

**BOROUGH OF MIDLAND PARK
COUNTY OF BERGEN
PLANNING BOARD**

**RESOLUTION GRANTING SITE PLAN, MINOR SUBDIVISION AND VARIANCE
APPROVAL FOR PREMISES KNOWN AS BLOCK 26.01, LOTS 31.02 & 31.03,
KNOWN AS 37 & 41 BIRCH STREET, BOROUGH OF MIDLAND PARK
COUNTY OF BERGEN, STATE OF NEW JERSEY**

WHEREAS, an application has been submitted to the Borough of Midland Park Planning Board by Jacobson Real Estate, LLC for site plan, minor subdivision and variance approval for the premises known as Block 26.01, Lots 31.02 and 31.03 on the current tax assessment map of the Borough of Midland Park; and

WHEREAS, a public hearing of the Planning Board was held on Monday, August 21, 2023 (in which due notice was given) and during which the Planning Board heard testimony by the applicant and its consultants, representatives, and experts, and the Planning Board reviewed and considered all correspondence, maps, plats, reports and public input, if any, on the application, as well as a presentation by the applicant's attorney, David Becker, Esq., together with all exhibits submitted as evidence; and

WHEREAS, during the public hearing the following was introduced by the applicant as exhibits:

Exhibit A Plan entitled "Site Plan" prepared by Robert J. Weissman, Weissman Engineering Co. dated December 9, 2022, with a final revision date of July 12, 2023.

Exhibit B Aerial photo showing depiction of FEMA flood plains.

WHEREAS, the submissions by Applicant have been reviewed by the Planning Board engineer, Erik Boe, and hisr comments and recommendations are set forth in his letter to the Planning Board dated March 16, 2023 updated through August 2, 2023; and

WHEREAS, the Planning Board also considered the following documents:

1. Inter-office memo from the Midland Park Fire Prevention Official which is dated as received on August 17, 2023;
2. Email from the Zoning Officer, Mark Berninger, dated April 12, 2023;

WHEREAS, the applicant has requested the following variances from the requirements of the Zoning Ordinance:

- 34-13.1.b.1 Set back to accessory structure: 15 feet required:
Structure on lot 31.03 has existing setback of 4.6 feet;

Two relocated tent structures have proposed setback of 2 feet;

Four sheds on plans require setback variances as shown – this variance condition was eliminated during hearing with applicant agreeing to move sheds.

34-13.1.b.3 Front Setback to accessory structure: 25 feet required, structure on lot 31.03 has existing setback of 24.6 feet;

34-11.2.c Side yard setback to structure: 15 feet required; setback to principle structure on lot 31.02 has existing setback of 4 feet;

34-11.2.f Maximum improved lot coverage: 80% permitted, 80.4% proposed; and

WHEREAS, the applicant has requested waivers from the submissions required by the Site Plan Review Ordinance, which the Board engineer has recommended be granted; and

WHEREAS, The Planning Board heard testimony from the applicant's representatives as follows:

David Becker, Esq. appeared as the attorney for the applicant. He advised that the application proposed a reverse subdivision, eliminating the lot lines between Lots 31.03 and 31.02. Both lots are owned by the applicant and have historically been used in connection with the landscaping business. The dwelling structure that is located on Lot 31.03 has been used as a residence, which is a non-conforming use. The applicant proposes to abandon that use and limit the use of that structure to offices, which is a permitted use. The applicant also proposes to move structures that are located on the adjoining property to the rear that is not owned by the applicant onto the applicant's property.

Nick Rodriguez testified that he is the company manager of CLC Landscaping, the entity that currently operates the landscaping business on the premises. He described the current operation and use of the site. The bins shown along the rear property line are used to store mulch, gravel and related landscaping material. The sheds shown in the plans are used for storage. The covered tent structures are used for storage of equipment and some stone work and other operational work which is performed under the tents in inclement weather. The second floor of the main metal building is used for offices and the first floor of that building is used for storage and mechanical work on the equipment. With respect to lighting there are two post lights and some building lights which are sufficient for the operations and no change is proposed. Other than the relocation of the various structures, there is no proposed change to the operations of or use of the site. He acknowledged that the residential use would be abandoned and that the structure is not proposed to be used by his company. He further acknowledged that any future use of the residential structure on Lot 31.03 would be subject to planning board approval.

The matter was open to the public for questions of this witness. Ken Peterson asked if salt was stored on the property and if it would create runoff during the rain. Mr. Rodriguez responded that salt is stored at the property, but it is covered to prevent runoff. He agreed that this would be a condition of any approval.

Thomas Donahue appeared and was accepted by the Board as an expert in the field of engineering. He testified generally as to the improvements on the property and the movement of the structures from off of the adjoining properties. He testified that moving the tents and other structures as proposed will bring the property more into conformance with the requirements of the zoning ordinance although he acknowledged that the variances are required. There is a tent structure located on the adjoining property to the south which will be relocated onto the applicant's property. The tent as relocated requires a setback variance. There are four sheds located along the east property line, two of which encroach onto the adjoining property owned by the railroad. The sheds are shown on the plans as being moved onto the applicant's property. Setback variances are required for these sheds. The storage bins are currently located within the rear setback and are being relocated in the same area.

In response to a question by a board member, he indicated that he was not aware of the height of the tent structures but acknowledged that the maximum height allowed by zoning ordinance is 12 feet. The applicant agreed that none of the structures would exceed 12 feet in height so that a variance was not required.

He introduced what was marked as Exhibit B and testified that it was a rendering showing the FEMA maps for flood plains. All structures are located outside of the flood hazard area. In response to an inquiry from a Board member concerning whether the drainage ditch was considered, he acknowledged that applicant would be required to obtain a Flood Hazard Area verification inclusive of the drainage ditch from the NJDEP, which could be provided as a condition of any approval.

The hearing was opened to the public for questions of this witness and for comments. Ken Petersen appeared and questioned the location of the four sheds as they are visible from the adjoining properties and questioned whether screening could be added. In response, the applicant agreed to move those four sheds to an area between the parking spaces and the storage bins near Birch Street. The applicant also agreed to install a landscaping buffer along the east property line from the rear of the main building to the rear property line.

Findings of Fact and Conclusions of Law

WHEREAS, the Planning Board makes the following findings of fact/conclusions of law:

1. The property consists of two separate tax lots, which are improved and have been used jointly for a landscaping operation and the applicant proposed to continue the current use. The structure on Lot 31.03 has been used as a residence which is a non-conforming use. There is no evidence that this use was ever approved. The applicant proposes to abandon the residential use.
2. Merging the two lots into one lot and the abandonment of the non-conforming residential use brings the improvements and commercial use of the site more into conformance with the requirements of the zoning ordinance and constitutes good planning.

3. The proposed relocation of the tent and storage bins, as indicated in the plans, onto the applicant's property brings the property more into conformance with the requirements of the zoning ordinance. Although the proposed relocation area requires a setback variance, it represents a significant improvement over the existing condition. As the site is currently fully improved, the alternatives for the movement of the tent structures are limited and creates a hardship. There is no detriment to the public and moving the tent structures brings the property more into conformance with the zoning ordinance.

4. Moving the four sheds from the east property line to the area near the parking spaces and storage bins represents an improvement and reduces existing encroachments and variance conditions.

5. There are a number of other setback variance conditions which currently exist and are not affected by this application.

WHEREAS, the Planning Board has considered the request by the applicant for the variances and waivers set forth above. In considering the overall application to be in accordance with sound and proven zoning and planning principles, the Planning Board has determined that, based on the above mentioned facts and the testimony of the witnesses, the requested variances can be granted without causing a substantial detriment to the public good, nor substantially impairing the intent and purpose of the Midland Park Zoning and Land Use Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board that based upon the above findings of fact and conclusions of law that the application of Jacobson Real Estate, LLC for minor subdivision and preliminary and final site plan approval on those premises known as Block 26.01, Lots 31.02 and 31.03, along with the waivers and variances set forth herein in accordance with the plans and exhibits is hereby granted; and

BE IT FURTHER RESOLVED that the approvals set forth above are subject to the following conditions:

1. That the granting of the application is subject to the approval of the Bergen County Planning Board, if necessary.
2. All improvements will be constructed or located in accordance with the Plans, except as may be set forth herein. Notwithstanding, no approval granted herein shall be deemed to supersede any building code requirements.
3. The applicant shall obtain and comply with any federal, state, county, and borough government rules, ordinances, or regulations with regard to the granting of the applications hereto, including the payment of all fees and escrows, established by the borough for the review of the subject application.
4. To the extent not set forth above, the applicant shall comply with any and all applicable requirements of the Federal Americans with Disabilities Act.

5. All lighting on the site shall be restricted to this site and shall not spill over on any other sites.
6. This approval is subject to all of the representations made by the applicant and its experts.
7. The applicant shall obtain and submit to the Planning Board a certification from the Bergen County Soil Conservation District if required.
8. The applicant shall prepare a Deed merging the two lots into one lot, the form of which shall be submitted to the Board attorney and engineer for approval;
9. The applicant shall submit an application for Flood Hazzard Area verification to the New Jersey Department of Environmental Protection which application shall include the drainage ditch located on the property.
10. Any salt that is stored on the property shall be covered from the elements to prevent runoff;
11. The four sheds shown on the plans along the east property line will be relocated to the area between the storage bins and the parking area near Birch Street. The plans shall be revised and the location of the sheds will be subject to the review and approval of the Board engineer;
12. The applicant shall plant Norway Spruce along the east property line from the rear of the 2 Story Metal Building to the rear property line. The plants shall be 8 to 10 feet high and planted 8 to 10 feet apart;
13. There shall be no use of the 2 story frame dwelling located on current lot 31.03 without the approval of the Planning Board;
14. All equipment shall be removed from the railroad property and there shall be no further use of the railroad property by the applicant or other users of this property without the approval of the Planning Board;
15. The applicant shall submit calculations for the requirement of the number of parking spaces;
16. No accessory structure may be higher than twelve feet;
17. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by ordinance within 30 days of the adoption of a resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits,

and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance as applicable;

18. Any conditions of approval stipulated to by the applicant during the hearing are incorporated herein, even if not specifically stated;
19. The aforementioned approval shall be subject to all requirements, conditions, restrictions, and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein.

BE IT FURTHER RESOLVED that the Chairman and the Secretary of the Board are hereby authorized to affix their signatures to this resolution granting approval for preliminary and final site plan and variances. The Secretary of the Board is hereby authorized to advertise the action taken by way of this resolution in the local newspaper and furthermore send certified copies of this resolution to the Borough tax assessor, construction code enforcement official, building sub-code official, zoning official, the borough attorney, and the applicant=s attorney.

Approved: September 18, 2023

Planning Board of the Borough of Midland Park

By: _____

JESSICA HARMON, *Secretary*

KENT RIGG, *Chairman*