

**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.

ALPHA BOROUGH LAND USE BOARD  
APPLICATION WTPB #2022-02

SECRETARY: Donna L. Messina

APPROVAL DATE: 10/19/22

BLOCK: 65.01 LOT: 12

VOTE:

Ayes: Mr. Dragotta, Ms. Dalrymple, Mr. Schwar, and Mr. Seiss.

Nays: None.

**BLOCK 65.01, LOT 12**

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 July 20, 2022.



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DONNA L. MESSINA, Secretary

Eligible to Vote: Dragotta, Dalrymple, Fey, Schwar, Seiss