

**RESOLUTION
BOROUGH OF BUTLER
PLANNING BOARD
IN THE MATTER OF JOSEPH LAPLACA
DECIDED ON JUNE 19, 2025
MEMORIALIZED ON JULY 17, 2025
APPLICATION NO. 24-008
DENIAL OF d(1) USE VARIANCE AND
ANCILLARY “c” VARIANCE TO CONSTRUCT A
TWO-FAMILY DWELLING**

WHEREAS, Joseph LaPlaca (hereinafter the “Applicant”) has made application to the Borough of Butler Planning Board (hereinafter “Board” or “Planning Board”) seeking a use variance pursuant to N.J.S.A. 40:55D-70d(1), as well as ancillary “c” variance relief pursuant to N.J.S.A. 40:55D-70c for property known and designated as Block 25, Lot 38 as shown on the Tax Assessment Map of the Borough of Butler and located at 84 Arch Street, Butler, New Jersey (hereinafter the “Property”) in the R-4 Residence Zone District (hereinafter “R-4 Zone”); and

WHEREAS, a public hearing was held on May 15, 2025 and June 19, 2025, after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Lindsay Jannel, Esq.

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 a use variance pursuant to N.J.S.A. 40:55D-70d(1) as well as ancillary “c” variance relief for property known and designated as Block 25, Lot 38 as shown on the Tax Assessment Map of the Borough of Butler and located at 84 Arch Street, Butler, New Jersey in the R-4 Zone.

May 5, 2025 Hearing

Overview of Application

Lindsay Jannel, Esq., attorney for the Applicant, provided an overview of the application. Ms. Jannel represented that the Applicant is seeking d(1) use variance approval in order to construct a two-family dwelling (duplex) on the Property. Ms. Jannel further represented that the Applicant also requires ancillary "c" variance relief because the Applicant is not proposing to construct an attached or detached garage in conjunction with the proposed two-family dwelling.

Owner's Testimony

Testifying on behalf of the Applicant was Joseph LaPlaca. Mr. LaPlaca testified that he owns several other investment properties. He characterized the Property as being unimproved. Mr. LaPlaca stated that he owns property located at 88 Arch Street. He stated that it is his intention to construct a two-family dwelling on the Property as well as to construct another two-family dwelling on the adjoining property (86 Arch Street, Block 25, Lot 37 which is also unimproved). Mr. LaPlaca testified that he intends to retain both houses and to rent them out. He also represented that this project is for his retirement.

Engineering Testimony

Jeffrey Houser, P.E., a licensed Professional Engineer in the State of New Jersey testified in support of the application. Mr. Houser confirmed that the Property is located in the R-4 Zone District. He stated the lot measures 7,500 square feet in lot area. Mr. Houser testified that the Applicant seeks approval in order to construct a two-family dwelling on the subject Property. He confirmed that the Applicant is proposing a building with a footprint of 30 feet by 44 feet deep. Each dwelling unit will be side by side. Mr. Houser also represented that each dwelling unit would have a small deck at the rear of each unit. He further represented that each unit will have its own driveway providing access to the dwelling unit.

Mr. Houser testified that the dwelling units will be serviced by public water, sewer and gas. He also indicated that there are overhead electric poles to provide electric service and then the Applicant would run electric underground to the dwelling units.

Mr. Houser also confirmed that the Applicant is proposing two (2) new depressed curbs along with driveway aprons.

Mr. Houser testified that the Applicant would comply with all setback requirements in the R-4 zone. He also confirmed that the Applicant would conform to the maximum building height requirements in the zone.

Mr. Houser also stated that the Applicant is not proposing any accessory structures on the Property. Mr. Houser also testified that the Applicant is proposing two (2) tandem parking spaces per unit. Mr. Houser confirmed that the bumpers from the cars that are parked in tandem would not extend over the property line. He also confirmed that the distance from the parking lot to the property line would be 38 feet. Mr. Houser confirmed that by providing two (2) parking spaces per dwelling unit, the Applicant is in compliance with the Residential Site Improvement Standards ("RSIS") requirements. Mr. Houser addressed the issue of not providing a garage on-site as is required by Ordinance and stated it would be a tight fit on a narrow lot to add a garage. Mr. Houser also testified that approximately one-fourth of the homes in the area have a garage.

Mr. Houser also represented that the Applicant would provide foundation plantings and would comply with the New Jersey Department of Environmental Protection ("NJDEP") tree replacement requirements.

Planning Testimony

Jessica C. Caldwell, P.P., A.I.C.P., a licensed Professional Planner in the State of New Jersey, provided planning testimony in support of the granting of this application. Ms. Caldwell prepared a report dated October 28, 2024. Ms. Caldwell reviewed her report and identified eight (8) properties which she characterized as being multi-family. Some of the dwelling units were located within 200 feet of the property. Others were located within 500 feet of the property and others were located beyond the 500-foot radius.

Ms. Caldwell next presented the planning proofs in regard to the request for d(1) use variance approval. Ms. Caldwell represented that townhouses are permitted in the R-4 Zone. Furthermore, she represented that the proposed use of the property as a two-family dwelling is suitable for the property. More specifically, Ms. Caldwell stated that under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2, purpose 2(a) would be advanced because the Applicant meets all bulk standards to construct a two-family dwelling within the R-4 Zone. She contends that the Applicant is providing sufficient on-site parking for the two (2) two-family dwelling. In addition, she stated there is open space in the rear yard.

Next, Ms. Caldwell testified that purpose 2(e) would be advanced because the zone allows for townhouses, thus permitting a similar use to a two-family. She further represented that the proposed two-family dwelling will provide additional housing options, thus, providing a variety of residential uses. Ms. Caldwell also stated that purpose 2(g) would be advanced by permitting a two-family dwelling because it would fit in well with the existing neighborhood due to the existence of other multi-family dwellings in the neighborhood. Ms. Caldwell also represented that purpose 2(m) would be advanced by allowing for the efficient use of an existing site and lessening the cost of site development.

Ms. Caldwell also testified that the approval of this application would not be substantially detrimental to the public good. The proposed two-family dwelling would blend in with the neighborhood and is essentially two (2) single-family dwellings attached side by side.

Ms. Caldwell also testified that she reviewed the 2015 Borough of Butler Master Plan, and she found that the approval of this application would conform to the requirements of the Master Plan by preserving and protecting the overall character of the area, respecting environmental features as well as providing for the proper distribution of land uses.

Ms. Caldwell also testified that despite not providing a garage, the Applicant meets the intent of the Ordinance by providing on-site parking. She also indicated that the Applicant is proposing a basement which could be used for storage purposes. As a result, she stated that the Applicant does not need to construct accessory structure sheds because items can be stored in the basement.

Ms. Caldwell also testified that other homes in the area have driveways on each side of the dwelling unit. Ms. Caldwell therefore concluded that ancillary "c" variance relief can be granted with respect to the Applicant not providing a garage under the "c(2)" criteria based upon the benefits of granting variance relief outweighing the detriments.

The Board Engineer Thomas Boorady, P.E., stated that two-family dwellings are a permitted use in the R-5 Zone District but there is a minimum lot area requirement in the R-5 Zone for a two-family dwelling at 9,375 square feet.

Ms. Caldwell represented that the Property is located a distance of approximately 800 feet from Main Street. She characterized the community as being "tight-knit" and she further represented that the approval of this application would result in economic development.

Builder's Testimony

Vincent Lanza testified that he is a licensed builder and has been so since 1979. He represented that the Applicant proposes to construct a duplex modular home. The Applicant intends to construct a basement with an 8-foot ceiling height. He stated that the basement would be segregated and that each dwelling unit would have access to the basement for storage purposes. Mr. Lanza also confirmed that each unit would contain 1,320 square feet.

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 this application.

June 19, 2025 Hearing

Jeffrey Houser, P.E. continued his testimony before the Planning Board. Mr. Houser testified that the Applicant retained a wetlands professional who performed an assessment of the Property and determined that there are no wetlands on the subject Property. Mr. Houser also testified that the Applicant has made modifications to the stormwater management system thereby increasing capacity for the system.

Mr. Houser represented that the Applicant has increased the side yard setbacks from 10 feet to 10.2 feet. He further represented that a covered front porch had been added on the architectural plans.

Mr. Houser also confirmed that no shed is proposed, and no garage is proposed for development on the site. Mr. Houser testified that the Applicant is proposing a common stairway into the basement level and that each tenant would have its own separate storage area in the basement. He also confirmed that the air conditioning units would be elevated off the ground and would be located on the side of each dwelling unit.

The Board and the Applicant's Engineer engaged in a colloquy in regard to the lack of providing a garage on the Property. The Applicant's professionals admitted that the Applicant

could construct a single-family dwelling on the Property inclusive of a garage and would not need variance relief.

Continuation of Planning Testimony

Jessica C. Caldwell, P.P., A.I.C.P., continued her testimony before the Board. She characterized the Property as being a unique piece of property with the Pequannock River being located behind the lot. Thus, she represented that there would be open space behind the lot due to the existence of the River.

She confirmed that the Applicant is proposing two (2) driveways one (1) for each dwelling unit and that the Applicant is able to provide parking to comply with the RSIS.

Ms. Caldwell reiterated her testimony that the subject Property is located within 700 to 800 feet of Main Street which is a benefit to the businesses on Main Street to have more people available to support the local business district.

Ms. Caldwell testified in support of the request for variance relief for not providing a garage. She stated that the two (2) purposes for constructing a garage would be for parking a car and for storage purposes. She stated that the Applicant satisfies both purposes by providing a basement for storage and being able to park two (2) cars in the driveway.

Ms. Caldwell represented that the Applicant was not seeking d(1) use variance approval based upon the Applicant providing an inherently beneficial use nor based upon hardship, but rather the Applicant is proceeding under the special reasons standard that the site is particularly suitable for the proposed use.

Furthermore, in response to questions from the Board Attorney, the Applicant's Planner admitted that a review of Section 143-117 Schedule C and Section 143-118 of the Borough of Butler Code Schedule D confirms that in the R-4 Zone single-family dwellings are a permitted use

but that townhouses are not permitted in the R-4 Zone. Townhouses are only permitted in the R-2 and R-3 Zone Districts.

In response to a question from the Board Attorney, the Applicant's Planner agreed that the R-5 Zone permits two family dwellings but with a minimum lot area of 9,375 square feet which is almost 2,000 square feet larger than the subject Property which is 7,500 square feet in area.

Ms. Caldwell also agreed that Butler Borough Code Section 143-142 requires all new construction of single-family and two-family houses to have a garage, but nevertheless, the Applicant is seeking "c(2)" variance relief for not providing a garage.

The Builder Continues His Testimony

Vincent Lanza continued his testimony before the Board and confirmed that the Applicant prefers to construct a duplex as opposed to a single-family dwelling. He also stated that there are several houses in the area that do not have garages. He confirmed that the Applicant would be able to provide two (2) parking spaces on-site for each dwelling unit. He also admitted that he suggested that a duplex be constructed.

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 this application.

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

The application before the Board is a request for a use variance pursuant to N.J.S.A. 40:55D-70d(1) and for ancillary "c" variance relief pursuant to N.J.S.A. 40:55D-70c for property known and designated as Block 25, Lot 38 as shown on the Tax Assessment Map of the Borough of Butler and located at 84 Arch Street, Butler, New Jersey in the R-4 Zone.

The Board finds that the Property is a conforming lot with a lot area of 7,500 square feet and a lot depth of 150 feet where the minimum lot area in the R-4 Zone is 6,250 square feet and a lot depth of 125 feet is required in the R-4 Zone respectively. The Property is currently improved with a part of a shed which will be removed. The Applicant seeks approval to construct a two-family dwelling on the Property where two-family homes are not permitted in the R-4 Zone. Therefore, the proposed two-family dwelling requires a d(1) use variance for a use or principal structure in a district where such use or principal structure is not permitted.

The proposed building has a footprint of 30 feet by 44 feet with two (2) approximately 12 feet by 10 feet decks in the rear. The building is divided into two (2) units with each unit measuring approximately 1,300 square feet in area. The Applicant is proposing to construct two (2) dwelling units in a duplex configuration. Each unit is proposed to have three (3) bedrooms. Further, each unit is approximately 15 feet wide with a combined living/dining room, kitchen, bathroom and bedroom on the first floor and two (2) bedrooms with an on-suite bathroom on the second floor. The Applicant is also proposing a segregated basement for use by each tenant. The Applicant further requires ancillary “c” variance relief from Borough Code Section 143-142 wherein a garage with a driveway connecting it to the adjacent street is required for new single-family or two-family dwellings. In this application, no garage is proposed for either unit thus requiring ancillary “c” variance relief.

d(1) Use Variance Relief

The Applicant requires variance relief under the MLUL pursuant to N.J.S.A. 40:55D-70d(1) in order to permit the construction of a two-family dwelling in a duplex configuration.

Under the MLUL, a Board of Adjustment¹, when considering a “d” variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment of the intent

¹ The Planning Board of the Borough of Butler is a Unified Board and, in this matter, exercised the jurisdiction of a Zoning Board of Adjustment.

and purpose of the zone scheme and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criterion upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest as distinguished from the purely private interests of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such an effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

The Board has reviewed the application for “d(1)” variance relief under the Municipal Land Use Law, and in particular, N.J.S.A. 40:55D-2 the purposes of the Act. Under the Municipal Land Use Law and the cases interpreting same, there are three recognized categories of circumstances in which the special reasons required for a use variance may be found:

- (a) Where the proposed use inherently serves the public good, such as a school, hospital or public housing facility;
- (b) Where the property owner would suffer undue hardship if compelled to use the property in conformity with the permitted uses in the zone; and
- (c) Where the use would serve the general welfare because the proposed site is particularly suitable for the proposed use.

The Board accepts the representations of the Applicant’s Planner that the Applicant did not prosecute this land development application as an inherently beneficial use or that there is any kind of hardship, but rather the Applicant was proceeding under the particular suitability standard and must establish special reasons.

The New Jersey Supreme Court in Price v. Himeji, 214 N.J. 263 (2013) clarified the meaning and intent of the particularly suitable standard under N.J.S.A. 40:55D-70d(1). In Price, the court held “although the availability of alternative locations is relevant to the analysis, demonstrating that a property is particularly suitable for a use does not require proof that there is no other potential location for the use nor does it demand evidence that the project must be built in a particular location, rather, it is an inquiry into whether the property is particularly suited for the proposed purpose, in the sense that it is especially well-suited for the use, in spite of the fact that the use is not permitted in the Zone.” In addition, in Northeast Towers Inc. v. Zoning Board of Adjustment of the Borough of West Paterson, 327 N.J. Super. 476, 497 (App. Div. 2000), the court held: “The concept expressed in Kohl as to the peculiar suitability of the location requires, however, that the use fits well within the surrounding area . . .” The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The

courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the Applicants, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the Applicants can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the Applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the Applicants to establish the above criteria.

The Board finds that the Applicant has failed to satisfy the positive criteria. More specifically, the Applicant's Planner in her testimony and in her report dated October 28, 2024 stated that the positive criteria for granting d(1) variance relief would be achieved pursuant to N.J.S.A. 40:55D-2a. More specifically, she stated in her Report:

"The proposed dwelling serves the general welfare by improving vacant undeveloped land a residential district with a new two-family dwelling. The site is particularly suited to the use because it is of adequate size to accommodate the use; adequate parking,

access and open space can be provided; all bulk standards, with the exception of providing a garage, can be met.”

The Board rejects this testimony. The Board finds that neither the Applicant’s Planner nor any other witness provided any specific testimony concerning the housing needs of the Borough. It is also unclear how a two-family unit would have any perceptible impact on housing supply more than a single-family home. Further, the vacant undeveloped land could be developed with a single-family dwelling which is a permitted use in the R-4 Zone.

The Applicant’s Planner in her testimony and in her report contends that 2(e) would be advanced by the approval of this application. She stated: “The proposed two-family dwelling would provide an additional housing option, thus further increasing the Borough’s housing stock. The R-4 Zone allows for townhouses, thus, permitting a similar use to a two-family.” The Board finds that the Applicant did not provide any specific testimony concerning the housing needs of the Borough considering the fact that multi-family housing is permitted in the R-2 Zone, R-3 Zone, R-5 Zone, R-6 Zone, R-7 Zone, R-8 Zone, and in the SCC Senior Citizen Housing Zone. The Board notes that under the Borough of Butler Code Section 143-117 Schedule C, townhouses are only permitted in the R-2 and R-3 Districts and thus, the R-4 Zone is limited to single-family dwellings. Therefore, the Board finds that townhouses are not a permitted use in the R-4 Zone.

Next, the Applicant’s Planner in her testimony and in her report, represented that the Applicant satisfied purpose 2(g) and stated: “The proposed two-family dwelling meets the bulk standards of the R-4 District. Several other two, three and four-family dwellings exist within 200 and 500 feet of the site and beyond further showing the presence of similar uses in the neighborhood.” The Board notes that the bulk standards in the R-4 Zone are designed to accommodate development of single-family homes and not two-family dwellings. The Board

recognizes that the lot area in this instance is 7,500 square feet which exceeds the minimum lot area in the R-4 Zone. However, looking at a comparable zone, the R-5 Zone wherein two-family dwellings are a permitted use, the minimum lot area for a two-family dwelling is 9,375 square feet. Thus, the Board finds that the Governing Body has made a determination that two-family dwellings should be located on larger lots than is required in the R-4 single-family zone. In this instance, when an analysis is conducted for comparative purposes, the Board notes that if the Property were proposed for development in the R-5 Zone, it would not meet the minimum lot area requirement and would be 1,875 square feet less than what is required. Also, the Applicant was not able to provide credible proofs as to how any other multi-family dwelling was created within the R-4 Zone and whether or not any of the multi-family dwellings are pre-existing non-conforming uses.

The Applicant's Planner further testified and stated in her report that 2(i) would be advanced because "The proposed two-family dwelling will improve the visual appearance of the vacant undeveloped parcel with a new and aesthetically pleasing dwelling." The Board finds that any improvement based upon visual environment has nothing to do with the proposed two-family dwelling, rather it is related simply to constructing a new dwelling which could similarly provide an aesthetic benefit based upon the construction of a new single-family dwelling which is permitted in the R-4 Zone.

Finally, the Applicant's Planner testified and stated in her report that 2(m) would be advanced as follows: "The proposed improvements of the subject Property allow for the efficient use of an existing site without having to find a new developable site on environmentally sensitive land or on an undersized lot, thus, creating an efficient use of the Property and lessening the cost of site development." Once again, the Board finds that the Applicant could develop the Property for a single-family dwelling which is a permitted use in the R-4 Zone and would still result in the

efficient use of an existing site. Furthermore, the Board notes that the Property is currently undeveloped with the exception of a shed located thereon.

The Board further finds the testimony of the property owner to be credible when he testified that his intention is to construct a two-family dwelling on this lot for rental purposes. Mr. LaPlaca also represented that he is seeking development in this manner because this is for his retirement. The Board also notes that Mr. LaPlaca is the owner of 88 Arch Street.

Furthermore, the Applicant provided testimony from his professionals that the subject Property is located approximately 700 to 800 feet away from Main Street and that residents can walk to Main Street to support the Business District. Therefore, to the extent, the Applicant is arguing that the proposed multi-family use would be a good transition from residential uses to the Business Zone located on Main Street, the Board rejects this testimony.

The Board relies upon Funeral Home Management Inc. v. Basralian, 319 N.J. Super 200, 212, 213 (App. Div. 1999) which holds that it is not appropriate to grant variance relief to a property that acts as a buffer or transition area between two zones. The Court in Funeral Home Management referred to Cerdel Constr Co. Inc. v. East Hanover Township, 86 N.J. 303, 306, 307 (1981) wherein the Supreme Court held “it can always be said that the border area of a zone is affected by adjoining uses and that such an area is particularly adaptable to uses pursuant to a variance. However, the lines have to be drawn somewhere if a zone plan is to have any real purpose. The erosion of border areas through variances is destructive of sound zoning and cannot be allowed except where special circumstances beyond those ordinarily associated with zone borders are shown.” Funeral Home Management, supra 319 N.J. Super at 213.

The Board rejects the notion that the goals of planning enumerated at N.J.S.A. 40:55D-2 would be advanced by the proposed two-family home. Again, the improvement to the visual

environment has nothing to do with the proposed two-family dwelling, the same goal can be achieved by constructing a single-family dwelling which is a permitted use in the R-4 Zone. Thus, the same visual enhancement is possible through a permitted use. The Board also finds that multi-family dwellings do not constitute the predominant use in the R-4 Zone.

Based upon the foregoing, the Board concludes that the Applicant has failed to prove that the subject Property is particularly suited to the proposed prohibited use and merely represents a more profitable venture which serves only private interests.

The Board also finds that the Applicant has failed to satisfy the enhanced criteria. The testimony and proofs failed to reconcile the proposed use variance with the zoning ordinances and master plans omission of the use from those permitted in the zoning district. In this instance, the Board finds that the Mayor and Council specifically included this property in the R-4 Zone, which does not permit multi-family residential uses. This is evidence that the Governing Body did not want to see this site zoned for multi-family residential use and at the density proposed by this Applicant. Thus, the Applicant has failed to reconcile the proposed multi-family use of the Property with the zoning ordinance omission of the proposed use from the uses permitted in the zone. The Applicant's Planner failed to cite any section of the Master Plan which identified the subject Property as being suitable for multi-family residential development. The Planner's arguments concerning the need for housing was also not supported by any reference whatsoever to the Borough's Housing Element of the Master Plan. The Applicant has failed to satisfy the enhanced criteria.

The Borough's Governing Body is aware of the character of the neighborhood. There has been a legislative decision to maintain the permitted uses. The grant of use variance relief would degrade the integrity of the zone and leave it lacking in the very character the Ordinance seeks to create. The Board therefore concludes that the grant of use variance relief would result in

substantial detriment to the public good and also substantially impair the intent and purpose of the zone plan and ordinance. The Applicant has therefore failed to satisfy the negative criteria.

The Board finds that the Applicant has failed to satisfy the positive criteria, enhanced criteria and the negative criteria and that use variance relief pursuant to N.J.S.A. 40:55D-70d(1) must therefore be denied.

Ancillary “c” Variance Relief

The Board has 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 notes that the Butler Code Section 143-142 states as follows:

“No building permit shall hereinafter be granted for the erection of a new one-or-two-family dwelling unless provision is made for the construction of a garage, connected by an adequately serviced driveway to the adjacent street. Driveway surfacing shall be asphalt or equal for the total distance from the garage apron to the street pavement.”

The Board finds that the Applicant is not proposing to construct a garage on the Property in contravention of Borough Code §143-142. The Governing Body has specifically directed that the new construction of one and two-family dwellings contain a garage. The Board rejects the testimony of the Applicant’s witnesses that there are essentially two (2) purposes for a garage which are to park a car in the garage and for storage purposes. The Board rejects the Applicant’s

Professional's testimony that cars can be parked in the driveway and that the proposed multi-family has a basement for storage purposes. The Board finds that the Applicant's Engineer has not presented any credible testimony regarding a hardship as to why the Applicant can't construct a garage on the Property. Furthermore, the Applicant's witnesses admitted that the Applicant could construct a garage and not require variance relief if the Applicant constructed a single-family dwelling. Therefore, for the same reasons as stated regarding the d(1) use variance, the Board finds that the Applicant has not met its proofs to be granted "c(1)" or "c(2)" variance relief.

The Board further finds that any need for bulk variance relief pursuant to N.J.S.A. 40:55D-70c is subsumed within the consideration of use variance relief. See Puleio v. North Brunswick Zoning Board 375 N.J. Super. 413 (App. Div. certif. den. 184 NJ 212 (2005) and the request for relief is denied.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Butler that the application of Joseph LaPlaca for premises designated as Block 25, Lot 38 as shown on the Tax Assessment Map of the Borough of Butler, and located at 84 Arch Street, Butler, New Jersey in the R-4 Zone, is determined as follows:

- (1) Variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(1) to permit a two-family residential dwelling (duplex configuration) to be constructed on the property is hereby denied;
- (2) Ancillary "c" variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2) to permit the construction of a two-family dwelling (duplex configuration) without a garage is hereby denied. Further, the need for bulk variance relief is subsumed within the consideration of use variance relief pursuant to Puleio v. North Brunswick Zoning Board, 375 N.J. Super. 413 (App. Div. certif. den. 184 N.J. 212 (2005) and is denied.

VOTE ON APPLICATION
JUNE 19, 2025

Motion to Deny: Brown

Seconded By: Finelli

In Favor: Reger, Hough, Vath, Finelli, Brown and Chairman Veneziano

Opposed:

VOTE TO APPROVE RESOLUTION
JULY 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 June 19, 2025 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on July 17, 2025.



William Budesheim, Board Secretary

5355184.1 BUTPB-017E Joseph LaPlaca Resolution of Denial of Use Variance (App. No. 24-008) RB 7.17.25