

**RESOLUTION
BOROUGH OF BUTLER
PLANNING BOARD
IN THE MATTER OF TARA WEIR
DECIDED ON FEBRUARY 20, 2025
MEMORIALIZED ON APRIL 17, 2025
APPLICATION NO. 24-007
“c” VARIANCE RELIEF FOR ADDITION TO
SINGLE-FAMILY DWELLING**

WHEREAS, Tara Weir (hereinafter the “Applicant”) has filed an application with the Borough of Butler Planning Board (“Planning Board”) seeking “c” or bulk variance relief in regard to real property designated as Block 76.06, Lot 1 on the Tax Map of the Borough of Butler, and located at 18 Siek Road, Butler, New Jersey 07405 in the R-2 Residential Zone (hereinafter “R-2 Zone”); and,

WHEREAS, a public hearing was held on February 20, 2025, after the Planning Board determined it had jurisdiction; and,

WHEREAS, the Applicant was not represented by legal counsel.

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

The application before the Board is a request for ancillary “c” or bulk variance relief for an addition to an existing single-family dwelling for premises known and designated as Block 76.06, Lot 1 on the Tax Map of the Borough of Butler, and located at 18 Siek Road, Butler, New Jersey 07405 in the R-2 Zone.

Applicant’s Proofs

Testifying on behalf of the Applicant was Matthew Bilow, a licensed Architect in the State of New Jersey. Mr. Bilow was qualified as an expert witness in the field of architecture. Mr. Bilow provided an overview of the project. The Applicant introduced into evidence Exhibit A-1 consisting of five (5) sheets inclusive of a portion of the site plan as well as photographs of the subject property

with the proposed improvements superimposed thereon as well as photographs of existing single-family dwellings located on Siek Road.

Mr. Bilow represented that the Applicant seeks approval in order to construct a two-story addition along the southwesterly side of the existing dwelling. Mr. Bilow next reviewed the variances associated with this application. The Applicant requires the following variances:

Pre-Existing Non-Conformities

1. Lot area where a minimum lot area of 12,500 square feet is required, and 10,277 square feet is existing;
2. Lot depth where a minimum lot depth of 125 feet is required, and 104 feet is existing; and
3. Front yard setback where a minimum setback of 40 feet is required, and 28.6 feet is existing to Dean Avenue and 32.6 feet is existing to Siek Road.

Additional Variances Required

Variances for Proposed Addition

1. Front yard setback where a minimum setback of 40 feet is required, and 13 feet is proposed to Dean Avenue and 32.6 feet is proposed to Siek Road;
2. Back yard setback where a minimum setback of 40 feet is required, and 34.5 feet is proposed in regard to the back left corner setback and 38.8 feet is proposed in regard to the back right corner setback.

Variance for Proposed Deck

1. Front yard setback where 40 feet is required, and 30 feet is proposed to Dean Avenue.

Variance for Fence

The Applicant will relocate the existing vinyl solid fence out of the Borough's right-of-way and move it within the perimeter of the lot line. The Applicant requires variance relief for fence height where a 4-foot-high fence is permitted, and a 6-foot-high fence is existing and proposed and no more than 50% of the fence can be solid and the fence is more than 50% solid.

Variance for Shed

A shed is located 33 feet from Siek Road where a minimum setback of 40 feet is required.

Mr. Bilow testified that the existing single-family dwelling is not located within the building envelope and thus does not meet the front yard setback. Mr. Bilow reviewed Exhibit A-1, Sheets 3 and 4 which depict existing single-family dwellings similar to the Applicant's dwelling and which are located at 22 Siek Road, 42 Siek Road and 8 Siek Road. Mr. Bilow also reviewed Exhibit A-1, Sheet 2 which depicts the existing single-family dwelling with the proposed addition superimposed on the lot.

Mr. Bilow also testified that the subject Property is a corner property with frontage on both Siek Road and Dean Avenue. Mr. Bilow represented that the proposed addition is located on the left side of the house along the Dean Avenue property frontage. He represented that this was the only logical location on the site for the two-story building addition as the opposite side has a garage and an existing shed.

Property Owner's Testimony

Tara Weir testified that she and her husband are the owners of the house. She stated that they acquired title to the house in 2021. She indicated that storage is a major issue. She further represented that the proposed addition will be utilized to provide additional living space.

Public Portion

The meeting was opened up to members of the public and there were no members of the public present expressing an interest in the application.

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

The application before the Board is a request for ancillary "c" or bulk variance relief for property designated as Block 76.06, Lot 1 on the Tax Map of the Borough of Butler, and located at 18 Siek Road, Butler, New Jersey 07405 in the R-2 Residential Zone.

The Applicant seeks approval in order to construct a two-story addition to the southwesterly (left) side of the existing dwelling. The Applicant is also proposing to construct an elevated deck in the rear of the dwelling. The Applicant also seeks to relocate the existing solid fence currently located within the Borough's right-of-way to be within the property limits.

The Applicant requires the following variances:

Pre-Existing Non-Conformities

1. Lot area where a minimum lot area of 12,500 square feet is required, and 10,277 square feet is existing;
2. Lot depth where a minimum lot depth of 125 feet is required, and 104 feet is existing; and
3. Front yard setback where a minimum setback of 40 feet is required, and 28.6 feet is existing to Dean Avenue and 32.6 feet is existing to Siek Road.

Additional Variances Required

Variances for Proposed Addition

1. Front yard setback where a minimum setback of 40 feet is required, and 13 feet is proposed to Dean Avenue and 32.6 feet is proposed to Siek Road;
2. Back yard setback where a minimum setback of 40 feet is required, and 34.5 feet is proposed in regard to the back left corner setback and 38.8 feet is proposed in regard to the back right corner setback.

Variance for Proposed Deck

1. Front yard setback where 40 feet is required, and 30 feet is proposed to Dean Avenue.

Variance for Fence

The Applicant will relocate the existing vinyl solid fence out of the Borough's right-of-way and move it within the perimeter of the lot line. The Applicant requires variance relief for fence height where a 4-foot-high fence is permitted, and a 6-foot-high fence is existing and proposed and no more than 50% of the fence can be solid and the fence is more than 50% solid.

Variance for Shed

A shed is located 33 feet from Sick Road where a minimum setback of 40 feet is required.

Ancillary "c" Variance Relief

The Butler Planning Board, having reviewed the proposed application and having considered the impact of the proposed application on the Borough and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Borough of Butler, and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant may be granted bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2).

The Board finds the subject site is currently developed with a single-family dwelling which is a permitted use in the R-2 Zone and the Applicant will construct modest improvements to the existing dwelling.

The Applicant's proposal, however, requires "c" or bulk 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 be substantially detrimental to the public good and, further, it 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 finds that under N.J.S.A. 40:55D-70c(1)(c) relief may be granted by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon. The Board finds that development of this site is impacted due to the existing non-conforming lot area where a minimum lot area of 12,500 square feet is required and 10,277 feet is existing, as well as a deficiency in lot depth where a minimum depth of 125 feet is required and 104 feet is existing; and front yard setback where 28.6 feet is existing to Dean Avenue and 32.6 feet is existing to Siek Road. The Board notes that with the addition on the southwesterly (left) side of the existing dwelling, the setback to Dean Avenue will be 13 feet and the front yard setback will remain 32.6 feet to Siek Road. Notwithstanding the deficiency regarding the setback, the Board finds that the sight lines of motorists will not be impeded.

Variance relief is also required for back yard setback where 40 feet is required, and 34.5 feet is proposed at the back left corner and 38.8 feet is proposed at the back right corner. The Board finds these variances to be *de minimis*.

The Applicant also requires a front yard setback in regard to the proposed deck where a minimum of 40 feet is required, and 30 feet is proposed to Dean Avenue. The Board notes that this

is a corner property with two (2) property frontages along both Siek Road and Dean Avenue. However, the Board notes that the deck is located in the rear of the dwelling and does not extend beyond the footprint of the current dwelling and is thus, setback substantially from the end of the proposed two-story addition, thus mitigating any negative detriment for violating the front yard setback to Dean Avenue.

The Applicant requires variance relief in regard to the height of the solid fence where a 4-foot-high fence is permitted, and a 6-foot-high fence is proposed and no more than 50% of the fence can be solid and the Applicant is proposing a fence which is solid. The Board notes that the Applicant will relocate the existing fence out of the Borough right-of-way and move it within the perimeter of the lot line. The Board also has reviewed Exhibit A-1, Sheet 3 which depicts single-family residences at 22 Siek Road and 42 Siek Road. These photographs depict single family homes located on corner properties with a fence height greater than 4 feet. Thus, the Board finds that it is appropriate to grant a fence height at 6 feet for security and privacy reasons which is not out of character in this area.

The Applicant also requires a variance for the shed which is located 33 feet from Siek Road where a minimum of 40 feet is required. The shed is located in the front yard and does not comply with the 40-foot setback from Siek Road. The Board notes that the shed is existing and once again the property has frontage on two (2) streets Siek Road and Dean Avenue. The Board finds that the location of the shed does not impede the sight lines of motorists along Siek Road.

The Board also determines that the floor plan for the existing single-family dwelling does not lend itself to constructing an addition in either the rear or the right side of the dwelling. The Board further notes that the right side of the property has a shed located thereon along with a garage and thus, the proposed addition could not be located on that side of the dwelling. The Board finds that the proposed location of the addition is the only appropriate location for it to be constructed.

The Board finds that the existing non-conforming conditions are not being aggravated or exacerbated in any meaningful way as a result of the proposed improvements to the single-family dwelling. The Board does find that under N.J.S.A. 40:55D-70c(1)(c) that relief may be granted due to the extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon as identified herein. The Board therefore finds that these existing conditions are to a large degree the result of the undersized nature of the lot inclusive of deficiencies in lot area and lot frontage.

The Board has also examined the request for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2). In Kaufman v. Planning Board for Warren Township, 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 finds that the Applicant has satisfied the positive criteria. The Board finds that the Applicant has satisfied the purposes of the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2a because the approval of this application guides the appropriate use or development of land in this State in a manner which promotes the public health, safety, morals and general welfare. Secondly, N.J.S.A. 40:55D-2(g) is satisfied because the approval of this application provides sufficient space in appropriate locations for residential uses and continues to provide open space. Thirdly, N.J.S.A. 40:55D-2(m) is satisfied because the approval of this application results in more efficient use of land.

In addition, the Board finds that the goals of the Borough of Butler Master Plan were met, and the approval of this application will preserve the residential character of the R-2 Zone and will enable

the Applicant to significantly upgrade an existing residential dwelling which results in responsible development or smart growth which is a further goal in the Borough Master Plan. Therefore, the Board determines that the Applicant has satisfied the positive criteria in regard to the granting of ancillary "c" variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55d-70c(2).

The Board finds that the approval of this application with the proposed improvements will modernize the dwelling, which enables the dwelling to reach its full development potential. Also, the aesthetics of the area will be enhanced by the aesthetics of the improved dwelling. All of the improvements will provide more functional living space, thus making the dwelling more habitable, while not resulting in the size of the house being too large so as to be out of character with the other houses in the area.

Next, as to the negative criteria, the Board finds that the improvements will not interfere with the provision of adequate light and air between residential properties. The Board finds that the proposed improvements will not aggravate or exacerbate in any meaningful way those existing non-conformities as referenced herein. The Board further finds that the request for variance relief is not out of character for the area.

The Board finds that the Applicant has satisfied the negative criteria in that the approval of this application can be granted without substantial detriment to the public good. Furthermore, ancillary "c" or bulk variance relief can be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The Board concludes that the use of the property as a single-family dwelling is a permitted use in the R-2 Zone. The Board finds that the approval of this application is consistent with the Borough of Butler Master Plan goals as set forth herein. The Board thus finds that the purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-70c(2) would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. The Board, therefore, finds that the negative criteria has

also been satisfied in that it is appropriate to grant ancillary "c" or bulk variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2).

Upon consideration of the plans, testimony and application, the Planning Board determines that the request for ancillary "c" variance relief for improvements to an existing single-family dwelling meets the minimum requirements of the Municipal Land Use Law, Case Law and Borough Ordinances to a sufficient degree so as to enable the Board to grant the relief being requested.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board that the application of Tara Weir in regard to property designated as Block 76.06, Lot 1 on the Tax Map of the Borough of Butler, located at 18 Siek Road, Butler, New Jersey 07405 in the R-2 Zone, and bearing application no. 24-007, requesting land use relief is determined as follows:

- (1) Ancillary "c" variance relief is granted under the MLUL pursuant to N.J.S.A. 40:55D-70c(1) and (2) for lot area, lot depth, front yard setback, backyard setback, front yard setback for deck, front yard setback for shed, fence height and fence more than 50% solid.

IT IS FURTHER RESOLVED that the application is granted subject to the following terms and conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application.
2. The Applicant represents that all representations and stipulations made either by or on behalf of the Applicant to the Borough of Butler Planning Board are true and accurate and acknowledges that the Planning Board specifically relied upon the Applicant's stipulations in the Board's granting of this 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 February 20, 2025.

4. The Applicant shall comply with all terms and conditions set forth in the Board Engineer's review report prepared by Thomas A. Boorady, P.E., P.P., C.M.E., C.F.M., dated November 25, 2024.

5. The granting of this application is subject to and conditioned upon the submission of revised plans if required by the Board Professionals and/or the Butler Planning Board during the public hearing prior to the signature of the plans by the Board Chair, Secretary and Engineer.

6. The granting of this application is subject to and conditioned upon the proposed location, dimensions and setback dimensions of all proposed improvements which shall not be revised from what has been requested, approved and memorialized. When constructing foundations, walls, posts/columns, stairs, decking, HVAC units, etc., the thickness of all materials, including finished materials, shall be considered to ensure the as-built setbacks will be no less than the setback dimensions approved by the Board. Setback dimensions are measured to the outer exposed surface of all finished materials façade treatments such as cultured stone on foundations.

7. The granting of this application is subject to and conditioned upon the Applicant obtaining plan certification from the Morris County Soil Conservation District prior to any site disturbance and prior to being issued building permits, if required.

8. The granting of this application is subject to and conditioned upon the Applicant opening and maintaining an escrow account with the Borough of Butler and keeping the account current with sufficient funds for professional inspection and review fees.

9. The granting of this application is subject to and conditioned upon the Applicant submitting four (4) copies of an As-Built Survey prepared by a licensed professional land surveyor to show all work was constructed according to the approved plans. The As-Built Survey shall be submitted to the Borough Engineer for review and approval. No Certificate of Occupancy will be

recommended unless such documentation is submitted for review and approval by the Board Engineer.

10. The granting of this application is subject to and conditioned upon the Applicant contacting the Board Engineer's office for inspections on site work, such as including stormwater management facilities, to ensure their installation is in accordance with the approved plans.

11. The Applicant shall relocate the fence out of the Borough's right-of-way.

12. The Applicant shall submit to the Board Engineer the necessary calculations and the necessary facilities to address stormwater management which shall be subject to the review and approval of the Board Engineer.

13. The granting of this application is subject to and conditioned upon the Applicant obtaining all necessary permits prior to starting any work in accordance with this approval.

14. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of request by the Board's Secretary.

15. Certificate that taxes are paid to date of approval.

16. 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 jurisdiction.

This application was approved by the Borough of Butler Planning Board at a duly constituted public meeting held on February 20, 2025, by a vote of 7 to 0 in favor of approval.

APPROVAL OF APPLICATION
FEBRUARY 20, 2025

Motion Introduced By: Mayor Martinez

Motion Seconded By: Reger

In Favor: Chairman Veneziano, Vice-Chairman Brown, Mayor Martinez, Piccirillo, Vath, Hough and Reger

Opposed: None

MEMORIALIZATION OF RESOLUTION
APRIL 17, 2025

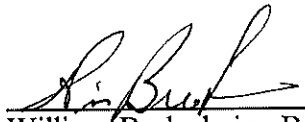
Motion Introduced By:

Motion Seconded By:

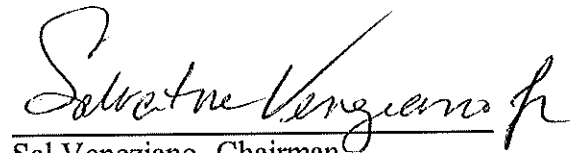
In Favor:

Opposed:

Butler Planning Board

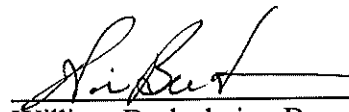


William Budesheim, Board Secretary



Sal Veneziano, Chairman

The undersigned secretary certifies that the within Resolution was adopted by the Butler Planning Board on February 20, 2025 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on March 20, 2025.



William Budesheim, Board Secretary