

**RESOLUTION
BOROUGH OF BUTLER PLANNING BOARD
APPLICATION AP3-22**

WHEREAS EMMA McMASTERS and **SHANNON McMASTERS**, residing at 65 High Street, Butler, New Jersey are the owners of said premises, otherwise known as Lot 1 in Block 13, on the Borough Tax Map, and

WHEREAS EMMA McMASTERS and **SHANNON McMASTERS** have made application to the Planning Board of the Borough of Butler, appealing the denial of a Zoning Permit for a previously approved third floor addition to the subject premises, and in the alternative, for a bulk variance to permit this third-floor addition, if required, and

WHEREAS the Planning Board of the Borough of Butler conducted a public hearing on April 20, 2023, and

WHEREAS the applicants were represented by David C. Dixon, Esq. of Feeney & Dixon, LLC, located at 620 Newark-Pompton Turnpike, Suite 2, Pompton Plains, New Jersey.

1. The presentation of Attorney Dixon established the following:
 - A. The Borough of Butler issued a permit in 1989 for the construction of a third floor to the existing building on the subject property, and the third floor was duly constructed.
 - B. The owners of the subject premises at that time occupied the subject property continuously thereafter.
 - C. In or about 2019-2020, when the current owners purchased the building, they were advised that the third floor violated the current Borough Code, which limited single family homes in the R-5 Zone to a maximum of 2 ½ stories.

D. The applicants thereafter applied for a Zoning Permit from the Borough Zoning Officer, which was denied.

E. The Borough of Butler adopted its initial Zoning Ordinance in January of 1979. That ordinance contained no height limitation for this zone.

F. The height of the existing building is exactly 35 feet, although it consists of three stories. The current Zoning Ordinance of the Borough provides that maximum height of residential buildings in this zone shall be no greater than 35 feet, and no greater than 2 ½ stories.

2. Zoning Officer William Budesheim noted at the April 20, 2023 meeting that under the Municipal Land Use Law, since the pre-existing, non-conforming use had existed for over one year, he was prohibited from issuing any written acknowledgment that the subject premises was a pre-existing, non-conforming use.

3. Acting Board Attorney Bernard P. Bacchetta offered his legal opinion to the Planning Board, which was that if the Zoning Ordinance of 1979 contained no height restriction for the residential zone in which the subject property is located, and if that ordinance remained unchanged insofar as height requirements of residential buildings was concerned when the building was constructed, it should be recognized as a pre-existing, non-conforming structure.

4. There was no public comment on this application.

5. The Planning Board members agreed that there was no height restriction in the Borough Zoning Ordinance when the Building Permit issued for the construction of the third-floor addition to the building in question, and agreed that it is a pre-existing, non-conforming structure.

In view of the foregoing, a Motion was made, seconded, and approved by the Planning Board to recognize the single-family structure presently on the subject premises as a pre-existing, non-conforming structure, and that it must remain as a single family home in order to enjoy this status.

NOW THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Butler that the application of **EMMA McMASTERS** and **SHANNON McMASTERS** for a Zoning Permit recognizing the three-story structure in question as a valid pre-existing non-conforming structure, be and the same is hereby granted.

BOROUGH OF BUTLER PLANNING BOARD

James Nargiso, Board Chairman

Attest:

William Budesheim, 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 April 20, 2023. This Resolution memorializes the action taken by the Board at that public meeting.

William Budesheim, Secretary