



## State of New Jersey

DEPARTMENT OF TRANSPORTATION  
P.O. Box 600  
Trenton, New Jersey 08625-0600

PHILIP D. MURPHY  
*Governor*

DIANE GUTIERREZ-SCACCETTI  
*Commissioner*

SHEILA Y. OLIVER  
*Lt. Governor*

January 13, 2023

William F. Harrison, Esq.  
Genova Burns LLC  
494 Broad Street  
Newark, NJ 07102

Re: Route 27, Driveway Modification Appeal, Block 3516, Lots 1, 30, and 65, Newark, Essex County (Thirty-Three Queen Realty, Inc.)

Dear Mr. Harrison:

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 27 (“Route 27”), known locally as Frelinghuysen Avenue, and a property owned by Thirty-Three Queen Realty, Inc. (“Owner”) located at 366-380 Frelinghuysen Avenue in Newark, Essex County, New Jersey (“Property”). The Property is identified as Block 3516, Lots 1, 30, and 65 in the local tax map.

This appeal concerns an OAD proposed modification of driveway plan that would affect the Property, which currently has (1) a full-movement driveway on Route 27 northbound (“Driveway”) and (2) a right-out only driveway on an entrance ramp to Route 22 eastbound (“Ramp Driveway”). DOT-1; Owner-1.<sup>1</sup> Under the OAD’s original proposal, all vehicles would enter the Property by turning right into the Driveway and exit the Property by turning right out of the Ramp Driveway. 1T23:16-24:4.<sup>2</sup> After discussions with the Owner, the OAD revised its proposal to allow vehicles to exit the Property by turning right out of the Driveway as well as the

<sup>1</sup> The Ramp Driveway is not at issue in this appeal.

<sup>2</sup> “1T” refers to the transcript of the October 13, 2022 hearing. “2T” refers to the transcript of the October 18, 2022 hearing.

Ramp Driveway; however, due to a change in the location of the “stop bar”<sup>3</sup> on Route 27 northbound perpendicular to the Driveway (“Stop Bar”), an exiting vehicle could no longer turn right if other vehicles were waiting at a red light. DOT-1; 1T17:23-18:3; 1T24:5-9; 1T37:15-25.<sup>4</sup> The proposed plan as revised also included a concrete median opposite the Driveway to preclude left-turns onto Route 27 southbound. DOT-1; 1T22:25-23:7; 1T43:6-10. On May 20, 2022, the OAD advised the Owner of its determination to modify the Driveway as proposed. The Owner requested this appeal on June 28, 2022, and a formal hearing was held on October 13, 2022 and October 18, 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 on December 2, 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.

### **FINDINGS OF FACT**

The proposed modification of driveway at issue is being undertaken in conjunction with an NJDOT project to resurface Route 27 from Dehart Place to Route 21 and to add two lanes (one northbound and one southbound) to Route 27 in the vicinity of the Property, with a concrete median and upgrades to traffic signal timing. DOT-1; DOT-2; 1T13:22-14:3; 1T22:18-24. The project includes safety improvements, a crosswalk compliant with the Americans with Disabilities Act, and bicycle and handicap ramps. 1T14:4-5; 1T18:4-15; 1T22:8-13; 1T85:11-16.

The Property is a corner lot, with Route 27 to the west and an entrance ramp to Route 22 eastbound (“On Ramp”) to the north. Owner-1. The Property currently has access to Route 27 (both northbound and southbound) via the Driveway, which is just south of a set of traffic signals at the intersection of Route 27 and the On Ramp (“On Ramp Intersection”). Ibid. Immediately north of the On Ramp is an exit ramp off Route 22 westbound (“Off Ramp”). Ibid. There is another set of traffic signals at the intersection of Route 27 and (1) the Off Ramp, which is on the same side of Route 27 as the Property, and (2) Empire Street, which is on the opposite side of Route 27 (“Off Ramp Intersection”). Ibid.

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<sup>3</sup> A stop bar is the “solid white line[] extending across approach lanes [that] indicate[s] the point at which the stop [at a red light] is intended or required to be made.” Manual on Uniform Traffic Control Devices § 3B.16 (2009).

<sup>4</sup> The Owner “acknowledge[s] that the [OAD’s] plan was changed based on [the Owner’s] feedback.” 2T161:6-9. I note that the OAD considered multiple designs, including one that would have allowed right turns into the Ramp Driveway (which was rejected because “[e]gress on the ramp is bad, but ingress off the ramp is worse”). 1T45:21-22.

Route 27 northbound as currently configured by the Property effectively has a right shoulder,<sup>5</sup> which means trucks “can stay in the rightmost lane and make the right turn” into the Driveway and also exit out of the Driveway directly into the rightmost lane. 1T66:21-68:5; 1T73:7-23; 1T75:21-76:12; DOT-3. A turning truck takes up most of the Driveway. DOT-3. The Driveway “is not controlled by the signal” at the On Ramp Intersection, so when there is a red light, and vehicles on Route 27 northbound “actually stop at the [S]top [B]ar,” a vehicle on the Property “can freely exit” through the Driveway. 1T82:10-12; 1T100:23-101:20; see also 1T37:16-25. This exiting vehicle would conflict with (1) “vehicles that are turning left onto the [On Ramp]” from Route 27 southbound and actually have the right of way and (2) pedestrians in the crosswalk. 1T85:11-16; 1T87:12-16; 1T102:11-22.

Route 27, which has a speed limit of 35 miles per hour by the Property, is “a very highly voluminous road in terms of its vehicles” with “a lot of congestion issues.” 1T41:23-24; 1T42:21; 2T216:15-20. The Off Ramp “also has a lot of congest[ion] problems with traffic there backing up onto Route 22 [westbound].” 1T42:15-21.<sup>6</sup> This area of Route 27 has been deemed among the “top 100 unsafe intersections” in New Jersey. 1T18:6-8; 1T27:20-28:5.<sup>7</sup>

This configuration of highways and the Driveway results in multiple conflict points:

- Vehicles entering the Driveway (or the On Ramp) from Route 27 southbound must make a left turn across two lanes of northbound traffic and may cross vehicles that are making right turns onto the On Ramp. 1T18:22-19:1; 1T44:12-14; and
- Vehicles exiting the Driveway to travel south on Route 27 must make a left turn across two lanes of northbound traffic; if the vehicle is a truck, it blocks all northbound traffic during the left-turn. 2T130:22-131:18.

These conflict points will be made worse by adding a lane of traffic (from two to three lanes) in both directions of Route 27. 1T18:18-22.

The Property is “highly industrial” and leased to Flexon Industries (“Flexon”), which manufactures water hoses, and US Wire and Cable Corp., which manufactures extension cords. DOT-1; 1T37:6-7; 2T135:8-14; 2T139:23-140:1. Flexon operates 24 hours a day. 2T135:24-136:5. According to the Owner, three hundred workers, a “significant” number of whom drive to the Property (some in car pools), work one of two 12-hour shifts, from 7 a.m. to 7 p.m. or 7 p.m. to 7 a.m. 2T136:6-15; 2T137:21-25; 2T156:1. The Owner estimates that “most of” the workers “use [Route 27] in both

<sup>5</sup> I note that the shoulder is not clearly marked as such. See Owner-1; DOT-3.

<sup>6</sup> Owner-1 shows eight vehicles on the Off Ramp, behind two cars waiting before and after a stop bar to turn left onto Route 27 southbound (or possibly to drive straight onto Empire Street).

<sup>7</sup> The parties dispute whether accidents have predominantly occurred at the Off Ramp Intersection or the On Ramp Intersection. The exact location of accidents is less significant than the dangers of the potential conflict of allowing left turns across three lanes of through traffic. The NJDOT’s improvements to the “safety of this corridor on Route 27” will improve overall highway safety, which is a purpose and need of the NJDOT project. 1T18:4-19:7.

directions" for their commute rather than the Ramp Driveway; the Owner himself uses the Ramp Driveway when he leaves the Property "to go home." 2T151:11-23.

Flexon's manufacturing "is a continuous flow business" and the machines are not shut down. 2T137:14-20. "[T]wo dozen to several dozen trucks," mostly tractor-trailers as long as WB-67 trucks (which are 53' long), make daily trips to deliver raw materials and transport finished products, which are stored south of the Property. 1T37:4-8; 1T48:13-16; 1T65:2-15; 1T67:9-12; 2T140:19-142:15; 2T144:4-19; 2T148:7-17. If these trucks are coming from the New Jersey Turnpike, which is "the main artery" east of the Property, they might take Route 22 westbound, exit off the Off Ramp, and then (1) turn left onto Route 27 southbound and turn left into the Driveway (crossing two lanes of northbound traffic) or (2) travel straight through the Off Ramp Intersection onto Empire Street, make three left-turns to get onto Route 27 northbound, and turn right into the Driveway. 2T150:11-21.

Currently, the Driveway does not meet four requirements of the State Highway Access Management Code, N.J.A.C. 16:47-1.1 to -14.1 ("Access Code"): (1) the curbline opening is more than the 60' maximum; (2) the 6' distance between the extended lot line and the curbline opening is less than the 12' minimum; (3) the distance between driveways is less than the 24' minimum; and (4) the distance to a signalized intersection is less than the 100' minimum. DOT-1; 1T16:20-17:14 (Driveway is located "right on the signal").

The OAD proposes (1) to modify the Driveway from full-movement to right-in, right-out only, (2) to reduce the width of the Driveway from 77.5' to 66', (3) to build a concrete median opposite the Driveway between the northbound and southbound lanes,<sup>8</sup> and (4) to relocate the Stop Bar north of the Driveway, so that vehicles cannot turn right out of the Driveway when other vehicles are stopped at the relocated Stop Bar. DOT-1; DOT-3; 1T15:15-16:19; 2T169:16-170:22; 2T171:7-11; 2T188:7-21. The modified Driveway will be wide enough to be used by tractor-trailers. 1T30:13-18; 1T36:23-37:11. According to the OAD, removing left turns into and out of the Driveway will "minimize the conflict points" and "improve the safety of the [On Ramp I]ntersection." 1T18:1-2; 1T18:11-12. Specifically, movements would be safer "for the [Route] 27 northbound traffic and . . . definitely for the [Route] 27 northbound traffic that's exi[]ting onto the" On Ramp. 1T38:16-22. The modified Driveway will have the same Access Code violations as the current Driveway, but the NJDOT will issue a waiver. 1T30:8-12.<sup>9</sup>

Under the OAD's proposed design, vehicles as large as WB-67 trucks could access the Property through the Driveway. 1T72:16-22; DOT-3. The only difference is that trucks entering the

<sup>8</sup> Concrete medians "are considered operational and safety features of the State highway, and . . . may be installed . . . at any time by the [NJDOT] to promote efficient traffic operations or traffic safety." N.J.A.C. 16:47-7.1(b).

<sup>9</sup> Absent a waiver, the Property would become landlocked (and the tenant businesses presumably would go out of business). 1T19:8-20:7. The waiver therefore mitigates the impact of the Route 27 project on the Owner and the general public. The waiver of four Access Code violations for the Driveway (and two Access Code violations for the Ramp Driveway), see DOT-1, represents a significant acquiescence by the NJDOT for the Owner's benefit.

Driveway from Route 27 northbound would have “to swing into the center lane and then turn [right] into . . . the [Driveway] to access the [P]roperty.” 1T71:3-24; DOT-3. This maneuver is “very common on highways where [a] shoulder is not present.” 1T68:8-69:10. However, if a vehicle were exiting the Driveway at the same time, the truck would have to wait for the exiting vehicle and block the center and rightmost lanes. 1T73:24-74:15. Trucks exiting the Driveway would have “to swing out to the center lane [of Route 27 northbound] and then . . . come back to the rightmost lane,” another “common maneuver,” “if they need” to do so. 1T70:6-19; DOT-3.

Due to the removal of left-turns into the Driveway, vehicles traveling on Route 27 southbound to the Property would have to turn right onto Empire Street, make three or four left turns to get onto Route 27 northbound, and turn right into the Driveway. See Owner-2.<sup>10</sup> According to the Owner, Empire Street is “not very well lit,” “poorly paved,” and “almost like a ghost town”; it floods “during heavy rains.” 2T139:15-19. The Owner also noted “the crime rate in the neighborhood” is not “very appealing.” 2T153:7.

Due to the removal of left-turns out of the Driveway, vehicles exiting the Driveway to travel south on Route 27 would have two options. They could exit the Driveway (swinging out to the center lane of Route 27 northbound as described above), travel “approximately 150 feet” to get into the leftmost lane, turn left onto Empire Street (at a signalized intersection, where the left-turn would “be completely protected from southbound traffic”), turn left onto Victoria Street or Meeker Avenue,<sup>11</sup> and turn right onto Route 27 southbound (at a signalized intersection). 1T24:13-17; 1T40:15-20; 1T49:3-50:19; 2T129:8-15; Owner-2. This option would be “a very short detour, less than a quarter mile.” 1T40:20-21. The Owner’s traffic engineering expert acknowledged that there is “very little left-hand volume onto Empire Street” from Route 27 northbound. 2T222:12-13.

Alternatively, vehicles could exit through the Ramp Driveway onto Route 22 eastbound, exit onto Routes 1 & 9 southbound, exit onto Haynes Avenue westbound, and turn left onto Route 27 southbound (at a signalized intersection). 1T24:18-25:2; 1T40:22-41:2; 2T128:22-129:7; 2T150:4-6. This option would be “approximately a mile” or “approximately two miles” but happen at high speed, mostly along State highways. 1T41:2-6; 2T129:6. However, during morning and evening rush hours, heavy traffic due in part to airport traffic at the nearby Newark Liberty International Airport would add time to this detour. 2T146:13-17.

A significant amount of the hearing was devoted to exploring various traffic engineering options at the On Ramp Intersection and the Off Ramp Intersection. Briefly summarized, traffic at a signalized intersection moves in phases. 2T190:16-191:6. In a permitted (“green ball”) phase, left turns may be made whenever a gap in traffic in the opposite direction allows. 1T39:21-23; 2T191:21-25; 2T193:6-11; 2T197:17-19. Currently, the On Ramp Intersection and the Off Ramp Intersection have permitted phases for left turns onto the On Ramp and Empire Street, respectively.

<sup>10</sup> Three left turns would use Victoria Street instead of Meeker Avenue. 2T130:11-21. Four left turns would use Meeker Avenue; the left-turn from Empire Street to Meeker Avenue is at “a much gentler . . . angle, which facilitates easier movements for tractor trailers.” 2T132:5-18.

<sup>11</sup> See supra note 10; 2T130:11-21.

2T219:9-16. In a protected (“green arrow”) phase, left turns may be made only when all traffic in the opposite direction is stopped at a red light. 1T39:17-20; 2T191:7-20. The NJDOT’s Bureau of Traffic Engineering (“BTE”) prohibits vehicles from “cross[ing] three lanes of through traffic in a permitted state.” 1T39:14-17. Once Route 27 is expanded to six lanes, any left turn would have to cross three lanes of through traffic, so the On Ramp Intersection would have to have a protected phase for left turns into the Driveway (just as the Off Ramp Intersection will have a protected phase for left turns onto Empire Street). 1T90:14-18. That time “would have to be taken from one of the other signal phases,” because “you can’t create time.” 1T90:20-23. Given traffic volumes on Route 27, the time for the Driveway’s protected phase “would most likely be pulled away from the [Off Ramp],” which would “degrade the level of service and increase queuing [(i.e., the distance between the stop bar and the end of the traffic backup)] that could extend back onto [the] Route 22 westbound main line, which was a major concern.” 1T91:1-14; see supra note 6.

## ANALYSIS

All owners of property that “abuts a public road ha[ve] a right of reasonable access to the general system of streets and highways in the State, but not to a particular means of access.” N.J.S.A. 27:7-90(e). “The right of access is subject to regulation for the purpose of protecting the public health, safety and welfare” and a property owner’s access rights “must be held subordinate to the public’s right and interest in a safe and efficient highway.” Ibid.; N.J.S.A. 27:7-90(g).

“Modification of driveway” as defined at N.J.A.C. 16:47-2.1 covers NJDOT-approved “changes to driveways in conjunction with the implementation of a State highway improvement advanced by the [NJDOT] . . . which changes the . . . width of the curbline opening of a driveway by more than five feet.” 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.<sup>12</sup>

The issue before me is whether the proposed modification of the Driveway will provide “reasonable access to the general system of streets and highways in the State,” N.J.S.A. 27:7-90(e), and “allow continuation of the existing use on the lot or site,” N.J.A.C. 16:47-11.1(a). N.J.A.C.

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<sup>12</sup> I address the following because both parties discussed revocation of access law and cases in their written closing arguments. Revocation involves the removal of all driveways on a State highway; modification leaves at least one driveway on a State highway. N.J.A.C. 16:47-11.1(b)(2) & (3). The standard in revocation (not modification) cases is alternative access under N.J.S.A. 27:7-94(c). Alternative access is not the same as reasonable access, as the revocation statute makes clear. See N.J.S.A. 27:7-94(c) (“For the purposes of this section, alternative access shall be assumed to exist if the property owner enjoys reasonable access to the general system of streets and highways in the State and in addition, in the case of the following classes of property, the applicable following condition is met.”) (emphases added). The stricter standard for proposed revocations makes sense because the property owner is losing all access to a State highway. This is not the case in modification cases, such as this one, where the property owner retains access to a State highway. The Owner here is retaining access to two State highways (Route 27 and Route 22).

16:47-2.1 defines “existing use” as “the permitted size and type of land use that exists, or that apparently exists, on a lot or site at the time . . . [the NJDOT] notifies the lot or site owner of an access alteration.” Ibid. There is no dispute that the Property may continue to be used for manufacturing purposes after the proposed modification of the Driveway; the largest trucks can both enter and exit through the modified Driveway. 1T36:23-25; DOT-3.

The Owner’s claim that eliminating left turns into and out of the Driveway will mean “devastating hardships to their business” is unsubstantiated. At most, the evidence shows that it would be less convenient and more time-consuming to access the Property from Route 27 southbound (and vice versa) if the modification were accomplished, but longer commute times for employees or trips for trucks do not preclude the operation of the Property for manufacturing. The existing use of the Property may continue. The NJDOT’s ultimate aim is to “select[] the plan that will best achieve the overarching goal of providing reasonable access to the State’s system of highways rather than maximizing the business interests of a particular property owner.” In re Revocation of Access of Block No. 613, Lots No. 4 & 5, Twp. of Toms River, Ocean Cty. (Arielle Realty, LLC), 224 N.J. 53, 56 (2016).

I accept for purposes of this proceeding that the NJDOT’s project designers have determined that the removal of left turns into and out of the Driveway (along with the installation of the concrete median and the relocation of the Stop Bar) is necessary to accomplish the purposes of the NJDOT project, which is to improve highway safety along Route 27 and to provide congestion relief. The proposed modification impacts only the ease of movements from and onto Route 27 southbound. Vehicles will still be able to turn right out of the Driveway directly onto Route 27 northbound; put another way, they will still have direct access to Route 27. Vehicles may also continue to use the Ramp Driveway, which is not being altered.

The Owner’s safety-related objections to the Empire Street detour are overstated (and should be directed at the City of Newark, which has jurisdiction over local streets). The Owner argues that a right turn out of the Driveway onto Route 27 northbound followed by a left turn onto Empire Street would “creat[e] more of an unsafe condition.” 2T146:23-147:2. However, it will be safer for a truck to move from the center lane of Route 27 northbound to the leftmost lane and make a left turn during a protected phase (when all southbound traffic is stopped at the Off Ramp Intersection) than to make a left turn out of the Driveway and cut across three lanes of northbound traffic into southbound traffic. Truck movement from the center lane to the leftmost lane is in line with driver expectation; a left turn cutting across three lanes is not.

I accordingly find that the proposed modification of driveway would not deny vehicles direct access to Route 27 or “reasonable access to the general system of streets and highways in the State.” N.J.S.A. 27:7-90(e).

While the appeal before me is from a proposed modification of driveway under the Access Code, the main dispute between the parties concerns traffic engineering at the On Ramp Intersection and the Off Ramp Intersection. As background, I note that the purpose of the Access Code “is 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). The NJDOT may “modify . . . a driveway based upon maximum achievement of the goals and purposes

of [the Access Code]," as long as the modification "will allow continuation of the existing use on the lot or site." N.J.A.C. 16:47-11.1(a). I further note that the OAD and the BTE are separate units of the NJDOT. The OAD handles appeals of proposed modifications of driveways under N.J.A.C. 16:47-11.3(e); any appeal of the OAD's decision is to me. Ibid. The BTE handles traffic regulations and traffic control devices under N.J.A.C. 16:27.

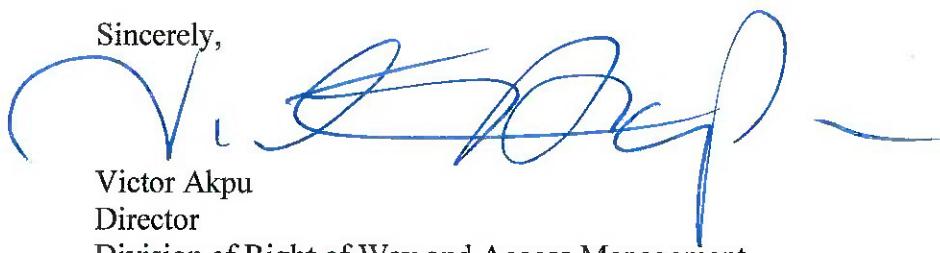
The Access Code refers to the BTE in Appendix F (for access permit applicants to obtain "[t]raffic signal configurations, timing, and signal progression information," N.J.A.C. 16:47, Appx. F-1.5(b)) and Appendix G (for access permit applicants to obtain "[i]nformation on existing signal cycle length," N.J.A.C. 16:47, Appx. G-2(b)(4)). The Access Code does not provide guidance or regulations for traffic signal phasing and timing engineering. For this reason, the merits, or lack thereof, of the Owner's proposal for traffic signal phasing are irrelevant to resolution of the access issues before me.

For these reasons, I find that the OAD's proposed plan would allow continuation of the existing use on the Property and, with waivers, meets the requirements of the Access Code. I therefore accept the proposed plan.

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 "V. Akpu".

Victor Akpu  
Director  
Division of Right of Way and Access Management

cc: Dennis J. Mikolay, II, Deputy Attorney General  
Nirav Shah, Project Engineer Surface Design