

**RESOLUTION  
BOROUGH OF BUTLER  
PLANNING BOARD  
IN THE MATTER OF R SQUARE REALTY, LLP  
DECIDED ON APRIL 16, 2026  
MEMORIALIZED ON MAY 21, 2026  
APPLICATION NO. 25-004  
MINOR SUBDIVISION APPROVAL  
WITH ANCILLARY “C” VARIANCE RELIEF**

**WHEREAS**, R Square Realty, LLP (hereinafter “Applicant”) has made application to the Borough of Butler Planning Board, (hereinafter “Board” or “Planning Board”), for property known and designated as Block 47, Lot 11.01, on the Tax Assessment Map of the Borough of Butler, (hereinafter “Borough”), which premises are located at 13 Spring Street, Butler, New Jersey (hereinafter “the Property” or “the subject Property”) and located in the R-4 Residential Zone District, (hereinafter “R-4 Zone”); and

**WHEREAS**, a public hearing was held on April 16, 2026 after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by Diane McGovern, Esq. with the law firm Gaccione Pomaco, P.C.

**NOW, THEREFORE**, the Planning Board makes the following findings of fact, based on evidence presented at its public hearing, at which a record was made.

The application before the Planning Board is a request for minor subdivision approval with ancillary “c” variance relief for property known and designated as Block 47, Lot 11.01 as shown on the Tax Assessment Map of the Borough of Butler, which premises are located at 13 Spring Street, Butler, New Jersey. The subject site is located in the R-4 Zone District.

### **Overview of Application**

Diane McGovern, Esq., counsel for the Applicant, provided a brief overview of the application. Ms. McGovern represented that the Applicant seeks minor subdivision approval in order to subdivide existing Lot 11.01 into two (2) lots to permit the construction of a single-family dwelling on each lot. Ms. McGovern also stated that the Applicant requires two (2) “c” variances in regard to this development application. Both variances are in regard to proposed Lot 11.03 for average lot depth where a minimum of 125 feet is required and 102.18 feet is proposed and in regard to a rear yard setback variance of 25 feet where 35 feet is required, but the variance would allow for a larger building footprint. Ms. McGovern also represented that the Applicant filed an application with the Morris County Planning Board and has received an exemption letter dated September 30, 2025. Finally, Ms. McGovern represented that if the minor subdivision application were to be approved, the Applicant would seek to perfect the minor subdivision by filing a subdivision deed.

### **Owner’s Testimony**

Testifying on behalf of the Applicant was Michael Otovic. Mr. Otovic represented that he is one of the managing members of R Square Realty, LLP. Mr. Otovic testified that they are the owners of the Property and the purpose of the minor subdivision application is to permit the construction of two (2) single-family houses. Mr. Otovic also represented that there would be one (1) single-family house located on each lot and that the houses would be comparable to other houses in the neighborhood. Mr. Otovic also represented that it was the Applicant’s intention to connect to the existing sewer, water and gas services on Spring Street.

### **Surveyor's Testimony**

Robert L. Cigol, N.J. P.L.S., a Licensed Land Surveyor in the State of New Jersey testified before the Planning Board. Mr. Cigol was accepted as an expert witness as a Land Surveyor. Mr. Cigol testified that the subject Property is located at 13 Spring Street. Mr. Cigol reviewed the bulk requirements in the R-4 Zone. Existing Lot 11.01 contains 16,340.51 square feet where a minimum lot area of 6,250 square feet is required. As a result of the proposed subdivision, proposed Lot 11.02 would have a lot area of 8,344.67 square feet and proposed Lot 11.03 would have a lot area of 7,995.84 square feet. Thus, the minimum lot areas for proposed Lots 11.02 and 11.03 exceed the minimum required lot area in the R-4 Zone. Furthermore, proposed Lot 11.02 would be fully conforming with all bulk requirements in the R-4 Zone and would be variance free. Proposed Lot 11.03 would require two (2) variances. The Applicant would require variance relief for lot depth where a minimum lot depth of 125 feet is required, and a lot depth of 102.18 feet is proposed. Furthermore, proposed Lot 11.03 would require variance relief for rear yard setback where a minimum rear yard setback of 35 feet is required and the Applicant upon the advice of the Board Engineer, has agreed to reduce the rear yard setback to 25 feet a reduction of 10 feet in order to allow for a larger building footprint, which would result in the need for a variance.

Mr. Cigol also testified in support of the granting of variance relief and stated that there is a roadway dedication to the Borough of Butler which reduces the depth of the Property and the properties in the area are all fully developed which prevents the Applicant from adding more property.

Mr. Cigol represented that based upon discussions with the Borough of Butler Tax Assessor, proposed Lot 11.02 would have a street address of 13 Spring Street and proposed Lot 11.03 would have a street address of 15 Spring Street.

**Public Portion**

The meeting was opened up to members of the public, and the Board was addressed by Christopher Pederson, a resident of 21 Spring Street. Mr. Pederson had questions in regard to whether or not the developer would sell the single-family dwellings or would retain ownership of the single-family dwellings. Mr. Otovic represented that the property owner intends to retain ownership of the single-family dwellings and will not offer them for sale. Mr. Pederson also inquired about the utilities and where they would be connected and it was represented that the sewer, water and gas would be connected to the service lines on Spring Street.

There were no members of the public present who expressed an interest in this application.

**NOW, THEREFORE**, the Planning Board hereby makes the following conclusions of law, based upon the foregoing findings of fact.

The application before the Board is a request for minor subdivision approval and ancillary “c” variance relief for property known and designated as Block 47, Lot 11.01 on the Tax Assessment Map of the Borough of Butler, and which premises are located at 13 Spring Street, Butler, New Jersey in the R-4 Zone.

The Applicant seeks minor subdivision approval with bulk variances to allow for the creation of two (2) new lots from one (1) existing lot known as Lot 11.01 in Tax Block 47. The subject Property is unimproved and located within the R-4 Zone with a conforming lot frontage of 178.21 feet along Spring Street, a municipal right-of-way from which the Property is accessible. The existing lot area is conforming at 16,340.51 square feet where a minimum of 6,250 square feet

is required in the R-4 Zone. The Applicant proposes to create one (1) subdivision line such that two (2) lots would be created from the existing lot. Proposed Lot 11.02 would contain 8,344.67 square feet and proposed Lot 11.03 would contain 7,995.84 square feet thus, the proposed lot areas would exceed the minimum required lot area in the R-4 Zone. The Board notes, however, that proposed Lot 11.03 requires two (2) variances as follows:

1. Lot depth where a minimum lot depth of 125 feet is required and 102.18 feet is proposed; and
2. Rear yard setback where a minimum of 35 feet is required and 25 feet is proposed.

#### **Ancillary “c” Variance Relief**

The Board finds that the Applicant is proposing a permitted use in the Zone but does, however require variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the Applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially

outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an Applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the Applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicant to establish these criteria.

The Board reviewed the granting of ancillary “c” variance relief under the c(2) analysis. In Kaufman v. Planning Board for Warren Borough, 110 N.J. 551, 563 (1988), the New Jersey Supreme Court held:

“By definition then no “c(2)” variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a “c(2)” case, then, will be not on the characteristics of the land that, in light of current zoning requirements, create a hardship on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

The Board, in its review of the application under the “c(2)” criteria, analyzed the proofs provided by the Applicant relative to the positive criteria under the MLUL pursuant to N.J.S.A. 40:55D-2 and its subparts. The Board finds that the intent and the purpose of the MLUL would be advanced pursuant to N.J.S.A. 40:55D-2(a) to encourage municipal action to guide the appropriate use or development of all lands in the State of New Jersey, in a manner which will promote the public health, safety, morals and general welfare. The Board further finds that purpose 2(c) is

advanced which is to provide adequate light, air and open space. The Board also determines that purpose 2(e) is satisfied by promoting the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions. The Board further finds that the Applicant has satisfied purpose 2(g) which is to provide sufficient space in appropriate locations for a variety of residential uses. The Board also finds that purpose 2(m) is satisfied because the proposed development results in more efficient use of land.

The Board finds that the proposed subdivision is consistent with the surrounding neighborhood. The Board further finds that several goals of the Butler Master Plan are advanced by the approval of this application including, but not limited to, maintaining the character of the existing residential area and maintaining the overall quality of the neighborhood. The Board also finds that the approval of this application would be reflective of the neighborhood with respect to the proposed lot sizes which are more consistent with the minimum lot area in the R-4 Zone. The Board notes that the minimum lot area in the R-4 Zone is 6,250 square feet. Here, the existing Lot 11.01 contains 16,340.51 square feet and with the proposed subdivision, proposed Lot 11.02 would contain 8,344.67 square feet and proposed Lot 11.03 would contain 7,995.84 square feet.

The Board also finds that the Applicant will be able to be serviced by public utilities inclusive of water, sewer and gas from Spring Street.

Having found that the Applicant has satisfied the positive criteria granting bulk or “c” variance relief, the Board then turns to the negative criteria. For the reasons set forth herein, the Board concludes that ancillary “c” or bulk variance relief may be granted without substantial detriment to the public good. The Board finds that “c” or bulk variance relief may be granted without a substantial adverse impact upon or detriment to the adjoining properties, nor will it cause such damage to the character of the neighborhood as to constitute substantial detriment to the public

good. The Board reaches these conclusions based on the proofs presented and the nature of the relief sought in this matter. The Board also finds that “c” or bulk variance relief may be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

Based upon all of these conclusions, the Board finds that the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements, and the benefits of any deviation substantially outweigh any detriment and, thus, ancillary “c” or bulk variance relief may be granted. The Board therefore concludes that both the positive and negative criteria were met by the Applicant and thus, the granting of ancillary “c” or bulk variance relief set forth herein is appropriate to be granted under the MLUL pursuant to N.J.S.A. 40:55D-70c(2).

### **CONCLUSION**

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has met the minimum requirements of the MLUL, case law and Borough ordinances to a sufficient degree so as to enable the Board to grant the relief being requested. The Board further finds that the granting of this application will not adversely impact or impair the use and enjoyment of adjacent properties.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Butler with regard to the application of R Square Realty, LLP for property known and designated as Block 47, Lot 11.01 on the Tax Assessment Map of the Borough of Butler, located at 13 Spring Street, Butler, New Jersey, and located in the R-4 Zone requesting land use relief is determined as follows:

- A. Minor subdivision approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47; and
- B. Ancillary “c” or bulk variance relief is granted for proposed Lot 11.03 lot depth and rear yard setback in accordance with the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2).

**IT IS FURTHER RESOLVED** that the aforementioned relief is granted subject to the following terms and conditions:

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved, as well as any further amendments required by the Planning Board or the Board's Professionals as a result of the hearing process.

2. The granting of this application is subject to and conditioned upon all of the representations and stipulations being made by or on behalf of the Applicant to the Borough of Butler Planning Board being true and accurate. The Planning Board notes that it specifically relied upon said stipulations in the Board's granting of approval. If any representation or stipulation is false, this approval is subject to revocation.

3. This approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of the public hearing on April 16, 2026.

4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in the report of the Board Engineer, Thomas A. Boorady, P.E., P.P., C.M.E., C.F.M., Engineer to the Borough of Butler Planning Board dated February 6, 2026 and as testified to during the hearing.

5. The Deed recorded memorializing this subdivision shall specifically refer to this Resolution and the Resolution shall be annexed to and recorded with the Subdivision Deed. The Subdivision Deed shall be subject to the review and approval of the Board Engineer, Borough Surveyor and Board Attorney. The Applicant shall record the subdivision deed within 190 days of the memorializing resolution being adopted. Failure to do so shall render this approval null and void unless an extension of time is granted.

6. The granting of this application is subject to and conditioned upon the Applicant obtaining confirmation from the Borough of Butler Tax Assessor regarding the lot numbers for the lots created as a result of this subdivision approval as well as the street addresses for the lots created for this subdivision.

7. The granting of this application is subject to and conditioned upon the Applicant removing any underground structures that are in existence.

8. The Applicant shall coordinate the location of the new water main and shall coordinate any new water service with Butler Water and Sewer Department.

9. The proposed Sight Triangle Easement shall explicitly prohibit any structure, growth or physical impediment that would in any manner infringe upon a free and open line of sight. The Easement shall also provide the Borough of Butler with the right to enter the easement area and to remove any impediment should the owner fail to maintain the integrity of The Sight Triangle Easement. The Sight Triangle Easement shall be subject to the review and approval of the Board Engineer, Borough Surveyor and Board Attorney prior to recording.

10. The Applicant and all successive owners agree to supply a detailed lot development plan to the Board Engineer for review and approval prior to any site work, and prior to the issuance of any permits including, but not limited to, tree removal permits, construction permits, utility permits, road opening permits.

11. The following additional conditions are required to be satisfied prior to the Butler Planning Board Chair and Board Secretary's signature of the minor subdivision deeds for recording:

- a. If required, the minor subdivision plans shall be revised as may be recommended by the Butler Planning Board, Board Engineer, Board Attorney, and Borough Surveyor.

- b. The minor subdivision plans shall be accompanied by deeds for all affected lots, including new legal descriptions for each lot and any required language reciting easements, right-of-way dedications, conservation areas, etc., for review and approval by the Board Engineer, Board Attorney and Borough Surveyor.
- c. Prior to approving the deeds for recording, the Butler Board Secretary must first receive a status report from the Borough Tax Collector and Finance Officer confirming all escrow fees and property taxes of both properties are current.
- d. The Applicant removes any soil stockpiles and equipment used for the water main project undertaken by the Borough, and the site is restored its pre-disturbed state.
- e. The remnants of the existing concrete block foundation in the rear of the property are removed.
- f. The Applicant removes the three (3) evergreen trees encroaching within the right-of-way. These trees reduce sight distances for vehicles entering and existing proposed Lot 11.03 and Lot 13.01.
- g. The Applicant removes any existing underground structures (if present) as discussed above.

12. The granting of this application is subject to and conditioned upon the property owner and all contractors being responsible for contacting the Borough Engineer for site inspections prior to and during the construction of all improvements, including but not limited to, driveways, utilities, retaining walls, curbs, seepage pits, trench drains, storm drainage and associated piping, landscaping, guide rails and fences. Adequate notice of at least three (3) business days shall be provided prior to beginning construction of these improvements. The Office of the Board Engineer will not approve improvements which have been constructed and backfilled without inspections.

13. Inspections by the Board Engineer's office shall be required during any site work, and a final site inspection by the Board Engineer's office will be necessary prior to recommendation of approval to record the minor subdivision deeds to ensure all items of construction have been completed in conformance with the approved plans.

14. The granting of this application is subject to and conditioned upon any approvals from all local, county or state agencies shall be submitted to the Borough and to the Board Engineer to ensure all utility work and septic decommissioning have been satisfactorily completed prior to the recording of the minor subdivision deeds.

15. The granting of this application is subject to and conditioned upon the Applicant's escrow account being kept current during construction and until as-built drawings and a final site inspection are completed. Stop work orders will be issued on projects that do not maintain sufficient escrow for inspections. Additional escrow may be necessary to cover the cost of reviewing revisions and to perform routine site inspections throughout the project.

16. The Applicant and all successive owners shall supply a detailed lot development plan to the office of the Board Engineer for review and approval prior to any site work being performed on the subject Property and prior to the issuance of any tree removal permits, construction permits, utility permits, road opening permits and any other required permits.

17. The granting of this application is subject to and conditioned upon Morris County Planning Board approval or a Letter of No-Interest.

18. The granting of this application is subject to and conditioned upon Morris County Soil Conservation District approval, if required.

19. The granting of this application is subject to and conditioned upon New Jersey Department of Environmental Protection approval, if required.

20. The granting of this application is subject to and conditioned upon the Borough of Butler Board of Health approval, if required.

21. The granting of this application is subject to and conditioned upon the submission of revised plans, if required, which shall be reviewed and approved by the Board Engineer. The plans

shall not be signed by the Board Secretary and Chairman until the revised plans have been reviewed and approved by the Board Engineer. An appropriate escrow shall also be established and maintained by the Applicant to cover the cost of professional review and inspection fees.

22. This approval is subject to the payment in full by the Applicant of all taxes, fees, escrows, assessments and other amounts due and owing to the Borough and/or any other agency. Any monies are to be paid by the Applicant within twenty (20) days of said request by the Board Secretary.

23. Certification that taxes are paid to date of approval.

24. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Butler, County of Morris, State of New Jersey, or any other agency having jurisdiction hereunder.

**VOTE ON APPLICATION**  
**APRIL 16, 2026**

Motion Introduced By:

Seconded By:

In Favor:

Opposed:

**VOTE TO APPROVE RESOLUTION**  
**MAY 21, 2026**

Motion Introduced By:

Motion Seconded By:

In Favor

Opposed

Butler Planning Board

\_\_\_\_\_  
William Budesheim, Board Secretary

\_\_\_\_\_  
Sal Veneziano, Chairman

The undersigned secretary certifies that the within Resolution was adopted by the Butler Planning Board on April 16, 2026 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on May 21, 2026.

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William Budesheim, Board Secretary

(5726826.1) BUTPB-025E R Square Realty, LLP Resolution Granting Minor Subdivision With Ancillary "C" Variance (App. # 25-004) 5.21.26 RB