

Law Office *of*
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VIA HAND DELIVERY

February 20, 2024

Kent Rigg, Chairman
and Members
Planning Board
Borough of Midland Park
280 Godwin Avenue
Midland Park, NJ 07432

**RE: Jacobsen Real Estate, LLC
37 & 41 Birch Street
Midland Park, NJ 07432
(Block 26.01, Lots 31.02 & 31.03)**

Dear Chairman Rigg & Members of the Planning Board:

I am writing this letter as a status report regarding the conditions that were required and which the above owner/applicant agreed upon, based upon the approvals granted by this Board on August 21, 2023 and which were memorialized in a resolution adopted on September 18, 2023. I must preface my remarks first by informing you as to the owner/applicant itself.

Glenn Jacobsen, the principal and managing member of this Limited Liability Company, and a long time business owner here in Midland Park, was diagnosed with brain cancer around the time an application was made to this Board. This was the reason he was unable to appear in person during any of the hearings. Soon after the hearing, in which approvals were granted, Mr. Jacobsen took a turn for the worse and I regret to inform you that he has since passed away.

If there appears to have been any delay, I believe it is understandable that due to Glenn's condition he was unable to actively pursue satisfying all of the conditions and furthermore his family was understandably preoccupied with his medical care. Since his passing, Melissa Jacobsen (Glenn's wife) has worked diligently with the professionals to

satisfy and complete all of the conditions, which are as follows (the numbered conditions reference the numbers in the Resolution of September 18, 2023):

- 1) Salt stored on the subject property is covered and will continue to be practiced (condition # 10).
- 2) Three (3) sheds have been relocated to an area between the storage bins and the parking area near Birch Street, with the fourth shed removed from the site (condition # 11).
- 3) Norway Spruce trees have been purchased (8 -10 feet in height), and will be planted 8 to 10 feet apart along the property line from the rear of the two story Metal Building to the rear of the property line. They will be planted as soon as possible, weather permitting, and may even be planted in time for your meeting on February 26, 2024 (condition # 12).
- 4) All of the equipment located on the railroad property has been or will be removed by February 26, 2023 (condition # 14).
- 5) Certification letter from the Bergen County Soil Conservation District is attached hereto (condition # 7).
- 6) Letter from Environmental Technology Inc. (drafted and signed by David C. Krueger – Professional Wetland Scientist & Certified Wetland Delineator), dated February 16, 2024, concluding: “no portion of the activities depicted on the referenced site plan require NJDEP approval in regards to wetlands and/or wetland transition areas” (addressing condition # 9). Also, letter from Robert J. Weissman, P.E. & L.S. to the Borough of Midland Park Planning Board (dated July 21, 2023), stating that this activity qualifies for DEP FHA permits by rule (also addressing condition # 9). Both letters are attached hereto.
- 7) Proposed Deed (with metes and bounds description) for the merger of the two lots, abandoning the lot line, and resulting in a reverse subdivision. This is being submitted for review by the Board’s attorney and engineer, and upon approval this office will see to the execution and filing of this Deed, copying the Board’s attorney (condition # 8).

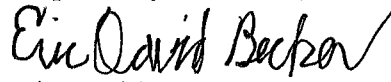
The only remaining conditions that need to be addressed are the following:

- 1) The final Site Plan revised (condition # 11) with lot line removed, the physical changes as set forth above, and the calculations as to the required parking spaces (condition # 15). This will be performed by Mr. Weissman and can be submitted to the Board’s engineer for final review and approval.
- 2) The abandonment of the residential use. The current tenant has a high school senior who would greatly appreciate the opportunity to stay in this residential dwelling until the end of the school year, at which time the structure will be vacated and no longer used for residential purposes.

The final issue has to do with the status of the Temporary Certificate Occupancy (TCO) issued to CLC Landscaping (CLC), the tenant currently occupying and utilizing the subject property. Though the undersigned does not officially represent CLC, on behalf of the owner/applicant we would request that the TCO be further extended until these final two conditions can be satisfied.

I am unfortunately unable to appear in person due to an out of state wedding that was planned and scheduled more than a year ago. I hope you find this status letter sufficient in bringing the Board up to date on this application, approval, and conditions. If you have further questions, comments, or need additional information, I will make myself available and appear at your next scheduled meeting on March 18, 2024.

Respectfully submitted,

A handwritten signature in black ink that reads "Eric David Becker". The signature is written in a cursive, flowing style.

Eric David Becker, Esq.

cc: Jessica Harmon – Board Secretary (via hand delivery)
Darryl Siss, Esq. – Board Attorney (via email)
Erik Boe, P.E. – Board Engineer (via email)
Melissa Jacobsen – Owner/Applicant (via email)
Robert Weissman, P.E. – Applicant’s Engineer (via email)
David C. Krueger – ETI (via email)



BERGEN COUNTY SOIL CONSERVATION DISTRICT

700 Kinderkamack Road, Suite 106 • Oradell, New Jersey 07649
Telephone: 201-261-4407 • info@bergenscd.org

July 7, 2023

RE: Site Improvements
37 & 41 Birch St.
Block 402, Lots 31.02 & 31.03
Midland Park
Our File # 23-4486

Jacobsen Real Estate, LLC
10 New City St.
Essex, CT 06426

Dear Owners:

Pursuant to N.J.S.A. 4:24-39 et seq., the N.J. Soil Erosion and Sediment Control Act, the Bergen County Soil Conservation District hereby certifies the Soil Erosion and Sediment Control Plan for the above referenced project, subject to the following:

1. That the applicant carries out all land disturbance activities in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the State Soil Conservation Committee.
2. The applicant must notify the District office, by mail, at least 48 hours prior to initial land disturbance.
3. The owner/applicant must obtain a District-issued Report of Compliance prior to issuance of any Certificate of Occupancy by the municipality. The District requires advance notice of at least one week for the issuance of a Report of Compliance.
4. Changes in the certified plan relating to, or that will affect land disturbance on the site, must be submitted to the District office for reevaluation and approval.
5. A copy of the certified plan and a copy of these provisions must be kept on the job site at all times.

Failure to comply with any of the above conditions may result in the issuance of a Stop Work Order.

This approval is limited to the soil erosion, sedimentation and related stormwater management controls specified in the plan. It is not authorization to engage in the proposed land use unless such has been previously approved by the municipality or other controlling agency.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Raymond J. Cywinski".

Raymond J. Cywinski
District Supervisor



ENVIRONMENTAL
TECHNOLOGY
INC.

Environmental Consultants



February 16, 2024

Mr. Kent Rigg, Chairman And Members
Of the Midland Park Planning Board
Borough Hall
280 Godwin Avenue
Midland Park, NJ 07432

Re: Wetlands/Transition Area Investigation – Proposed Site Plan
37 & 41 Birch Street
Tax Map Lots 31.02 & 31.03, Block 26.01
Borough of Midland Park, Bergen County, New Jersey

Dear Mr. Rigg and Members of the Board:

Environmental Technology Inc. (ETI) has been retained by Jacobsen Real Estate, LLC at the above referenced location to review the proposed site plan in regards to the potential for wetlands and/or transition area impacts. Specifically, the proposed project includes the relocation and enlargement of several concrete storage bins, the relocation of two tents and the relocation of several sheds. The plan reviewed was prepared by Weissman Engineering Co., P.C. and is entitled "Site Plan" consisting of one sheet, dated December 9, 2022 and last revised July 12, 2023. This review is pursuant to the Freshwater Wetlands Protection Act Rules (N.J.A.C 7:7A).

Our methodology and findings are as follows:

STUDY METHODOLOGY

Field investigations of the site were conducted on January 12, 2021 and August 17 2023.

In accordance with the New Jersey Freshwater Wetlands Protection Act (FWWPA), and outlined by the New Jersey Department of Environmental Protection (NJDEP), the extent of the wetlands were determined by implementing the methodology that is currently accepted by the United States Environmental Protection Agency (USEPA), namely Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989 and supplements. This methodology states that for an area to be considered wetland all three of the following parameters must be present:

February 16, 2023

1. Hydric Soils
2. A Predominance of Hydrophytic Vegetation
3. Hydrology

FINDINGS

The site was found to be almost entirely developed with a landscaping business. Undeveloped areas are found to be located to the south of the developed area and off-site. This off-site area is wooded and contains Goffle Brook, which flows in a southerly direction. Most of the watercourse in the vicinity of the subject property is classified as State open waters and does not contain any adjacent wetlands. The banks are abrupt and stony. A small section of the watercourse contains a narrow wetland area.

Based on ETI's review, any wetlands in the vicinity of the site are classified as intermediate resource value and require a 50-foot transition area. This classification is based on two factors: 1) Goffle Brook is classified as FW-2, Non-Trout according to the latest Surface Water Quality Standards (N.J.A.C. 7:9B) and 2) review of NJDEP GeoWeb does not identify any documented habitat for any threatened or endangered species on or adjacent to the site.

As part of our review, ETI reviewed historical aerial photographs and identified that the concrete bins were present prior to July 1, 1988, which is the date of enactment of the Freshwater Wetlands Protection Act and rules governing such. The existing sheds and tents and their previous and proposed locations are not within a wetland transition area.

Although a small portion of the concrete bins are within a wetland transition area, the previous and proposed location are not classified as a regulated activity in a transition area. Pursuant to N.J.A.C. 7:7A(b)1, the proposed activity is classified as normal property maintenance and does not require NJDEP authorization through either a permit or waiver.

The New Jersey Freshwater Wetlands Protection Act and rules governing such at N.J.A.C. 7:7A regulate certain activities within transition areas. Pursuant to 7:7A-2.3 (a), except as provided in (b) and (c) below, the following are regulated activities when they occur in transition areas:

1. Removal, excavation, or disturbance of the soil;
2. Dumping or filling with any materials;
3. Erection of structures;
4. Placement of pavements; and
5. Destruction of plant life which would alter the existing pattern of vegetation.

(b) Notwithstanding (a) above, the following activities are not regulated in transition areas and do not require Department approval under this chapter, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and is not contained within a conservation restriction. If the transition area is contained in a conservation restriction, none of the following activities are allowed unless explicitly stated in the conservation restriction:

1. Normal Property maintenance;
 - i. For the purposes of this paragraph, "normal property maintenance" means activities required to maintain lawfully existing artificial and natural features, landscaping, and gardening. These activities include:

- (1) Mowing of existing lawns. The conversion of a field to a lawn by planting, seeding, frequent mowing or any other means is not considered normal property maintenance and requires a transition area waiver;
- (2) Maintenance of existing fields;
- (3) Pruning of trees and shrubs;
- (4) Selective cutting of trees;
- (5) Replacement of existing non-native plants with either native or non-native species that will not significantly change the character of the existing vegetational community of the transition area.;
- (6) Limited supplemental planting of non-native plant species that will not significantly change the character of the existing vegetational community of the transition area. The creation of a lawn is not considered supplemental planting;
- (7) Planting of native species, that is, plants naturally occurring in transition areas in the local region, (the county agricultural agent may be consulted to obtain information regarding these species);
- (8) Continued cultivation of existing gardens and the development of new gardens provided that the new garden is:
 - (A) No larger than 2,500 square feet in size;
 - (B) Located in a non-forested transition areas; and
 - (C) Located in a transition area not subject to a conservation restriction; and
- (9) Maintenance of artificial features including the repair, rehabilitation, replacement, maintenance or reconstruction of any previously authorized, currently serviceable structure lawfully existing prior to July 1, 1989, or permitted under this chapter, provided such activities do not result in additional disturbance of the transition area upon completion of the activity (emphasis added).

ii. Any activity which involves or causes the substantial alteration or change of the existing characteristics of a transition area shall not be considered normal property maintenance and shall require a transition area waiver in accordance with this chapter. Activities which involve or cause substantial alteration or change of the transition area include, but are not limited to, extensive removal, alteration, or destruction of vegetation by clear cutting, cutting, mowing (except as described in (b)1i above), burning or application of herbicides, planting of ornamental plants or lawns for landscaping purposes (except as described in (b)1i above), regrading or significant changes in the existing surface contours and the placement of fill, pavement or other impervious surfaces.

Based on the above NJDEP regulations and past experience with NJDEP on similar matters, the relocation and enlargement of the concrete bins, relocation of the tents and sheds are not regulated since:

- 1) The construction of the concrete bins predate the enactment of the wetlands law and rules governing such. Both the previous and proposed locations are within gravel areas. Therefore the relocation and minor enlargement is classified as normal property maintenance.
- 2) The relocation of the concrete bins and slight enlargement is further from the stream and wetlands and neither the movement of same or enlargement constitute a regulated activity.
- 3) The relocation of the tents and sheds are not regulated per the above since both their current location and proposed relocation are not within a wetland transition area.

Midland Park Borough Planning Board
Re: Wetlands/Transition Area Investigation – Proposed Site Plan
37 & 41 Birch Street
Tax Map Lots 31.02 & 31.03, Block 26.01
Borough of Midland Park, Bergen County, New Jersey

February 16, 2023

CONCLUSIONS

Based on the our site inspection, review of various data sources and the Freshwater Protection Act Rules (N.J.A.C. 7:7A), no portion of the activities depicted on the referenced site plan require any NJDEP approval in regards to wetlands and/or wetland transition areas.

The information provided is based on the most current information available and our best professional judgment. This letter does not consider pending or future legislation or regulations that may change the opinions provided.

Please do not hesitate to contact our office if you should have any questions regarding our findings.



Very truly,

ENVIRONMENTAL TECHNOLOGY INC.

David C. Krueger, President
Professional Wetland Scientist 000662
Certified Wetland Delineator WDCCP94MD03101146B

cc: Jacobsen Real Estate, LLC – via email
David Becker, Esq. – via email
Robert J. Weissman, P.E. – via email

21004

WEISSMAN ENGINEERING CO., P.C.

686 GODWIN AVENUE, MIDLAND PARK, N.J. 07432

Telephone (201) 445-2799, Fax (201) 445-0483

Email: info@weissmanengineeringpc.com

ROBERT J. WEISSMAN, P.E., L.S.

Borough of Midland Park
Planning Board
280 Godwin Avenue
Midland Park, NJ 07432
Attn: Jessica Harmon

July 21, 2023

RE: DEP FHA Permits by Rule # 3 & #4
41 Birch Street
Lot 31.02, Block 26.01
Borough of Midland Park
Bergen County, NJ

Dear Jessica:

This letter is to notify the Department the proposed activities that qualify for DEP FHA permits by rule numbers 3 & 4 at the referenced site.

- #3 – In kind replacement of a lawfully existing structure.
- #4 – Removal of any lawfully existing fill or structure.

Since:

1. The fill or structures are not located within a floodway.
2. The structure being replaced is not retaining wall or bulkhead subject to the requirements of N.J.A.C. 7:13-12.13 or habitable building and the fill or structure is disposed of outside of any regulated area and in accordance with all applicable federal, state and local requirements.
3. No riparian zone vegetation is cleared, cut, and/or removed, except for vegetation within 20 feet of the fill or structure, where such disturbance is necessary to facilitate its removal; and
4. No more than one-quarter acre of riparian zone vegetation is cleared, cut, and/or removed.

Attached is a pdf of the 'Site Plan' demonstrating compliance with the above. I trust this meets with your approval. Please call if you have any questions.

Very truly yours,



Robert J. Weissman, P.E., L.S.

Cc: Jacobsen Real Estate, LLC
LAN Engineering
David Becker, Esq.

Prepared by: _____
Eric David Becker, Esq.

DEED

THIS DEED is made on February , 2024

BETWEEN: *Jacobsen Real Estate, L.L.C., a New Jersey liability company*
residing at 10 New City Street, Essex, CT 06426

Referred to as the Grantors,

AND: *Jacobsen Real Estate, L.L.C. a New Jersey liability company*
whose Post Office address is: 10 New City Street, Essex, CT 06426

Referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

1. **Transfer of Ownership.** The Grantors grants and conveys (transfers ownership of) the property (called the "Property") described below to the Grantee. This transfer is made for the sum of ONE DOLLAR AND 00/100 (\$1.00). The Grantors acknowledges receipt of this money.
2. **Tax Map Reference.** (N.J.S.A. 46:15-1.1) Municipality of the Township of Midland Park

Block No. **26.01** Lot No. **31.02 & 31.03** Qualifier No. Account No.

3. **Property.** The property consists of the land and all the buildings and structures on the land in the Township of Midland Park, County of Bergen and State of New Jersey. The legal description is:

Please see attached Legal Description annexed hereto and made a part hereof.

BEGINNING at a point on the southerly sideline of Birch Street (40' ROW), said point being the intersection of said southerly sideline of Birch Street with the westerly sideline of West Street (40' ROW) and running thence:

1. On a bearing N 66 degrees 44' 55" E a distance of 3254.00' to a point, thence –
2. On a bearing S 23 degrees 15' 00" E a distance of 125.00' to a point, thence –
3. On a bearing S 47 degrees 47' 30" W a distance of 274.58' to a point, thence –
4. On a bearing N 23 degrees 15' 00" W a distance of 240.00' to the point or place of BEGINNING.

Said description in accordance with survey completed by Weissman Engineering Co., P.C. dated February 5, 2024.

Recital for Block 26.01 Lot No. 31.02

BEING the same premises conveyed to Grantor herein by Deed from Jacobsen Real Estate, L.L.C, a New Jersey Limited Liability Company, dated January 14, 2003, recorded in the Bergen County Clerk's Office on February 27, 2003, in Deed Book 08553 Page 771.

Recital for Block 26.01 Lot No. 31.03

BEING the same premises conveyed to Grantor herein by Deed from Jacobsen Real Estate, L.L.C, a New Jersey Limited Liability Company, dated January 14, 2003, recorded in the Bergen County Clerk's Office on February 27, 2003, in Deed Book 08553 Page 768.

SUBJECT to all state, federal, and county regulations and municipal ordinances, easements, restrictions and agreements of record and such state of facts as an accurate survey of the premises may reveal.

BEING commonly known as: 41 & 37 Birch Street, Midland Park, NJ 07432

- 4. **Purpose.** The Purpose of this Deed is to combine lots 31.03 and 31.02 into one lot.
- 5. **Signatures.** The Grantors sign this Deed as of the date at the top of the first page. (Print name below each signature.)

Jacobsen Real Estate, L.L.C.

WITNESSED BY:

By: _____, managing member

STATE OF NEW JERSEY :
: SS:
COUNTY OF BERGEN :

I CERTIFY that on February , 2024,
, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) are the managing members of Jacobsen Real Estate L.L.C., the limited liability company named in the within instrument and is authorized to sign the within instrument on behalf of the limited liability company; and

- (b) as such member or manager, signed, sealed and delivered this instrument as the voluntary act and Deed of the limited liability company, made by virtue of authority from its members.
- (c) made this Deed for \$1.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)
-

RECORD & RETURN TO:

Eric David Becker, esq.
253 Madison Ave.
Wyckoff NJ 07481

WEISSMAN ENGINEERING CO., P.C.

686 GODWIN AVENUE, MIDLAND PARK, N.J. 07432

Telephone (201) 445-2799, Fax (201) 445-0483

Email: info@weissmanengineeringpc.com

ROBERT J. WEISSMAN, P.E., L.S.

February 5, 2024

LOT CONSOLIDATION DEED DESCRIPTION

37 & 41 Birch Street

Lots 31.02 & 31.03, Block 26.01

Borough of Midland Park

Bergen County, N.J.

Beginning at a point on the southerly sideline of Birch Street (40' ROW), said point being the intersection of said southerly sideline of Birch Street with the westerly sideline of West Street (40' ROW) and running thence:

1. On a bearing N 66° 44' 55" E a distance of 254.00' to a point, thence –
2. On a bearing S 23° 15' 00" E a distance of 125.00' to a point, thence –
3. On a bearing S 47° 47' 30" W a distance of 274.58' to a point, thence –
4. On a bearing N 23° 15' 00" W a distance of 240.00' to the point or place of beginning.

Containing 49,879.9 S.F. = 1.15 AC



Robert J. Weissman, P.E., L.S.
Lic. #GB29624