

**RESOLUTION  
BOROUGH OF BUTLER PLANNING BOARD**

**Application No. 20-74SD**

**WHEREAS 1567 SOUTH REALTY, LIMITED LIABILITY COMPANY, 1571 ROUTE 23 SOUTH PROPERTY ASSOCIATES, L.L.C. and 1571 ROUTE 23 PROPERTY ASSOCIATES, LLC** (hereinafter referred to as the applicant), all c/o Wayne Mazda, Attn: Kevin DiPiano, located at 1244 Rt. 23 North, Wayne, New Jersey are the owners of premises known as 1565 and 1571 Route 23 South, in the Borough of Butler, which premises are also known as Lots 1, 2, and 2.01 in Block 203 on the Borough Tax Map, and

**WHEREAS** said premises are located in the Highway Commercial Zone, and

**WHEREAS** the applicants have applied to the Butler Planning Board, for the following relief with regard to said premises:

1. Minor Subdivision of the above three parcels, so as to create two parcels, to be known as Lots 2 and 2.02 in Block 203.
2. Use Variance approval to permit a deviation from a specification or standard, pursuant to N.J.S.A. 40:55D-67 and N.J.S.A. 40:55D-70(d)(3).
3. Confirmation of various existing dimensional variances, and

**WHEREAS** submitted with the application and made a part of it were the following:

1. Butler Planning Board application, dated September 3, 2020, revised December 15, 2020.
2. Site Inspection Authorization, signed by the applicant, dated September 3, 2020.
3. W-9 Form for Butler Public Self Storage, LLC, dated March 5, 2019.
4. Ownership Disclosure Statement #5.
5. Morris County Tax Records for Block 203, Lot 1.

6. Copy of Deed for 1571 Route 23 Butler, New Jersey, dated October 25, 2007.
7. Morris County Tax Records for Block 203, Lot 3.
8. Morris County Tax Records for Block 203, Lot 2, dated July 20, 2011.
9. Morris County Tax Records for Block 203, Lot 2.01.
10. Copy of Deed for Block 203, Lot 2.01, dated June 30, 2011.
11. Borough of Butler Checklist for Determining Completeness of Application for Development, with no signature or date.
12. Previous Site Plan approvals, prepared by Mary O'Keefe, Borough Clerk, dated September 15, 2020:
  - a. Butler Planning Board Resolution for Application SP-0954, decided July 16, 2009;
  - b. Butler Board of Adjustment Resolution for Application SP-1162, decided October 13, 2011;
  - c. Butler Board of Adjustment Resolution for Application 98-67V, decided on November 9, 1998;
  - d. Butler Board of Adjustment Resolution for Application 95-41V, decided October 9, 1995;
13. Copy of Legal Notice;
14. Borough of Butler certified 200' Property Owner List, dated September 9, 2020;
15. Borough of Kinnelon certified 200' Property Owner List, dated September 24, 2020;
16. Morris County Land Development Review Application, dated September 4, 2020;
17. Subdivision Plat, two sheets, prepared by Costa Engineering Corporation, last revised December 21, 2020; and

**WHEREAS** the Butler Planning Board conducted a public hearing on March 11, 2021, at which time it made the following findings of fact:

1. The Board noted that this application had previously been declared complete.
2. Representing the applicant was Steven C. Schepis, Esq., of 339 Changebridge Road, Pine Brook, New Jersey.
3. Marked into evidence was Exhibit A-1, enlarged and colorized Sheet 2 of 2 of the Subdivision Plat prepared by Costa Engineering Corporation.
4. The Board noted receipt of the Letter Report of Darmofalski Engineering, Inc., dated January 21, 2021, and agreed with the opinion of the Board Engineer, Thomas Boorady, that the uses on the subject properties can be deemed conditional uses in the zone, but that since the lots in question did not meet the conditional use standards of the Zoning Ordinance, a D3 Use Variance would be required.
5. Testifying on behalf of the applicant was Robert L. Costa, P.E. and P.P., of Costa Engineering Corporation, who was recognized as an expert in the fields of civil engineering and professional planning, and Kevin DiPiano, who is a principal of all three applicants.
6. Testimony of Robert L. Costa established the following:
  - a. He agreed that a D3 Use Variance would be required for the two conditional uses, which are an automobile sales establishment on proposed Lot 2.03, and a service station on proposed Lot 2.02, because conditional use standards of the Borough Zoning Ordinance cannot be met.
  - b. No improvements of any nature will be undertaken, no additional parking will be provided, and the subject premises have no drainage issues.
  - c. Proposed Lot 2.02 contains Mavis Discount Tire. This lot presently consists of 33,111 square feet (.760 acres), and will increase in size to 42,864.25 square feet (.984 acres).

d. Proposed Lot 2.03 contains the Route 23 Nissan dealership. This lot is presently 133,748 square feet (3.07 acres), and will increase in size to 172,471.21 square feet (3.959 acres).

e. Existing Lot 2.01 essentially contains parking area and car display areas for Rt. 23 Nissan. It consists of 48,589 square feet (1.115 acres), and will be joined with the Route 23 Nissan dealership property.

f. The proposed subdivision will bring three lots into better conformity with the requirements of the Butler Zoning Ordinance. It will also result in two uses on two lots, as opposed to the present arrangement whereby the use on existing Lot 2 (Route 23 Nissan) will lease and utilize Lot 2.01.

7. Testimony of Kevin DiPiano established the following:

a. All points and technical comments raised in the Letter Report of the Board Engineer, dated January 21, 2021, are agreeable and acceptable.

b. He will speak to the Route 23 Nissan dealership, who is a tenant of his company, about discontinuing its parking by the evergreen row on the northerly side of existing Lot 2, since that is prohibited by ordinance.

c. He insisted that the four car display areas on the easterly side of current Lot 2.01 all existed when the parking lot on Lot 2.01 was approved by the Borough.

d. He is agreeable to conditions which will prohibit parking in the parking lot aisles and on grass areas.

8. Based upon the Letter Report of the Board Engineer, dated January 21, 2021, the Planning Board was of the opinion that the requested waivers could all be granted without any detriment to the Borough, or to the Zoning Ordinance.

9. The Planning Board was of the opinion that the comments made by the Board Engineer in his Letter Report of January 21, 2021, were cogent to this application, and his recommendations were deemed warranted and appropriate.

10. Evidence produced by the Planning Board Secretary confirmed that the current paver areas on the easterly side of the parking lot existed when the parking lot was approved.

11. The Planning Board acknowledged that the Borough Zoning Ordinance prohibits a parking lot which does not serve the principal use on this same lot. This application cures that violation.

12. The Planning Board further agreed that the case of Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994) was applicable to the current application, in that it lessened the proofs needed for a D-3 variance.

13. The Board noted the following deficient dimensions as they currently exist on current Lot 2:

- a. Lot area of 3.07 acres, where 5 acres are required;
- b. Lot frontage of 171.67 feet, where 200 feet are required;
- c. Lot width of 150.14 feet, where 300 feet are required;
- d. Deficient side yard setback;
- e. Parking setback 10.7 feet from right-of-way, where 25 feet are required;
- f. Parking setback 7.0 feet from property lines, where 10 feet are required;
- g. Parking setback 30.26 feet from residential districts, where 50 feet are required; and
- h. Parking setback 30.26 feet from buffer width, where 50 feet are required.

14. The Board noted the following deficient dimensions as they currently exist on existing Lot 1:

- a. Lot area of 33,111 square feet, where 40,000 square feet are required.
- b. Lot frontage of 143.10 feet, where 150 feet are required.
- c. Lot width of 136.22 feet, where 150 feet are required.
- d. Front yard setback from Route 23 of 43.98 feet, where 100 feet are required.
- e. Front yard setback of 23.20 feet from Lincoln Road, where 100 feet are required.
- f. Side yard setback of 7.82 feet where 30 feet are required.
- g. Building coverage of 23.13 %, where 20% is the maximum allowed.
- h. Parking setback of 0 feet from buildings, where 5 feet are required.
- i. Parking setback of 13.6 feet from Lincoln Road, where 25 feet are required.
- j. Parking setback of 0 feet from property lines, where 10 feet are required.
- k. Parking setback of 42.13 feet from residential districts, where 50 feet are required.
- l. Parking setback of 42.13 feet from the buffer width, where 50 feet are required.

15. The Board noted the following deficient dimensions as they currently exist on current Lot 2.01:

- a. Parking setback of 5.02 feet from the right of way, where 25 feet are required.

16. Variances required for proposed Lot 2.02 are as follows:

- a. Side yard setback of 48.35 feet where 30 feet are required.
- b. Parking setback of 0 feet from buildings, where 5 feet are required.

- c. Parking setback of 13.6 feet from Lincoln Road, where 25 feet are required.
- d. Parking of 2.7 feet from property lines, where 10 feet are required.
- e. Parking setback of 42.13 feet from residential districts, where 50 feet are required.
- f. Parking setback of 42.13 feet from the buffer width, where 50 feet are required.
- g. Front yard setback of 43.98 feet, where 100 feet are required.
- h. Front yard setback of 23.20 feet from Lincoln Road, where 100 feet are required.

17. Variances with regard to proposed Lot 2.03 are as follows:

- a. Lot area of 3.959 acres, where 5 acres are required.
- b. Deficient side yard setback, where 50 feet are required.
- c. Parking setback of 5.02 feet from the right-of-way, where 25 feet are required.
- d. Parking setback of 4.5 feet and 7.0 feet from property lines, where 10 feet are required.
- e. Parking setback of 30.26 feet from residential districts, where 50 feet are required.
- f. Parking setback of 30.26 feet from the buffer width, where 50 feet are required.
- g. Wall height of 9 feet, where the maximum is 6 feet.

18. In the opinion of the Planning Board, this application could be granted without detrimentally affecting the health, safety, and welfare of the local citizens, and without negatively impairing the intent or purpose of the Borough Master Plan or Zoning Ordinance.

**NOW THEREFORE, BE IT RESOLVED**, by the Planning Board of the Borough of Butler that this application is approved, subject to the following:

1. All of the technical comments made by the Board Engineer in his Letter Report of January 21, 2021.

2. Parking shall be only in designated parking areas, and there shall be no parking in the aisles or on grassy areas.

3. The four car display areas on the easterly side of the subject premises are not to be deemed a 5 foot side yard setback along that entire easterly sideline.

4. Final revised Minor Subdivision Plans shall be submitted to the Butler Planning Board, the Board Engineer, and the Borough Surveyor for review and approval, prior to any plans or subdivision deeds being signed for recordation.

5. Revised Minor Subdivision Plans shall be accompanied by a separate deed for each new lot, to include legal descriptions, deed restrictions, required easements, etc., all for review and approval by the Board Engineer, Board Attorney, and Borough Surveyor.

6. Prior to approving deeds for recordation, the Butler Planning Board Secretary shall first receive a status report from the Borough Tax Collector and Finance Officer, confirming that all escrow fees and property taxes of all properties involved are current.

**BOROUGH OF BUTLER PLANNING BOARD**

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James Nargiso, Board Chairman

**Attest:**

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**Board Secretary**

It is hereby certified that this is a true and correct copy of the Resolution adopted on a roll call taken at the regular meeting of the Borough of Butler Planning Board, held on March 11, 2021. This Resolution memorializes the action taken by the Board at the \_\_\_\_\_, 2021 meeting.

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**Board Secretary**