along all adjoining exterior walls in accordance with N.J.A.C. 7:13-12.5(p)2.

The applicant contends that the basement entrance is dry flood proofed since flood waters cannot enter the basement due to the access being 1.1 feet above the flood hazard area elevation of 11 feet NAVD88. Further, the applicant states that it is not structurally feasible to remove any floors or raise any floors due to the construction of the existing building. Additionally, the applicant has not fully demonstrated other feasible and prudent alternatives that would not compromise public health, safety, and welfare including not pursuing the project or removing the basement level completely by filling it in with gravel, dirt, or any other fill material.

Further, the applicant contends that there is an extraordinary condition of the site, and that compliance with N.J.A.C. 7:13-12.5(p)2 would result in an exceptional and undue hardship for the applicant. The applicant states that the building, a historic Statco Warehouse according to the City of Jersey City. Specifically, the underground parking has been approved by the City since parking is a requirement as part of their City Master Plan and the Redevelopment Zone where the building is located. Further, the Jersey City "Redevelopment Plan Ordinance" does not allow for any additions to the historic structure on the roof or adjacent to it for a parking garage and that these requirements prevent them from relocating the proposed basement parking. It is of the Division's position that a local zoning plan is not an extraordinary situation of the site, as a multitude of other buildings are beholden to the same plan while still in compliance with the Flood Hazard Area Control Act. Additionally, the requirements of the zoning plan outlined by the applicant are focused solely on the aesthetics and parking requirements of a building and do not take into account public safety or welfare, while the enclosure below the lowest floor of a building requirement of the Flood Hazard Area Control Act is focused solely on public safety and welfare. It is the Division's position that the applicants have not fully exhausted potential alternatives with the City of Jersey City that would allow for compliance with N.J.A.C. 17:13-12.5(p)2, such as obtaining a variance from the City of Jersey City.

After reviewing the hardship exception request, the Division does not feel that the applicant has proven that project meets any of the requirements at N.J.A.C. 7:13-15.1(b) and (c) and therefore denies the hardship exception request.

Conclusion

Based upon the preceding analysis, the Division has concluded that the proposed project does not meet the specific criteria of the Rules as outlined above, and therefore denies the subject application. Please note that a new application and fee will be required to reactivate the Division's review. In addition, please be advised that any regulated activities conducted onsite without the proper authorization from the Department shall be considered a violation of the Flood Hazard Area Control Act Rules, specifically N.J.A.C. 7:13-2.1(a).

Appeal of Decision

Any person who is aggrieved by this decision may submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin (available at www.nj.gov/dep/bulletin). If a person submits the hearing request after this time, the Department shall deny the request. The hearing request must include a completed copy of the Administrative Hearing Request Checklist (available at www.nj.gov/dep/landuse/forms.html). A person requesting an adjudicatory hearing shall submit the original hearing request to: NJDEP Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Mail Code 401-04L, P.O. Box 402, 401 East State Street, 7th Floor, Trenton, NJ 08625-0402. Additionally, a copy of the hearing request shall be submitted to the Director of the Division of Land Resource Protection at the address listed on page one of this permit. In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see www.nj.gov/dep/odr for more information on this process.

If you have any questions regarding this letter, please contact Christian Zografos by email at christian.zografos@dep.nj.gov or by phone at (609)984-6216. Please reference the Division's file number in all communication.

Sincerely,

Keith P. Stampfel, P.E., Section Chief
Division of Land Resource Protection

c: Municipal Clerk
Municipal Construction Official
Agent (original) – Jeffery Reeves P.E.