

Application #: 2023-01

Approved: 5/17/23

**RESOLUTION 2023-09
BOROUGH OF ALPHA
LAND USE BOARD
FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION
REGARDING THE APPLICATION OF
BOROUGH OF ALPHA WATER STORAGE TANK
MINOR SUBDIVISION & PRELIMINARY & FINAL SITE PLAN
WITH VARIANCE RELIEF FOR
BLOCK 100, LOT 10.02 – EDGE ROAD**

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. Dragotta, adopts the following findings of fact, conclusions and resolution:

Findings of Fact:

1. The applicant, Borough of Alpha has submitted an application seeking minor subdivision and site plan approval and variance relief for development of Block 100, Lot 10.02. The property is located within the I-Industrial Zone where an above ground water storage tank is a permitted conditional use. The proposed water storage tank meets all conditional use standards, and no relief is required pursuant to N.J.S.A. 40:55D-70(d)(3).
2. The Borough of Alpha owns and operates an existing water system within the Borough. The system includes an existing above ground storage tank located on Industrial Drive on Block 100, Lot 10.04. The system has been analyzed by Borough engineering consultants and has been found to be insufficient in providing adequate storage volume and pressure for firefighting. To address these issues the Borough is constructing a new 500,000 gallon (0.5 MG)

above ground spherical storage tank on a “new” lot to be created via subdivision from Block 100, Lot 10.02 located along the west side of Edge Road. Lot 10.02 is owned by Baramax, LLC. The proposed new lot (Lot 10.06) will be 10,000 square feet (80’ deep by 125’ of frontage) and the proposed height of the tank will be less than 150 feet above finished grade (top of foundation). The Borough Council has elected to seek approval from the Land Use Board for a Minor Subdivision and Preliminary and Final Site Plan.

3. The application as amended during the hearing process and through plan revisions sought the following relief:

A. Minor Subdivision Approval

B. Preliminary and Final Major Site Plan Approval.

C. “C” variance relief pursuant to N.J.S.A. 40:55D-70(c) from the following standards:

i. §410-28A (3) limits the height of fences to six feet. The application proposes the use of eight-foot fences. A variance is required for the use of the taller fence.

ii. Chapter 410-20. D(2)(f) of the Alpha Code requires that solar panels be set back a minimum of 75 feet from all property lines. A variance is required to establish a new property line in violation of this setback standard.

D. Design waivers are requested as follows:

i. The Grading Plan indicates a driveway slope of approximately 8.3% (calculated). §315-10B(2)(g)(1) states that driveways shall not exceed a maximum grade of 6%.

ii. The landscaping plan proposes evergreen trees along the side lot lines. The site plan ordinance (§315-10. B(2)(d)[1]) requires street trees along Edge Road.

4. On April 19, 2023, the matter was entertained for purposes of completeness.

The Borough was represented by Joseph Tauriello, Esq. The Mayor and Borough Council representative did not participate in the proceedings. A motion was made and seconded to deem the application complete with the requested waivers. Roll Call: Ayes: Mr. Castro, Mr. Dragotta, Mr. Fey, Mr. Fritts, and Mr. Seiss. Nays: None. Absent: Ms. Dalrymple.

5. The applicant, having presented the appropriate proof of service and publication of a Notice of Hearing, the Board was found to have jurisdiction to conduct the hearing.

6. The following witnesses presented evidence before the Board on behalf of the applicant: Gregory Sullivan, P.E., P.P. of Remington and Vernick.

7. The following exhibits were marked into evidence:

Exhibit A-1: Minor Subdivision Plan last revised April 19, 2023

Exhibit A-2: Tank Plans and Sections dated January 2023.

Exhibit A-3: A rendering of the tank location relative to the existing property.

Exhibit A-4: Site Clearing Plan

Exhibit A-5: Grading Plan

Exhibit B-1: Conflict Board Engineer's completeness and technical review correspondence dated April 14, 2023

8. Mr. Sullivan provided sworn testimony under oath. His credentials were reviewed and he was accepted as an expert in the fields of Engineering and Planning. Mr. Sullivan reviewed the proposed minor subdivision plan and presented Exhibit A-1 with a revision date of April 19, 2023. The proposal is to create a new lot 10.06 from existing Lot 10.02. The new proposed lot will fully conform to the Borough's ordinances.

Mr. Sullivan presented Exhibit A-2: Tank Plans and Sections. This exhibit is dated January 2023. The proposal calls for the construction of a water tank with a capacity of 500,000

gallons of water. The tank will provide increased capacity and water pressure for firefighting purposes and is the preferred method for water storage for these purposes. Mr. Sullivan presented a rendering of the tank location relative to the existing property which was marked as Exhibit A-3.

Mr. Sullivan prepared a letter dated April 19, 2023, which responded to the Board Conflict Engineer's April 14, 2023 review correspondence. Mr. Sullivan confirmed that the proposal conforms with all conditional use standards as such:

- a. Minimum lot area = 10,000 square feet. Proposed lot area = 10,000 square feet.
Complies.
- b. Maximum lot depth = 100 feet. Proposed lot depth = 80 feet. Complies.
- c. Minimum lot width at street = 100 feet. Proposed lot width = 125 feet. Complies.
- d. Minimum lot width at the building line = 100 feet. Proposed lot width = 125 feet.
Complies.
- e. Minimum front yard setback = 10 feet. Proposed front yard setback = 10 feet 7 inches.
(Measured from the outside of the spheroid). Complies.
- f. Minimum side yard setback = 10 feet. Proposed side yard setback = 29 feet 2 inches
(Measured from the outside of the spheroid). Complies.
- g. Minimum rear yard setback = 10 feet. Proposed rear yard setback = 13 feet 7 inches
(measured from the outside of the spheroid).
- h. Maximum lot coverage = 50%. Proposed lot coverage = 35.6% (calculated using the tank drip line diameter and scaled measurements of the driveway and turnaround). Complies. The applicant agreed to revise the plans to reflect this information in the zoning table.

i. Maximum structure height = 150 feet. Proposed tank height – <150 feet. Complies. The applicant will revise the plans to include the revised height.

Mr. Sullivan stated that the recommendation to elevate this tower will increase the water pressure by 19 PSI, making it more efficient in fighting fires. This increases the PSI throughout the Borough. The Industrial Drive tower will be taken offline, due to it being structurally deficient. Pursel St. tower, which is locked out, can be kept online but it is at a lower elevation. He was also able to satisfy questions from the board. Mr. Seiss had concerns about flow. Flow is not a part of this application; however, there is one connection underneath the railroad by Alpha Sub and the line we currently have is sufficient based on the hydraulic analysis done for firefighting capability in the Borough. This flow issue will be handled as a separate project apart from this application. With the water elevated, it will bring more pressure to the fire hydrants for a longer period of time.

The applicant agreed to comply with all other requested revisions as contained in B-1 with the following exceptions/clarifications:

MINOR SUBDIVISION

3. An Owner's Certification should be provided on the Minor Subdivision Plan for signature by Baramax, LLC consenting to the subdivision.

Alpha will file the minor subdivision by deed; therefore, the plan will not be modified. The engineer representing the board had a concern that there was not a visual with the deed. Mr. Sullivan stated that the applicant will supply the exhibit.

4. Land Use Board Certification should be provided on the Minor Subdivision Plan for signature by the Board Chairman and Secretary.

Alpha will file the minor subdivision by deed and therefore the plan will not be provided.

5. The Minor Subdivision Plan should be re-submitted with a NJPLS signature and seal.

□ Referring to Exhibit A-1: Mr. Sullivan stated that we have one signed and sealed copy and will provide as many as needed.

There are existing solar panels on Lot 10.02. By creating the new lot 10.06, the setback to the new property line will be less than the minimum 75 foot standard set forth in Chapter 410-20.D(2)(f) of the Alpha Code. A variance is required to establish a new property line in violation of this setback standard. A variance is requested with respect to the existing structure. Attorney Tauriello stated no new structure would be erected in violation of that. The variance is required to address the existing location of the solar panels. Proof under N.J.S.A. 40:55D-70(c)(2) was submitted. Mr. Sullivan opined that the new lot is being created and clearly promotes the public good and general welfare. The applicant does not wish to reduce or disturb the existing structure and the two uses are compatible. To impose that burden on the property owner to remove all solar panels within 75 feet would be onerous. The applicants feel they can co-exist with the tank and the solar panels. Moreover, there would be no substantial detriment to the public good and no substantial impairment to the zone plan and zoning ordinance. Exhibit A-3 has been shared with the current lot owner. It was reviewed that the tower will have no negative impact to the neighboring municipality and the single-family home, located to the south of the tower.

. As to the Site Clearing Plan, the Board finds Exhibit A-4 acceptable as a landscape plan with no additional shading required.

The Grading Plan indicates a driveway slope of approximately 8.3% (calculated). §315-10B(2)(g)(1) states that driveways shall not exceed a maximum grade of 6%. A waiver from the Design Standards is required. Referring to Exhibit A-5: Proposed condition site plan. This is a new exhibit with a revision date of 4/19/23. Based on the comments provided, the applicant

proposes flipping the driveway and the water line, the sewer line, and the fence line out of the electric company's easement. Everything has been moved to the south side of the site. The original driveway predated the easement. Attorney Tauriello confirmed that the applicant will only be using the new driveway. They are requesting a waiver for the slope. Mr. Sullivan read into the record that the anticipated amount of traffic for this site is once a week. A light pickup truck would be inspecting the tower to ensure everything is operating properly. At this time, Attorney Tauriello requested a five-minute recess. Returning from recess, Attorney Tauriello, having conferred with the other property owner, the applicant can make a representation that the existing driveway will be abandoned. There will be one driveway with the Borough placing a new gate at the end of the new driveway that will be installed for the other owner.

Mr. Sullivan next discussed the variance request pertaining to the height of the fence. §410-28A(3) limits the height of fences to six feet. The application proposes the use of eight-foot fences. Applicant is requesting an eight-foot fence to provide an added level of homeland security. It is the opinion of the applicant that it protects the safety, health, and welfare of the community. The board agrees with the request for a higher fence.

9. The hearing was opened to the public for questions of Mr. Sullivan. Mr. Peter Russell, general counsel for Bihler of America, asked to view Exhibit A-5 and to have the driveway plans reviewed again, by Mr. Sullivan.

10. The matter was opened to the public to provide testimony and/or evidence pertaining to the application. Mike Savary, Alpha NJ provided sworn testimony under oath. He stated that this water tower is long overdue and the pressure improvements will be welcomed.

11. A motion to close the public hearing was moved by Mr. Fritts. Motion seconded by Mr. Dragotta. Roll Call: Ayes: Mr. Castro, Mr. Dragotta, Mr. Fey, Mr. Fritts, and Mr. Seiss. Absent: Ms. Dalrymple.

12. A motion was moved by Mr. Dragotta to approve the above statements made by Attorney Gruenberg. Motion seconded by Mr. Seiss. Roll Call: Ayes: Mr. Castro, Mr. Dragotta, Mr. Fey, Mr. Fritts, and Mr. Seiss. Absent: Ms. Dalrymple.

Conclusions:

1. The applicant has established its entitlement to the variances as set forth above and as articulated in the plans and reports of the Board's engineer pursuant to N.J.S.A. 40:55D-70(c)(2). The applicant has established the necessary “positive” and “negative” criteria for the granting of the requested variance pursuant to N.J.S.A. 40:55D-70(c)(2). Specifically, the Board finds persuasive the testimony of the applicant's Engineer/Planner, Greg Sullivan which was uncontroverted. The Board finds that the following purposes of the Municipal Land Use Law would be advanced by granting the variance relief requested:

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;

b. To secure safety from fire, flood, panic and other natural and man-made disasters;

The applicant has provided sufficient proof of the need for an increase in firefighting capacity which will be served by the use of the water tower which is fully conforming to the Alpha Borough ordinances and is a permitted conditional use in the zone. The Board agreed with the applicant that the 8 foot height of the fence provides additional security to prevent people from attempting to gain access to this important water source and to deter people

from attempting to scale the tower. The Board likewise finds that the setback requirement for the solar panels to the lot line less than the 75 foot standard is appropriate under the unique circumstances presented as the proposed water tower use is compatible with the solar use. The applicant has proposed appropriate landscaping to mitigate and offset any detrimental effects of the variance and/or design waiver relief requested. The result is an appropriate design that promotes the zoning plan. In sum, in weighing the benefits v. any detriments, the Board finds that the benefits of granting the various variance relief requested far outweigh any detriments that might result.

2. As to the negative criteria, the Board finds that the variances can be granted without a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. In fact, by granting the variances, the applicant brings increased fire safety which is a clear benefit to the community.

3. For the foregoing reasons, the Board likewise finds that the Design Waivers are appropriate under the circumstances. The limited nature of the driveway use and sufficient existing buffering provide a sufficient basis for the granting of the design waivers under the unique circumstances presented.

4. The application otherwise being fully conforming to the Alpha Borough ordinances, the applicant was found to be entitled to minor subdivision approval, preliminary and final site plan and c variance relief subject to conditions.

Resolution:

RESOLVED, that the Applicant, BOROUGH OF ALPHA is 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 Conflict Board Engineer's Review correspondence marked Exhibit B-1 and revision of plans to his satisfaction as clarified during the testimony.

C. Applicant shall provide the Geotechnical investigation report to the satisfaction of the board engineer.

D. Applicant shall provide proof of abandonment of the existing driveway and relocation of the fire hydrant to the satisfaction of the Board Conflict Engineer and Board Attorney

E. Applicant shall relocate the proposed fire hydrant outside of the fenced area to a location satisfactory to the Board Conflict Engineer.

F. Applicant shall obtain any and all outside governmental agency approvals including but not limited to Warren County Planning Board, Warren County Soil Conservation District, Warren County Board of Health, NJ Highlands and New Jersey Department of Environmental Protection to the extent required.

G. 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.

BOROUGH OF ALPHA
LAND USE BOARD
APPLICATION # 2023-01

SECRETARY: Donna L. Messina

APPROVAL DATE: 5/17/23

BLOCK 100, LOT 10.02 – EDGE ROAD

VOTE:

Ayes: Mr. Castro, Mr. Dragotta, Mr. Fey, Mr. Fritts, and Mr. Seiss

Nays: None

I certify that this is a true copy of a resolution adopted by the Land Use Board of the Borough of Alpha, Warren County, on May 17, 2023, to memorialize the Board's action on April 19, 2023.

Donna L. Messina, Secretary

Eligible to Vote: Mr. Castro, Mr. Dragotta, Mr. Fey, Mr. Fritts, and Mr. Seiss