

~~MM~~ MM Cranbury 13-Sept-1983
Browning Ferris Industries et. al,
Complaint filed by Browning
Ferris et al as owners of
land located in Cranbury

pgs = 18

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RECD & FILED
SUPERIOR COURT
OF NEW JERSEY

SEP 14 2 14 PM '83

W. LEWIS BANGORICK
CLERK

L-058046-83

SCERBO, KOBIN, LITWIN & WOLFF

10 PARK PLACE
MORRISTOWN, N. J. 07960
(201) 338-4220
ATTORNEYS FOR

Plaintiffs

**BROWNING-FERRIS INDUSTRIES
OF SOUTH JERSEY, INC., A
Corporation of the State of New
Jersey, RICHCRETE CONCRETE
COMPANY, A corporation of the
State of New Jersey and MID-STATE
FILIGREE SYSTEMS] INC., a Corporation
of the State of New Jersey,**

Plaintiffs

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY**

Docket No. P.W.

Civil Action

COMPLAINT

vs.

**CRANBURY TOWNSHIP PLANNING
BOARD AND THE TOWNSHIP
COMMITTEE OF TOWNSHIP OF
CRANBURY,**

Defendants

**Plaintiffs, Browning Ferris Industries of South Jersey, Inc., a corporation
of the State of New Jersey, (hereinafter "BFI"), Richcrete Concrete Company,
a corporation of the State of New Jersey, (hereinafter "Richcrete") and Mid-
State Filigree Systems, Inc., a corporation of the State of New Jersey**

(hereinafter "Midstate") by way of Complaint against the defendants Cranbury Township Planning Board (hereinafter "Planning Board") and defendant the Township Committee of the Township of Cranbury (hereinafter Township Committee") says:

FIRST COUNT

1. BFI is the owner of lands and premises known as Lot 6, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey. Said land and premises are located on Hightstown-Cranbury Station Road. Said lands and premises is 4.7 acres and has been used since approximately July 1, 1976 for the parking storage and repair of trucks pursuant to a site plan approval and related use variance.

2. Richcrete is the owner of lands and premises known as Lot 13, Block 16 as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey. Said lands and premises are located on Heightstown Cranbury Station Road. Said lands and premises is 3.4 acres and has been used since approximately February 1965 for the construction and operation of a transit mix concrete plant pursuant to a use permit.

3. Mid-State is the owner of lands and premises known as Lot 5 Block 16, as shown on the tax map of the Township of Cranbury, Middlesex County, New Jersey. Said lands and premises are located on Hightstown Cranbury Station Road. Said lands and premises is 16.1 acres and has been used since 1972 for the manufacturing of cement forms as a permitted use.

4. Prior to July 25, 1983, the land and premises adjoining the plaintiffs land and premises has been owned by Johns Mansville Inc. Said land and premises are known as Lot 4, Block 16 on the tax map of the Township of Cranbury, Middlesex County, New Jersey. Said land and premises are located on Brickyard Road. Said lands and premises is 65.38 acres and is used for agriculture purposes.

5. On September 5, 1982 the Planning Board adopted the Cranbury

Township Land Use Ordinance (hereinafter "Land Use Plan") Pursuant to the Land Use

Plan, the Planning Board _____ " plaintiffs le- and p...
located in the light impact industrial zone and the Johns Manville land and
premises be located in the light impact residential zone.

6. Despite plaintiffs objections, the Planning Board recommended to
the _____ Township Committee a Zoning Ordinance in which plaintiffs
_____ premises were located in the light impact industrial zone and the
Johns Manville land and premises was located in the light impact residential
zone.

7. On July 25, 1983 the Township Committee adopted _____
recommended by the Planning Board. The Zoning Ordinance was put _____
5, 1983.

8. Pursuant to the Zoning Ordinance plaintiffs' property is zoned I-LI,
Industrial - Light Impact Zone. §150-41 of the Zoning Ordinance provides:

"150-41 Permitted Uses. In the I-LI, In-
dustrial Light Impact Zone, no land shall be
used and no structure shall be erected, altered
or occupied for any purpose except the fol-
lowing:

... any man-
... be
... light
... an
... closed *.
Industry is defined in § 150-41 as an
activity which involves the fabrication, re-
shaping, reworking, assembly or combining
of products from previously prepared materials
and which does not involve the synthesis of
chemical or chemical products or the pro-
cessing of any raw materials. Light industry
includes industrial operations such as elect-
ronic, machine parts and small component
assembly, as opposed to heavy industrial
such as automobile assembly or

- B. Offices: Corporate, ...
- C. Pharmaceutical operations.
- D. Food processing.
- E. Scientific or research laboratories ex-
clusively devoted to research, design or ex-
perimentation, including processing or fab-
ricating that is clearly incidental to the
principal uses and specifically excluding the
manufacture, processing or fabricating on
the premises of materials or finished products
for sale to the general public.
- F. Wholesaling and warehousing establish-
ments.

- H. . ecessary public utilities and servic)
- I. Buildings, structures and uses owned or operated by the Township of Cranbury.
- J. .Accessory uses and accessory buildings, incidental to tne above uses, located on the same lot and within the same zone.

The area and bulk regulations for I-LI zone are set forth in §150-43 of the Zoning Ordinance which provides:

Area and Bulk Regulations

A. All permitted uses other than agriculture:

1) Area: Minimum lot area shall be ten (10) acres.

(2) Floor area ratic : The maximum floor area ratio shall be as follows:

(a) Offices, research laboratories - 0.12 for one store buildings and 0.20 for multi-storied buildings.

(b) light industry, wholesaling and warehousing - 0.22 for one story buildings and 0.30 for multi-storied buildings.

(3) Frontage: Minimum street frontage shall be four hundred (400) feet.

(4) Front yard: Minimum front yard depth shall be seventy-five (75) feet.

(5) Side yards: Minimum side yard width shall be fifty (50) feet.

(6) Rear I yard: Minimum rear yard depth shall be fifty (50) feet.

(7) Parking: No parking facilities shall be located in the area between the street line and a line drawn parallel thereto through the nearest point of construction, nor shall any such facility be located nearer than twenty-five (25) feet to any property line. All parking and service areas shall be screened from the view of adjoining properties or streets.

(8) Improvement coverage: Impervious surfaces in the aggregate shall not cover more than fifty (50) percent of the lot.

(9) Building height: Maximum building height shall be forty (40) feet.

9. Pursuant to the Zoning Ordinance the John Manville property which adjoins plaintiffs' property is zoned R-LI. §150-17 of the Zoning Ordinance provides as follows:

Permitted Uses: In the R-U, residence-light impact zone, no land shall be used and no structure shall be erected, altered or occupied for any purposes except the following:

- A. Detached single-family dwellings.
- B. Agriculture and other farm buildings.
- C. Public parks and playgrounds.
- D. Necessary public utilities and services.
- E. Buildings, structures and uses owned and operated by the Township of Cranbury.
- F. Accessory uses and accessory buildings customarily incidental to the above uses and located on the same lot.

150-19 Area and Bulk Regulations[^]. Single-Family dwelling:

- (1) **Lot area:** Minimum lot area for a single-family dwelling shall be three (3) acres.
- (2) **Frontage:** Minimum street frontage shall be two hundred fifty (250) feet.
- (3) **Lot depth:** Minimum lot depth shall be two hundred fifty (250) feet.
- (4) **Front Yard:** Minimum front yard depth shall be fifty (50) feet.
- (5) **Side yards:** Minimum side yard width shall be fifty (50) feet.
- (6) **Rear yard:** Minimum rear yard depth shall be fifty (50) feet.
- (7) **Building height:** Maximum building height shall be thirty-five (35) feet.

(8) Streets: Minimum street right-of-way and cartway widths shall conform with the standards for rural streets set forth in Article XVI.

10. The actions of the Planning Board and Township Committee in recommending and adopting the Zoning Ordinance and the Land Use Plan as applied to the plaintiffs properties was arbitrary, capricious, unreasonable and clearly erroneous.

Wherefore, plaintiffs demands judgment that the Land Use Plan and the Zoning Ordinance be declared null and void.

SECOND COUNT

1. Plaintiffs repeats the allegations of the First Count as if set forth hereinafter at length.

2. The defendant Planning Board incorporated in the Land Use Plan the utilization of Transfer Development Credits (hereinafter "T.D.C.") .

3. The defendant Planning Board recommended and the defendant Township Committee adopted a Zoning Ordinance which provided for TDC.

4. The Zoning Ordinance provides by definition in § 150-7 that:

"Development Credit - An interest in land which represents a right to exchange land for residential purposes in accordance with the provisions of this ordinance.

Transfer of Development Credits - Where permitted by this ordinance, the act of using a development credit in order that permission for development may be granted.

5. §150-16 of the Zoning Ordinance provides:

Transfer of Development Credits. The owner of any land in the A-100 Agricultural zone, in lieu of developing such land, may transfer its development potential or credit to the owner of any land in the PD-MD and PD-HD zones, for development in accordance with the re-

gulations applicable in such zones (which are attached to the complaint as Exhibit A) such transfer or development credit shall be subject to the following requirements:

A. To determine the numbers of development credits to which the owner is entitled, such owner shall submit a hypothetical subdivision Sketch Plat Which shall include the following information:

- (1) Name and address of owner or owners of record and lot and block number of the affected land;
- (2) Scale and north arrow;
- (3) date of original preparation and of each subsequent revisions;
- (4) tract boundary line, clearly delineated;
- (5) Area of the entire tract and of each proposed lot, to the nearest tenth of an acre;
- (6) Provision for approved signatures of the Chairman and Secretary of the Planning Board and the Township Engineer, specifying the number of credits.
- (7) Delineation of existing floodways, flood hazard and flood fringe areas of all water courses within or abutting the tract;
- (8) Delineation of soils types on the tract as determined by the U.S. Soil conservation services or as otherwise approved by the Township engineer;
- (9) Existing contours, referred to a known datum, with intervals of five (5) feet;
- (10) A hypothetical circulation plan showing all streets as having a uniform right-of-way of fifty (50) feet.
- (11) Hypothetical lot layout, with lots having an area of not less than two (2) acres, in

accordance with the subdivision design criteria contained in Article XVI and the requirements of the R-LD Zone where neither sewers or water is available. The hypothetical layout shall provide sufficient information for a determination by the Board of Health and Township Engineer that all lots shown would be capable of being supplied with the necessary on-site septic system, and that all lots would be useable if developed as shown. In addition to information, supplied by the National Cooperative Soil Survey which was prepared by the U.S. Department of Agriculture, the Township may request additional percolation tests or soil logs in order to reach the required determination.

Upon approval of the Sketch Plat, the owner shall be entitled to a number of development credits certificate equal to the number of approved hypothetical lots.

B. The transfer of the approved number of development credits shall be authorized only upon the filing by the owner of a deed restriction, in a form acceptable to the Planning Board attorney, running with the land from which the development credits are proposed to be transferred and restricting such land to agricultural use and farm building in perpetuity. Such deed restrictions, which shall be specifically enforceable by the Township, shall be recorded with the Clerk of Middlesex County and proof of such recording shall be presented to the Planning Board as part of the final subdivision or site plan for the development which is proposed to utilize such credits.

C. A copy of the approval of the transfer, together with a copy of the approved Sketch Plat, shall be filed with the Township Clerk who shall keep a map showing all lands from which development credits have been transferred, in whole or in part. In the case of a transfer of less than all the development credits approved for a given parcel, the deed restriction shall cover a corresponding portion of the parcel from which the credits are transferred including a percent from which the credits

are transferred including a percent of the road frontage equivalent to the percent of the total land retired through deed restriction. The Township Clerk shall keep a record of the total approved number of credits and the number authorized to be transferred.

7. The use of TDC in a the Zoning Ordinance is not authorized by law.

Wherefore plaintiff demands judgment that the Zoning Ordinance and the Land Use Plan be declared null and void.

Wherefore, plaintiffs demands judgment appointing a Master to prepare a new land use plan and a new zoning ordinance.

Wherefore, plaintiffs demand judgment for counsel fees and costs of this action.

THIRD COUNT

1. Plaintiff repeat the allegations of the Second Count as if set forth hereinafter at length.

2. The defendant Planning Board provided in the land use plan that the use of T.D.C. in the Zoning Ordinance would lead to approximately 1500 credits or 1500 units of a residential character.

3. The utilization of T.D.C. assisted the defendant, Township Committee, in meeting the obligations of South Burlington County NAACP v. Mt. laurel Twp. 92 N.J. 158(1983).

4c The use of T.D.C. in a zoning ordinance is not authorized by law.

5. Therefore, the Township Committee will be unable to meet the obligations of South Burlington County NAACP v. Mt. Laurel Twp. 92 N.J. 158

(1983).

WHEREFORE, plaintiff demands judgment that the Zoning Ordinance and the Land Use Plan be declared null and void.

WHEREFORE, plaintiff demands judgment appointing a master to prepare a new land use plan and new zoning ordinance.

WHEREFORE, plaintiff demands judgment for counsel fees and costs of this action.

FOURTH COUNT

1. Plaintiff repeat the allegations of the First, Second, and Third Counts of the Complaint as if set forth hereinafter at length.
2. The Planning Board's public notice of Master Plan hearings provided:

Please take notice that the Planning Board of the Township of Cranbury will hold a Public Hearing on Thursday, July 8, 1982 at 8:00 p.m. at the Cranbury Elementary School. To be considered are revisions to the Master Plan and discussion adoption of a Farmland Preservation Program. Copies of the proposed documents will be available for review ten days prior to the meeting at the Cranbury Township Office and the Cranbury Public Library.

Please take notice that the Planning Board of the Township of Cranbury will hold a public hearing on Thursday, July 29, 1982, at the Cranbury Elementary School. To be considered are revisions to the Master Plan and discussion of adoption of a Farmland Preservation Program. Copies of the proposed documents are available for review at the Cranbury Township Office and the Cranbury Public Library.

Please take notice that the continuation of the public hearing to consider an amended

element of the Land Use Plan of the Township of Cranbury and, specifically, a Farmland Preservation Plan has been rescheduled August 3, 1982, at the Cranbury Elementary School at 8:00 p.m. At that time the Planning Board will also consider possible the plan specifically in the high middle density

● Hi

\$10.00.

3. Said notice is inadequate and unduly vague in that it does not put a property owner - - - the zoning of property can be changed as a result of the adoption thereof.

4. Said notice is violative of law and the United States Constitution.

Wherefore, plaintiff demands judgment that Land «se »- and * - « Ordinance be declared to be null and void.

Dated: September 13, 1983

SCARBO, KOBIN, LITWIN & WOLF
Attorneys for Plaintiffs
BY: *[Signature]*
LAWRENCE B. LITWIN, ESQ

ARTICLE VIII

PD-MD, PLANNED DEVELOPMENT-MEDIUM DENSITY ZONE

- 150-26 Permitted Use In xhm PD-MD, Planned Development-Medium Density Zone, no lot shall be used and no structure shall be erected, altered or occupied for any purpose except the followings
- A. Detached single-family dwellings.
 - B. Agriculture and other farm buildings but excluding agricultural stands.
 - C. Public parks and playgrounds.
 - D. Necessary public utilities and services.
 - E. Buildings, structures and uses owned and operated by the Township of Cranbury.
 - F. Accessory uses and accessory buildings customarily incidental to the above uses and located on the same lot.

150-27) Conditional Uses. In the PD-MD Zone the following may be permitted as a conditional uses

- A. Borne occupations, subject to the requirements of Section 150-51.
- B. A planned development, including all or any of the followings single-family detached, or single-family zero-lot line detached dwellings, semi-detached and attached dwellings, two-family dwellings, townhouse dwellings, and multi-family and garden apartment dwellings, subject to the following requirements*
 - (1) Infrastructures All units shall be served by common water and sewer systems.
 - (2) Development areas The ~~minimum~~ area of a planned development shall be twenty-five (25) contiguous acres.
 - (3) Gross density and transfer of development credits: The permitted base density shall be 0.5 dwelling units per acre. Additional density increases at the rate of one (1) dwelling unit per acre for each development credit transferred from the agricultural zone shall be permitted. However, the maximum gross density of the development shall not exceed three (3) dwelling units per acre.
 - (4) Net densities Except as specified hereinafter, the maximum permitted net density of particular types of dwelling units shall be in accordance with the schedule below.

- (a) Detached single-family dwellings - four (4) units per acre.
- (b) Semi-detached single-family dwellings, zero lot line dwellings and two-family dwellings - five (5) units per acre.
- (c) Townhouses - eight (8) units per acre.
- (d) Multi-family dwellings and garden apartments - ten (10) units per acre.

The frontage along Station Road shall be restricted to the development of detached single-family dwellings on lots with a minimum area of one acre.

- (S) Housing types There shall be a range of housing types in accordance with the requirements set forth below:

Housing Types and Mix Schedule - WHO

Housing Type	Units per Acre
Detached Single Family	20-50
Semi-detached, zero lot line and two-family dwellings	0-30
Townhouses	0-30
Multi-family and garden apartments	20-90

Note: The maximum units per acre for a particular housing type shall be based on the total dwelling units allowed in the development.

- (6) Impervious Coverages Impervious surfaces in the aggregate shall not cover more than forty (40%) percent of the area of the development tract,
- (7) Building heights Maximum building height shall be thirty-five (35) feet.
- (8) Setbacks No portion of any dwelling shall be nearer than thirty (30) feet to any internal local road right-of-way, or fifty (50) feet to a collector road right-of-way, or one hundred (100) feet from any state road right-of-way. All other building setback and yard requirements are set forth in Article XVI.

- (9) Frontages A planned development shall have a minimum street frontage of three hundred (300) feet except that the lots along Station Road shall have a minimum frontage of one hundred seventy (170) feet.
- (10) Common open spaces Not less than thirty percent (30%) of the total development shall be in common open space which shall be provided in accordance with the requirements of Article XVI.

150-28

Area and Bulk Regulations

A. Detached single-family dwellings

- (1) Lot area: ~~Minimum~~ lot area for a detached single-family dwelling which is not part of a planned development shall be two (2) acres.
- (2) Frontages ~~Minimum~~ street frontage shall be two hundred (200) feet.
- (3) Lot depths ~~Minimum~~ lot depth shall be two hundred and fifty (250) feet.
- (4) Front yards Minimum front yard depth shall be fifty (50) feet.
- (5) Side yardss Minimum side yard width shall be thirty (30) feet.
- (6) Rear yards ~~Minimum~~ rear yard depth shall be fifty (50) feet.
- (7) Building heights Maximum building height shall be thirty-five (35) feet.

B. Agricultures

- (1) Lot areas Minimum lot area shall be two (2) acres provided that, if any livestock is maintained on the lot, the minimum lot area shall be five (5) acres; and provided further that either lot area shall be increased to six (6) acres if a single family dwelling is located on the lot.
- (2) Setbacks Any farm building or other animal shelter housing livestock, whether principal or accessory, shall be located farther than two hundred (200) feet from any zone boundary or property line.

ARTICLE IX

PD-HD PLANNED DEVELOPMENT-HIGH DENSITY

150-29 Permitted Uses. In the PD-HD, Planned Development-High Density Zone, no lot shall be used and no structure shall be erected, altered or occupied for any purpose except the following:

- A. Detached single-family dwellings.
- B. Agriculture, including farm dwellings and other farm buildings but excluding agricultural stands.
- C. Public parks and playgrounds.
- D. Necessary public utilities and services.
- E. Buildings, structures and uses owned and operated by the Township of Cranbury.
- F. Accessory uses and accessory buildings customarily incidental to the above uses and located on the same lot.

150-30 Conditional Uses. In the PD-HD Zone the following may be permitted as a conditional uses

- A. Borne occupations, subject to the requirements of Section 150*51.
- B. A planned development, including all or any of the following: single-family detached or single family zero-lot line detached dwellings, semi-detached dwellings, two-family dwellings, townhouse dwellings and multi-family and garden apartment dwellings, subject to the following requirements:
 - (1) Infrastructure: All units shall be served by common water and sewer systems.
 - (2) Development area: Minimum development area shall be twenty-five (25) contiguous acres.
 - (3) Gross density and transfer of development credits: The permitted base density shall be 0.5 dwelling units per acre. Additional density increases at the rate of one (1) dwelling unit per acre for each development credit transferred from the agricultural zone shall be permitted. However, the ~~maximum~~ gross density of the development shall not exceed four (4) dwelling units per acre.
 - (4) Net density: Except as specified hereinafter, the maximum permitted net density of particular types of dwelling units shall be in accordance with the schedule below.

- (a) Detached single-family and zero lot line dwellings - four (4) unit* per acre.
 - (b) Semi-detached single-family dwellings, zero lot line dwellings and two-family dwellings - five (5) units per acre.
 - (c) Townhouse* - eight (8) units per acre.
 - (d) Multi-family dwellings and garden apartments - ten (10) units per acre.
- (5) **Housing types** There shall be a range of housing types in accordance with the requirements set forth belows

Required Bousing Type Mix Schedule Opetoni; FD-HD

Housing Types	Option A Bousing Mix (\)
Detached tingle <i>tamilj</i> dwellings	0-30
Seal-detached, zero toe 1 1 M and two-faaily dwellings	0-30
Townhouse*	20-30
Multi-faally dwellings and gardes apartments	30-40

Notej Housing nix describes a •Inlna-aaxlaua range of a particular housing type that say be permitted expressed as a percent of the total dwelling units la a development.

- (6) **Impervious coverages** Impervious surfaces in the aggregate shall not cover more than forty (40%) percent of the area of thelot.
- (7) **Building height:** Maximum building height shall be thirty-five (35) feet.
- (8) **Building setback:** No portion of any dwelling shall be closer than thirty (30) feet to any internal local road right-of-way, or fifty (50) feet to a collector road right-of-way, or one hundred (100) feet from any. state road right-of-way. All other building setback and yard requirements are set forth in Article XVI.
- (9) **Frontages** A planned develoom*n* •*•"fc -

- (10) Common open spaces Not less than thirty (30%) percent of the total development shall be in common open space which shall be provided in accordance with the requirements of Article XVI.
- (11) Low and moderate Income housing* The housing provisions and options set forth herein are directed toward Increasing the supply of low and moderate income housing la Craabury Township. Applicants may receive a density bonus Increase for providing low and moderate lnmtna housing equal to one (1) additional dwelling unit p^x acre above the «**<"»« otherwise permitted in the PD-RD district, provided that in any development where the gross density exceeds four (4) dwelling units per acre, at least fifteen (15) percent of all units shall consist of low and moderate income housing. Where low and moderate income housing is provided, applicants shall construct such housing la phases, proportional to the construction phasing of the entire development project.

These low and moderate Income housing requirements may be complied with the assistance of of state or federal programs, either directly or channeled through public non-profit or Untied profit sponsorship, or through public, private or internal subsidies as further set forth-feelows

- (a) Applicants may use federal or state rental or purchase subsidy programs or other legal mechanisms, to bring on to the market the required low and moderate income housing. Guaranteed rental or purchase subsidies for twenty (20) years or more or a contract with a non-profit, limited profit or government sponsor who has obtained such guarantees or subsidies shall be deemed to have shown that such housing will remain affordable to persons within the low or moderate Income range specified la the subsidy upon resale or re-rental.
- (b) Applicants may also enter into disposition agreements, in the form of covenants running with the land, or create a mechanism through a Homeowners Association instrument in a planned development, or create any other legal mechanism acceptable to the Planning Board which, in its opinion, will insure that such housing will remain affordable for a term of twenty (20) years or more for persons within the low and moderate Income cost housing range upon resale or re-rental upon resale or re-rental.

Area and Bulk Requirements

A. Single-family dwellings:

- (1) Lot areas Minimum lot area for a single-family dwelling which is not part of a planned development shall be two (2) acres.
- (2) Frontagei ~~mn<imw~~ street frontage shall be two hundred (200) feet.
- (3) Lot depth: Minimum lot depth shall be two hundred and fifty (250) feet.
- (4) Front yard: Minimum front yard depth shall be fifty (50) feet.
- (5) Side yardsi Minimum side yard width shall be thirty (30) feet.
- (6) Rear yard: Minimum rear yard depth shall be fifty (50) feet.
- (7) Building heicrht: Maximum building height shall be thirty-five (35) feet.

B. Agriculture:

- (1) Lot areas ~~*<<<<">~~ lot area shall be two (2) acres provided that, if any livestock is maintained on the lot, the minimum lot area shall be five (5) acresi and provided further that either lot area shall be increased to six (6) acres if a . single-family dwelling is located on the lot.
- (2) Building setbacks Any farm building or other animal shelter, whether principal or accessory, shall be'located
 - farther than two hundred (200) feet from any zone boundary or property line.