

RICHARD A. CARLUCCI, ESQUIRE
GRIFFITH and CARLUCCI, P.C.
761 Asbury Avenue - Suite 201
Ocean City, New Jersey 08226
(609) 399-6900
Attorneys for the Ocean City Planning Board

IN THE MATTER OF THE APPLICATION OF THE ROBERT SMITH FAMILY TRUST FOR MINOR SUBDIVISION APPROVAL AND VARIANCES FOR BLOCK 1605, LOT 13	OCEAN CITY PLANNING BOARD APPLICATION NO. PBA 26-008 DECISION AND RESOLUTION
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BACKGROUND OF DECISION AND RESOLUTION

1. The Robert Smith Family Trust ["Applicant"] is the owner of certain lands and premises located in the City of Ocean City known as Block 1605, Lot 13 as shown on the current official tax map for the City of Ocean City, New Jersey commonly known as 215 17th Street, Ocean City, New Jersey ["Property"].

2. The Applicant has made application to the Ocean City Planning Board for **(i) minor subdivision approval** to subdivide the Property into two (2) new lots (corner lot and interior lot) in the Residential, R-1-30 Zone (which, if approved, will be Lots 13.01 (interior lot) and 13.02 corner lot)); and, **(ii) variances** to permit (a) a minimum lot width of 29.50 feet for proposed Lot 13.01; (b) a minimum lot frontage of 29.50 feet for proposed Lot 13.01; and (c) a minimum lot area of 2,950.00 square feet for proposed Lot 13.01. A checklist waiver from § 25-1500.5.2 a.3. of the Ocean City Zoning and Land Development Ordinance. Each of the proposed new lots will front on West Avenue. All existing structures, improvements, and existing concrete or flat work, now located on the Property are to be demolished and removed. The Applicant proposes to

construct one (1) new single family home on each of the proposed Lots 13.01 & 13.02 as illustrated on the architect's plans submitted with the application and Exhibit A-2.

3. The application to the Ocean City Planning Board as aforesaid was deemed complete and a public hearing in respect of the aforesaid application was held before the Ocean City Planning Board on September 2, 2026.

4. Ocean City Planning Board Member Halliday recused herself and did not participate in the public hearing in respect of the aforesaid application that was held before the Ocean City Planning Board on September 2, 2026.

WITNESSETH

NOW, THEREFORE, the Ocean City Planning Board based upon the exhibits submitted and the analysis by the Planner for the Ocean City Planning Board, Randall E. Scheule, A.I.C.P. & P.P. ["Planner"] and the Engineer for the Ocean City Planning Board, David S. Scheidegg, P.E., P.P., C.M.E. ["Engineer"] and the testimony presented makes the following findings of fact:

1. Paragraphs 1 through 4 set forth above in the Background of Decision and Resolution are incorporated by this reference as if specifically set forth herein at length; all appropriate applications have been filed; all required application fees have been paid; and, all notices required by law have been given.

2. The Applicant has submitted and the Planner and Engineer have reviewed the plans and documents identified and delineated by the Planner in the Planner's Report dated June 15, 2026 ["Planner's Report"] all of which are incorporated by this reference as if specifically listed herein at this place and identified and delineated by the Engineer in the Engineer's Report dated June 16, 2026 ["Engineer's Report"] all of which are incorporated by this reference as if

specifically listed herein at this place. The Planner's Report is attached to this Decision and Resolution as Exhibit A and expressly made a part hereof and the Engineer's Report is attached to this Decision and Resolution as Exhibit B and expressly made a part hereof.

3. The Applicant was represented by Avery S. Teitler, Esquire at the time of public hearing. Mr. Teitler presented the Applicant's application for minor subdivision approval, variances and checklist waiver in respect of the Property. The Property is located in the Residential R-1-30 Zone and is identified as Block 1605, Lot 13 as shown on the current official tax map for the City of Ocean City, New Jersey. The street address of the Property is 215 17th Street, Ocean City, New Jersey. Mr. Teitler indicated that it was the Applicant's intention to subdivide the Property into two (2) new lots (corner lot and interior lot) in the Residential R-1-30 Zone (which, if approved, will be Lots 13.01 (interior lot) and 13.02 (corner lot)). Lot 13.02 will be fully conforming. Variances to permit (a) a minimum lot width of 29.50 feet for proposed Lot 13.01; (b) a minimum lot frontage of 29.50 feet for proposed Lot 13.01; and (c) a minimum lot area of 2,950.00 square feet for proposed Lot 13.01 and a checklist waiver from § 25-1500.5.2 a. 3. of the Ocean City Zoning and Land Development Ordinance requiring "All topographical data on-site and within twenty-five (25') feet of the site. Contours shall be shown at one-foot (1') intervals throughout" are requested. Each of the proposed new lots will front on West Avenue. All existing structures, improvements, and existing concrete or flat work, now located on the Property are to be demolished and removed. The Applicant proposes to construct one (1) new single family home on each of the proposed Lots 13.01 & 13.02 as illustrated on the architect's plans submitted with the application and Exhibit A-2.

John E. Halbruner, P.E. & R.A., was the first witness to testify in respect of the application. Mr. Halbruner is a professional engineer and registered architect and was

recognized by the Ocean City Planning Board as an expert. Mr. Halbruner is the project engineer engaged by the Applicant for the minor subdivision and variances for the Property. During Mr. Halbruner's testimony Exhibits A-1 (Tax Map) and Exhibit A-2 (Rendering of two new single family homes) were marked and admitted into evidence. Mr. Halbruner provided a general description of the Property and the proposed minor subdivision, variances, and two (2) new single family homes for the Property. He testified about the variances requested by the Applicant. Mr. Halbruner testified about the lot configurations in the surrounding neighborhood. He testified that the requested bulk variances were *de minimis* in nature. He testified that the existing improvements at the Property would be demolished.

Mr. Halbruner testified using the c. (2) criteria of N.J.S. 40:55D-70 as the basis for his professional testimony and opinions. Mr. Halbruner testified that the proposed development of two (2) smaller single family homes on two (2) smaller lots was consistent with several purposes of zoning as delineated in the Municipal Land Use Law, particularly N.J.S. 40:55D-2, a. (harmonious lot sizes will promote the public health, safety, morals, and general welfare through the appropriate use and development of the Property), c. (provide adequate light, air, and open space through the development of two smaller homes), and i. (promote a desirable visual environment by developing new smaller single family homes on the Property consistent with the immediate neighborhood).

Mr. Halbruner testified that there was no detriment resulting from the proposed minor subdivision and the variances requested by the Applicant. Mr. Halbruner testified that the proposed development of the Property constituted a better zoning alternative than one large single family home that could be constructed on the Property. He testified that the proposed development would (i) contribute desirable air, light, and open space in the immediate

neighborhood, (ii) provide additional parking and (iii) create a desirable visual and aesthetic environment in the community. In summarizing the testimony, Mr. Halbruner offered his expert opinion that the positive criteria consistent with N.J.S. 40:55D-70 c. (2) to grant the variance relief requested by the Applicant were satisfied and particularly as to the c. (2) criteria, that the benefits of any deviation permitting the variance relief would substantially outweigh any detriment and that the negative criteria consistent with the standards required in N.J.S. 40:55D-70 were likewise satisfied, indicating that the relief requested by the Applicant, could, in his professional opinions, be granted without any substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

4. Chris Halliday, R.A. was the second witness to testify in respect of the Application. Mr. Halliday is a registered architect and was recognized by the Ocean City Planning Board as an expert. Mr. Haliday is the project architect engaged by the Applicant for the minor subdivision and variances for the Property. Mr. Halliday gave a description of the two single family homes the Applicant proposed to construct. Both homes will have a coastal style appearance, open floor plan, rear deck and front porch. Both homes will have four (4) bedrooms and four (4) parking spaces. Both homes will have greater setbacks than the minimum required setback. He opined that construction of a large home on an oversized lot would be out of character with the neighborhood. The proposed lot sizes are harmonious with the neighborhood. The *de minimis* variance request if granted would not be perceivable by anyone walking past the homes. The proposed development will remove an older home that is susceptible to flood risk. The older home will be replaced with two homes that would be flood compliant. Mr. Halliday testified that there was no detriment resulting from the proposed minor subdivision and the variances requested by the Applicant. Mr. Halliday testified that the proposed development of

the Property constituted a better zoning alternative than one large single family home that could be constructed on the Property. He testified that the proposed development would (i) contribute desirable air, light, and open space in the immediate neighborhood, (ii) create more parking and (iii) create a desirable visual and aesthetic environment in the community. In summarizing the testimony, Mr. Halliday offered his expert opinion that the positive criteria consistent with N.J.S. 40:55D-70 c. (2) to grant the variance relief requested by the Applicant were satisfied and particularly as to the c. (2) criteria, that the benefits of any deviation permitting the variance relief would substantially outweigh any detriment and that the negative criteria consistent with the standards required in N.J.S. 40:55D-70 were likewise satisfied, indicating that the relief requested by the Applicant, could, in his professional opinions, be granted without any substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

The Applicant shall comply with all the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on September 2, 2026. The Applicant will perfect any minor subdivision approval granted by the filing of a minor subdivision plat.

5. Comments from the Planner were received consistent with Planner's Report. The Planner's Report was received by the Ocean City Planning Board. Comments from the Engineer were received consistent with the Engineer's Report. The Engineer's Report was received by the Ocean City Planning Board. The Applicant will comply with (i) the Planner's Report and (ii) the Engineer's Report, as agreed by Applicant's counsel, Mr. Teitler. The Applicant shall cause the minor subdivision plat and architect's plans to be revised to show all changes thereto consistent with the foregoing and all the representations and agreements placed

on the record by the Applicant's counsel and the Applicant's professionals at the public hearing on September 2, 2026.

6. Upon completion of Mr. Teitler's presentation on behalf of the Applicant, receipt of the Planner's Report and the Engineer's Report, and receipt of comments by the Planner and the Engineer, the meeting was then opened to the public. The following members of the public testified and offered comments in respect of the application as follows:

Mary Crawford, 835 Pelham Place: Asked if the Shade Tree Committee made a recommendation for the planting of trees.

7. Upon conclusion and closing of the public portion of the meeting, there was further discussion and deliberation by the Ocean City Planning Board.

NOW, THEREFORE, the Ocean City Planning Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The Applicant has made application to the Ocean City Planning Board for **(i) minor subdivision approval** to subdivide the Property into two (2) new lots (corner lot and interior lot) in the Residential R-1-30 Zone (which, if approved, will be Lots 13.01 (interior lot) and 13.02 corner lot)); and, **(ii) variances** to permit (a) a minimum lot width of 29.50 feet for proposed Lot 13.01; (b) a minimum lot frontage of 29.50 feet for proposed Lot 13.01; and (c) a minimum lot area of 2,950.00 square feet for proposed Lot 13.01. A checklist waiver from § 25-1500.5.2 a.3. of the Ocean City Zoning and Land Development Ordinance requiring "All topographical data on-site and within twenty-five (25') feet of the site. Contours shall be shown at one-foot (1') intervals throughout". Each of the proposed new lots will front on West Avenue. All existing structures, improvements, and existing concrete or flat work, now located on the Property are to be demolished and removed. The Applicant proposes to construct one (1) new single family home on each of the proposed

Lots 13.01 & 13.02 as illustrated on the architect's plans submitted with the application and Exhibit A-2.

Under the Municipal Land Use Law, N.J.S. 40:55D-1 *et seq* and particularly, N.J.S. 40:55D-60, a Planning Board, when considering a subdivision, as in this case, may grant variances as provided for in N.J.S 40:55D-70 c. The Applicant has the burden of proof to satisfy both the positive and negative criteria necessary to grant the variance relief requested. The Applicant must satisfy certain specific proofs which are enunciated in N.J.S 40:55D-70 c. Specifically, pursuant to N.J.S 40:55D-70 c. (2), the Applicant may be entitled to relief, if the Applicant can demonstrate that in a particular circumstance relating specifically to the Property, the purposes of the Municipal Land Use Law would be advanced by allowing a deviation from the Ocean City Zoning and Land Development Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, variance relief may be legally granted. The category specifically enumerated above constitutes the affirmative proofs necessary in order to obtain "bulk" or c. variance relief. Finally, the Applicant must also show that the variance relief requested can be granted without any substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and Ocean City Zoning and Land Development Ordinance. It is only in those instances when an applicant has satisfied the statutory criteria, that a Planning Board acting pursuant to statutory and case law can grant relief. The burden of proof is upon the Applicant to establish these criteria.

Based upon the application, plans and documents, reports, and testimony, including the expert opinions furnished by Mr. Halbruner and Mr. Halliday, the Ocean City Planning Board finds that the Applicant **has met** the minimum requirements of the Municipal Land Use Law, case law and the Ocean City Zoning and Land Development Ordinance so as to grant the relief

requested. The bulk variance requests are *de minimis* in nature. Specifically, as it pertains to the c. variance relief sought by the Applicant, the Ocean City Planning Board finds that: 1. The c. (2) criteria to grant the variances to permit (a) a minimum lot width of 29.50 feet for proposed Lot 13.01 and ; (b) a minimum lot frontage of 29.50 feet for proposed Lot 13.01; and (c) a minimum lot area of 2,950.00 square feet for proposed Lot 13.01 **have been satisfied**; and, specifically as to the c. (2) criteria, that the purposes of the Municipal Land Use Law would be advanced by a deviation from the Ocean City Zoning and Land Development Ordinance and the benefits of the deviation would substantially outweigh any detriment, taking into consideration, 1. several purposes of zoning as delineated in the Municipal Land Use Law, particularly N.J.S. 40:55D-2, a. (promote the public health, safety, morals, and general welfare through the appropriate use and development of the Property by providing additional parking and lot sizes consistent with the neighborhood), c. (provide adequate light, air, and open space through the development of smaller homes), e. (promote appropriate population densities through the development of compatible single family housing), and i. (promote a desirable visual environment by developing new smaller single family homes on the Property), 2. the adequate provision of light, air, and open space, 3. the nature of the variances requested, 4. the existing pattern of the lot sizes and existing homes in the neighborhood where the Property is located, 5. the location and aesthetic characteristics of the proposed new development in the neighborhood where the Property is located, 6. that the project development was consistent within the pattern of development in the immediate neighborhood where the Property is located, and 7. that the development of two (2) smaller single family homes on two (2) smaller lots at the Property constituted a better zoning alternative than one large single family home that could be constructed on the Property; and, 2. The evidence before the Ocean City Planning Board

supports the conclusion that the minor subdivision, variances, and checklist waiver requested, if approved and granted, would not have a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and the Ocean City Zoning and Land Development Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Ocean City Planning Board on September 2, 2026 that the application made by the Applicant, The Robert Smith Family Trust requesting land use approvals is determined as follows: **(i) minor subdivision approval** to subdivide the Property into two (2) new lots (corner lot and interior lot) in the Residential R-1-30 Zone (which, if approved, will be Lots 13.01 (interior lot) and 13.02 corner lot)); and, **(ii) variances** to permit (a) a minimum lot width of 29.50 feet for proposed Lot 13.01; (b) a minimum lot frontage of 29.50 feet for proposed Lot 13.01; and (c) a minimum lot area of 2,950.00 square feet for proposed Lot 13.01 are **APPROVED AND GRANTED**. Construction of one (1) new single family home on each of the proposed Lots 13.01 & 13.02 as illustrated on the architect's plans submitted with the application and as depicted in Exhibit A-2 is likewise **APPROVED AND GRANTED**.

IT IS FURTHER RESOLVED that the above approvals all as aforesaid are **GRANTED** with and subject to the following terms and conditions:

A. The subdivision approval is further conditioned on the approval of the subdivision expiring 190 days from the date of adoption of this Decision and Resolution, unless within such period a plat in conformity with such approval and provisions of the Map Filing Law (N.J.S. 46:23-9.9 *et. seq.*) is filed by the Applicant all as required consistent with and pursuant to N.J.S. 40:55D-47. The Applicant has agreed to and shall file by plat as represented at the time of public hearing. The Applicant shall confirm the proper lot designations in respect

of the Property (as subdivided) with the Ocean City Tax Assessor before the plat referenced herein is filed as aforesaid.

B. The Applicant shall, prior to the issuance of any construction permit, reimburse the City of Ocean City for all professional fees and other expenses incurred by the City of Ocean City as a result of processing Applicant's application in accordance with the Ocean City Zoning and Land Development Ordinance.

C. The Applicant will comply with the Planner's Report and the Engineer's Report.

D. The Applicant shall comply with all the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on September 2, 2026.

E. The Applicant shall obtain the approval of all other municipal, county, state or federal agencies or boards having jurisdiction over the proposed minor subdivision of the Property, including but not limited to approval from the Cape-Atlantic Soil Conservation District, if necessary.

F. The Applicant shall cause all plans and documents, including the minor subdivision plat and the architect's plans to be revised consistent with the above referenced conditions, including but not limited to, those revisions contained in the Engineer's Report dated June 16, 2026 and Planner's Report dated June 15, 2026, the revision of note #2 on A0.01, an updated survey, curb and sidewalk replacement, the inclusion ADA ramp details on the plans, a retaining wall detail, trash corral detail, driveway details for lot 13.01, parking dimensions, the labeling of an unlabeled room, roof plans, the provision of a floor area for the attic, removal of an existing six (6) foot fence, certification of demolition and monuments set, utility letters from

all utilities, submission of a tax map fee and all of the representations and agreements placed on the record by the Applicant's counsel, professionals, and/or other representatives at the time of public hearing on September 2, 2026 including the agreement to have the Board Engineer prepare separate cost estimates.

G. If applicable, the Applicant (or future owner) shall satisfy the legal requirements of § 25-1900 (Affordable Housing Development Fees) for any development on proposed Lots 13.01 & 13.02.

H. All existing structures, improvements, and existing concrete or flat work, now located on the Property are to be demolished and removed before the plat required in subparagraph A above is filed.

I. The Applicant's request for a checklist waiver from § 25-1500.5.2 a.3. of the Ocean City Zoning and Land Development Ordinance requiring "All topographical data on-site and within twenty-five (25') feet of the site. Contours shall be shown at one-foot (1') intervals throughout" is granted.

J. The Applicant shall comply with Article 1600 of the Ocean City Zoning and Land Development Ordinance in respect of Guarantees and Improvement Procedures.

K. The Applicant shall comply with all provisions of the Ocean City Zoning and Land Development Ordinance, including without limitation § 25-1500.5.4 thereof, and any and all other municipal, county, state, or federal laws or regulations relating or applicable to the proposed minor subdivision of the Property, including but not limited to § 30-1, Schedule L of the Revised General Ordinances for the City of Ocean City.

This Decision and Resolution was adopted upon a motion, to be considered in the affirmative to approve the Applicant's request for land use approvals with the conditions

aforesaid, made by Ocean City Planning Board Member Jessel and seconded by Ocean City Planning Board Member Birch on September 2, 2026 [“Jessel Motion”]. The vote on the Jessel Motion was seven (7) in favor of and zero (0) against with Ocean City Planning Board Members, Allegretto, Barnes, Birch, Jessel, Stell, Dr. Vanderschuere and Loeper all voting in the affirmative.

OCEAN CITY PLANNING BOARD

JOHN LOEPER,
CHAIRPERSON

Dated: October 14, 2026

CERTIFICATION

I, JAIME M. FELKER, Secretary to the Ocean City Planning Board, do hereby certify that the foregoing Decision and Resolution was duly adopted at the meeting of the Ocean City Planning Board held on September 2, 2026 and memorialized herein pursuant to N.J.S. 40:55D-10 g. (2) on October 14, 2026. This resolution has been filed in the office of the Board and is available for inspection upon request.

JAIME M. FELKER,
Secretary, Ocean City Planning Board