

**RESOLUTION NO. 32-2017**  
**Case # PB-019-17**  
**MINOR SUBDIVISION APPROVAL**  
**WITH ANCILLARY BULK VARIANCE RELIEF**

**PLANNING BOARD**  
**TOWNSHIP OF WAYNE**  
**COUNTY OF PASSAIC, STATE OF NEW JERSEY**

**WHEREAS, Annemarie Appleton**, hereinafter referred to as “Applicant,” 169 Parish Drive, Wayne, NJ has applied to the Wayne Township Planning Board, herein after referred to as “Board,” for minor subdivision pursuant to N.J.S.A. 40:55D-47 with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70 on property identified as Block 911, Lot 14 by Township Tax Assessment records, affecting property with street address 169 Parish Drive, hereinafter “subject property,” in the R-15 District; and

**WHEREAS**, the Board has examined the application and accompanying exhibits, held public meetings and considered the recommendations of the staff; and

**WHEREAS**, a public hearing was held on November 13, 2017 at which time the Applicant was represented by Michael Sweeney, Esq., and the general public was given the opportunity to be heard; and

**WHEREAS**, expert testimony was provided on behalf of the Applicant by William J. Darmstatter, P.E. and L.S.; and

**WHEREAS**, the necessary agencies have reviewed this application. The reports from said agencies are incorporated herein and made a part hereof by reference in conjunction with this application as if set forth verbatim.

**NOW, THEREFORE**, the Planning Board after examining the application and supporting material, the testimony of witnesses, and the exhibits offered at the hearing, makes the following findings of fact:

1. The Administrative Officer deemed the application incomplete pending the Board’s action to waive checklist completeness items. The Board granted the waivers and declared the application complete on November 13, 2017.
2. In support of the application, the Applicant submitted
  - Application form, with rider
  - Minor Subdivision Plan signed and sealed by William J. Darmstatter, Darmstatter, Inc., dated June 2, 2017, last revised September 18, 2017, consisting of two (2) sheets
  - Impervious Lot Coverage Calculations (for proposed Lots 14.01 and 14.02)
  - Environmental Protection Calculation – number of building lots
3. The subject property, 57,592 square feet, is located at the northwesterly corner of the bend of Parish Drive, a county road and is improved with two (2) single-family dwellings, a nonconforming situation. The subject property lies in the R-15 District.
4. The Applicant proposes put each dwelling on its own lot by subdividing such that two (2) lots are created: one is to be 38,617 square feet, the other is to be 18,976 square feet. No new building lots are proposed; no land development is proposed.
5. The Applicant performed EP calculations that show compliance with respect to lot yield: 3.799 where the Applicant is proposing two (2) lots.

6. The Board and the Applicant discussed fencing on the subject property that might be the Applicant's or might be the neighbor's. It was determined that the Applicant will remove fences that are on the subject properties.
7. The Deeds shall include language to referencing the five-foot-wide shade-tree easement.
8. Applicant amended the application to include the request for relief from §134-34.2.I for exceeding the amount of paved area (maximum 35%) in a front yard).

**NOW, THEREFORE**, the Board hereby makes the following conclusions of law, based upon the foregoing findings of fact

The Municipal Land Use Law allows municipalities to grant to an applicant the right to subdivide land for the creation of a number of lots specifically permitted by ordinance, which, under Wayne Township ordinances, is not more than three (3) lots, and pursuant to the standards set forth in the ordinance. The within proposal is classified as a minor subdivision and meets the minimum requirements necessary to enable the Board to grant minor subdivision approval.

With respect to the "c" variance relief, the Municipal Land Use Law provides the Board with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain proofs which are enunciated in the statute. Specifically, the applicant may be entitled to relief if this specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic or physical features exist that 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 positive proofs necessary in order to obtain "bulk" or c variance relief. Finally, an applicant must show also that the proposed variance relief sought will not have a substantial detriment to the public good and, further, 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.

In reviewing the application plans and testimony, the Board concludes that the Applicant has met both the positive and the negative criteria that are required in order for the Board to grant the relief specifically being sought. The Board notes the configuration is existing conditions and the Applicant is taking a nonconforming situation and making it conforming with this subdivision. Specifically, the condition of having two (2) principal dwellings on one (1) lot is being eliminated. The bulk variance relief of front yard setback, paved area in a front yard and accessory structure's setback are existing conditions that are not exacerbated by this subdivision.

Turning next to the negative criteria, the Board concludes that the application does not negatively impact the public good, the zone plan nor the zone scheme of the area. In fact, the Board noted a nonconforming situation is eliminated.

**NOW, THEREFORE, BE IT RESOLVED** by the Board that the application of **Annemarie Appleton**, for Block 911, Lot 14 as shown on the Tax Map of the Township

of Wayne, be **granted** minor subdivision approval pursuant to N.J.S.A.40:55D-47; and variance relief pursuant to N.J.S.A. 40:55D-70c to allow the creation of two lots. Additionally, variance relief was granted as follows:

| <b>ZONING TABLE</b>                             |                        |                 |  |
|---|------------------------|-----------------|--|
| <i>Criteria</i>                                 | <i>Ordinance §134-</i> | <i>Required</i> | <i>Requested</i>                           |
| Front yard setback (169 Parish Drive) (minimum) | 34.2.D.1               | 50 ft           | 33.5/42.5                                  |
| Acc. Structure side yard setback (minimum)      | 34.2.E.1               | 10 ft           | 8 ft                                       |
| Paved area in a front yard (maximum)            | 34-2.I                 | 35%             | As shown on the plan reviewed by the Board |

The approval is granted subject to the following conditions:

1. Compliance with testimony presented at the November 13, 2017 public hearing.
2. Said approval is granted for the time period as set forth in Chapter 134 of the Code of the Township of Wayne and the statutory protections will expire in accordance with the provisions of the Municipal Land Use Law.
3. Revised plans, stormwater management reports and other documents submitted for review for Conformance with Resolution shall:
  - A. be submitted in complete sets (no partial sets of plans and documents shall be accepted)
  - B. be accompanied by a cover letter that lists every change and/or revision in accordance with the nomenclature in this resolution, below, for facilitation. In addition, all plan revisions shall be clearly identified (“clouded” or similar treatment, and numbered). Revised plans and/or other reports that are not accompanied by such a cover letter shall be returned without further review or comment.
4. With respect to the **Engineering Division** report of October 23, 2017:
  - A. Revised plans submitted for review for Conformance with Resolution shall comply with said report, as follows:
    - (1) Item 1a: N/A waived by Board
    - (2) Item 1b: N/A waived by Board
    - (3) Item 1c: N/A waived by Board
    - (4) Item 2a: will comply. Applicant will remove fence
    - (5) Item 2b: will comply. Applicant will remove fence
    - (6) Item 2c: will comply (plan already shows the shade tree easement)
    - (7) Item 2d: will comply, but Board modified comment. Instead of planting trees at 50-foot intervals, Board required Applicant to plant a total of six (6) trees distributed within the two (2) lots. The **Supervisor of Landscape and Park Design** is to determine the size, location and species of the six (6) trees to be planted.
    - (8) Item 3: will comply since the planting of shade trees was required by the Board

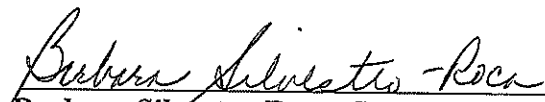
- D. Final Comments: Applicant will comply with all applicable comments in this section of the report except item 1.b)ii, which was waived by the Board.
5. Revised plans submitted for review for Conformance with Resolution shall comply with the requirements of the **Health Department** in its memo of October 13, 2017. Applicant shall revise plan to show that there are two (2) separate lines.
  6. Revised plans submitted for review for Conformance with Resolution shall comply with the requirements of the **Supervisor of Landscape and Park Design** as set forth in condition 4.A(7), above.
  7. Deeds submitted for review by the Township Surveyor shall include a reference and description for the five (5) foot wide shade tree easement.
  8. Any and all necessary subdivision plan revisions, ensuing from Township agency reviews shall be made by the Applicant and those revised plans are to be submitted to the Planning and Zoning office for administrative 'conformance with resolution' review. Upon the determination that the Applicant has presented plans that are acceptable to every reviewing agency, the Township administrative staff, on behalf of the Board, issues stamped approved plans. These stamped approved plans are distributed to agencies and to the Applicant and indicate that the plans meet the Board's conditions of approval with respect to plan details. This is done prior to the signing of the deeds. **Accordingly, prior to the signing of the deeds, the Applicant shall:**
    - a. Have submitted revised plans to the satisfaction of the reviewing agencies.
    - b. Have complied with the Final Comments in the Engineering Division's memo of October 23, 2017, except for item 1b)ii.
    - c. Have submitted deeds for review by the Township Surveyor, which the Township Surveyor finds acceptable.
  9. Applicant shall pay all property taxes and water & sewer taxes, plus interest.
  10. Should the proposed development require any public improvements within a public right-of-way that affects private property, the applicant or agents thereof shall have the responsibility to notify all affected property owners prior to constructing any such public improvements. Notice must be received by affected property owners at minimum 30 days prior to the commencement of construction and shall be by personal service or certified mail. Proof of notification shall be provided to the Administrative Officer of the Board. Furthermore, the developer or their designated agent shall be responsible for all work within the right-of-way and any damage to private property caused as a result of construction shall be the sole responsibility of the applicant and shall be so rectified at the applicant's cost.
  11. The applicant shall comply with all applicable ordinances of the Township of Wayne and all applicable federal, State and County requirements including but not limited to obtaining Hudson-Essex-Passaic County Soil Conservation District approvals.

Roll Call as to the **motion to approve**, where pursuant to N.J.S.A. 40:55D-10.g(2), only the members of the Board who voted for the action taken may vote on the within memorialization:

ROLL CALL VOTE UPON MOTION  
Made November 13, 2017

| Board Member                               | Yea | Nay | Abstain | Absent or Not Vote Eligible |
|--|-----|-----|---------|-----------------------------|
| Falcone, Richard                           | X   |     |         |                             |
| Natoli, John                               |     |     |         | X                           |
| Marini, Armand                             | X   |     |         |                             |
| Stomber, Richard                           | X   |     |         |                             |
| Vergano, Christopher <i>Mayor</i>          | X   |     |         |                             |
| Okun, Scott                                |     |     |         | X                           |
| Ranalletti, Frank <i>Chair</i>             | X   |     |         |                             |
| <i>Alternates</i>                          | --  | --  | --      | --                          |
| Olivo, John, Jr. <i>2<sup>nd</sup> Alt</i> | X   |     |         |                             |

The undersigned, Secretary of the Township of Wayne Planning Board, hereby certifies that the above is a true copy of a resolution duly memorialized by said Board on **January 8, 2018**.

  
Barbara Silvestro-Roca, Secretary  
Wayne Township Planning Board

STATE OF NEW JERSEY, COUNTY OF PASSAIC:

I CERTIFY that on Jan. 9, 2018 Barbara Silvestro-Roca came to me to acknowledge under oath that she,

- a. is the Secretary of the Wayne Township Planning Board;
- b. personally signed the attached document; and
- c. signed and delivered this document as her act and deed as Secretary to the Wayne Township Planning Board.

On this day of Jan 9, 2018 before me personally appeared:  
Barbara Silvestro Roca, to me known and known to be the person described herein and who executed the foregoing instrument and she thereupon duly acknowledged to me that she executed the same

  
Notary Public

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