

**RESOLUTION
BOROUGH OF BUTLER
PLANNING BOARD
IN THE MATTER OF JONATHAN AND MARY SWITAJ
DECIDED ON JANUARY 16, 2025
MEMORIALIZED ON FEBRUARY 20, 2025
APPLICATION NO. 24-010
APPROVAL OF IN-GROUND SWIMMING POOL
WITH ANCILLARY “c” VARIANCE RELIEF**

WHEREAS, Jonathan and Mary Switaj (hereinafter the “Applicants”) have filed an application with the Borough of Butler Planning Board (“Board” or “Planning Board”) for property known and designated as Block 38, Lot 1.02 on the Tax Assessment Map of the Borough of Butler (hereinafter “Borough”), which premises are located at 24 Cedar Street, Butler, New Jersey 07405 and located in the R-3 Residential Zone District (hereinafter “R-3 Zone”); and,

WHEREAS, a public hearing was held on January 16, 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” variance relief in regard to the height of a retaining wall related to the Applicant seeking approval to construct an in-ground swimming pool for property known and designated as Block 38, Lot 1.02 as shown on the Tax Assessment Map of the Borough of Butler, which premises are located at 24 Cedar Street, Butler, New Jersey. The subject site is located in the R-3 Zone District.

Applicant’s Testimony

Testifying on behalf of the Applicant was Jonathan Switaj. Mr. Switaj confirmed that he and his wife are the owners of the single-family house located at 24 Cedar Street, Butler, New Jersey. Mr. Switaj represented that he and his wife are seeking approval to install an in-ground swimming pool.

The Applicant also proposes to expand the rear yard which can be accomplished by installing a retaining wall and providing fill in order increase the rear yard area. Mr. Switaj also stated that the expansion of the rear yard would enable the Applicant to provide an additional grass area behind the in-ground pool for recreation purposes for his family. Mr. Switaj testified that there is an existing retaining wall that will not be removed. The proposed retaining wall will have a height of 16 feet and will be approximately 60 feet wide. If approved by the Planning Board, the Applicants will be able to expand their rear yard by approximately 1,200 square feet with the addition of the retaining wall.

Mr. Switaj agreed to comply with the conditions contained in the Board Engineer's review report dated November 7, 2024 and confirmed that he would comply with the Borough of Butler Tree Removal Ordinance and that the Applicant would tie in the roof leaders to the proposed stormwater infiltration system by draining into the Cultec chambers.

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 Planning Board hereby makes the following conclusions of law, based on the foregoing findings of fact.

The application before the Board seeks approval to construct an in-ground swimming pool and ancillary "c" variance relief in regard to the height of a retaining wall for a property known and designated as Block 38, Lot 1.02 on the Tax Assessment Map of the Borough of Butler, and which premises are located at 24 Cedar Street, Butler, New Jersey in the R-3 Zone.

The Applicant seeks approval in order to construct an approximately 16 foot by 32 foot in-ground pool with an irregular stepping stone patio and an approximately 16 foot tall retaining wall. The proposed retaining wall will expand the flat rear yard area by approximately 1,200 square feet.

Ancillary "c" Variance Relief

The Applicant also requires ancillary “c” variance relief in regard to the height of the proposed retaining wall where a maximum height of 6 feet is permitted pursuant to Borough Code Section 143-141 and the Applicant is proposing a retaining wall 16 feet in height.

The Board finds that the Applicant is proposing a permitted use in the Zone but does, however, require variance relief.

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)(b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation would result in peculiar and exceptional practical difficulties to where exceptional and undue hardship upon the developer of such property thereby enabling the Planning Board to grant variance relief from such strict application of such regulations so as to relief such difficulties or hardship. The Board reaches these conclusions because the topographic conditions from the rear of the lot result in a significant drop off from the downstream properties located on Poplar Street and Scott Street. The Board finds that by permitting the Applicant to construct the 16 foot high retaining wall, the Applicant will be able to increase the rear yard area by approximately 1,200 square feet making the rear yard more functional and increasing recreation space on the property. The Board notes that the location of the house on the lot also dictates the area of the lot in the rear yard where an in-ground pool can be constructed.

Having found that the Applicant has satisfied the positive criteria granting bulk or “c” variance relief, the Board next 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 to the neighborhood as to constitute substantial detriment to the public good. The Board finds that the Applicant is proposing stormwater management measures including a stormwater infiltration system (i.e. Cultec chambers) that will benefit the Applicant and downstream property

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 Jonathan and Mary Switaj for property known and designated as Block 38, Lot 1.02 on the Tax Assessment Map of the Borough of Butler, located at 24 Cedar Street, Butler, New Jersey and located in the R-3 Zone requesting land use relief is determined as follows:

- (1) Ancillary “c” or bulk variance relief is granted in accordance with the MLUL pursuant to N.J.S.A. 40:55D-70c(1) in regard to the height of a retaining wall at 16 feet along with a pool/pedestrian safety fence along the top of the retaining wall up to a maximum height of 6 feet for a total height of 22 feet.

IT IS FURTHER RESOLVED that the aforementioned relief 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 Applicants’ 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 January 16, 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 7, 2024.
5. The Applicant shall comply with the Borough of Butler Tree Removal Ordinance.

6. The Applicant's engineer shall provide stormwater retention onsite to the maximum extent feasible the nature and sufficiency of which shall be subject to the review and approval of the Borough engineer.

7. The Applicant's engineer shall provide construction details to the Borough engineer for the proposed stormwater infiltration system (i.e., Cultec chambers). Further, provisions shall be made for inspections, overflow and separation between the excavation and native soil which are subject to the approval of the Borough engineer.

8. The Applicant's engineer shall provide to the Borough engineer calculations to substantiate any proposed rip-rap pads and swales in accordance with the New Jersey Soil Erosion Standards.

9. The Applicant's engineer shall prepare and submit to the Borough engineer a construction sequence for the proposed work that takes into consideration the location of the existing retaining wall.

10. The Applicant's engineer shall prepare an inspection and testing regime for the proposed retaining wall and submit same to the Borough engineer for review and approval prior to the commencement of construction.

11. The Applicant's contractor shall provide a source for the controlled fill for review and approval by the Borough engineer and retaining wall engineer prior to the importation of the fill to the site.

12. The Applicant shall construct the retaining wall utilizing Versa-Lok 18 inch by 8 inch modular blocks as depicted on the plans submitted with the application or an approved equal as determined by the Board Engineer.

13. The Applicant shall provide rounded corners in regard to the proposed retaining wall.

14. There shall be no clearing or site work prior to obtaining all other approvals that may be necessary, including, but not limited to, issuance of construction permits.

15. The limit of disturbance shall be adhered to by the Applicant, owner and all contractors. There shall be no temporary or permanent disturbance beyond the limits shown on the approved plans.

16. There shall be no field changes deviating from the approved site plan which would cause wall construction above or beyond the limits of any walls shown on the approved plans.

17. There shall be no changes to the approved plans, including site plans, pool size and location, accessory structure locations, contours, spot elevations, stormwater management facilities, etc. If field conditions necessitate deviations from the approved plans, then all work shall stop until revised plans can be prepared by the owners' professionals and submitted to Borough engineer and building department for review and approval prior to constructing any modifications.

18. The Applicant shall provide documentation showing any imported materials consisting of topsoil, earth, rock, gravel, quarry process or sand obtained solely from virgin sources. The Applicant and all contractors retained by the Applicant shall agree to provide written documentation for any and all imported fill originated from virgin sources. Further, the use of recycled asphalt pavement (RAP) commonly known as "millings" and the use of recycled concrete products (RCA) are prohibited.

19. Homeowners and contractors are responsible for contacting the Borough engineer for site inspections prior to and during the construction of all improvements, including but not limited to: retaining walls, curbs, seepage pits, trench drains, storm drainage and associated piping, landscaping, guide rails, fence, etc. Adequate notice of at least three business days shall be provided prior to beginning construction of these improvements. The Borough engineer will not approve improvements which have been constructed and backfilled without inspections.

20. The Applicant shall submit to the Borough engineer an as-built topographic survey prepared by a licensed professional land surveyor and a final inspection by the construction official and Borough engineer will be necessary prior to issuance of a certificate of occupancy to ensure all items of construction are in conformance with the approved plans. The as-built survey shall provide the location of all aboveground and below ground improvements, including septic system, wells, drainage structures, and utilities.

21. 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.

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

23. 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.

VOTE ON APPLICATION
JANUARY 16, 2025

Motion Introduced By: Brown

Motion Seconded By: Finelli

In Favor: Roche, Hammaker, Brown Finelli, Hough, Reger, Veneziano, Vath, Piccirillo

Opposed: None

VOTE TO APPROVE THE RESOLUTION
FEBRUARY 20, 2025


Motion Introduced By: VATH

Motion Seconded By: PICCIRILLO


In Favor: BROWN, VATH, HOUGH, REGER, PICCIRILLO, VENEZIANO

Opposed: NONE

Butler Planning Board




William Budesheim, Board Secretary



Sal Veneziano, Chairman

The undersigned secretary certifies that the within Resolution was adopted by the Borough of Butler Planning Board on January 16, 2025 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on February 20, 2025.



William Budesheim, Board Secretary

(5208229.1) BUTPB-014E Jonathan and Mary Switaj Resolution Granting Approval of in-Ground Swimming Pool with Ancillary c Variance Relief 2.20.25