

**Addendum to Application  
Variance Justification**

James Ginn  
Block 1915, Lot 3  
115 Holly Hills Drive  
Somers Point, NJ 08244

**USE VARIANCE REQUEST**

As to Use Variances, the Municipal Land Use Law (“MLUL”) at N.J.S.A. 40:55D-70d provides:

The board of adjustment shall have the power to: ... in particular cases for **special reasons**, grant a variance to allow a departure from regulations pursuant to article 8 of this act to permit: (1) a use or principal structure in a district restricted against such a use or principal structure ... (emphasis added) [N.J.S.A. 40:55D-70d].

The “special reasons” requirement of the statute is referred to as the “positive criteria” for a use variance. Sica v. Bd. of Adj. of Tp. Of Wall, 127 N.J. 152, 156 (1992). The only “special reasons” that can be considered are those which promote the statutorily defined purpose of the MLUL. Medici v. BPR Co., 107 N.J. 1, 10, 18 (1987). The purposes of the MLUL are set forth at N.J.S.A. 40:55D-2a through 2q. Each purpose set forth at N.J.S.A. 40:55D-2 may independently support an application for a “d” Variance.

N.J.S.A. 40:55D-70 also provides that:

No variance or other relief may be granted under the terms of this section, ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. [N.J.S.A. 40:55D-70]

This portion of the statute is referred to as the “negative criteria” for a variance. Sica v. Bd. of Adj. of Tp. Of Wall, 127 N.J. at 156. The statute “requires an applicant to prove both positive and negative criteria to obtain a use variance”. Id.

**SPECIAL REASONS EXIST**

In the present matter the proposed project carries out a purpose of zoning as defined in N.J.S.A. 40:55D-2.

Residential development of this lot will

- a. Promote the public health, safety, morals, and general welfare.
- c. Provide adequate light, air and open space.
- f. Provide sufficient space in appropriate locations for residential use in order to meet the needs of all New Jersey citizens.

- i. Promote a desirable visual environment.
- j. Promote the proper use of land by preventing the degradation of the environment.

This lot is particularly well suited for a residence. It is in an appropriate location for residential use rather than a commercial use. It is immediately adjacent to residential properties. The location of the proposed residence will maintain a buffer from adjoining commercial uses for all the residences in the neighborhood, thereby providing adequate light, air and open space. Due to its environmental sensitivity, this lot is more appropriately suited for a less intense use such as a private residence, will fit in better with the existing neighborhood residences and will promote the public health, safety and welfare by being a more environmentally friendly development as opposed to a commercial use. Finally, this project will promote a desirable visual environment for the neighborhood. A residential use will be fully harmonious, consistent and compatible with the neighborhood.

For all the above reasons discussed above, the Applicant contends that the positive criteria for the requested use variance is satisfied.

#### **THE NEGATIVE CRITERIA IS SATISFIED**

Applicant's proposed use would not be a substantial detriment to the public good or substantial impairment to the intent and purpose of the zoning plan and the zoning ordinance. The proposed single-family residence is in keeping with the existing character of the neighborhood and the manner in which existing residences in this neighborhood are used.

As such, the negative aspects of granting the variance do not substantially outweigh the positive criteria. This project will further the purposes of zoning that are advanced as stated herein and warrant the granting of the use variance requested.

#### **FRONT YARD SET BACK VARIANCE**

As to Bulk variances, the Municipal Land Use law at N.J.S.A. 40:55D-70 c. provides

- (1) (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property ...the strict application of any regulation pursuant to article 8 of this act [40:55D-62 et sq.] would result in peculiar and exceptional practicable difficulties to, or exceptional and undue hardship upon, the developer of such property\, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship.
- (2) Where in an application or appeal relating to a specific piece of property the purposes of this act ...would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially

outweigh any detriment, grant a variance to allow departure from regulations pursuant to article 8 of this act [N.J.S.A. 40:55D-62 et seq.]

As in all variance cases, the applicant bears the burden of proving both the positive and negative criteria. See Ten Stary Dom Ptp. V. Mauro, 216 N.J. 16, 30 (2013). The purpose of yard set backs is to protect adjoining properties from intrusions of sound, light, glare and other objectionable factors.

#### **THE C (1) CRITERIA HAS BEEN SATISFIED**

The Applicant seeks “c” variance relief for a front yard set back. The required front yard set back in the commercial zone is 50 feet while a 20 foot set back is proposed. However, the required front yard set back in the adjacent residential zone is 20 feet. Using this standard no bulk variance relief would be required. Using the Commercial set back requirements, a hardship exists due to exceptional topographic conditions on the property. A hardship also exists by reason of an extraordinary and exceptional situation uniquely affecting this property. (A stream running through the property that requires protection by locating development as far away as reasonably possible.)

#### **THE C (2) CRITERIA HAS BEEN SATISFIED**

The purpose of the MLUL would be advanced by the granting of the requested bulk variance. In Kaufmann v. Planning Bd. for Warren Tp., 110 N.J. 551, 563 (1988), the Supreme Court provided guidance in the application of C (2) variance requests by stating: “For example [N.J.S.] 40:55D-2(j) intends the prevention of degradation of the environment through improper use of land thus a property crossed by a stream might call for an adjustment of side or front yards better to protect the stream bed ...” Id. at 563. (A stream running through the property that requires protection by locating development as far away as reasonably possible.)

#### **THE NEGATIVE CRITERIA HAS BEEN SATISFIED**

The negative criteria of the c (2) variance require statutory focus on the surrounding properties. Medici v. BPR Co., 107 N.J. 1, 22 n. 12 (1987). The bulk variance requested herein can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance. Initially, as discussed above, there is no substantial negative impact to the surrounding neighborhood or the Zoning Ordinance and Zone Plan of Somers Point. The granting of this front yard variance will not have a negative impact on nearby properties. The proposed location of the residence will blend in nicely with the existing neighborhood and will be indistinguishable from neighboring homes with the granting of the front yard set back requested. The proposed single-family residence is otherwise in conformity with all other bulk controls. The granting of this variance will benefit the community in that it represents a better zoning alternative for the property as the variance will protect the environment.

Thus, it is respectfully submitted that there is no detriment associated with any of the variances sought. As such the positive aspects of the variances sought in connection with this application clearly outweigh any detriment associated therewith.

Prepared by: Richard A. Carlucci, Esquire of the Law firm of Griffith and Carlucci, P.C.

**NOTICE OF PUBLIC HEARING  
NOTICE TO PROPERTY OWNERS WITHIN 200 FEET OF  
SUBJECT PREMISES AND THE GENERAL PUBLIC  
SOMERS POINT ZONING BOARD**

**PLEASE TAKE NOTICE:**

That James S. Ginn ["Applicant"] has filed a written application for development ["Application"] with the City of Somers Point Zoning Board.

The property subject to the aforesaid Application is located at 115 Holly Hills Drive, Somers Point, New Jersey 08244 and is currently identified as Lot 3 in Block 1915 as shown on the Official Tax Map for the City of Somers Point, New Jersey ["Property"]. The Property is located in the Highway Commercial-Two HC-2 zoning district.

In its Application, the Applicant seeks a use variance and a front-yard set-back variance for the construction of a single-family residence.

This Notice of Public Hearing is being served upon you as an owner of property in the immediate vicinity of the Property and/or as a member of the general public. To the extent that any additional approvals, variances or waivers of the Zoning Ordinance are deemed necessary by the Board in the exercise of its discretion the Applicant requests such approvals, variances and waivers. To the extent that any interpretations of the Zoning Ordinance are required to grant any approval, the Applicant requests such interpretations.

A public hearing has been scheduled for \_\_\_\_\_, 2024 at 7:00 p.m. in the City Hall 1 West New Jersey Avenue, Somers Point, New Jersey, at which time and place any interested party (as defined in N.J.S.A. 40:55D-4) will have an opportunity to be heard. When this matter is called you may appear either in person or by attorney, and present any testimony, including objection(s) which you may have to the granting of the relief or approvals sought by the Applicant in the Application. Maps and other documents relating to this matter will be available for inspection during regular business hours in the office of the Board Secretary of the City of Somers Point Zoning Board, 1 West New Jersey Avenue, Somers Point, New Jersey 08244 at least ten (10) days prior to the public hearing date set forth above. This Notice of Public Hearing is being provided to you and published by the Applicant, as required by the Zoning Ordinance and consistent with existing New Jersey law.

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