

ELIAS T. MANOS, ESQUIRE
Attorney ID No. 026092004
2408 New Road, Suite 2
Northfield, New Jersey 08225
(609) 335-1873

Elias T. Manos, Esquire
Attorney for the City of Ocean City Zoning Board of Adjustment

**CITY OF OCEAN CITY
ZONING BOARD OF ADJUSTMENT
RESOLUTION ZBA-26-007**

APPLICATION OF: Elmwood Developers LLC

PROPERTY: 3300-02 and 3304-06 Simpson Avenue BLOCK 3306, LOTS 3 and 3.01

WHEREAS, Elmwood Developers LLC (“applicant”) is the owner of Block 3306, Lots 3 and 3.01 as the same are designated on the Tax Map of the City of Ocean City; and

WHEREAS, the applicant was represented by Avery Teitler, Esquire; and

WHEREAS, a Minor Subdivision Plan (consisting of five sheet, including a Title Sheet (sheet A0.01), a Site Plan (sheet A0.02), Lot 3.02 Plans and Elevations (sheet A1), Lot 3.03 Plans and Elevations (sheet A2) and Lot 3.04 Plans and Elevations (sheet A3)) was submitted from Halliday Architects, signed by Christopher Halliday, RA, NJ Architect License No. 21A101936000, Project No. 25084, dated March 16, 2026, and who testified on behalf of the applicant; and

WHEREAS, a Minor Subdivision plat, consisting of one sheet (sheet V102), was submitted from the Hyland Group, signed by Thomas A Prendergast, PLS, NJ License No. GS 37604, Project No. 34368.02, last dated November 24, 2025; and

WHEREAS, a Survey of Premises, consisting of one sheet (sheet V101), was submitted from the Hyland Group, signed by Thomas A Prendergast, PLS, NJ License No. GS 37604, Project

No. 34368.02, dated June 11, 2025; and

WHEREAS, Jason Sciuillo, PE, PP, of Sciuillo Engineering Services, LLC, appeared and also testified on behalf of applicant along with Mr. Halliday; and

WHEREAS, the applicant has filed a complete application with the City of Ocean City Zoning Board of Adjustment (sometimes referred to as the “Zoning Board” or “Board”) seeking minor subdivision approval to create three new lots, use variance pursuant to N.J.S.A. 40:55D-70d(1) to construct a new single-family dwelling on each of the newly created lots, “c” variances pursuant to N.J.S.A. 40:55D-70c for the lot depths of each of the newly created lots (specifically 90 feet in depth for each of the newly created lots where 100 feet is required) and checklist waivers (specifically from having to provide all topographical data within 25 feet of the site and from having to provide a key map on the plans that is not less than one inch = 1,000 feet) for the premises located at Block 3306, Lots 3 and 3.01, also known as 3300-02 and 3304-06 Simpson Avenue, Ocean City, New Jersey 08226; and

WHEREAS, the property is located in the Neighborhood Business Zone (“NB Zone”); and

WHEREAS, the Board has considered the plans submitted and the testimony on behalf of the applicant and it makes the following findings of fact:

The subject premises consists of two properties, those being Lot 3 in Block 3306 and Lot 3.01 in Block 3306, located at the corner of Simpson Avenue and 33rd Street. Taken together, the properties are 122.50 feet wide along 33rd Street by 90 feet deep along Simpson Avenue, for a total lot area of 11,025 square feet. The minimum required lot width for interior lots in the NB Zone is 30 feet, the minimum required lot depth is 100 feet and the minimum required lot area is 3,000 square feet. The minimum required lot width for corner lots in the NB Zone is 40 feet, the

minimum required lot depth is 100 feet and the minimum required lot area is 4,000 square feet. The properties previously contained one single-family dwelling which was recently demolished and the properties are now vacant land. The NB Zone permits residential uses over commercial space at the ground level but does not permit stand-alone single-family dwellings.

The applicant is proposing to subdivide the properties from two existing lots into three new lots, with two interior lots and one corner lot each oriented towards 33rd Street, and construct a new single-family dwelling on each of the newly created lots. Each proposed lot will have a driveway off of 33rd Street, with three compliant parking spaces per lot. Since single-family dwellings are not a permitted use in the NB Zone, the applicant requires use variance approval pursuant to N.J.S.A. 40:55D-70d(1). Further, the two interior lots, proposed as Lot 3.01 and Lot 3.02, will be 39 feet wide by 90 feet deep, for a total lot area of 3,510 square feet. The corner lot, proposed as Lot 3.03, will be 44.50 feet wide by 90 feet deep, for a total lot area of 4,005 square feet. Thus, while the lot width and total lot area for each proposed new lot exceeds the minimum requirements for lot width and lot area for the NB Zone, variance relief pursuant to N.J.S.A. 40:55D-70c is required by the applicant for the lot depths of each lot at 90 feet where 100 feet is required. The applicant is also seeking waivers from the minor subdivision plat requirements of the City of Ocean City Zoning and Land Development Code (“Zoning Ordinance”) from having to provide all topographical data within 25 feet of the site and from having to provide a key map on the minor subdivision plan that is not less than one inch = 1,000 feet. Each of the proposed single-family dwellings themselves comply with each of the bulk requirements for the NB Zone.

The applicant provided testimony that constructing three single-family dwellings (i.e. one on each proposed newly created lot) is a better, more consistent and less intensive proposal for the properties than constructing commercial space at the ground level with up to (2) two residential

units above it. The applicant's testimony indicated that "by-right" two conforming lots could be created, each with commercial space at the ground level that does not require on-site parking and two residential units above the commercial space. The testimony further indicated that as a three lot subdivision with the lot depth deviations, the applicant could also comply with the permitted use in the NB Zone by constructing three commercial buildings at the ground level with two residential units above each commercial space. The testimony on behalf of the applicant stated that the yield in either of the aforementioned scenarios would be much greater and much more intensive than allowing a stand-alone single family dwelling on each of the three proposed new lots. The testimony additionally noted that on-site parking would not be required for a commercial component if constructed, with street parking being overburdened by such a commercial component, and that the driveways associated with three residential lots proposed along 33rd Street would result in the loss of only one parking space on the street. The testimony on behalf of the applicant moreover indicted that the use on the properties has historically been a single-family dwelling and that the proposal is consistent with the residential character of the neighborhood.

The applicant, through the testimony provided, opined that granting the use variance will advance the general welfare because the proposed use of three single-family dwellings is particularly suited for the site as the site historically contained a stand-alone single-family dwelling and single-family development is consistent with the development pattern of the neighborhood. The applicant's testimony further opined that granting the use variance will (i) promote light, air and open space as the three proposed single-family dwellings themselves will meet or exceed each of the bulk requirements for the NB Zone and provide for much smaller buildings than if a commercial component was constructed at the ground level, (ii) provide for an appropriate location for single-family development as single-family uses are consistent with and compliment the

development pattern of the neighborhood and (iii) improve the aesthetics of the properties with three new single-family dwellings. The testimony by the applicant also opined that granting the use variance will not have a substantial negative impact on the public good as the proposed single-family dwellings themselves meet or exceed each of the bulk requirements for the NB Zone and are less impactful without commercial space being constructed at the ground level. The testimony additionally opined that granting the use variance will not have a substantial negative impact on the zone plan or Zoning Ordinance of the City of Ocean City as the NB Zone does permit residential uses, just not stand-alone residential uses without commercial space at the ground level, and proposed single-family dwellings are consistent with the development pattern of the neighborhood.

With respect to the minor subdivision and variance relief pursuant to N.J.S.A. 40:55D-70c for the lot depths of each proposed newly created lot, the testimony on behalf of the applicant indicated that the lot width and total lot area of each of the lots is compliant and the applicant has no ability to acquire more land to make the lot depths compliant or more compliant. The testimony further stated that the lot depth variances pursuant to N.J.S.A. 40:55D-70c are subsumed by the applicant's position, as set forth above, that the use variance should be granted.

Public Comment: Maureen McQuade (135 Haven Avenue), Frank Worrell (3307 Simpson Avenue) and Fran Worrell (3307 Simpson Avenue).

Exhibits: A-1 - Rendering

The Board having considered the testimony and evidence presented made the following findings of fact and conclusions of law.

The applicant proposes to subdivide the subject properties from two existing lots into three new lots and construct a new single-family dwelling on each of the newly created lots. The NB

Zone does not permit stand-alone single-family dwellings as a permitted use and thus the applicant requires use variance approval pursuant to N.J.S.A. 40:55D-70d(1). Further, the applicant requires variance relief pursuant to N.J.S.A. 40:55D-70c for the lot depths of each newly created lot as the proposed depth of each newly created lot is 90 feet and the NB Zone requires a minimum lot depth of 100 feet. The applicant is also seeking waivers from the minor subdivision plat requirements of the Zoning Ordinance from having to provide all topographical data within 25 feet of the site and from having to provide a key map on the plans that is not less than one inch = 1,000 feet.

The proposal by the applicant for a use variance to allow three new single-family dwellings on the subdivided property would advance several purposes of the New Jersey Municipal Land Use Act. In that regard, the proposal will advance the general welfare as the proposed single-family uses are particularly suited for the site as the site historically contained a stand-alone single-family dwelling and single-family development is consistent with the development pattern of the neighborhood. The proposal will further promote light, air and open space as the three proposed single-family dwellings themselves will meet or exceed each of the bulk requirements for the NB Zone and provide for a much smaller development than if the permitted use of commercial spaces at grade, with residential units above them, was constructed. Moreover, the applicant's proposal provides for an appropriate location for single-family development as single-family uses are consistent with and compliment the development pattern of the neighborhood. The proposal by the applicant will also improve the aesthetics of the properties with three new, well designed single-family dwellings on what is now vacant land. In addition, there will be no substantial negative impacts to the public good associated with granting the use variance for the proposed single-family dwellings as providing for the required commercial space on the ground floor would be more impactful and the proposed single-family dwellings themselves meet or exceed each of

the bulk requirements for the NB Zone. Furthermore, there will be no substantial negative impact to the zone plan or Zoning Ordinance of the City of Ocean City as the NB Zone does permit residential uses, just not stand-alone residential uses without commercial at the ground level, and proposed single-family dwellings are consistent with the development pattern of the neighborhood.

For these reasons, the applicant has established the necessary criteria pursuant to N.J.S.A. 40:55D-70d(1) of the New Jersey Municipal Land Use Act to support the requested use variance. For these same reasons, the applicant has established the necessary criteria pursuant to N.J.S.A. 40:55D-70c of the New Jersey Municipal Land Use Act to support the lot depth deviations for each proposed newly created lots. The lot depth variances pursuant to N.J.S.A. 40:55D-70c are also subsumed with the grant of the use variance and the applicant has no ability to make the depths of the lots conforming or more conforming.

The Board determined that the use variance pursuant to N.J.S.A. 40:55D-70d(1) and variance relief for the deficient lot depths pursuant to N.J.S.A. 40:55D-70c could be granted without substantial detriment to the zone plan or Zoning Ordinance of the City of Ocean City.

The purpose of the Municipal Land Use Act would be advanced by allowing the stand-alone single-family dwellings in the NB Zone on lots that have deficient lot depth and those advancements would substantially outweigh any detriments. The proposed single-family uses are also particularly suited for the subject properties. The granting of the use variance pursuant to N.J.S.A. 40:55D-70d(1) to allow the single-family dwelling use in the NB Zone and the granting of the lot depth variances pursuant to N.J.S.A. 40:55D-70c would not substantially impair the zone plan or Zoning Ordinance of the City of Ocean City. Further, the waiver requests are reasonable, appropriate and justified as providing all topographical data within 25 feet of the site and a key map that is not less than one inch = 1,000 feet on the minor subdivision plan presented is not

necessary for the Board to make an informed decision in this application. In addition, the minor subdivision plan, with the grant of the variance relief pursuant to N.J.S.A. 40:55D-70c for the depths of each lot and the waivers, is in accordance with the Zoning Ordinance such that minor subdivision approval can be granted.

Prior to issuance of a certificate of occupancy all escrow monies must be paid to the City of Ocean City in full. As this is a residential development approved for single-family dwellings, the applicant is not required to provide cost estimates for the proposed improvements or performance guarantees. This requirement is waived by the Board.

NOW, THEREFORE, BE IT RESOLVED by the Ocean City Zoning Board of Adjustment at its meeting on September 23, 2026, that the use variance requested by the applicant pursuant to N.J.S.A. 40:55D-70d(1) to allow the proposed single-family dwellings (one on each of the three newly created lots) in the NB Zone is hereby granted. Mr. DeMarco made the motion to grant the use variance, Mr. Becker seconded the motion. Members Mr. Waddell, Mr. DeMarco, Mr. Becker, Mrs. Schneider, Mr. Gallagher and Mr. Price voted in favor. Zero were opposed. Motion passed 6-0.

AND BE IT FURTHER RESOLVED by the Ocean City Zoning Board of Adjustment at its meeting on September 23, 2026, that (i) the minor subdivision approval to create three new lots from two existing lots, (ii) variance relief pursuant to N.J.S.A. 40:55D-70c to allow each of the newly created lots to be 90 feet in depth where 100 feet is required, and (iii) waivers from the minor subdivision plat requirements of the Zoning Ordinance from having to provide all topographical data within 25 feet of the site and from having to provide a key map on the minor subdivision plan that is not less than one inch = 1,000 feet is hereby granted. Mr. DeMarco made the motion to grant the minor subdivision approval, lot depth variances and waivers. Mr. Price

seconded the motion. Members Mr. Waddell, Mr. DeMarco, Mr. Becker, Mrs. Schneider, Mr. Gallagher and Mr. Price voted in favor. Zero were opposed. Motion passed 6-0.

The minor subdivision approval and the granting of the use variance, “c” variances and waivers are conditioned upon the applicant providing on the subject property ground level plant material of either grass or some other permanent green vegetative cover.

Further conditioned upon the City of Ocean City Tax Assessor assigning the official new block and lot numbers, and street addresses, of each of the newly created lots through the minor subdivision approved herein.

Further conditioned upon the applicant providing sewer availability letters and other utilities availability letters for the subject property and the proposal approved herein.

Further conditioned upon the applicant perfecting the minor subdivision approved herein through the filing of a plat with the Cape May County Clerk’s Office.

Further conditioned on there being no crushed stone or like material in any area that is not in compliance with the City design standards.

Further conditioned that there be no substantial deviation in the design, construction material or building elevations from that which was presented to the Zoning Board.

Further conditioned that no subsequent additions, alterations or changes can be made without further review by the Zoning Board.

Further conditioned that any plan revisions as required from the approval must be completed.

Further conditioned that the storage areas do not exceed the minimum IBC requirements as to lighting and electrical outlets; that the storage area not contain egress windows and that there be no phone jacks or cable outlets permitted.

Further conditioned that the applicant comply with Section 25-1700.3.1 and Section 25-1700.3.2 of the City of Ocean City Ordinance and/or as conditioned by the Board Engineer.

Further conditioned that the applicant provide copies of all approvals from any agency having jurisdiction over this application.

Further conditioned that the applicant provide seventy-two hour notice to the Board Secretary for all required inspections.

Further conditioned that all fees and real estate taxes associated with the application to the Zoning Board shall be paid current prior to building permits being issued.

Further conditioned upon any conditions in the Engineering report by William R. Long, PE, of Richard A. Alaimo Associates, dated June 12, 2026 being complied with but not further contained herein.

Further conditioned upon any conditions in the Planning report by Randall Scheule, PP, of Scheule Planning Solutions, LLC, dated June 12, 2026 being complied with but not further contained herein.

Further conditioned upon agreement by the applicant to specific items not contained within this Resolution, but which were otherwise set forth in the record of the hearing before the Zoning Board, which are incorporated herein by reference though not set forth at length herein.

Further conditioned upon the applicant paying all fees pursuant to Section 25-1900 Affordable Housing Development Fees (COAH), if applicable.

The applicant shall comply with all provisions of the Zoning Ordinance and any and all municipal, County, State and/or Federal laws or regulations relating or applicable to the proposed project.

Any variance granted by the City of Ocean City Zoning Board of Adjustment shall expire

one (1) year subsequent to the grant of said variance unless within that period of time the applicant has received a building permit from the Construction Official. In the event a building permit is obtained it shall be acted upon in conformity with the Uniform Construction Code.

ZONING BOARD OF ADJUSTMENT
CITY OF OCEAN CITY

Dated: 10/21/26

/s/ _____
RYAN PRICE, Chairperson

The foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the City of Ocean City at its meeting on the 21st day of October 2026 as held at said meeting.

Dated: 10/2/126

Jaime M. Felker, Secretary
Ocean City Zoning Board of Adjustment

A copy of this Resolution has been filed in the office of the Ocean City Zoning Board of Adjustment and is available for inspection during regular business hours.