




**MEMO TO:** Borough of Sayreville Planning Board  
**FROM:** Jay B. Cornell, P.E. – Borough Engineer's Office   
**DATE:** February 7, 2024  
**SUBJECT:** 2069 Highway 35, LLC Site Plan  
Block 428, Lot 1, 2 and 2.01  
Our File No.: PSAP0428.01

In accordance with your authorization, our office has reviewed the revised site plan submitted for the above referenced project as prepared by French & Parrello Associates and dated September 15, 2022 and last revised December 18, 2023 and offer the following comments:

1. The subject application was recently determined to be complete by the Board's Technical Review Committee. We would refer to the report of the Board Planner for his review of the variances, conformance schedule, and zoning ordinance associated with this project.
2. The subject property consists of a 1.977 acre parcel located on the southbound side of Route 35 just south of the Sayreville/South Amboy boundary line. The site contains a former 2 ½ story residential dwelling and a 5,000 sf office/storage building. This property is currently being utilized as a landscaping yard.

In terms of background, use variance and site plan approval was granted for this property by the Borough Zoning Board in February 2001. That approval allowed for the existing residential dwelling to remain, the conversion of the balance of the property into landscaping business, for the construction of a 5,000 sf office/storage building, and for the construction of various other site related improvements. A copy of the Zoning Board Resolution of Approval for this project is attached for the information of the Board. Please note that this Resolution contains numerous conditions concerning the operation of this business associated with this approval.

Although this project was approved by the Zoning Board in 2001, the project was not constructed and placed into operation until 2018. At the time of the issuance of a Certificate of Occupancy (CO) in 2018, the project was in accordance with the approved site plan.

After the issuance of a CO, various changes were made to the approved site plan as well as the operation of the business without the approval of the Borough. This resulted in complaints being filed with the Borough from the surrounding residential properties. Based upon these complaints, violation notices were issued by the Borough Zoning Officer beginning in 2021 to the property owner. A copy of a March 2021 report which summarizes the deviations from the originally approved site plan is attached for the information of the Board.

As a result of the violation notices issued by the Borough, this matter has been in litigation. A copy of the recent Court Order concerning this project is attached for the information of the Board.



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3. The current application before the Board is seeking approval to legalize the operation of the site as currently it exists as well as to approve the majority of the deviations from the originally approved site plan. In addition, the former 2 ½ story residence is proposed to be demolished and replaced by a 45' x 50' pole barn. Other site related drainage and landscaping improvements are also proposed in conjunction with the current application.
4. Our office previously provided the Applicant and his professionals with an seven (7) page report which summarized our "technical" concerns relative to this project.

Since that time, we have been provided with revised plans which have addressed some of the previously outstanding items.

5. Our office has prepared the attached updated "Technical Engineering Review" based on the revised plans submitted. The comments contained in this review should be addressed in further detail by the Applicant's Engineer.

At this time, it would be the recommendation of our office that any action taken by the Board on the subject application be contingent upon the resolution of the aforementioned items.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

JBC/blr

cc: All Board Members  
John Giunco, Esq.  
French & Parrello Associates

RESOLUTION  
BOARD OF ADJUSTMENT  
OF  
THE BOROUGH OF SAYREVILLE

Re: Application #00-52  
Applied Landscaping Technologies  
Route 35 South  
Block 428, Lots 1, 2 and 2.01

WHEREAS, by application #00-52, Applied Landscaping Technologies, owners of the property located on Route 35 South, a/k/a Lots 1, 2 and 2.01 in Block 428, requests a use variance to permit the continued use of one of the structures located on the above described property as a residence (not permitted use) and introducing a new use, i.e. landscaping business (permitted use); and

WHEREAS, a Hearing was conducted on January 24, 2001, said Hearing being continued until February 28, 2001, in Council Chambers, in Borough Hall in the Borough of Sayreville; and

WHEREAS, the following members heard the testimony and read the documents submitted:

Mr. Amaczi (Chairman)  
Mr. Daddio  
Mr. Kilcomons  
Mr. Sutter  
Mr. Waitt  
Mr. Kuczynski

WHEREAS, at said meeting all those who desired to be heard were heard, and the testimony was recorded by the Board of Adjustment; and

WHEREAS, at said meeting the Board of Adjustment carefully considered the testimony submitted, the documents offered and the arguments of the applicant, and as a result the following findings of facts and conclusions of law were made:

**FINDINGS**

1. The applicant is the owner of the property located on Route 35 South, a/k/a Lots 1, 2 and 2.01 in Block 428 in the Borough of Sayreville, County of Middlesex, State of New Jersey.
2. The premises in question is 1.977 acres (86,123 sq. ft.) presently being used as a dwelling and a garage and located in the B-3 Zone.
3. The current residential use is a pre-existing non-conforming use in the B-3 Zone.
4. The applicant is requesting a use variance, to allow it to continue the residential use in its present location, while at the same time, operate a landscaping yard and office in the rear portion of the premises.
5. This application represents an expansion of a pre-existing non-conforming use, and as such, use variance is thus required.
6. In addition, the applicant is requesting a front yard variance as it relates to the existing garage in relationship to the jug handle (50 ft. required, 21.4 ft. proposed).
7. Lastly, the applicant is requesting approval of a site plan prepared by James E. Cleary and Associates, dated July 2000.
8. At the Hearing, the applicant offered testimony that it was a commercial (non-residential) landscaper.
9. The applicant testified that they had between 7-9 employees that appear on site.

10. Generally the employees would appear on site at approximately 6:00am and leave site at 6:15am, to return at 4:30pm to disperse.
11. The applicant indicated that there would be no retail operation on the proposed site.
12. The applicant indicated that materials that would be stored on site would be landscaping materials, such as topsoil, etc. The vast majority of the materials needed to conduct their business would be delivered to the site of the landscaping.
13. The applicant testified that there would be a number of vehicles that would be stored on site at any one point in time, including:
  - A. Three dump trucks
  - B. Two rack body trucks
  - C. Three mason dumping trucks
  - D. Four pick up trucks
  - E. Three tag-along trailers
  - F. Three bulldozers
  - G. Two backhoes
14. The applicant is proposing improving the rear (west) portion of the lot with a structure to house a shop, storage area and office area.
15. In addition, the applicant testified that they would be installing a chain-link fence around the front (east) portion of the property, that in which the one-family residence was located.
16. The applicant testified that the vehicular traffic for the landscaping use would enter into the rear portion of the lot by virtue of the driveway to the north of the premises in question.

17. The proposed building is a permanent building of split block construction.
18. In addition to the above, there would be three bins for topsoil and mulch, etc. in the rear portion of the lot.
19. Lastly, there is a bulk variance required by virtue of the fact that the existing garage is 21.4 ft. from the frontage created by the jug-handle (25 ft. required).
20. Applications and all submissions were reviewed by J.B. Cornell, P.E. of C.M.E. Associates, Engineer for the Borough of Sayreville, who issued a report dated January 24, 2001, which by reference is incorporated into this Resolution and made a part hereof.
21. An issue was raised as to whether in fact the application represented "outside storage".
22. This issue was reviewed by John T. Chadwick IV, P.P., who issued a letter report dated February 13, 2001, a copy of which is incorporated into this Resolution and made a part hereof.
23. In that report Mr. Chadwick concluded that the landscaping use was in full compliance with the Zoning Ordinance.
24. In addition to the above, the applicant is requesting a variance from 50 ft. buffer requirement for the storage of materials, i.e. topsoil, mulch, etc. (25 ft. proposed).

#### CONCLUSIONS

1. The applicant has demonstrated sufficient hardship or practical difficulties to support the bulk relief requested.
2. The applicant has demonstrated sufficient special reasons to support the relief requested, i.e.:

- A. to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses in an open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; and
  - B. 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.
3. The applicant has demonstrated that the relief requested can be granted without substantial detriment to the intent and purpose of the Zoning Ordinance or Zoning Plan.
  4. The applicant has demonstrated that the purposes of the Municipal Land Use Law would be advanced by the technical deviations from the bulk requirements; the benefits of the deviation (bulk variances) substantially outweighing the detriment.
  5. The applicant has demonstrated that it would be in the best interest of the community and the surrounding neighborhood to approve the site plan submitted.

**NOW THEREFORE BE IT RESOLVED** that the applicant's request for the following relief is hereby granted:

1. A use variance to permit the continuation of the non-conforming residential use along with the proposed landscaping use; and
2. A variance from the front yard setback requirement as it relates to the existing frame garage (25 ft. required. 21.4 provided); and

3. A 25 ft. buffer along the boundary that abuts residential uses;
4. Approval of the site plan prepared by James E. Gleary and Associates, originally dated July of 2000 and last revised on January 4, 2001.

The above relief is granted on the following conditions:

1. The applicant apply for and receive all required permits and approvals for the construction; and
2. The applicant meet all of the requirements contained in the letter of the Borough Engineer, i.e. J.C. Corneli, dated January 24, 2001; and
3. The construction shall be in compliance with all of the building requirements of the Borough of Sayreville; and
4. All required fees, escrows, bonds and inspection fees are paid pursuant to Borough Ordinance; and
5. The applicant is subject to the mandatory registration with the Fire Official's office, for any new building that requires same; and
6. Review of site plan by the Construction Official and the Fire Official, if applicable; grading plan review, if applicable; pre-construction meeting with the Borough Engineer and the Construction Official prior to the commencement of work, if required; and the mandatory registration with the Borough Clerk of any new businesses, including food licenses, where applicable; and
7. The applicant will comply with all regulations of the Borough of Sayreville, County of Middlesex, State of New Jersey and the federal government.



8. There is to be no additional water run-off from the premises in question onto any adjacent property.

Dated: 3/26, 2001

  
Henry Sutter, Board Secretary

Motion made by Mr. Sutter, seconded by Mr. Kilcomons.

In Favor are:

Against:

Mr. Amaczi (Chairman)  
Mr. Daddio  
Mr. Kilcomons  
Mr. Sutter  
Mr. Waitt  
Mr. Kuczynski

None



**BOROUGH OF SAYREVILLE  
BRIAN BURLEW PROPERTY (BLOCK 428, LOTS 1, 2 AND 2.01)  
FORMER APPLIED LANDSCAPE TECHNOLOGIES SITE PLAN**

**- SUMMARY OF DEVIATIONS FROM ORIGINALLY APPROVED SITE PLAN -**

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1. The trees in the front yard area that were required to remain have been removed.
2. The NJDOT Right-of-Way area adjacent to the front yard area has been regraded and millings has been installed. This area is currently being utilized for vehicle storage.
3. The front yard area of the 2 ½ story dwelling was required to be a grass area. This area has been replaced with stone/millings and is currently being utilized for equipment and material storage.
4. Lot 2.01 was required to remain undisturbed. A driveway from this lot connecting to Route 35 has been constructed. A permit from the NJDOT has not been obtained for this driveway.
5. Lot 2.01 is currently being utilized for vehicle / material storage as well as a driveway connecting the rear portion of the site to Route 35.
6. The fence between the garage and side yard area has been removed and a driveway connecting to the front yard area constructed.
7. A brick paver display area has been constructed between the garage and storage building area.
8. The 24' wide site entrance driveway is being utilized for vehicle parking.
9. Multiple pallets of brick pavers have been stockpiled in the NJDOT Right-of-Way near the site entrance.
10. Numerous evergreen trees along the northerly property line have been removed. Other trees in this area have died.



Borough of Sayreville

**Brian Burlew Property (Block 428, Lots 1, 2 AND 2.01)  
Former Applied Landscape Technologies Site Plan**

**- Summary of Site Plan Deviations -**

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11. The originally proposed grass area between the parking lot and chain link fence along the northerly property line is being utilized for material storage.
12. The originally proposed employee/truck parking areas located behind the storage building are currently being utilized for material storage.
13. The originally proposed grass area between the parking lot and chain link fence on the westerly property line is currently being utilized for material storage.
14. The originally approved plan called for three (3) storage bins between the parking lot and chain link fence along the westerly property line. A total of fourteen (14) storage bins are now located in this area. The eleven (11) additional bins are located in what was originally approved as a grass area.
15. The originally proposed plant/equipment gravel storage area to the rear of the site has expanded and is being utilized for both equipment and material storage.
16. Various evergreen trees located on the westerly property line berm have died.
17. Five (5) storage bins have been constructed on top of the subsurface detention system.
18. Various evergreen trees within the buffer area along the southerly property line have died.
19. The originally proposed trees adjacent to the rear yard parking/storage area have been removed.
20. The originally proposed landscaping adjacent to the storage building has been removed.
21. The site as currently exists has increased the impervious coverage above what was contained on the approved plans. The subsurface detention system was not designed to handle the site as constructed.

**FILED**

AUGUST 11, 2023

Hon. Aravind Aithal., J.S.C.

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*Attorneys for Plaintiff, Borough of Sayreville*

BOROUGH OF SAYREVILLE,

Plaintiff,

v.

2069 HIGHWAY 35, LLC, and BRIAN  
BURLEW

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY

Docket No: MID-3693-23

Civil Action

**ORDER**

**THIS MATTER** having been brought before the Court by the law firm of Cleary Giacobbe Alfieri Jacobs, LLC, attorneys for Plaintiff, Borough of Sayreville (“Plaintiff”), seeking relief by way of Order to Show Cause pursuant to Rule 4:52 of the New Jersey Rules of Court, based upon the facts set forth in the Verified Complain; and upon notice to Defendants, 2069 Highway 35, LLC and Brian Burlew (collectively “Defendants”); and the Court having reviewed the papers filed seeking an Order temporarily and permanently enjoining and restraining Defendants from, among other things, utilizing the subject property beyond the scope permitted from prior Borough approvals; and for good cause shown;

**IT IS** on this 1st day of AUGUST 2023,

**ORDERED** that Defendants are temporarily enjoined, restrained and compelled to act as follows:

- A. Defendants are hereby **Ordered** to remove all equipment and storage containers not permitted in the March 28, 2001 Resolution of Approval within 30-days of this Order from the Property; and,
- B. Defendants are hereby **Ordered** to immediately remove all encroachments into the buffer and/or set-back area (50 feet from the southerly boundary line unless otherwise permitted by the Borough; and,
- C. Defendants are hereby **Ordered** to reduce the aggregate number of storage containers and/or storage bins on the Property to no greater than three (3) and said containers and/or bins shall be located in accordance with the Borough's March 28, 2001 approval related to same within 30-days of this Order; and,
- D. Defendants are hereby enjoined from utilizing, operating or otherwise accessing the driveway on Block, 428, Lot 2.01 to enter or exit the subject property onto Route 35; and,
- E. Defendants are hereby enjoined from increasing the total number of storage containers and/or bins beyond the three (3) permitted in the Borough's March 28, 2001 approval; and,
- F. Defendants are hereby enjoined from storing, encroaching, and obstructing the buffer and/or set-back areas of the Property with any materials, equipment, and/or vehicles.

~~**IT IS FURTHER ORDERED** that the represented parties shall be deemed served with this Order upon its dissemination to their counsel via eCourts.~~

**IT IS FURTHER ORDERED** that a copy of this Order shall be deemed served on all counsel of record upon its posting by the Court to the eCourts case jacket for this matter.

Pursuant to R. 1:5-1(a) and R. 1:32-2A, the Movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of this Order.

*/s/ Aravind Aithal*

HON. ARAVIND AITHAL, J.S.C.

### DECISION OF THE COURT

Plaintiff-Movant Borough of Sayreville (“Borough”) seeks to enjoin the use of property located at 2069 Highway 35, South Amboy, New Jersey 08879, known on the official Tax Map of the Borough of Sayreville as Block 428, Lots 1, 2, and 2.01 (“Property”) by Defendants 2069 Highway 35, LLC and Brian Burlew (“Defendants”). Plaintiff avers that Defendants are in continual violation of Ordinance 26-115(d) (“Ordinance”) and have failed to obtain necessary land use approvals under the Municipal Land Use Law (“MLUL”), N.J.S.A. 40:55D-1 to -22 to use the property as they are currently using it. Ultimately, Plaintiff contends that Defendants have enjoyed the Property in a fashion that is “not authorized[,] to the detriment of [the Borough] and the general public” and seeks this injunctive relief to enforce the Ordinance, the Borough’s prior land use approval resolutions for the Property, and the MLUL.

Plaintiff requests the Court enter an Order granting the following relief: (1) “adjudicating and enjoining” Defendants from the use of the Property until appropriate permits and approvals are obtained; (2) immediately and permanently enjoining all vehicles from utilizing the “illegal driveway on Block 428, Lot 2.01 to exit the subject property onto Route 35” in the absence of necessary approvals from the Borough and the New Jersey Department of Transportation (“NJDOT”); (3) requiring Defendants to remove all vehicles, equipment, and storage containers presently on the Property in violation of the March 28, 2001 Resolution of Approval (“Resolution”); and (4) attorneys’ fees in conjunction with this action.

The Court first notes that Defendants have certified that as of July 27, 2023, the second driveway that is subject of this relief has since been blocked off with concrete blocks. Plaintiff’s second form of relief is thus moot, and the Court shall only address the remaining requested relief.

It is well established that a party seeking injunctive relief bears the burden of demonstrating by clear and convincing evidence that it satisfies the four factors outlined in Crowe v. De Gioia, 90 N.J. 126 (1982), appeal after remand 203 N.J. Super. 22 (App. Div. 1985), aff’d 102 N.J. 50 (1986). See also Waste Management of New Jersey, Inc. v. Union Cty. Utilities Auth., 399 N.J. Super. 508 (App. Div. 2008) (internal citations omitted).

To establish that a party is entitled to injunctive relief, the party seeking relief must demonstrate: (1) the requested relief is necessary to prevent irreparable harm; (2) the legal right underlying plaintiff’s claim is settled; (3) the material facts are undisputed and plaintiff has reasonable probability of success on the merits; and, (4) balancing the relative hardships of the parties in granting or denying the requested relief, and the public interest will not be harmed.

Crowe, 90 N.J., at 132-34; see also Waste Management, 399 N.J. Super., at 519-20. Further, the party seeking injunctive relief has the burden of satisfying *all* Crowe factors. Ibid.

First, Plaintiff must demonstrate that the requested relief is necessary to prevent irreparable harm. It is undisputed that Defendants have been using the Property in a manner that is incompatible with the Borough's Ordinance 26-115(d) and the Resolution. The Borough provided Defendants with a long list of violations in their use of the Property, including: (1) the impermissible removal of trees on the Property; (2) the expansion of the originally proposed plant/equipment storage area that is instead being used for equipment and material storage; (3) using fourteen storage bins on the Property, when only three were permitted between the parking lot and chain link fence along the Westerly property line; and (4) the increase in impervious coverage above what was permitted on the approved plans, because the subsurface detention system was not designed to handle the site as constructed.

The Plaintiff is charged "with the duty of enforcing those ordinances in the public interest," and this situation is no different. See Borough of Cresskill v. Borough of Dumont, 28 N.J. Super. 26, 44 (Law Div. 1953) aff'd, 15 N.J. 238 (1954). In addition, courts in New Jersey have held that a party "may obtain equitable restraint against violation of a zoning ordinance where [they have] 'sustained special damage...'" See Garrou v. Teaneck Tryon Co., 11 N.J. 294, 300 (1953). The Court finds that, at this juncture, these non-conforming uses cause immediate and irreparable harm to the Plaintiff, the adjoining property owners, the master plan, and the Ordinance. Plaintiff has put Defendants on notice of their non-conforming uses and conditions of the Property for over two years. Defendants non-conforming, unlawful uses and conditions of the Property remained in violation of the Borough's Ordinance. Although Defendants aver that Plaintiff's harm can be redressed by money damages, rendering it "not irreparable," this is not the case because fines are imposed through statute or the Ordinance. More importantly, these monies do not compensate Plaintiff for Defendants' continued non-conforming use, but rather, act as a penalty to discourage parties like Defendants from failing to comply with the Ordinance.

Defendants also allege that the harm is not "immediate." The Court disagrees. "Generally, equitable relief of a preliminary injunction should not be entered except when necessary to prevent substantial, immediate and irreparable harm." Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997) (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303-04 (E. & A. 1878)). The Court notes that Plaintiff argues the site's subsurface detention system was not designed to handle the site as constructed. See Pl. Exh. F. The continued use of the Property as is puts the subsurface detention system at risk of failure, and ultimately, harm to the municipality and adjoining property owners at any time. Accordingly, Plaintiff has satisfied the first Crowe factor.

The Plaintiff must also demonstrate that their underlying legal right has is settled. Crowe, 90 N.J., at 132-34. It is well-established that the MLUL entitles a municipal governing body, such as Plaintiff, to "enforce this act **and** any ordinance or regulation made and adopted hereunder." N.J.S.A. 40:55D-18 (emphasis added). Further, the act expressly contemplates the filing of an action by "the proper local authorities of the municipality or an interested party, in addition to other remedies, may institute any appropriate action or proceedings to prevent such...alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation...or to prevent any illegal act, conduct, business or use in or about such premises." Ibid. Plaintiff's requested relief relates to the enforcement of the Ordinance and ensuring that

Defendants' use of the Property conforms with it. Therefore, the Plaintiff has satisfied the second Crowe factor.

The third Crowe factor requires Plaintiff to demonstrate that it has a reasonable probability of success on the merits. Once again, it is undisputed that Defendants use of the Property runs contrary to the requirements of the Ordinance and the prior Resolution, and Plaintiff has the right to enforce any ordinance or regulation made and adopted under the MLUL. See Ibid. Plaintiff has demonstrated, clearly and convincingly, that Defendants have not used the property in a manner that conforms with the Ordinance, or the original March 28, 2001 Resolution of Approval issued to Defendants' predecessor, Applied Landscaping Technologies. See Pl. Exh. A; See also Pl. Exh. F. Defendants seem to concede this point but rely on the doctrine of laches in opposition to the relief. However, the fact that Plaintiff only filed this action now does not factor into the Court's analysis because Plaintiff has the right to enforce all ordinances and regulations at all times. See N.J.S.A. 40:55D-18. The institution of this action is the ultimate method to obtain compliance when methods such as negotiation, discussion, and coercive penalties otherwise fail to satisfy that objective. This clear violation leads the Court to find that Plaintiff would have a likelihood of success on the merits.

With regard to the fourth Crowe factor, Plaintiff must show that in balancing the equities, the public interest will not be harmed. The Court finds that in balancing these equities, the public interest would be harmed if Defendants non-conforming uses of the Property were to continue. Ordinances are enacted "to advance the general welfare by means of a comprehensive plan..." Gallo v. Mayor & Twp. Council of Lawrence Twp., 328 N.J. Super. 117, 127 (App. Div. 2000). The Borough's Ordinance furthers the advancement of the general welfare, and if Defendants' unlawful uses were to continue, the harm that would befall the public would outweigh any monetary harm suffered by Defendants if they were unable to use the Property in violation of the Ordinance and the Resolution to operate their business. The Court is aware that this type of relief is granted sparingly and with restraint. The Court is also cognizant of the impact this may have on Defendants' business, but still, the Court finds that Plaintiff is entitled to the relief sought.

The Court notes Defendants argue that Plaintiff impermissibly seeks judgment in its Order to Show Cause in violation of R. 4:52-1(a) as well. The Rule provides, in relevant part, that a plaintiff "may apply for an order requiring the defendant to show cause why an interlocutory injunction should not be granted pending the disposition of the action." Defendants' argument on this point effectively rests on Plaintiff's use of the term "adjudicating," but the Court finds that this largely procedural argument fails. The proposed Order clearly requests injunctive relief as illustrated through the plain language of the Order, which requests the Court "adjudicat[e] and **enjoin** Defendants" from using the subject property until receiving appropriate permits and approvals, "**enjoining** all vehicles from utilizing the driveway," and prohibiting the use of equipment, storage containers, and vehicles not expressly permitted by the March 28, 2001 Resolution. See Pl. Proposed Form of Order, at 1 (emphasis added).

Defendants also argue that the Complaint "fails to disclose to the court that other actions are pending in violation of R. 4:5-1." This omission is not fatal to Plaintiff's claims and requested relief, as the Court is permitted, but not obligated, to impose "appropriate sanctions." See R. 4:5-1 (b)(2) ("If a party fails to comply with its obligations under this rule, the court **may** impose an appropriate sanction..."). Defendants request the Court dismiss the matter without prejudice or provide Plaintiff with the opportunity to file an amended pleading in light of this



procedural issue. However, “[t]he Rule’s only authorization for dismissal relates to the preclusion ‘of a successive action’ that is appropriate only if ‘the failure of compliance was inexcusable and the right of [an] undisclosed party to defend [a] successive action has been substantially prejudiced by not having been identified in the prior action.’” Alpha Beauty Distributors, Inc. v. Winn-Dixie Stores, Inc., 425 N.J. Super. 94, 101 (App. Div. 2012) (citing R. 4:5-1(b)(2)). This is not an instance where an undisclosed party would not be able to defend against a subsequent action, rendering a dismissal procedurally improper. See Ibid. Further, even if the Court were to permit Plaintiff to file an amended pleading certifying to the existence of a related action in municipal court, this Court’s analysis and findings would remain unchanged.

Accordingly, the Court finds that Plaintiff has satisfied **all Crowe** factors with clear and convincing evidence. Therefore, Plaintiff’s request for injunctive relief is **GRANTED IN PART**. Defendants shall be enjoined from any use of the Property in violation of the Ordinance or Resolution unless temporarily permitted by the Borough by agreement. Access to Route 35 by way of the unauthorized access point shall be abated. Temporary and permanent structures, objects, and items in the Buffer Zone shall be removed unless otherwise permitted by the Borough by agreement. However, the Court finds the interests of justice do not warrant fees at this juncture, and that request is **DENIED WITHOUT PREJUDICE**.

**SO ORDERED.**



**BOROUGH OF SAYREVILLE  
2069 HIGHWAY 35, LLC SITE PLAN**

**- TECHNICAL ENGINEERING REVIEW -**

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Our File No.: PSAP0428.01/600.01

**A. SITE GRADING AND GENERAL COMMENTS**

1. The Applicant will be required to obtain the following governmental approvals necessary to implement this project:
  - a. Middlesex County Planning Board,
  - b. Borough of Sayreville – Soil Fill Permit,
  - c. Borough of Sayreville – Tree Preservation Permit,
  - d. Borough of Sayreville – SESC Plan Certification,
  - e. NJDOT – Major Access Permit,
  - f. NJDEP – Construction Activity Stormwater Discharge Permit (RFA).
2. The proposed use of Lot 2.01 should be further reviewed. The plans propose the removal of the existing roadway and the installation of landscaping in the area. It should be confirmed that this area will not be utilized for site access or any other business related use.
3. The aesthetics of the proposed building to be constructed should be reviewed by the Board.
4. Our office would defer to the report of the Board Planner for his review of any proposed wall signs, ground signs, and free-standing signs for this project, their proposed locations and construction details.
5. A Deed of Lot Consolidation should be filed for the project. The new block and lot numbers should be obtained from the Borough Tax Assessor.
6. Sidewalk is required throughout the site and along the frontage of the property as per the requirements of the Borough Design Standards. The Applicant is requesting a waiver of this requirement.
7. As per Borough Ordinance Requirements, a minimum of one (1) off-street loading berth is required per building. The Applicant is requesting a waiver of this requirement.
8. Portions of the storage area are proposed not be paved with bituminous materials but rather surfaced with gravel which is not in accordance with Borough Ordinance requirements. The Applicant is requesting a waiver of this requirement.
9. Pursuant to Borough Ordinance, all parking lots are to be fully enclosed with either concrete or belgian block curbing along their perimeter. The Applicant is requesting a waiver of this requirement.



Technical Engineering Review  
2069 Highway 35, LLC Site Plan  
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10. The Applicant is proposing storage/display areas within the front yard setback which is not permitted by Borough Ordinance. The Applicant is requesting a waiver of this requirement.
11. The Applicant should review with the Board the specific type of uses at the site that are proposed with this application. The submitted plan indicates the existing use is a landscape yard and the proposed use is a landscaping yard. However the website for the current site indicates the following uses are taking place at the site:
  - a. Equipment rentals
  - b. Topsoil, mulch, sand, stone sales
  - c. Dumpster rentals
  - d. Concrete block/paver sales
  - e. Winter supplies sales (rock salt, etc)
  - f. Masonry materials sales
  - g. Retail sales

The Applicant should clarify if the above uses are still proposed and also advise if any uses other than those listed above are proposed. In addition the specific locations where these uses take place on the site should be noted on the plans. The parking area requirements of Borough Ordinance should also be further reviewed based upon the various types of uses currently taking place at the site.

12. The plans indicate that the proposed hours of operation of the business are 7:00 am to 6:00 pm. The Applicant should confirm that these hours are correct since work at the site is presently taking place outside of these hours. Weekend hours of the business should also be clarified.
13. The specific number of employees for the use should also be confirmed. The plans indicate "several employees and an office/business manager". The Applicant should clarify this figure.
14. The type of material to be stored in the proposed bins closest to the southerly property line should be further reviewed with the Board. Consideration should be given to removing these bins due to their proximity to the residential properties or limiting their use to materials that will not create noise or dust issues.

**B. SANITARY SEWER SYSTEM**

1. An existing Borough sanitary sewer easement is present on the property. As per the Deed for this easement "The Grantor shall not ... erect structures of any kind within said easement premises...". The Applicant should confirm that no structures are proposed to be located within the easement area.

**C. WATER DISTRIBUTION SYSTEM**

1. The Water System Design Report should be revised to include an estimate of the required fire flows for the proposed building. In addition, results of a current hydrant flow test and calculations that demonstrate that the required fire flow can be met by the existing Borough



water system should also be included in the report. The calculation of needed fire flow for the proposed building should conform with the Insurance Services Office (ISO) method.

**D. STORM DRAINAGE SYSTEM**

1. The property identified as Block 428, Lots 1, 2, and 2.01 consists of approximately 1.977 acres. As the proposed development will result in more than one (1) acre of land disturbance and increases regulated motor vehicle surfaces more than 0.25 acre, the project is classified as a "Major Development". Therefore, the proposed development must be designed to meet the stormwater runoff quantity, stormwater runoff quality, groundwater recharge and green infrastructure standards set forth by the Borough of Sayreville Land Use Ordinance and NJAC 7:8.
2. In accordance with the NJAC 7:8-5.4 groundwater recharge standards, the proposed project must maintain the present conditions average annual groundwater recharge volume for the site. The groundwater recharge requirement does not apply to projects within the "urban redevelopment area". Since the project is located in a Metropolitan Planning Area (PA-1) and is within the urban redevelopment area, the groundwater recharge requirement is not required.
3. In accordance with N.J.A.C. 7:8-5.8, the Design Engineer must prepare a Maintenance Plan for the stormwater management incorporated into the design of the proposed development.
4. The Maintenance Plan must contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). The plan shall contain information on BMP location, design, ownership, maintenance tasks and frequencies, and other details as specified in Chapter 8 of the NJ BMP Manual, as well as the tasks specific to the type of BMP, as described in the applicable chapter containing design specifics.
5. The subject site currently directs stormwater runoff from the property onto adjacent Block 435.01, Lot 32. The Applicant's Engineer has submitted an Exhibit that attempts to show no changes in drainage patterns to this area. However, that Exhibit does not reflect the changes made to the drainage patterns by the Applicant from the grading patterns shown on the 2001 approved plan. In order to address the current drainage problems in this area, the Applicant should be required to regrade the area in order to redirect the stormwater runoff away from this property.

**E. LANDSCAPING AND LIGHTING**

1. The Tree Preservation Plan and Calculations indicates a deficit of forty-one (41) trees will result from the proposed project. A contribution to the Borough Tree Bank will be required.
2. The Applicant's Engineer should provide calculations that verify at least 20% of the subject site will consist of landscaping and that at least 5% of the required landscaped area is along the



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right of way areas, as required by the Borough Ordinance. The Applicant is requesting a waiver of this requirement.

3. Any existing dead trees on the site should be removed and replaced.
4. In accordance with the Borough Ordinance, a minimum of 10% of all proposed parking areas shall be landscaped about the interior. The Applicant's Engineer should further review this issue and revise the plans accordingly. The Applicant is requesting a waiver of this requirement.
5. As per Ordinance requirements, a 50' wide vegetated buffer is required when a commercial property abuts a residential zone. This requirement has not been satisfied. A 25' wide buffer was approved for three (3) storage bins along the westerly property line of the site. Twelve (12) storage bins are proposed in this area on the current plan. The original plan required a 50' buffer with no storage bins along the southerly property line. No storage bins are shown in this area on the current plan.
6. The height of any display materials/equipment to be located within the display areas should be clarified. The need to provide screening of the proposed display areas should be further reviewed.
7. The need to provide additional screening of the additional storage bins along the westerly property line should be further reviewed since the number of proposed bins in this area has increased since the 2001 approval.
8. Notes should be added to the plan to verify that the areas in which the additional landscaping is to be installed along the southerly property line will have all the existing gravel removed prior to planting.

**G. PARKING AND ROAD IMPROVEMENTS**

1. Information on anticipated traffic patterns, deliveries, garbage pick-up, etc. should be provided. In addition, the number of vehicles associated with the business (both rental and operational) and their associated parking areas should be shown on the plan.
2. The manner in which deliveries to the site and refuse pick-up are proposed to be made should be further reviewed.
3. The Applicant's Engineer should indicate any required signage and striping of fire zones as may be required by the Borough Fire Official. A note indicating same should be added to the plans.
4. The existing driveway does not provide for the 10' setback to the property line as required by the Borough Design Standards. The Applicant is requesting a waiver of this requirement.
5. Hairpin striping is not proposed as per Ordinance requirement. The Applicant is requesting a waiver of this requirement.