

**RECOMMENDATION ON THE VARIANCE APPLICATION OF**  
**20 Aquarium/NRS/Secaucus Rd – Subdivision/Variance**  
**File #14-205**

**I. INTRODUCTION**

An application for two (2) bulk variances has been filed with the New Jersey Meadowlands Commission (NJMC) by James C. Carlino of Scannell Properties #181, LLC, for the premises identified as Block 101, Lots 1, 16, 18 and 23, and Block 1001, Lot 3, in the City of Jersey City, New Jersey. Said premises are located in the Commission's Intermodal B zone. The variances are sought in connection with the applicant's proposal to subdivide the properties identified as existing Block 101, Lots 1 and 23 into proposed Block 101, Lots 1.01 and 23.01 and consolidate existing Block 101, Lots 16 and 18 and Block 1001, Lot 3 into proposed Block 101, Lot 18.01, in the City of Jersey City, New Jersey. In accordance with N.J.A.C. 19:5-5.3(a), the proposed subdivision is classified as a technical major subdivision, because proposed Lots 18.01 and 23.01 do not provide direct access to an improved public or private street. Specifically, the applicant is requesting variance relief from the following:

1. N.J.A.C. 19:5-7.4(a), which requires that all lots located in any subdivision shall have direct access to an improved public or private street. Access will be provided to Secaucus Road from proposed Lot 18.01 by a proposed ingress/egress easement across proposed Lots 1.01 and 23.01.
2. N.J.A.C. 19:5-7.4(a), which requires that all lots located in any subdivision shall have direct access to an improved public or private street. Access will be provided to Secaucus Road from proposed Lot 23.01 by a proposed ingress/egress easement across proposed Lot 1.01.

Notice was given to the public and all interested parties as required by law. Public notices were published in The Jersey Journal newspaper. No written comments or objections have been received to date. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

## II. GENERAL INFORMATION

### A. Existing and Proposed Use

The property in question encompasses existing Block 101, Lots 1, 16, 18 and 23 and existing Block 1001, Lot 3 (the "subject property") and consists of approximately 83.62 acres. The property has a rectangular configuration, having side lot lines significantly longer than the front and rear lot lines. Existing Block 101, Lots 23, 18 and 16 and existing Block 1001, Lot 3, do not currently have direct access to a public or private improved street. These properties access Secaucus Road through Block 101, Lot 1, which fronts on Secaucus Road to the north. The subject property is bordered by the Penhorn Creek and a wetlands mitigation area to the west, a PSE&G right-of-way containing overhead electric transmission wires to the east, and a USPS facility and the future Goya Headquarters and warehouse site to the southeast and southwest, respectively. The Township of North Bergen is located to the north of the subject premises and the Town of Secaucus is located across Penhorn Creek to the west of the subject premises. The subject property is located within the Commission's Intermodal B zone. The properties to the north, east and south are also located in the Intermodal B zone and contain warehouse and distribution uses. The properties to the east are located in the Light Industrial A zone and have warehouse/distribution facilities, office uses, a house of worship and an automobile repair facility.

The subject property contains a 50-foot-wide drainage easement and a 25-foot-wide drainage easement along the northeasterly portion of the front property line, which separates it from, and limits access to Secaucus Road. A drainage ditch currently exists within the drainage easement and collects water from the site and Secaucus Road. The ditch is an Army Corps regulated ditch and wetland mitigation area. The front lot line is 1,796.21 linear feet in length, of which the drainage easements comprise approximately 1,680 linear feet along the front lot line.

The 50-foot-wide property known as Block 101, Lot 7, containing a combined sewer ditch owned by the City of Jersey City and the City of Union City, divides the subject property into two sections referred to as the northern tract and the southern tract. Access between the two tracts across Block 101, Lot 7, has been established by an access easement documented within filed deeds, copies of which have been submitted to our office.

The northern tract is approximately 46 acres and consists of existing Block 101, Lots 1 and 23. The purpose of the subdivision of these existing lots is to adjust the lot line to result in proposed Block 101, Lot 1.01 and 23.01. Proposed Block 101, Lot 23.01, will not have direct access to a public street, so access is proposed to be provided to Secaucus Road by a proposed ingress/egress easement across proposed Lot 1.01 within Block 101.

The southern tract is approximately 38 acres and consists of existing Block 101, Lots 18 and 16, and Block 1001, Lots 3. The purpose of the subdivision of these lots is to consolidate the three existing lots into proposed Block 101, Lot 18.01. Proposed Block 101, Lot 18.01, will not have direct access to a public street, so access is proposed to be provided to Secaucus Road by a proposed ingress/egress easement across proposed Lots 1.01 and 23.01, within Block 101. The proposed

ingress/egress easement located along the eastern edge of the existing Block 101, Lots 1 and 23, will allow vehicles and utilities to access proposed Block 101, Lots 18.01 and 23.01, from Secaucus Road.

The intent of the subdivision is to accommodate the future sale of the two rear properties, more specifically proposed Block 101, Lots 18.01 and 23.01, to develop a warehouse facility. The proposed 50-foot-wide access easement will accommodate a driveway and utilities and connect these properties to Secaucus Road. The subject property is not currently developed, however the northern tract is currently utilized for tractor trailer parking. The site is accessed from Secaucus Road via a driveway located on the eastern portion of the front lot line.

#### **B. Response to the Public Notice**

No written comments or objections were submitted to this Office regarding this application prior to the public hearing.

### **III. PUBLIC HEARING (June 24, 2014)**

A public hearing was held on Tuesday, June 24, 2014. NJMC staff in attendance were Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management; Mia Petrou, P.P., AICP, Senior Planner; and Elizabeth Kenyon, P.E., Senior Engineer.

#### **A. Exhibits**

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Aerial (300)," Drawing No. VA101 Aerial 300, prepared by Langan Engineering, dated February 27, 2014.
A-2	"Subdivision Exhibit," Drawing No. A2, prepared by Langan Engineering, dated June 18, 2014.
A-3	"Subdivision Plat," Drawing No. CB101, prepared by Langan Engineering, dated March 31, 2014.

### **B. Testimony**

The applicant was represented at the hearing by Kevin J. Coakley, Esq., of the firm Connell Foley, LLP. The following two witnesses testified in support of the application:

1. Gregg Woodruff, P.P., Langan Engineering; and
2. Daniel Miola, P.E., Langan Engineering.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Darlene Kulesa, Certified Court Reporter.

## **IV. RECOMMENDATION**

**A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:5-7.4(a), which requires that all lots located in any subdivision shall have direct access to an improved public or private street. Proposed Block 101, Lot 18.01, will not have direct access to an improved street. Access is proposed to be provided to Secaucus Road from Lot 18.01 by a proposed ingress/egress easement across proposed Lots 1.01 and 23.01 within Block 101.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The subject property consists of two sizable tracts, the southern tract, comprised of proposed Lot 18.01 contains 46 acres, and the northern tract, comprised of proposed Lots 1.01 and 23.01, contains 38 acres. There is only one access point to the property from Secaucus Road, due to the presence of an Army Corps-regulated ditch within the 50-foot-wide drainage easement and a 25-foot-wide drainage easement along the majority of the frontage of proposed Lot 1.01.

The existing lots that comprise proposed Block 101, Lot 18.01, are currently landlocked with no direct access to an improved street. Further, proposed Block 101, Lot 18.01, is divided from the northern tract by Block 101, Lot 7, which contains a combined sewer ditch jointly owned by the City of Jersey City and the City of Union City. Thus, proposed Block 101, Lot 18.01, cannot be combined with any parcel of land within the subdivision to facilitate direct access to Secaucus Road. Access to the only public street adjacent to the subject property, Secaucus Road, is proposed to be accomplished through an ingress/egress access easement providing access across Block 101, Lot 7, between the northern and southern tracts.

Due to the constraints of the property associated with the lot configurations and limited access from Secaucus Road, it is infeasible for proposed Block 101, Lot 18.01, to have direct access to Secaucus Road. These are conditions unique to the property in question.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

Neighboring property owners and residents will not be adversely affected by the granting of the requested variance. The property subject to this variance request, comprised of existing Block 101, Lots 16 and 18, and Block 1001, Lot 3, is located adjacent to the Jersey City/ Union City combined sewer ditch to the north and is bordered by the Penhorn Creek and a wetlands mitigation area to the west, a PSE&G right-of-way containing overhead electric transmission wires to the east and USPS facility and the future Goya Headquarters and warehouse site to the southeast and southwest, respectively. A proposed 50-foot-wide ingress/egress easement will ensure that access between Block 101, Lot 18.01, and Secaucus Road, an improved public street, would be maintained without disturbing adjacent property owners. A separate access easement to cross Block 101, Lot 7, is in place between the property owners and the Cities of Jersey City and Union City. According to the testimony provided at the public hearing, access across Block 101, Lot 7 is not limited to one location. Also according to the testimony, there will be substantial improvements made to the existing crossing, including drainage improvements, in order to not

impede the flow of stormwater through the ditch. Testimony was provided that plans have been submitted to Jersey City and they are aware of the proposed project. There will not be any impact on any portion of neighboring properties for ingress or egress.

*iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

There are no public streets adjacent to the existing lots of the southern tract that could be utilized for access to the proposed Block 101, Lot 18.01. The existing driveway from Secaucus Road currently serves the subject properties and is in the location of the proposed access easement to benefit proposed Block 101, Lot 18.01. The proposed access easement along the east side of proposed Block 101, Lot 1.01, will act similarly to the existing driveway and maintain a safe means of ingress/egress without disturbing adjacent property owners.

Provision of direct access from a public street to the proposed combined lots is also constrained due to presence of Block 101, Lot 7, which contains a combined sewer/ditch owned by the Cities of Jersey City and Union City. Block 101, Lot 7, separates the existing lots in the southern tract, comprised of Block 101, Lots 16 and 18, and Block 1001, Lot 3, from the northern tract.

Therefore, this lot cannot be combined with any other parcel of land within the subdivision to facilitate direct access to a public street. Granting the variance would eliminate the hardship due to

the constraints of the property including the location of proposed Block 101, Lot 18.01, in relation to Secaucus Road and location of the combined sewer ditch in Block 101, Lot 7, and additionally, would provide access for future development on the southern tract. These property characteristics collectively preclude independent access to the proposed lot as required by the strict application of the regulations.

*iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse effects to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The locations of the proposed ingress/egress easement across Block 101, Lot 1.01, allow for access between Secaucus Road and Block 101, Lot 18.01, thereby not affecting public safety. Additionally, testimony was provided indicating that a traffic signal is proposed at the intersection of the proposed access easement and Secaucus Road to improve traffic flow and to provide additional safety for the public as part of the creation of a controlled intersection for both pedestrians and vehicles.

*v. The variance will not have a substantial adverse environmental impact.*

There will be no adverse environmental impacts created by the granting of the requested variance. The creation of proposed Block 101, Lot 18.01, with an associated access easement to provide access

between the southern tract and Secaucus Road, will not disturb environmentally sensitive areas, such as wetlands or stormwater facilities. Testimony was provided at the public hearing that the subdivision will provide a more appropriate boundary for future development that will limit impact on the natural resources in the area. Testimony was also provided that the granting of the subdivision and variances will facilitate the future development of the site which will ensure the proper implementation of the NJDEP-approved Remedial Action Work Plan and address issues associated with the wetlands mitigation project.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

NJMC zoning regulations require that all lots located in any subdivision shall have direct access to an improved public or private street. Currently, four of the five existing lots within the subdivision application do not have direct access to an improved public or private street. The proposed subdivision will decrease this number of non-conforming lots to two rather than four. Proposed Block 101, Lot 18.01, will not be located directly adjacent to Secaucus Road; however, access will be provided to Secaucus Road via a proposed ingress/egress easement which will serve vehicular and pedestrian traffic and utilities. The proposed variance is required due to the configuration of the lots within the property and the limitations associated with the location of the access point to Secaucus Road. In addition, the southern tract of the property is divided from the northern tract by Block 101, Lot 7, which contains a combined sewer/ditch owned by the Cities of

Jersey City and Union City. Therefore, this lot cannot be combined with any other parcel of land within the subdivision to facilitate direct access to Secaucus Road. Thus, the requested variance represents the minimum deviation from NJMC regulations that will afford relief.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The granting of the requested variance will not substantially impair the intent and purpose of these regulations. The approval of the technical major subdivision will promote development on the property. In this application, the provision of an easement as a means to provide access to proposed Block 101, Lot 18.01, is equivalent to a municipality building a public road to provide access. The granting of the subdivision and variance will accommodate future development of the subdivided properties. Testimony was provided that the proposed future development will be for a warehouse/distribution facility with associated parking, which is permitted within the Intermodal B zone. The proposed subdivision complies with all lot area and dimensional bulk regulations. Access to an improved public street, Secaucus Road, will be provided along an ingress/egress easement which will contain a driveway and utilities. Therefore, the proposed subdivision is consistent with sound planning principles and will promote the intent and purposes of the NJMC regulations by allowing for the site to be utilized in a safe and orderly manner, by providing for the orderly development of properties in the Hackensack Meadowlands District, and by providing for sufficient

space in appropriate locations for a variety of uses, including industrial, warehousing and distribution.

- B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:5-7.4(a), which requires that all lots located in any subdivision shall have direct access to an improved public or private street. Proposed Block 101, Lot 23.01, will not have direct access to an improved street. Access is proposed to be provided to Secaucus Road from Lot 23.01 by a proposed ingress/egress easement across proposed Lot 1.01 within Block 101.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*
  - i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

Proposed Block 101, Lot 23.01 is a reconfiguration of existing Block 101, Lot 23, which is currently landlocked with no access to an improved street. Further, the existing drainage easements along the northwesterly portion of the front property line, makes it infeasible to configure proposed Block 101, Lot 23.01, for an additional access point to Secaucus Road without complications associated with filling the Army Corps-regulated ditch, which not only collects water from the site and Secaucus Road but is also part

of a wetland mitigation area. These are conditions unique to the property in question.

- ii. The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

Neighboring property owners and residents will not be adversely affected by the granting of the requested variance. As proposed, the reconfiguration of existing Block 101, Lots 1 and 23, into proposed Block 101, Lots 1.01 and 23.01, involves the decrease in size of existing Lot 23 from 8.35 acres to 6.19 acres by the removal of the westernmost portion of existing Lot 23. As such, proposed Block 101, Lot 23.01, will be surrounded on the north and west sides by proposed Block 101, Lot 1.01, which is located in the Intermodal B zone. Block 101, Lot 1, in both its existing and proposed configurations, fronts Secaucus Road to the north, and Lot 23, in both configurations, does not have frontage on a public street. Proposed Block 101, Lot 23.01, is bordered by the proposed Block 101, Lot 1.01, to the north and west; a PSE&G right-of-way containing overhead electric transmission wires to the east; and Block 101, Lot 7, which contains a combined sewer/ditch owned by the Cities of Jersey City and Union City, to the south. A proposed ingress/egress easement will ensure that vehicles have access between Block 101, Lot 23.01, and Secaucus Road without disturbing adjacent property owners. There will not be any impact on any portion of neighboring properties for ingress or egress.

- iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

Other than Secaucus Road, there are no public streets adjacent to the existing lots of the northern tract that could be utilized for access to proposed Block 101, Lot 23.01. In addition, provision of direct access from Secaucus Road to proposed Block 101, Lot 23.01, is constrained by to the drainage ditch located within the drainage easements along the front lot line. The existing driveway from Secaucus Road, which serves as the single access point for all of the subject properties, is the only location adjacent to Secaucus Road that is not impacted by the drainage easement with its Army Corps-regulated drainage ditch and associated wetland mitigation. As such, reconfiguring the proposed Block 101, Lot 23.01 to provide access to Secaucus Road is not feasible. Granting the variance would eliminate the hardship due to constraints of the property configuration, easements and ditches, and provide access for future development. These property characteristics collectively preclude additional access to the proposed lot.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse effects to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The location of the proposed ingress/egress

easement across Block 101, Lot 1.01, allows for access between Secaucus Road and Block 101, Lot 23.01, thereby not affecting public safety. Additionally, testimony was provided indicating that a traffic signal is proposed at the intersection of the proposed access easement and Secaucus Road to improve traffic flow and to provide additional safety for the public as part of the creation of a controlled intersection for both pedestrians and vehicles.

*v. The variance will not have a substantial adverse environmental impact.*

There will be no adverse environmental impacts created by the granting of the requested variance. The creation of proposed Block 101, Lot 23.01, with an associated access easement to provide access to and from Secaucus Road, will not disturb environmentally sensitive areas, such as wetlands or stormwater facilities. Testimony was provided at the public hearing that the subdivision will provide a more appropriate boundary for future development that will limit impact on the natural resources in the area. Testimony was also provided that the granting of the subdivision and variances will facilitate the future development of the site, which will ensure the proper implementation of the NJDEP-approved Remedial Action Work Plan and address issues associated with the wetlands mitigation project.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

NJMC zoning regulations require that all lots located in any subdivision shall have direct access to an improved public or

private street. Proposed Block 101, Lot 23.01, is a reconfiguration of existing Block 101, Lot 23, which does not currently have direct access to Secaucus Road. Proposed Block 101, Lot 23.01, will also not be located directly adjacent to Secaucus Road; however, access will be provided to Secaucus Road via a proposed ingress/egress easement, which will serve vehicular and pedestrian traffic and utilities.

The applicant could have proposed to create a lot with frontage along Secaucus Road; however, potential locations to provide an alternative subdivision line are limited due to the existing drainage easement containing an Army Corps-approved drainage ditch located along the frontage of Secaucus Road. Filling or bridging a portion of the ditch to provide access to Secaucus Road would result in significant permitting challenges with the NJDEP and Army Corps. Additionally, a second access point to Secaucus Road in this vicinity would affect the circulation at the traffic signal proposed at the intersection of Secaucus Road and the proposed access easement. The proposed subdivision line has been placed in an optimal location representing the most regular layout available given the existing site conditions. Therefore, the requested variance represents the minimum deviation from NJMC regulations that will afford relief.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The granting of the requested variance will not substantially impair the intent and purpose of these regulations. The approval of the

technical major subdivision will promote development on the property. In this application, the provision of an easement as a means to provide access to proposed Block 101, Lot 23.01, is the equivalent to a municipality building a public road to provide access. The granting of the subdivision and variance will accommodate future development of the subdivided properties. Testimony was provided that the proposed future development will be for a warehouse/distribution facility with associated parking, which is permitted within the Intermodal B zone. The proposed subdivision complies with all lot area and dimensional bulk regulations. Access to an improved public street, Secaucus Road, will be provided along an ingress/egress easement which will contain a driveway and utilities. Therefore, the proposed subdivision is consistent with sound planning principles and will promote the intent and purposes of the NJMC regulations by allowing for the site to be utilized in a safe and orderly manner, by providing for the orderly development of properties in the Hackensack Meadowlands District, and by providing for sufficient space in appropriate locations for a variety of uses, including industrial, warehousing and distribution.

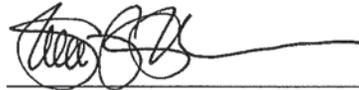
IV. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:5-7.4(a), which requires that all lots located in any subdivision shall have direct access to an improved public or private street. Proposed Block 101, Lot 18.01, will not have direct access to an improved street. Access is proposed to be provided to Secaucus Road from Lot 18.01 by a proposed ingress/egress easement across proposed Lots 1.01 and 23.01 within Block 101.

Based on the record in this matter, the bulk variance application to provide a subdivision resulting in the creation of a lot (proposed Block 101, Lot 18.01) which will not have direct access to an improved street, is hereby recommended for approval.

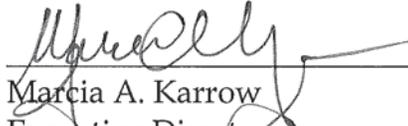
APPROVAL  
RECOMMENDATION ON  
VARIANCE REQUEST

9.4.14  
Date

  
Sara J. Sundell, P.E., P.P.  
Director of Land Use Management  
Chief Engineer

approval  
RECOMMENDATION ON  
VARIANCE REQUEST

9/8/14  
Date

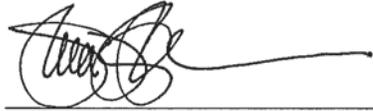
  
Marcia A. Karrow  
Executive Director

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:5-7.4(a), which requires that all lots located in any subdivision shall have direct access to an improved public or private street. Proposed Block 101, Lot 23.01, will not have direct access to an improved street. Access is proposed to be provided to Secaucus Road from Lot 23.01 by a proposed ingress/egress easement across proposed Lot 1.01 within Block 101.

Based on the record in this matter, the bulk variance application to provide a subdivision resulting in the creation of a lot (proposed Block 101, Lot 23.01) which will not have direct access to an improved street, is hereby recommended for approval.

APPROVAL  
RECOMMENDATION ON  
VARIANCE REQUEST

9.4.14  
Date

  
Sara J. Sundell, P.E., P.P.  
Director of Land Use Management  
Chief Engineer

approval  
RECOMMENDATION ON  
VARIANCE REQUEST

9/5/14  
Date

  
Marcia A. Karrow  
Executive Director