



State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O. Box 600

Trenton, New Jersey 08625-0600

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Governor

DIANE GUTIERREZ-SCACCETTI
Commissioner

SHEILA Y. OLIVER
Lt. Governor

June 12, 2023

Joseph W. Grather, Esq.
McKirdy, Riskin, Olson & DellaPelle, P.C.
201 Littleton Road, Suite 135
Morris Plains, NJ 07950

Re: Route 20 Paterson Safety, Drainage & Resurfacing, Modification of Access
Appeal, Block 8027, Lot 1, City of Paterson, Passaic County (Dr. Meta Rohde)

Dear Mr. Grather:

This is the final agency decision for an appeal of a determination of the Office of Access Design ("OAD") of the New Jersey Department of Transportation ("NJDOT"), modifying access between State Highway Route 20 ("Route 20"), known locally as McLean Boulevard, and a property owned by Dr. Meta Rohde ("Owner") located at 201 McLean Boulevard, Paterson, New Jersey ("Property"). The Property is identified as Block 8027, Lot 1 in the local tax map.

On October 28, 2022, after a formal hearing held on August 4 and 29, 2022, pursuant to N.J.A.C. 16:47-11.3(f), I remanded this case to the OAD "for the OAD to explore . . . options" to its current proposed plan for modification of access at the Property (see attached October 28, 2022 decision). The parties have informed me that the OAD considered alternative designs on remand, declined to grant a waiver under N.J.A.C. 16:47-9.9 of the State Highway Access Management Code's prohibition against driveways along a jughandle, N.J.A.C. 16:47, Appx. D, D-2(b)(4), and determined to keep the proposed plan. The parties agree that there is no need for further development of the record.

My October 28, 2022 decision contained detailed findings of fact, which are incorporated in this decision.¹ Defined terms in this decision have the meanings set forth in my previous decision.

¹ My previous decision was erroneously characterized as a "final agency decision"; this error was corrected in a March 27, 2023 letter to the parties.

As previously noted, the only question before me is whether the Property would have "reasonable access to the general system of streets and highways in the State" under the OAD's proposed plan. N.J.S.A. 27:7-90(e). That plan would widen the Shared Driveway, and the widened Shared Driveway would be the only one for the Property (which currently has two other driveways) as well as the adjoining Lot 2 and Lot 3.

I have explained the multiple problems with limiting ingress and egress to the Shared Driveway:

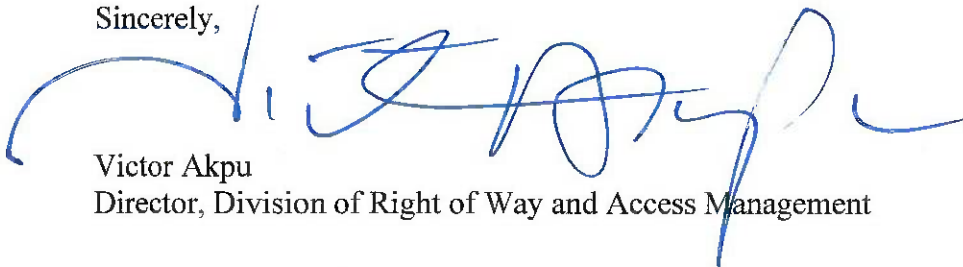
It is undisputed that the OAD's proposed plan will result in a worst case, LOS F driveway. Increased numbers of motorists exiting through the Shared Driveway may exacerbate queuing issues on Route 20 northbound. In addition, if a WB-67 truck were to break down in the Shared Driveway, no motorist or emergency services vehicle could enter or leave. Finally, if there were an emergency at the Property and all Synergy employees had to leave at the same time, the exiting queue could have more than forty cars, each of which would need time to merge into fast-moving traffic on Route 20 northbound.

These problems remain. Accordingly, I find that the OAD's proposed plan would not provide the Property with "reasonable access to the general system of streets and highways in the State" and reject it.

This is the final agency decision rendered on behalf of the NJDOT, which may be appealed, if desired, to the Appellate Division of the Superior Court of New Jersey.

Should you have any questions, please feel free to contact my office at (609) 963-1180.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victor Akpu", is written over a horizontal line.

Victor Akpu
Director, Division of Right of Way and Access Management

cc: Dennis J. Mikolay, II, Deputy Attorney General
Charles Isiadinso, Principal Engineer



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October 28, 2022

Joseph W. Grather, Esq.
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Morris Plains, NJ 07950

Re: Route 20 Paterson Safety, Drainage & Resurfacing, Modification of Access
Appeal, Block 8027, Lot 1, City of Paterson, Passaic County (Dr. Meta Rohde)

Dear Mr. Grather:

This is the final agency decision for an appeal of a determination of the Office of Access Design ("OAD") of the New Jersey Department of Transportation ("NJDOT"), modifying access between State Highway Route 20 ("Route 20"), known locally as McLean Boulevard, and a property owned by Dr. Meta Rohde ("Owner") located at 201 McLean Boulevard, Paterson, New Jersey ("Property"). The Property is identified as Block 8027, Lot 1 in the local tax map.

On March 10, 2022, after rescinding a modification of access plan that would affect the Property, the OAD sent a letter informing the Owner of a revised modification of access plan. The Owner requested this appeal on March 21, 2022, and a formal hearing was held on August 4 and 29, 2022, pursuant to N.J.A.C. 16:47-11.3(f).

I presided over the formal hearing and considered the pre-hearing submissions, testimony, documents presented, and arguments proffered by the parties, which were both represented by counsel. At the conclusion of the hearing, I announced that I would hold the record open pending the receipt of the transcripts and written closing arguments. The administrative record was closed as of September 14, 2022, rendering this decision timely pursuant to N.J.A.C. 16:47-11.3(g). My findings on the basis of the record are as follows.

The modification of access at issue is being undertaken in conjunction with an NJDOT capital improvement project to resurface pavement, improve safety, and improve drainage along Route 20. 1T67:19-25; 2T291:21-292:2.¹ Route 20 is a six-lane divided highway by the Property, which is located between a jughandle ("Jughandle") off Route 20 at 18th Avenue and the Passaic River. DOT-1; DOT-3.² The speed limit on Route 20 by the Property is 45 miles per hour, but motorists "do go 50 to 60 miles an hour." DOT-2; 1T26:3; 1T70:7-8; 1T135:6. The speed limit entering the Jughandle is 35 miles per hour. 1T26:3-5.

The latter part of the Jughandle is adjacent to a "fairly steep embankment" down to the Passaic River. 2T222:1; 2T267:24. To protect motorists "from going into the Passaic River," and to comply with design standards for a drainage culvert outlet in this location, the Route 20 project includes the safety provision of a concrete barrier curb along the outer edge of the Jughandle. 1T85:4-8; 2T221:20-222:7; 2T283:18-20.

Southwest of the Property is a candy store ("Lot 2") that abuts Route 20 northbound; south of Lot 2 is a large warehouse ("Lot 3") that also abuts Route 20 northbound. DOT-1. Lot 2 and Lot 3 share a 49.5'-wide driveway on Route 20 northbound ("Shared Driveway"). Ibid.³ The Property currently has a limited easement on Lot 3 for truck access. Ibid.; 1T64:8-25; 1T122:24-125:3.

The Property, which is improved with a two-story office building, is leased to Synergy Microwave Corp. ("Synergy"). DOT-1. Synergy has approximately 50-60 employees, most of whom work on-site and park in approximately 45 on-site parking spaces (some of which are in State right-of-way or a 50' buffer zone). Ibid.; 1T96:1-12; 1T97:1-7. Approximately two-thirds of these employees take the Shared Driveway (even though the Property's easement on Lot 3 is limited to trucks) and travel through Lot 3 to get to the Property. See DOT-3. The remaining employees enter the Property through a driveway at the beginning of the Jughandle ("Driveway 2") or another driveway in the middle of the Jughandle ("Driveway 1"). Ibid.; 1T90:17-20; 1T97:13-98:2.⁴ All Synergy employees appear to exit the Property through Driveway 1 or Driveway 2. See DOT-3;

¹ "1T" refers to the August 4, 2022 hearing transcript; "2T" refers to the August 29, 2022 hearing transcript.

² The Jughandle was built in 1966. 1T37:10-16. At the hearing, the Owner testified that at the signalized end of the Jughandle motorists turn left for Route 20 southbound or right for Route 20 northbound. 1T101:12-20. The OAD's proposed plan depicts two left-turn-only lanes in the Jughandle; motorists would have to turn left for Route 20 southbound and would not be allowed to turn right for Route 20 northbound. DOT-1.

³ Lot 2 has a separate driveway on Route 20 northbound that will be closed under the OAD's proposed plan; this closure is not at issue. 1T30:23-32:1.

⁴ I note that the OAD's proposed plan identifies the driveways at issue by location, from south to north. See DOT-1 (numbering driveways by "Existing Driveway Location"). Unfortunately, at some point the driveways began to be numbered in the opposite order (from north to south). See DOT-2; DOT-3. Much of the confusion at the hearing would have been avoided if the parties had resolved this discrepancy in advance. I will refer to the Property's driveways as numbered at the hearing (from north to south).

1T91:1-7; 1T100:2-5.⁵ Driveway 1 and Driveway 2 have existed since at least 1984, when the Owner purchased the Property. 1T95:9; 1T104:14-25. The Owner claims that there have been no accidents on Driveway 2 since 1984. 1T100:11-13.

Driveway 1 does not comply with the State Highway Access Management Code, N.J.A.C. 16:47-1.1 to -14.1 ("Access Code"), for multiple reasons: it is 10' wide and therefore narrower than the minimum driveway width of 20';⁶ its curbline opening is less than 24'; it is located on the Jughandle; and exiting motorists must maneuver in State right-of-way. DOT-1; 1T26:16-29:11; 1T177:10-15. Driveway 2, which is in vacated City of Paterson right-of-way, does not comply with the Access Code because it is located on the Jughandle. DOT-1; 1T91:1-11. Driveway 2 has "[in]sufficient stopping sight distance due to [various] obstructions located within the sight distance triangle." DOT-2.

Cars and trucks entering Lot 2 and Lot 3 predominantly use the Shared Driveway. See DOT-3. Cars exiting Lot 2 take Driveway 2 or the Shared Driveway; trucks exiting Lot 2 take Driveway 2. Ibid. Cars and trucks exiting Lot 3 predominantly use Driveway 2. Ibid. In short, traffic largely flows one-way: ingress through the Shared Driveway and egress through Driveway 2 (into the Jughandle), although roughly half of the cars exiting Lot 2 egress through the Shared Driveway (back onto Route 20 northbound). Ibid. ("The majority of all vehicles (86%) entered the site from [the Shared Driveway]. Most passenger vehicles leaving [the Property] and [Lot] 3 exited the site using Driveway 2. Customers leaving from Lot 2 utilized both Driveway[] 2 and [the Shared Driveway.]); 1T91:1-7 (Driveway 2 "primarily used as an exit driveway" for three lots). Cars and trucks sometimes use Driveway 2 to cut across the entrance to the Jughandle and get onto Route 20 northbound. 1T80:16-19 (driver exiting Driveway 2 "could make the soft right turn into the right lane or any lane on Route 20."); 1T100:24-101:9; 1T150:6-12; 2T233:24-234:5; 2T257:22-258:11; DOT-3.⁷

Regarding truck ingress and egress through the Shared Driveway, a WB-67 truck (a type of tractor-trailer) must take up the entire driveway. DOT-4. If a WB-67 truck is entering, no other vehicle can simultaneously exit; likewise, if a WB-67 truck is exiting, no other vehicle can simultaneously enter (i.e., the entering vehicle must wait in the right lane of Route 20 northbound until the truck has exited or "choose to be very aggressive and go around the tractor trailer on the opposite side of the driveway," entering through the exit side of the Shared Driveway). Ibid.; 2T233:17-18. Moreover, an exiting WB-67 truck must take up the entire three lanes of Route 20 northbound to get on the highway (ending up in the left lane). DOT-4. Box trucks, which are "much smaller

⁵ Vehicle counts show one out of 49 cars left the Property through the Shared Driveway on January 12, 2022. DOT-3. I view this as *de minimus*.

⁶ I reject the Owner's claim that Driveway 1 is a one-way driveway. 1T41:2-45:17. Witness testimony is in conflict. Compare 1T102:22-103:19 ("In the morning they drive in one way" through Driveway 1) with 1T173:3-11 ("at the end of the day" vehicles "exit out" Driveway 1). Moreover, vehicle counts show that cars enter and exit the Property through Driveway 1. DOT-3.

⁷ This maneuver is essentially an illegal left turn (out of Driveway 2) followed by an immediate right turn (onto Route 20 northbound), which presents an enforcement issue. 2T291:7-16.

than tractor trailers," and cars may "enter[] and exit[] [the Shared Driveway] simultaneously without issue." 2T285:16-17; DOT-3.

According to the OAD's traffic engineering expert, Douglas Freudenrich, PE, PTOE, of Taylor Wiseman & Taylor ("TWT"), WB-67 truck volumes at this site during three days of vehicle counts were "overall low . . . less than one per hour on average." DOT-3. According to the Owner, trucks remain parked on the Shared Driveway blocking ingress and egress for hours at a time. 1T109:5-111:13; 1T118:13-15; 1T120:11-14; Owner-4; Owner-5. No such blockages were observed during TWT's vehicle counts. DOT-3. The Owner also claims that "almost the whole" of Lot 3 is blocked by refrigerated containers. 1T129:17-130:18; Owner-6.

The OAD proposes that (1) the Shared Driveway be widened (from 49.5' to 54.6') and serve as the driveway for the Property as well as Lot 2 and Lot 3; (2) Driveway 1 and Driveway 2 be closed; and (3) six non-conforming parking spaces on the Property, which are in State right-of-way, be eliminated and nine parking spaces be removed to allow emergency vehicle site circulation. DOT-1. The purpose of widening the Shared Driveway "is to better accommodate the ingress and egress of all vehicles entering and exiting that driveway." 2T223:17-20. The widened Shared Driveway however would not solve the problem of WB-67 trucks taking up the entire driveway. DOT-4; 2T249:23-253:8. The NJDOT would obtain an expanded easement on Lot 3 for the benefit of the Property, so that cars may use the Shared Driveway and travel through Lot 3. DOT-1; 1T65:2-4. The OAD did not consider a potential waiver of Access Code requirements to keep any driveway on the Jughandle. 2T289:20-291:6. According to Mr. Freudenrich, "because of the fact that Driveway 1 and Driveway 2 are not permitted by [the Access Code] to be on the [J]ughandle, the intention to even consider that type of an idea was a moot point; it wasn't going to be looked in to at that time." 2T290:9-14.

The Shared Driveway as proposed will operate at an "F," or failing, level of service. 2T245:23-24.⁸ Mr. Freudenrich explained that "Level [of] service F is indicative of a roadway situation where motorists[] delay exceeds what is reasonable to be considered as good or average." 2T246:21-23. Motorist delay at the Shared Driveway is due to "[t]he amount of traffic . . . traveling along Route 20 northbound"; if "that traffic just keeps coming and coming, . . . someone desiring to exit the [Shared D]riveway may have to wait during those busy periods of time." 2T247:9-20. TWT found "[n]o queues of more than 2 vehicles" at any of the three driveways at issue; "queue times were observed to be approximately 15-30 seconds maximum." DOT-3. TWT also observed "multiple instances . . . where vehicles traveling along Route 20 Northbound stopped to provide 'courtesy' gaps letting vehicles exit out of the [Shared Driveway], often when the traffic signal on Route 20 Northbound at the jughandle was red." *Ibid.* In contrast, the Owner testified that when she tried to exit through the Shared Driveway she had to wait "for 10 to 15 minutes." 1T135:16-136:7.

⁸ See N.J.A.C. 16:47-2.1 ("Level of service' or 'LOS' means the operating conditions along a State highway or street or at a particular intersection. LOS designations range from a 'best case' of 'A' to a 'worst case' of 'F' and reflect factors, such as speed, travel time, freedom to maneuver, traffic interruptions, and delay."). The record does not indicate the LOS for the Shared Driveway at present.

TWT estimates that the Shared Driveway exiting queue from 4 p.m. to 5 p.m. (the period with the highest volume of traffic internally and on Route 20) will "be no more than three (3) vehicles, which is only a nominal difference from the existing field condition (2 queued vehicles) at [the Shared] Driveway." DOT-3. The estimated wait time is 83.2 seconds, which is not "significant" but still "considered undesirable in a general sense." 2T238:7-11; 2T246:24-247:6.

Finally, the closure of Driveway 1 would mean parking spaces along the Passaic River side of the Property could not be used (due to the narrow width of the space between the Synergy building and the riverside). 1T102:22-104:1.⁹

"Modification of driveway" as defined at N.J.A.C. 16:47-2.1 covers the NJDOT's "replac[ement of] all ingress or all egress between a State highway and a lot or site with ingress or egress via a private easement on a different lot or site." Ibid. N.J.A.C. 16:47-11.3(g) provides that review of a modification decision is to be heard on the basis of criteria set forth in the State Highway Access Management Act, N.J.S.A. 27:7-89 to -98, the Access Code, and the evidence presented at the hearing.

The only question for me to decide here is whether the Property would have "reasonable access to the general system of streets and highways in the State" under the OAD's proposed plan. N.J.S.A. 27:7-90(e). As a threshold matter, I note that the Access Code prohibits driveways "along a ramp or a jughandle." N.J.A.C. 16:47, Appx. D, D-2(b)(4).¹⁰ Because Driveway 1 and Driveway 2 have existed since at least 1984, they are "considered grandfathered and to have been constructed in accordance with the provisions of [the Access Code]." N.J.A.C. 16:47-8.3(a). This does not mean, however, that the driveways cannot be modified. The driveways can be modified "to further the purposes of [the Access Code]." N.J.A.C. 16:47-1.2(d). Those purposes are "to provide a system of access management to protect and enhance the safety and efficiency of the State highway system and the public investment in that system." N.J.A.C. 16:47-1.1(a).

This case is difficult due to the location of Driveway 2 on the Jughandle and the configuration of the Shared Driveway. Other than its location, Driveway 2 is compliant with the Access Code. I recognize that there are sight distance issues, but the status quo appears to be working. The record does not indicate that either Driveway 1 or Driveway 2 is unsafe. Indeed, the Owner's testimony, which I have no reason to doubt, was that there have been no accidents at Driveway 2 in nearly forty years. Closing Driveway 1 and Driveway 2 and requiring all motorists for the Property, Lot 2, and Lot 3 to use the Shared Driveway alone may not improve safety. It is undisputed that the OAD's proposed plan will result in a worst case, LOS F driveway. Increased numbers of motorists exiting through the Shared Driveway may exacerbate queuing issues on Route 20 northbound. In addition, if a WB-67 truck were to break down in the Shared Driveway, no motorist or emergency services vehicle could enter or leave. Finally, if there were an emergency at the Property and all

⁹ References during the hearing to parking spaces "on the western side of the building," 1T103:11-12; 1T103:22, appear to have been erroneous. The parking spaces at issue are on the eastern side of the building, by the Passaic River.

¹⁰ I accept witness testimony that "there are many driveways in the state on jug-handles," 1T179:1-2, and also note that there are driveways on ramps in New Jersey.

Synergy employees had to leave at the same time, the exiting queue could have more than forty cars, each of which would need time to merge into fast-moving traffic on Route 20 northbound.

I find that the OAD's failure to consider options other than a widened Shared Driveway was not reasonable and remand for the OAD to explore other options, including whether one right-out driveway on the Jughandle for cars only (no trucks) would warrant a waiver under N.J.A.C. 16:47-9.9 of the Access Code's prohibition against driveways along a jughandle. A right-out driveway might be shifted along the Jughandle away from the gore, to prevent the unsafe weaving of motorists into Route 20 northbound. Such a change in location would require modifications in the concrete barrier curb along the Jughandle and may improve the sight distance issues associated with Driveway 2's current location.

The loss of parking spaces on the Property is not a factor for me in this modification of access appeal. First, some of the spaces are in State right-of-way, making these spaces illegal. Second, loss of parking is not relevant in considering reasonable access under the Access Code. Cf. In re Revocation of Access of Block #697, Lot #19, Borough of Paramus, Bergen Cty. (Jan Lynn Realty Assocs.), No. TRP 9450-97, 1998 N.J. AGEN LEXIS 330, at *18 (Initial Decision May 4, 1998) (holding, in revocation of access case, that "on site parking and circulation difficulties . . . do not bear in any meaningful way on the statutory requirements" for alternative access), adopted (Final Decision June 2, 1998).

Finally, I reject the Owner's argument that "[c]losure of Driveway 1 and Driveway 2 would result in an unconstitutional taking of private property without just compensation . . . and leave the property landlocked." It is well-established that "modification . . . of an access point, so long as free and reasonable access remains, does not constitute a taking." State ex rel. Comm'r of Transp. v. Marlton Plaza Assocs., L.P., 426 N.J. Super. 337, 355 (App. Div. 2012). As the Owner recognizes, the Property would be landlocked "without an easement." The NJDOT is responsible for negotiating an expanded easement with the owner of Lot 3, and "[n]o work can begin on these parcels until right of way clearance is given by the right of way unit after all necessary easement and right of way acquisitions are acquired." 1T89:13-16. Therefore, the Owner's taking argument is baseless.

This is the final agency decision rendered on behalf of the NJDOT, which may be appealed, if desired, to the Appellate Division of the Superior Court of New Jersey.

Should you have any questions, please feel free to contact my office at (609) 963-1180.

Sincerely,



Victor Akpu
Director
Division of Right of Way and Access Management

cc: Dennis J. Mikolay, II, Deputy Attorney General
Charles Isiadinso, Principal Engineer