

Elias T. Manos, Esquire
MANOS LAW FIRM, LLC
2408 New Road, Suite 2
Northfield, New Jersey 08225
(609) 335-1873
Solicitor for City of Somers Point
Zoning Board of Adjustment

**APPLICATION OF JAMES GINN FOR D
VARIANCE APPROVAL FOR USE AND
C VARIANCE APPROVAL FOR A
FRONT YARD SETBACK FOR BLOCK
1915, LOT 3**

*CITY OF SOMERS POINT
ZONING BOARD OF ADJUSTMENT*

ZB-13-2024

DECISION AND RESOLUTION

THIS MATTER, having been heard by the Zoning Board of Adjustment of the City of Somers Point (hereinafter sometimes referred to as the “Board”) on July 8, 2024 at a regularly scheduled meeting at City Hall of the City of Somers Point, and a quorum being present; and

WHEREAS, an Application was made by James Ginn (the “Applicant”), for use variance approval pursuant to N.J.S.A. 40:55D-70d(1) and bulk variance approval pursuant to N.J.S.A. 40:55D-70c for a front yard setback in order to construct a new single family dwelling on property identified as Lot 3 in Block 1915, which property is located at 115 Holly Hills Drive (the “Property”); and

WHEREAS, the Property is located in the Highway Commercial-Two District (“HC-2 Zone”) as designated within the City of Somers Point’s Development Regulations; and

WHEREAS, proper subject matter jurisdiction for the Zoning Board of Adjustment of the City of Somers Point was established with respect to the relief requested and the statutory powers granted to the Board by the New Jersey Legislature as embodied in N.J.S.A. 40:55D-70; and

WHEREAS, the Applicant demonstrated site control of Property as the contract purchaser of the Property; and

WHEREAS, the Applicant has properly notified surrounding property owners of the Application and has satisfactorily published notice of the Application and the Board’s meeting to consider the same as required by N.J.S.A. 40:55D-12; and

WHEREAS, the Board conducted a public hearing on the said Application on July 8, 2024, at which time the Board considered the Application on its merits for approval; and

WHEREAS, the Applicant was represented by Richard A. Carlucci, Esquire at the public hearing conducted on July 8, 2024; and

WHEREAS, the Board has reviewed the Application submitted by the Applicant together with all attachments and all exhibits submitted with the Application and during the course of the hearing; and

WHEREAS, the Applicant, in addition to himself testifying, presented the testimony of the following witnesses during the course of the hearing, through counsel:

1. Junetta Dix, PWS, a professional environmental consultant in the State of New Jersey, explained the environmental constraints of the Property and discussed the permit for the project obtained by the Applicant from the New Jersey Department of Environmental Protection (“NJDEP”), as well as the overall NJDEP permitting process; and

2. Andy Schaeffer, PE, PP, a licensed professional engineer and planner in the State of New Jersey; described the proposal of the Applicant and offered extensive engineering and planning testimony to support the relief requested by the Applicant;

and

WHEREAS, Ms. Dix and Mr. Schaeffer were each qualified and accepted as experts in their respective professions by the Board; and

WHEREAS, the Board also heard the testimony of Deborah Wahl, PE, the Board Engineer, and received and reviewed the report from her firm dated May 28, 2024, and heard further testimony from the City of Somers Point Zoning Officer, Roger McLarnon; and

WHEREAS, during the public portion of the hearing, David Burns (111 Holly Hills Drive) spoke in opposition to the Application; and

WHEREAS, the Zoning Board of Adjustment of the City of Somers Point, based upon the Application submitted, the testimony presented by and on behalf of the Applicant, the testimony from public, the Board Engineer and the City of Somers Point Zoning Officer, as well as the report of the Board Engineer referred to above, and all plans and exhibits presented, makes the following findings of fact and conclusions of law:

1. The Applicant is, as noted, James Ginn. At the time of the hearing, the Applicant was represented by Richard A. Carlucci, Esquire.
2. The Applicant has submitted a properly filed Application and all required documents and has paid all required fees and has complied with the advertising and notice requirements of the Municipal Land Use Law.
3. The Property is known as Block 1915, Lot 3 and is located at 115 Holly Hills Drive.
4. The taxes for the Property have been paid and are current.
5. The Property is serviced or serviceable by public water and sewer.
6. The Property is located in the HC-2 Zone.
7. The Property is 40, 481 square feet in total lot area. It is irregularly shaped and fronts partially along Somers Point-Mays Landing Road and partially along Holly Hills Drive. The Property is heavily wooded vacant land and contains wetlands and other environmentally sensitive areas, including a drainage ditch, that limit the area of the Property that can be developed.

Although the Property is located in the HC-2 Zone, it borders the R-1 Single-Family Residential District (“R-1 Zone”) as designated within the City of Somers Point’s Development Regulations and Holly Hills Drive is a residential street consisting of residential uses.

8. The Applicant is seeking to construct a new single family dwelling on the Property. The footprint of the dwelling is proposed to be 45 feet by 44 feet and due to the environmental constraints of the Property, its proposed location on the Property is oriented near the front left corner of the Property (when facing the Property from Holly Hills Drive). The driveway to the proposed single family dwelling will be off of Holly Hills Drive and the dwelling will have a 20 foot front yard setback from the Holly Hills Drive front property line. The Property, with its environmental constraints, and the proposed footprint of the single family dwelling on the Property, is shown more fully on the “Wetlands Buffer Averaging & Variance Plan” submitted with the Application and presented to the Board prepared by Schaeffer Nassar Scheidegg Consulting Engineers, LLC last revised March 4, 2024 (1 sheet). The Applicant has obtained a CAFRA Permit for its proposal from the NJDEP.

9. Since the Property is located in the HC-2 Zone and the HC-2 Zone is a commercial zoning district that does not permit single family residential dwellings, a use variance is required by the Applicant pursuant to N.J.S.A. 40:55D-70d(1) for the proposed use. In addition, the required front yard setback for the HC-2 Zone is 50 feet and the Applicant is proposing a front yard setback to the Holly Hills Drive front property line of 20 feet. As a result, variance relief pursuant to N.J.S.A. 40:55D-70c is also required from that condition. The Applicant’s proposal meets all other bulk requirements of the HC-2 Zone. The specific relief requested by the Applicant is set forth in Paragraph 10 below.

10. The within Application is for:

a. Use variance approval pursuant to N.J.S.A. 40:55D-70d(1) to allow a residential use, that being development of a single family residential dwelling on the Property, in the HC-2 Zone where such use is not permitted; and

b. Bulk variance relief pursuant to N.J.S.A. 40:55D-70c from the requirements set forth in the City of Somers Point Development Regulations to allow a front yard setback to the Holly Hills Drive front property line of 20 feet where 50 feet is the front yard setback requirement in the HC-2 Zone.

11. Based upon the testimony and evidence presented, the City of Somers Point Zoning Board of Adjustment finds that the Applicant is entitled to the relief detailed in Paragraph 10 above, and makes the following additional findings of fact and conclusions of law, and decision:

b. The Board finds that the Applicant has demonstrated special reasons pursuant to N.J.S.A. 40:55D-70d(1) to justify the use variance relief set forth in Paragraph 10a above. The Board further finds based upon an enhanced quality of proof that granting the use variance relief will not cause a substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan or zoning ordinance (i.e. Development Regulations) of the City of Somers Point. Specifically, in terms of special reasons, the Board finds that the Applicant's proposal for the Property advances several purposes of zoning set forth in N.J.S.A. 40:55D-2, and particularly sections:

a. Promote the general welfare – the Board finds that the general welfare will be served because the Property is particularly suited for the proposed residential use of a single family dwelling. The Board finds that Holly Hills Drive serves as access to a residential area and is essentially residential in nature. The Board further notes that given the environmental constraints that limit the

developable area of the Property, the commercial uses permitted in the HC-2 Zone would not function well on the Property.

c. Light, air and open space – the Board notes that the Property is over 40,000 square feet in total lot area and that only a small portion can and will be developed. The Board also notes that with the exception of the requested front yard setback variance, the proposal by the Applicant meets all other bulk requirements for the HC-2 Zone in which the Property is located. The Board finds that the Applicant’s proposal will preserve light, air and open space.

e. Promote the establishment of appropriate population densities – the Board finds that the proposed single family use is utilizing an existing access street, that being Holly Hills Drive, that serves a residential neighborhood of predominately single family dwellings. The Board finds that the single family use is the appropriate density for the Property.

i. Aesthetic enhancement – the Board finds that the proposed single family dwelling, as shown on the rendering presented, will promote a desirable visual environment through creative development techniques and good civic design and arrangement in that it will compliment the residential development along Holly Hills Drive. The Board finds that Applicant’s proposal will enhance the Property overall in terms of aesthetics.

Moreover, in addition to the reasons detailed above, the Board finds that the positive criteria for the proposed single family residential use is also justified under a hardship standard pursuant to N.J.S.A. 40:55D-70c(1). The Board finds in that regard that the Property has a unique shape to it and that, combined with its limited developability due to environmental constraints, it

would be impractical for it to be developed with a commercial use with any of the uses permitted in the HC-2 Zone. The Board finds that the only viable development of the Property is for the residential use proposed by the Applicant.

In terms of the negative criteria, the Board finds that there will be no substantial detriment to the public good given that the neighborhood is largely residential in nature and that the development of the Property is limited, with the Applicant meeting all bulk requirements of the HC-2 Zone with the exception of the front yard setback to the Holly Hills Drive front property line. The Board thus finds that the proposal by the Applicant will not be an impactful one and will not cause a substantial detriment to the public good. The Board additionally finds that there will be no substantial impairment of the zone plan or zoning ordinance since, as noted, the area surrounding the Property is essentially residential in nature and is not viable for the commercial uses permitted in the HC-2 Zone. As a result, the Board finds that allowing the single family residential use will not have any substantial negative impact on the zone plan or zoning ordinance of the City of Somers Point.

For these reasons, the Board finds that the use variance relief is warranted and should be granted.

b. With respect to the bulk variance relief requested as detailed in Paragraph 10b above, the Board finds that pursuant to N.J.S.A. 40:55D-70c(1), the Applicant has demonstrated that the unique shape of the Property, combined with its limited developability due to environmental constraints, justifies the front yard setback variance under a hardship standard. Further, the Board finds that pursuant to N.J.S.A. 40:55D-70c(2), the Municipal Land Use Act would be advanced by a deviation or departure from the Somers Point Development Regulations for the requested variances for the reasons detailed above in connection with the use variance and

that the benefits of the requested variance substantially outweigh any detriment. Moreover, also for the reasons detailed above in connection with the use variance, the Board finds that the requested variance relief in Paragraph 10b will not cause a substantial detriment to the public good and will not substantially impair the intent and the purpose of the Somers Point zone plan or zoning ordinances. In addition, the Board notes that the proposed front yard setback to the Holly Hills Drive front property line, meets the required 20 foot front yard setback for the R-1 Zone which abuts the Property.

For these reasons, the Board finds that the bulk variance relief is warranted and should be granted.

NOW, THEREFORE, a Motion having been made and seconded, the City of Somers Point Zoning Board of Adjustment hereby grants use variance approval pursuant to N.J.S.A. 40:55D-70d(1) and bulk variance relief pursuant to N.J.S.A. 40:55D-70c to the Applicant, all as detailed in paragraph 10 above, for the reasons set forth above, subject to the following conditions:

(1) The Applicant shall replace any damaged or broken sidewalk that currently exists on or in front of the Property or that occurs as a result of construction of the proposed development on the Property.

(2) The Applicant shall continue the fence to the proposed dwelling that is shown on the plans presented to the side property line.

(3) The Applicant shall be subject to the tree removal ordinances of the City of Somers Point.

(4) The Applicant shall use his best efforts to attempt to grant an easement for the drainage ditch on the Property to the appropriate entity, who will accept such easement for maintenance of the drainage ditch.

(5) All representations made by or on behalf of the Applicant during the course of the hearing shall be followed.

(6) All those conditions and recommendations as set forth in the Board Engineer's report noted above shall be followed, unless modified herein or on the record during the course of the hearing.

(7) The Applicant's approval herein is contingent upon the Applicant obtaining all other necessary governmental approvals, including but not limited to any and all other approvals that may be required by the NJDEP.

(8) The Applicants shall submit the required number of compliance plans consistent with the approval granted herein, to be reviewed for compliance by the City of Somers Point Zoning Officer or Board Engineer.

(9) The conditions set forth herein shall run with the land and be binding on the Applicant, as well as any future owners of the Property and any of the Applicant's successors or assigns.

Roll Call Vote on Motion to grant use variance approval pursuant to N.J.S.A. 40:55D-70d(1) and bulk variance approval pursuant to N.J.S.A. 40:55D-70c, as set forth in Paragraph 10 above

Rowan	Yes
Gilbert	Yes
Helbig	Yes
Granus	Yes
Lawler	Yes
Kent	Yes
Craddock	Yes

**CITY OF SOMERS POINT ZONING
BOARD OF ADJUSTMENT**

Dated: 8/12/24

By: 

Joseph Craddock, Chairman

Dated: 8/12/24

By: 

Jayne Meischker, Zoning Board Secretary