

BOROUGH OF ALPHA LAND USE BOARD -

October 19, 2022 Regular Meeting

Municipal Building 1001 East Blvd., Alpha, New Jersey

The regular meeting of the Borough of Alpha Land Use Board was called to order at 7:00 p.m., by Chairman Fey.

NOTICE

Pursuant to the Open Public Meeting Act, Chapter 231, P.L. 1975, adequate notice of this meeting has been provided by mail to the Star Ledger and the Hunterdon County Democrat; a notice of this meeting and all other regular meeting of the Land Use Board of the Borough of Alpha, which notice sets forth the time, date and location of this meeting by posting said notice on the bulletin board outside the municipal clerk's office.

Roll Call:

Present: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Schwar, and Mr. Seiss. Absent: Mr. Fey, Mr. Fritz, and Mr. Gable.

Resolutions:

Motion made by Mr. Schwar to approve Resolution 2022-07. Motion seconded by Mr. Cartabona. Roll Call: Ayes: Dragotta, Dalrymple, Dunwell, Schwar, and Seiss. Nays: None. Absent: Fey, Fritts, and Gable.

Application #: 2022-04

Approved: 10/19/22

**RESOLUTION 2022-07
BOROUGH OF ALPHA
LAND USE BOARD
FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION
REGARDING THE APPLICATION OF
DANIEL AND TRICIA SHOUDT
FOR VARIANCE APPROVAL FOR
BLOCK 23, LOT 8 (737 SCHLEY AVENUE), ZONE R-4**

The Land Use Board of the Borough of Alpha, in the County of Warren and State of New Jersey, upon motion of Mr. Schwar, seconded by Mr. Cartabona, adopts the following findings of fact, conclusions and resolutions:

Findings of Fact:

1. Applicants, **DANIEL AND TRICIA SHOUDT**, have applied for variance relief to allow for the construction of a residential addition to an existing single family residential dwelling.

2. Variance relief is required with respect to the following standards:

a. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Lot Area

The Applicant proposes a lot area of 6,210 square feet whereas 9,375 square feet is required. This is an existing non-conformity and the applicant proposes no changes to the existing non-conforming condition.

b. §410-21 Schedule of Area, Yard, and Building Requirements – Maximum Lot Depth – Schley Frontage

The Applicant proposes a lot depth along Schley of 138 feet whereas 125 is the maximum permitted lot depth. This is an existing non-conformity and the applicant proposes no changes to the existing non-conforming condition.

c. §410-21 Schedule of Area, Yard, and Building Requirements – Maximum Street Line – Frace Frontage

The Applicant proposes a street line of 138 feet along the Frace Street frontage whereas 60 feet is the maximum permitted. This is an existing non-conformity and the applicant proposes no changes to the existing nonconforming condition.

d. §410-21 Schedule of Area, Yard, and Building Requirements – Maximum Building Line - Frace

The Applicant proposes a building line of 138 feet for proposed Lot along the Frace Street frontage whereas 75 feet is the maximum permitted. This is an existing non-conformity and the applicant proposes no changes to the existing non-conforming condition.

e. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Front Yard - Frace

The Applicant proposes a front yard of 7.5 feet along the Frace Street frontage whereas 25 feet is the minimum required. This is an existing non-conformity and the applicant proposes no changes to the existing setback.

f. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Side Yard (any)

The Applicant proposes a side yard of 1.7 feet whereas 10 ft. is the minimum required.

g. §410-21 Schedule of Area, Yard, and Building Requirements – Maximum Lot Coverage (Building / Total)

The Applicant proposes a lot coverage of 39.90% whereas 25% is the maximum permitted.

3. On September 17, 2022, the applicant appeared before the Land Use Board for a completeness determination. The applicant was represented by William Edleston, Esq. As an initial determination, the issue of whether this type of application required site plan approval was discussed. Attorney Gruenberg advised the Board that despite ordinance language that was unclear, the Municipal Land Use Law does not authorize the requirement of site plan review under the circumstances. Specifically, N.J.S.A. 40:55D-37(a) provides:

NJSA. 40:55D-37. Grant of powers; referral of proposed ordinance; county planning board approval.

a. The governing body may by ordinance require approval of subdivision plats by resolution of the planning board as a condition for the filing of such plats with the county recording officer and approval

of site plans by resolution of the planning board as a condition for the issuance of a permit for any development, except that subdivision **or individual lot applications for detached one or two dwelling-unit buildings shall be exempt from such site plan review and approval**; provided that the resolution of the board of adjustment shall substitute for that of the planning board whenever the board of adjustment has jurisdiction over a subdivision or site plan pursuant to subsection 63b. of this act. (emphasis added.)

Accordingly, the application was noted to be for “c” variance relief. The Board Engineer, Timothy O’Brien’s completeness and technical review correspondence was reviewed by the Board. Mr. O’Brien recommended that the application should be deemed complete in light of the legal interpretation provided by Attorney Gruenberg.

A motion was made by Mr. Seiss to deem the application complete. Motion seconded by Mr. Dragotta. Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Schwar, and Mr. Seiss. Nays: None. Absent: Fritts, and Gable.

4. On September 17, 2022, it was found that the applicant had provided appropriate proof of service and publication of the notice of hearing and that the Board had jurisdiction to proceed with the hearing on the application.

5. Sworn testimony under oath was provided by Tricia Shoudt and Christopher Nusser, P.E., P.P.

The following exhibits were marked into evidence:

Exhibit B-1 Board Engineer Report of August 15, 2022

6. Ms. Tricia Shoudt testified that the proposed expansion of the existing home is to accommodate Ms. Shoudt’s family due to Ms. Shoudt being her grandmother’s primary caregiver. They would like to put a second story onto the home which would house bedrooms and a full bath. They would also like to connect the house to the detached garage. There will be a staircase to reach the second floor where the laundry room will be located as well as a half bath. There will be no additional kitchen facilities or separate entrances. They also will agree as a condition of approval that the home would never be used for a two-family other than just the addition living quarters for her grandmother. Attorney Edleston also stated that they will agree to a deed restriction. There will be three bedrooms on the second floor and a single master bedroom on the first floor with handicap access.

Mr. Cartabona had questions about the existing bathroom and confirmed that the current two bedrooms will be converted to one master bedroom.

7. The matter was opened to the public for questions of Ms. Shoudt. None were received.

8. Sworn testimony under oath was received from Christopher Nusser, P.E. and P.P. Mr. Nusser’s credentials were reviewed by the Board and he was an expert Professional Engineer and Professional Planner.

Mr. Nusser displayed and described the variance plan dated 7/22/22 to the board. The proposal is to add a second story and to fill the gap between the garage and the existing home. There are several existing nonconforming conditions outlined above. The property has existing constraints which cause the applicant an undue hardship upon which to construct the improvements while strictly complying with the zoning ordinance requirements. Mr. Nusser states that given the existing nonconformities, it is constraining to the property to be able to meet the standards. The setback lines as they are shown on the plan are very narrow. Meeting those are not possible and they are staying within the existing footprint of the house set for that addition between the garage and the existing home. They are extending the line of the existing home and then in the forward section the line of the garage, which is maintaining what is already an existing setback. For the garage to meet the current requirements it would need to be demolished and reconstructed causing a large hardship for the homeowner to undertake in order to comply with the existing requirements. Mr. Nusser also states that the reason behind the request is more than appropriate, and they are not asking for something that is oversized for the neighborhood. It is his opinion that there is no substantial detriment to the public good and there will be no substantial impairment to the zone plan and the zoning ordinance. The applicant agreed to comply with the terms of the Board Engineer's review correspondence which was marked as Exhibit B-1.

Upon questioning, Mr. Nusser clarified that the existing 2.9-foot setback and 1.7-foot setbacks would not be worsened and that there is no planned expansion of the combined structure so that would cause a further encroachment on any sides of the structure. As to parking, Mr. Nusser confirmed that the current driveway remains and will be able to accommodate parking on site.

9. The matter was opened to the public for questions of the witness. None were received.

10. The matter was opened to the public for testimony and presenting of evidence in connection with the application. None was received.

11. A motion to close the public hearing was made by Mr. Seiss. Motion seconded by Mr. Dragotta. Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Schwar, and Mr. Seiss. Absent: Mr. Gable and Mr. Fritts.

12. A motion was made by Mr. Cartabona to approve the Shoudt Application #2022-04, Block 23, Lot 8 subject to conditions. Motion seconded by Mr. Schwar. Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Schwar, and Mr. Seiss. Absent: Mr. Gable and Mr. Fritts.

Conclusions:

1. The Board finds that the applicant has established the necessary “positive” and negative” criteria for the granting of the requested variances from the provisions of the ordinance pursuant to N.J.S.A. 40:55D-70(c)(1). The Board finds that the applicants would suffer an undue hardship if strict adherence to the ordinance was enforced given the unique size, shape and configuration of the lot and particularly the unique topographical conditions of the property, narrowness of the lot and location of the home lawfully existing on the property in relationship to the property lines. The granting of the variances requested is due to the unique circumstances affecting this particular property.

2. The applicant has also established that the variances 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. The granting of the variances improves the neighborhood scheme.

3. Consequently, applicant is entitled to the requested variances subject to conditions.

Resolution:

RESOLVED, that the Applicant, **DANIEL AND TRICIA SHOUDT**, is granted the variances as set forth above subject to the following conditions:

A. The terms of this approval are to be strictly in accordance with the plans, testimony, and representations presented at the public hearings, and the same are incorporated into this resolution by reference. Applicant shall perform the work in accordance with the plans submitted in connection with the application and as to be revised subject to the Board’s professionals’ approval as set forth above and in the review correspondence.

B. Applicant shall obtain any and all other necessary governmental approvals, including, but not limited to Warren County Planning Board approval, Upper Delaware Conservation District approval, and Highlands Board approval if required.

C. Applicant shall comply in all respects with the Board Engineer review correspondence dated August 15, 2022, marked as Exhibit B-1.

D. Applicant shall provide a Deed Restriction maintaining the property as a single-family residence and prohibiting the use of the property as a duplex without further relief from the Board to the satisfaction of the Board Engineer and the Board Attorney.

E. Applicant shall maintain a positive balance in its escrow account to reimburse the Borough for its professional expenses in the review of this application and compliance with this approval.

Mayor Dunwell and Mr. Cartabona are not eligible to vote on this resolution.

Motion made by Mr. Schwar to approve Resolution 2022-08. Motion seconded by Mr. Seiss.

Roll Call: Ayes: Dragotta, Dalrymple, Schwar, and Seiss. Nays: None. Absent: Fey, Fritts, and Gable.

Application #: 2022-01

Approved: 10/19/22

**RESOLUTION 2022-08
BOROUGH OF ALPHA
LAND USE BOARD
FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION
REGARDING THE APPLICATION OF
STERNER OUTDOOR ADVERTISING/PRISM HOLDINGS
FOR VARIANCE APPROVAL PURSUANT TO
NJSA 40:55D-70(D)(1) AND NJSA 40:55D-70(C) FOR
BLOCK 200, LOT 1, ZONE I**

The Land Use Board of the Borough of Alpha, in the County of Warren and State of New Jersey, upon motion of Mr. Schwar, seconded by Mr. Seiss, adopts the following findings of fact, conclusions and resolution:

Findings of Fact:

1. The applicants, **STERNER OUTDOOR ADVERTISING/PRISM HOLDINGS** submitted this application seeking approval of variances for the property located at Block 200, Lot 1 (Route 78) which is considered Conrail Railroad right-of-way (Norfolk Southern RR Property). The subject property is located in the Borough's I - Industrial Zoning District. The applicant is requesting a use variance and various bulk variances to construct an outdoor billboard sign. The Applicants previously received approval memorialized in a Resolution for Application 207-03 adopted on March 19, 2008 ("Prior Resolution") for relief for use variances pursuant to N.J.S.A. 40:55D-70(d)(1) and (d) (6); bulk variances pursuant to N.J.S.A. 40:55D-70(c)(1) and (2) and preliminary and final site plan approval permitting an outdoor billboard sign. That sign was never constructed and the applicant is now proposing a sign it contends is consistent with that prior approval. The applicant has been advised that the prior approval had expired necessitating relief from this Board.

2. The applicant seeks the following relief:

A. Preliminary and final site plan approval;

B. A d(1) variance to permit a use or principal structure in a district restricted against such use or principal structure;

C. A d(6) variance to permit the height of the structure to be 50 feet where 20 feet maximum is permitted which is more than 10 feet or 10% of the maximum height standard.

D. Relief pursuant to N.J.S.A. 40:55D-70(c) from the following bulk standards:

- i. Max. Sign Area (sq. ft.) 250 permitted, 1,000 per side (2,000 both sides) proposed
- ii. Max. Height of Sign Face (ft.) 10 permitted, 20 ft. proposed
- iii. Max. Width of Sign Face (ft.) 25 permitted, 50 each side proposed
- iv. Min. Setback to Any Property Line (ft.) 50 required, Face 1: 6.90, Face 2: 22.30 proposed

3. On May 18, 2022, the matter was entertained for purposes of completeness. A motion was moved and seconded to deem the application.

4. On August 17, 2022, the applicant was found to have provided appropriate proof of service and publication of the Notice of Hearing and the Board was deemed to have jurisdiction to proceed with the hearing.

5. The applicant was represented by William Edleston, Esq. Sworn testimony under oath was received from the following witnesses: Gerry Besko, managing partner for Sterner Outdoor Advertising.

6. The following exhibits were marked into evidence during the hearing process:

Exhibit A-1: Packet of materials submitted by applicant

Exhibit B-1 Engineering Completeness and Technical Review dated April 14, 2022

7. Attorney Edleston provided an overview of the application and stated that the applicant was essentially seeking a reapproval of what was previously approved in 2007, granting a use variance to allow a billboard on the eastern side of Route 78 just before the Pohatcong border. The applicant is essentially relying upon the proofs and findings of fact and conclusions of law set forth in that resolution.

8. Sworn testimony under oath was received from Mr. Gerry Besko of Sterner Outdoor Advertising. Mr. Besko is a managing partner with the firm. Sterner Outdoor Advertising specializes in the building of sign boards additionally known as billboards. In 2007 the previous partner of Norfolk Southern Railroad and their signboard contractor CBS moved forward with a variance request before this board. The request was granted and around 2008 the construction official was given notice the permits can be issued for the sign. In 2009, the project was deferred due to a recession and Norfolk Southern, the owner of the right-of-way, parted ways with CBS. Subsequently, CBS was sold off. In approximately 2014, Norfolk Southern approached Mr. Besko to move forward with construction of this signboard. The applicant approached our construction official at that time and submitted engineering to the Borough and permit requests. He was then told that they need to apply with their full engineering packet to move forward. Sometime in spring of 2018 a full engineering packet is submitted for the review of the construction official. In October of 2018 the construction official informs Mr. Besko that he can no longer issue the permit because too much time had passed and relief was required from this Board. The applicant essentially seeks a

reapproval. He also stated that whenever they are approached to build a signboard such as this, they always consider residential impact. This particular site has minimal residential impact.

Mr. Besko submitted an aerial view rendering of the area marking the location and distance of the closest residential area as well as a set of engineering prints showing the size of the sign and a survey, marked as Exhibit A-1. The proposed sign does not differ in any way from the original proposal made in 2007. He describes the sign as a 20-foot tall by 50-foot-long display, double-sided sign structure with an overall height of 50 feet. He further states that the sign is 50 feet because they need to stay a certain amount of feet above the railroad bed; however, they are slightly above that for visibility reasons. The sign will be illuminated with a solar package. Access to the sign in the event of maintenance will be via Norfolk Southern's Second Avenue access site.

Attorney Gruenberg asked about how the sign will be illuminated. Mr. Besko stated LED light fixtures. Attorney Gruenberg stated that this is a little bit different than the original proposal. This was cleared up when Mr. Besko stated that this is not a digital-type board or anything flashy. These are just led light fixtures and the lighting would not spill over into any neighboring areas or be a nuisance. Attorney Gruenberg asked about the LED lighting and confirmed that there are no moving parts or digital-type illumination to the proposed LED-type lighting.

There could be many types of businesses that might utilize this sign for advertising, such as car dealerships with an emphasis on regional or local businesses. It would not be used for advertising of illegal nature. Mr. Besko reviewed the resolution and agreed to adhere to the conditions set forth therein with the clarification as to LED lighting.

The applicant agreed to make compliance with the Board Engineer's report a condition of approval.

9. The matter was opened to the public for questions of the witness. None were received.

10. The matter was opened to the public for public comment or testimony. None was received.

11. Motion to close the public hearing made by Mr. Seiss. Motion seconded by Mr. Dragotta. Roll

Call: Ayes: Mr. Dragotta, Ms. Dalrymple, Mr. Fey, Mr. Schwar, and Mr. Seiss. Absent: Mr. Gable and Mr. Fritts.

Not eligible to vote: Mr. Cartabona, and Mayor Dunwell.

12. Motion made by Mr. Schwar to approve Sterner Outdoor Advertising Application #2022-01,

Block 200, Lot 1 subject to conditions. Motion seconded by Mr. Seiss. Roll Call: Ayes: Mr. Dragotta, Ms.

Dalrymple, Mr. Fey, Mr. Schwar, and Mr. Seiss. Absent: Mr. Fritts, and Mr. Gable. Ineligible to vote: Mr.

Cartabona, and Mayor Dunwell.

Conclusions:

13. The applicant seeks reapproval of the Board's granting of relief pursuant to the Resolution for Application 207-03 which granted the relief requested. The Board has reviewed the detailed prior resolution, findings of fact and conclusions of law contained within that resolution and adopt those findings as though fully set forth herein at length.

14. The Board notes that the only distinction between the prior proposal and the present is in the nature of lighting. Previously, condition 3 of the Resolution for Application 207-03 required the following:
“d. The sign shall remain as proposed, to wit: externally illuminated by floodlights, only, and shall not be altered, including same not being converted to an LED sign without subsequent application to, review and approval by this Board.”

The applicant clarified that while the sign will remain externally illuminated, the lighting shall be LED external illumination. The applicant confirmed that there are no moving parts or digital-type illumination to the proposed LED-type lighting.

15. The application otherwise being fully conforming to the Borough of Alpha ordinances; the applicant was found to be entitled to Preliminary and Final Site Plan Approval subject to conditions.

Resolution:

RESOLVED, that the Applicant, **STERNER OUTDOOR ADVERTISING/PRISM HOLDINGS** are granted the relief as set forth above, subject to the following conditions:

A. The terms of this approval are to be strictly in accordance with the plans, testimony, and representations presented at the public hearings, and the same are incorporated into this resolution by reference.

B. Compliance with the Board Engineer's Review correspondence marked Exhibit B-1 as clarified during the testimony.

C. Compliance with the Board's Prior Resolution of Approval for Application 207-03 attached hereto with the clarification that the sign will be externally illuminated with LED lights. There shall be no digital illumination or moving lights without the need for returning to the Board for further relief.

D. Applicant shall obtain any and all outside governmental agency approvals including but not limited to Warren County Planning Board, Upper Delaware Conservation District, Warren County Board of Health, NJ Highlands Approval to the extent required.

E. Applicant shall perform the work in accordance with the plans submitted in connection with the application and as to be revised subject to the Board's professionals' approval as set forth above and in the review correspondence.

F. Applicant shall maintain a positive balance in its escrow account to reimburse the Borough for its professional expenses in the review of this application and compliance with this approval.

Mayor Dunwell and Mr. Cartabona are not eligible to vote on this resolution.

Motion made by Mr. Seiss to approve Resolution 2022-09. Motion seconded by Mr. Schwar.

Roll Call: Ayes: Dragotta, Dalrymple, Schwar, and Seiss. Nays: None. Absent: Fey, Fritts, and Gable.

Application #2022-02

Approved: 10/19/22

**RESOLUTION 2022-09
BOROUGH OF ALPHA LAND USE BOARD
FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION
REGARDING THE APPLICATION OF TERESA WILLIAMS
FOR MINOR SUBDIVISION AND VARIANCE APPROVAL
BLOCK 65.01, LOT 12**

The Land Use Board of the Borough of Alpha, in the County of Warren and State of New Jersey, upon motion of Mr. Seiss, seconded by Mr. Schwar, adopts the following findings of fact, conclusions and resolutions:

Findings of Fact:

1. Applicant, **TERESA WILLIAMS**, has applied for approval for a minor subdivision for the property located at Block 65.01, Lot 12 (1418-1420 Warren Street) which is 7,696 SF in area and currently contains an existing two-family residential dwelling. The subject property is located in the Borough's R-4 - High Density (1 Family) Zone. The applicant is proposing to subdivide the property into two lots. Proposed Lot 12.01 will be 3,451 SF in area and will contain one unit of the two-family dwelling (#1418) and proposed Lot 12.02 will be 4,245 SF in area and will contain the other unit of the two-family dwelling (#1420), effectively creating two single-family lots. No site improvements or alterations to the existing dwellings are proposed under this application.

2. As a result of the proposed subdivision, the applicant required relief under N.J.S.A. 40:55D-70(d) (1) to permit a duplex use in the R-4 Zone where such use is not permitted.

3. As a result of the proposed subdivision, the following variances pursuant to N.J.S.A. 40:55D-70(c) are required:

a. §410-21 Schedule of Area, Yard, and Building Requirements – Maximum Street Line

The Applicant proposes a street line of 125.33 ft. for proposed Lot 12.01 along the Fourth Street frontage whereas 60 ft. is the maximum permitted. This is an existing non-conformity and the applicant

proposes no changes to the existing setback.

b. §410-21 Schedule of Area, Yard, and Building Requirements – Maximum Building Line

The Applicant proposes a building line of 125± ft. for proposed Lot 12.01 along the Fourth Street frontage whereas 75 ft. is the maximum permitted. This is an existing non-conformity and the applicant proposes no changes to the existing setback.

c. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Front Yard

The Applicant proposes a front yard of 0.65 ft. for proposed Lot 12.01 along the Fourth Street frontage whereas 25 ft. is the minimum required. This is an existing non-conformity and the applicant proposes no changes to the existing setback.

d. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Front Yard

The Applicant proposes a front yard of 7.15 ft. for proposed Lot 12.01 along the Warren Street frontage whereas 20 ft. is the minimum required. This is an existing non-conformity and the applicant proposes no changes to the existing setback.

e. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Front Yard

The Applicant proposes a front yard of 7.13 ft. for proposed Lot 12.02 along the Warren Street frontage whereas 20 ft. is the minimum required. This is an existing non-conformity and the applicant proposes no changes to the existing setback.

f. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Side Yard (any)

The Applicant proposes a side yard of 0 ft. for proposed Lot 12.01 whereas 10 ft. is the minimum required.

g. §410-21 Schedule of Area, Yard, and Building Requirements – Minimum Side Yard (any)

The Applicant proposes a side yard of 0 ft. for proposed Lot 12.02 whereas 10 ft. is the minimum required.

4. On May 18, 2022, the applicant appeared before the Board for purposes of completeness. The applicant was represented by William Edleston, Esq.

A motion to grant the waivers as set forth in the Board Engineer's review and to deem the application complete was made by Mr. Schwar. Motion seconded by Mr. Dragotta.

Roll call: Ayes: Cartabona, Dragotta, Dalrymple, Dunwell, Fey, Fritts, Gable, and Schwar.

Nays: None. Absent: Plimpton.

5. On July 20, 2022, the matter was presented for public hearing.

The applicant had provided appropriate proof of service and publication of the notice of hearing and the Board was found to have jurisdiction to proceed.

6. Mr. Edleston introduced the application as a minor subdivision or a paper division of the existing duplex property. Due to not complying with some of the requirements in the ordinance, they are looking for several variances and setbacks. There are no new improvements. The goal is to allow Ms. Williams the ability to sell her home in the future.

7. Testimony was received from the following witnesses: Teresa Williams, applicant and

Christopher Nusser, P.E., P.P., applicant's Engineering and Planning Expert. The following exhibits were entered into evidence:

Exhibit A-1 Minor Subdivision Plat exhibit dated July 20, 2022

Exhibit B-1 Van Cleef review correspondence dated April 14, 2022

8. Ms. Williams provided sworn testimony under oath. The existing structure is a duplex on one lot. There is only one deed which provides owner as one-half interest to her and the other half interest to her brother-in-law and his wife. They have consented to the application. She would like to subdivide the property so that two deeds can then be created and she can sell her half. Ms. Williams described the property as a vinyl sided home where more of the yard is on the half owned by Ms. Williams and this had become an issue when the request to subdivide came up. Each side of the duplex has their own utilities, including sewer, water and electric. Additionally, the roof leaders do lead away from the common dividing line between the two duplexes. Ms. Williams discussed the issue of the construction of a sidewalk on the Fourth St. side of the property and indicated that none of the houses going up that road have sidewalks on that side and she didn't think it was necessary.

9. The matter was opened to the public for questions of Ms. Williams. None were received.

10. Sworn testimony under oath was received from Christopher Nusser, P.E., P.P. Mr. Nusser's credentials were reviewed by the Board and he was accepted as an expert in the fields of Engineering and Planning.

Mr. Nusser marked the first exhibit as Exhibit A-1, dated 7/20/22. It is the minor subdivision plan. It indicates where the current property lines are and where the proposed property lines will be. The Board Engineer's review correspondence dated April 14, 2022 was marked as Exhibit B-1. Mr. Nusser identified the variances as set forth above and testified that there would be an undue hardship if the ordinances were strictly applied in light of the existing duplex structure in relation to the existing property lines. Mr. Nusser stated that the only two conditions created by the subdivision are lot 12.01 for the carport to the side yard where 1.45 feet is proposed. For the shed on lot 12.02 to that same new property line, which 1.49 feet is proposed. Mr. Nusser stated that he sees no negative impacts that would affect any neighboring property.

11. As to the D-1 Use Variance relief, Mr. Nusser the use is currently a two-family dwelling, which is not permitted in the zone. The proposal is to have them continue to be attached. To conform to the current ordinance, it would require the structure to be demolished and rebuilt. This would be a great burden to the applicant. They are bringing this more in conformance with the zoning and master plan to have each dwelling unit on its own property even though they are still attached. He believes that the structure of the ownership in this case is what drives this in his view. He states

that this is a very particular circumstance and wouldn't set precedence for any future requests for the same relief since the duplex is existing.

As to the positive criteria, Mr. Nusser testified that the continuation of the use is particularly suited under the circumstances. The positive criteria is satisfied by the advancement of the following purposes under the Municipal Land Use Law:

a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;

e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;

The resulting minor subdivision puts the existing non-conforming property into closer conformance to the zone plan and zoning ordinance by placing each individual dwelling unit on its own lot and causes no further expansion or disturbance of the existing property. Given the unique circumstances where two families own two units jointly, it is in the public interest for the two units to be formally separated on their own lot to ensure the ability of each family to convey their interest to others. Mr. Nusser saw no substantial detriment to the public good, nor the zone plan and zoning ordinance, since the existing conditions are essentially unchanged and the subdivision is merely drawing a line on a map where none exists.

12. Design Waivers. As to parking issues, currently, off-street parking and a driveway access are only provided for proposed Lot 12.01. Per §410-45, off-street parking facilities shall be located on the same lot as the principal building and driveways shall be at least 8' in width. A minimum of two off-street parking spaces and a driveway at least 8' in width must be provided for proposed Lot 12.02. Driveway areas may be used for proposed parking spaces. The parking that is proposed will be an on-lot parking for 12.01. There would not be off-street parking for 12.02. There is on-street parking in front of the house. The applicant stated that they can park two cars in front of their half of the house. Mr. Nusser confirmed with the applicant that each side can provide two off-street parking spaces. Mr. Nusser stated so far as an exception is required for providing those spaces on the property, they would request that. Provided that the driveway would require removal of the shed and the addition of the additional impervious surface to that property where currently the parking needs for the property are met. In his opinion there is no detriment. By granting the relief it would help to minimize any increase in impervious coverage.

Per §346-4, applicant is required to construct sidewalk along the Fourth Street frontage

as sidewalk does not currently exist in this area. In addition, the applicant is required to evaluate the existing curb and sidewalk along the Fourth Street and Warren Street frontages and reconstruct/repair as necessary. The applicant requested a design waiver from this requirement as there is no other sidewalk on Fourth St. going north and there is no sidewalk on Warren St.

on the north side of it, to the west of Fourth St. Putting in sidewalks would cause the removal of trees and shrubs that provide screening.

13. The matter was opened to the public for questions of Mr. Nusser. None were received.

14. The matter was opened to the public for testimony, comment or the presenting of evidence in connection with the application. None were received.

15. A motion was made by Mr. Schwar to close the public hearing. Motion seconded by Mr. Seiss. Roll Call: Ayes: Dragotta, Dalrymple, Fey, Schwar, Seiss. Nays: None.

16. A motion was made by Mr. Dragotta to grant all relief subject to the conditions stated in the testimony. Motion seconded by Mr. Schwar. Roll Call: Ayes: Dragotta, Dalrymple, Fey, Schwar, Seiss. Nays: None.

Conclusions:

17. D(1) VARIANCE RELIEF

The Land Use Board finds that the applicant has met its burden of proof with respect to N.J.S.A. 40:55D-70(d)(1) to permit a use or principal structure in a district restricted against such use or principal structure. The Board has the power to grant “d(1)” variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70(1) “in particular cases and for special reasons.” This is the so-called positive criteria of a “d(1)” variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of “special reasons.” Medici v. BPR Co., 107 N.J. 1 (1987). Our courts have held that certain uses are deemed “inherently beneficial” which essentially means that, by definition, the use per se promotes the general welfare. *Id.* The benefit to the general welfare from a typical non-inherently beneficial use, however, derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed. *Id.* Thus, in a typical non-inherently beneficial use application – and the application here is a typical non-inherently beneficial use application – the standard the Board must employ to determine whether special reasons have been proven is whether the property is particularly suited for the very use proposed. *Id.* The Board may not exercise its power to grant a “d(1)” variance otherwise warranted, however, unless the so-called “negative criteria”

has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... 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.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987). As to the zone plan (the master plan) and zoning ordinance, the Medici court held that the applicant must prove and the Board must find by an “enhanced quality or proof” that there will be no substantial impairment. The applicant must “reconcile” the use proposed with the ordinance’s omission of the use from those permitted in the zone. Id.

2. The Board finds that the applicant has satisfied the positive criteria in providing supportive testimony that there are special reasons for granting the application found in the purposes of the Municipal Land Use Law. The Board agrees with the testimony of the applicant’s Planning expert, Christopher Nusser, P.E., P.P. which was uncontroverted. Specifically, the Board finds that there are special reasons for granting the relief requested in that the following purposes of the Municipal Land Use Law would be advanced by the application:

a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;

The Board finds that the general welfare will be advanced by this proposal as it provides an opportunity to formalize the ownership interests of the parties in an existing duplex structure in order that each property owner may sell their one-half interest. No formal development or disturbance will take place and the property will remain as is. While the proposed use is not permitted in the zone, no change is taking place and the property will become more conforming by having each individual dwelling unit on its own lot.

e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;

For the same reasons, by placing each individual dwelling unit on its own lot, the establish of appropriate population densities is promoted with no disturbance or development taking place.

In sum, the Board finds that the proposed use is particularly suited to this and the continuation of the existing use is compatible with the residential uses within the neighborhood.

3. The Land Use Board also finds that the applicant has met its burden by an enhanced quality of proof that the d variance will not result in a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Clearly, the lot is particularly suited to the proposed use so

long as the conditions of approval are adhered to. The Board agreed with the testimony of the applicant's witnesses and finds by an enhanced quality of proof that the intent and purpose of the zone plan and zoning ordinance would be further advanced by the granting of the variance, rather than being impaired. The Board found no detriment to the public good as the proposed use will not result in a substantial intensification of uses on site.

4. **C VARIANCE RELIEF AND DESIGN WAIVER RELIEF**

While the Board found that the required relief was in the nature of a "d(1)" variance, the applicant technically also requires relief pursuant to N.J.S.A. 40:55D-70(c) and design waiver relief. The Board finds that the c variances and design waivers should be granted for the same reasons as articulated in the standard afforded under N.J.S.A. 40:55D-70(d)(1) and are essentially subsumed therein. Moreover, the parking variances are appropriate as this is an existing condition and the need for the removal of a shed and increase in impervious coverage would be required to strictly conform.

5. The application otherwise being fully conforming to the Alpha Borough ordinances; the applicant was found to be entitled to Minor Subdivision Approval subject to conditions.

Resolution:

RESOLVED, that the Applicant is granted minor subdivision approval with the variances as set forth above subject to the following conditions:

- (a) Applicant shall comply in all respects with the April 14, 2022 correspondence of the Board's Engineer which was marked as Exhibit B-1 as clarified during the testimony.
- (b) Applicant shall provide proposed deeds and metes and bounds descriptions to the satisfaction of the Board Engineer and Board Attorney.
- (c) Applicant shall obtain any and all other necessary governmental approvals including, but not limited to, Warren County Planning Board approval, Upper Delaware Conservation District approval, Highlands Board approval and NJDOT approval if applicable.
- (d) Applicant shall maintain a sufficient balance in the escrow account pursuant to ordinance to permit the continued review of the application by the Board's professionals.

Approval of Minutes:

Motion made by Mr. Schwar to approve the regular meeting minutes of 9/21/22. Motion seconded by Mayor Dunwell. Roll Call: Ayes: Cartabona, Dragotta, Dalrymple, Dunwell, Schwar, and Seiss. Nays: None. Absent: Fey, Fritts, and Gable.

Old Business:

Mayor Dunwell stated that when Woodhill Alpha, LLC came before the board for approval the board expressed concern about the realignment of Rt. 122 and Industrial Dr. That project is not going to happen this year. He estimates they will break ground in March, 2023.

He further stated that Standard Street, LLC has amended preliminary site plan approval for 550,000 sq. ft. warehouse. They are now working on getting additional permits from NJ Transit. NJ Transit has proposed a 50-year license with five 10-year renewals. Mayor Dunwell was requested to write a letter to the governor's office, which he did last Thursday. He was on a Zoom call the following week to discuss this. The mayor will author another letter to the attorney at Transit who ran the meeting.

New Business:

The Board was presented with the Borough of Alpha Ordinance 2022-10 for a consistency review to determine if it was inconsistent with the master plan. Attorney Gruenberg stated that this is an ordinance that was introduced and approved on first reading by the Alpha Borough Council. Engineer, Tim O'Brien issued correspondence indicating that he reviewed the ordinance and the plan and determined that this is not inconsistent with the master plan.

Motion made by Mayor Dunwell to authorize the board secretary to advertise for a special meeting notice for November 9, 2022 at 6:00 PM and to cancel the regular meeting scheduled for November 9, 2022 at 7:00 PM. Motion seconded by Mr. Cartabona. Roll Call: Ayes: Cartabona, Dragotta, Dalrymple, Dunwell, and Schwar. Nays: None. Abstentions: Seiss. Absent: Fey, Fritts, and Gable.

Motion was made by Mr. Seiss to direct the board secretary to send notification to the Alpha Borough Council indicating that the board finds that Ordinance 2022-10 is not inconsistent with the master plan. Motion seconded by Mr. Schwar. Ayes: Cartabona, Dragotta, Dalrymple, Dunwell, Schwar, and Seiss. Nays: None. Absent: Fey, Fritts, and Gable.

Next Meeting: November 9, 2022 at 6 PM

Adjourn:

There being no other business on the agenda, Mr. Seiss moved to adjourn the meeting at 7:33 PM. Mr. Schwar seconded the motion. The motion carried unanimously,

Respectfully submitted,

Donna L. Messina,

Land Use Board Secretary

Approved: __/__/__