RESOLUTION
Borough of Butler
Planning Board
In the Matter of 1579 Route 23 South Properties, L.L.C.
Amended Application Number SP 0954
Decided on January 21, 2010
Memorialized on February 18, 2010
Amended Site Plan Approval
With Variances and Design Waivers

WHEREAS, 1579 Route 23 South Properties, L.L.C. (hereinafter referred to as the "Applicant" has made an Application to the Borough of Butler Planning Board (hereinafter referred to as the "Board") for Minor Site Plan, bulk variance (front yard, rear yard) (all pre-existing, no change) & side yard variance, to permit occupancy of an existing commercial structure, in the HC-2 (Highway-Commercial District) Zone District, for property known as Block No. 204, Lot 2.01, as shown on the tax assessment map of the Borough of Butler, located at 1579 State Highway #23, Butler, New Jersey; and

WHEREAS, a public hearing was conducted on January 21, 2010, with regard to the Application; and

WHEREAS, the Applicant was represented by James LaSala, Esq.; and

WHEREAS, the Board has heard comments and testimony from the Applicant, and witnesses and with the public having had a full opportunity to be heard; and

WHEREAS, a complete Application has been filed, the fees as required by Borough Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

NOW THEREFORE, the Borough of Butler Planning Board makes the following findings of fact and conclusions of law based on evidence presented at the public hearing, of which a record was made:

1. The original Application before the Board was concluded and the Applicant had obtained the necessary permits to construct the project as approved.

2. The proposed use to build a music store and studio is a permitted use in the zone.

3. The Applicant installed a major portion of the site improvements and began making the required improvements to the remaining building.

4. The Applicant discovered that the building was not structurally sound and sought direction from the Borough's professional during this process. The entire building and foundation had to be removed for safety reasons.

5. In that the proceedings in this matter were voice recorded, the recital of facts in this Resolution is not intended to be all inclusive, but a summary and highlight of the complete record made before the Board.

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

1. The Application before the Board is a request to reaffirm the site plan approval, together with variances and waivers, for property known as Lot 2.01 of Block 204 as shown on the Tax Map of the Borough of Butler. Municipal Land Use Law, specifically N.J.S.A. 40:55D-46 provides Planning Boards with power to grant site plan approval when the Applicant satisfies certain criteria which are enunciated in the statute and ordinances. Further, the Municipal Land Use Law, specifically N.J.S.A. 40:55D-70c, provides the 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 as this lot demonstrates. The Applicant has shown evidence that exceptional or extraordinary circumstances existed, which uniquely affected this specific piece of property.

2. Upon consideration of the plans, testimony and evidence, the Board finds that it has been furnished sufficient information so as to enable it to make an informed decision with regard to amended site plan approval. Based upon the testimony and evidence presented, it would appear that the proposed land development is a permitted use in the zone, is consistent with sound planning and would enable the property to be utilized in an appropriate fashion consistent with zoning. Based upon the foregoing, the Board concludes that amended site plan approval pursuant to N.J.S.A. 40:55D-46 is appropriate as contemplated by the Municipal Land Use Law and by the ordinances of the Borough of Butler.

3. The Board hereby determines that the Applicant has satisfied the minimum requirements of the Municipal Land Use Law and Borough Ordinances so as to enable the Board to grant the variance relief (from pre-existing conditions, to new variances) and design waivers requested.

4. With regard to the negative criteria, and based upon the testimony and evidence presented, it would appear that the variances and waiver relief requested are suitable and practical given the proposed development of the subject property. Based upon the foregoing, and for the reasons set forth in this Resolution and the prior Resolution, the Board concludes that the variances and design waivers requested may be granted without substantial detriment to the public good, and without substantially impairing the intent and purpose of the zone plan and zoning ordinances of the Borough

of Butler.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Butler Planning Board that the Application of 1579 Route 23 South Properties, L.L.C. for Lot 2.01 of Block 204, as shown on the Tax Map of the Borough of Butler, requesting amended site plan approval is granted pursuant to N.J.S.A. 40:55D-46, and the request for dimensional variance and design waiver relief specifically set forth in the Application is granted pursuant to N.J.S.A. 40:55D-70c., subject to the following terms and conditions:

1. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all conditions and recommendations of the Board Engineer, Darmofalski Engineering Associates.
2. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.
3. Certificate that taxes are paid to date of approval.
4. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Butler, County of Morris, Department of Transportation approval if required, and any other State of New Jersey agency with jurisdiction and the Morris County Soil Conservation and/or any other County agency having jurisdiction.

The undersigned certifies that the within Resolution was adopted by this Board on January 21, 2010, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on February 18, 2010.

James Naylor 2/18/10

FOR: 6
AGAINST: 0
ABSTAIN: 0