

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 outsized 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.

**ALPHA BOROUGH LAND USE BOARD  
APPLICATION 2022-04**

SECRETARY: Donna L. Messina

APPROVAL DATE: 10/19/22

BLOCK: 23 LOT: 8

VOTE:

Ayes: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Schwar, 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 October 19, 2022, to memorialize the Land Use Board's action on September 17, 2022.

  
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DONNA L. MESSINA, Secretary

Eligible to vote: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Schwar, and Mr. Seiss.