



# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

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**PHILIP D. MURPHY**

*Governor*

**TAHESHA L. WAY**

*Lt. Governor*

**SHAWN M. LATOURETTE**

*Commissioner*

EMERSON LEASING CO. III, LLC

Petitioner,

v.

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
BUREAU OF LAND USE REGULATION,

Respondent.

) ADMINISTRATIVE ACTION

) FINAL DECISION

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OAL DKT NO.: ELU 03138-22

AGENCY REF. NO.: 0906-20-0006.1 LUP

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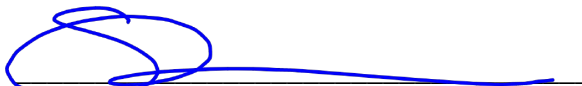
This order addresses the challenge by Emerson Leasing Co., III, LLC (Petitioner) of the Department of Environmental Protection's (Department) denial of its application for a Flood Hazard Area Control Act individual permit and hardship exemption in connection with the proposed reconstruction and adaptive reuse of the Emerson Radio Building in Jersey City, Hudson County. Petitioner proposed reconstructing the building for mixed-use, including residential units, commercial space, and a basement parking garage. The Department denied the permit because the parking garage floor was not at or above the adjoining exterior grade along at least one entire exterior wall, as required at N.J.A.C. 7:13-12.5(p)(2), and thus could not provide positive drainage of the enclosed area. Petitioner sought but was denied a hardship exception under N.J.A.C. 7:13-15.1, having failed to demonstrate it met the requirements for such an exception. Petitioner thereafter filed a timely request for an adjudicatory hearing and the matter was transmitted to the Office of Administrative Law.

On March 1, 2023, Administrative Law Judge (ALJ) John P. Scollo issued an Initial Decision granting the Department's motion for summary decision and denying Petitioners' cross-motion for the same. The ALJ affirmed the Department's interpretation of the terms "lowest floor" and "constructed in compliance with this chapter" at N.J.A.C. 7:13-12.5(p)2 and 6.i.(4) and found that N.J.A.C. 7:13-12.5 prohibited the use of Petitioner's basement as proposed in its application. The ALJ further found that Petitioner's hardship waiver application did not demonstrate compliance with N.J.A.C. 7:13-15.1. As such, the ALJ concluded the Department properly denied Petitioner's permit application. Petitioners submitted exceptions to the Initial Decision and the Department submitted a reply.

While the Initial Decision was before me for review, Petitioner submitted written notification withdrawing its appeal. Therefore, further review of the ALJ's Initial Decision is not necessary as the matter is now moot. I therefore REJECT the Initial Decision as moot.

IT IS SO ORDERED.

Dated: July 1, 2024

  
Shawn M. LaTourette, Commissioner  
Department of Environmental Protection



EMERSON LEASING CO. III, LLC  
v.  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
LAND USE REGULATION,

OAL DKT. NO.: ELU 03138-22  
AGENCY DKT. NO.: LUP200001, 0906-20-0006.1

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