

RESOLUTION

Township of West Orange

Planning Board

PB 25-09 Johny R. Perez /68 Whittlesey Avenue

Block: 129 Lot: 58; Zone: R-T Two Family Residential

Decided on August 12, 2026

Memorialized on September 2, 2026

Application for Minor Subdivision Approval with Bulk Variances

WHEREAS, Johny R. Perez (Hereinafter the “Applicant”) has made an application for Minor Subdivision approval with Bulk Variances to subdivide the subject property into two lots at property located at 69 Whittlesey Avenue, also known as Block: 129; Lot 58 (the “Property”), in the R-T two family residential zone; and

WHEREAS, a properly noticed public hearing was conducted on May 6, 2026 and August 12, 2026; and

WHEREAS, the Applicant was represented by Alan G. Trembulak, Esq.; and

WHEREAS, the Applicant provided testimony from Johny R. Perez, owner, and Matt Flynn of John McDonough and Associates, as a professional planner; and

WHEREAS, the Applicant submitted the following documents to the Board in the form of the application package:

ITEM	SIGNED BY	DATE/REVISION
Subdivision Plan (1 page)	Richard T. Watson	Last revised 7/1/2026

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Witnesses and also had an opportunity to offer statements in regard to the Application; and

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WHEREAS, the Board reviewed and considered the Application and the documents submitted therewith, the testimony of the Witnesses and members of the public; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing, including review memos dated December 16, 2025 and January 28, 2026 from Ryan MacNeill, P.E. of CME (Township Engineer) and a Planner's Report by Malvika Apte, PP, AICP, of Heyer, Bruel & Associates, Township Planning Consultant dated January 29, 2026.

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made:

The Applicant is requesting approval for Minor Subdivision approval with c variances to subdivide the existing lot 58, which currently is occupied by a two and a half-story one-family dwelling and two sheds, into two (2) new lots designated as Lots 58.01 and 58.02.

2. New lot 58.02 will contain the existing residential dwelling with an addition to that building to create a two-family home, while a new two-family house will be constructed on lot 58.01.
3. The proposed lots 58.01 and 58.02 will both have an area of 5,000 square feet (0.11 acres) and 50 foot lot widths, which creates a condition that does not meet the bulk standards for the district, specifically, the minimum lot area requirement for a two-family dwelling is 7,500 square feet and the required minimum lot width for a two-family dwelling is 75 feet.
4. The proposed two-family dwellings are permitted in the R-T Two Family Residential District; however the proposed subdivision will create a condition that does not meet

the bulk and design requirements for the District- specifically, the minimum lot area requirement for a two-family dwelling is 7,500 square feet and the required minimum lot width for a two-family dwelling is 75 feet.

5. Applicant seeks to construct an addition to the existing one-family dwelling currently located on proposed lot 58.02 to create a two-family dwelling, which does not meet the bulk and design requirements for the District- specifically, the minimum lot area requirement for a two-family dwelling is 7,500 square feet and the required minimum lot width for a two-family dwelling is 75 feet.

6. Applicant further proposes to construct a two-family dwelling on proposed lot 58.01 which also does not meet the bulk and design requirements for the District- specifically, the minimum lot area requirement for a two-family dwelling is 7,500 square feet and the required minimum lot width for a two-family dwelling is 75 feet.

7. The current Lot 58 is oversized at 10,000 square feet where the zone requires a minimum of 5,000 square feet for a one-family dwelling or 7,500 square feet for a two-family dwelling.

8. The proposed subdivision will create two non-conforming lots for two-family dwellings.

9. Each of the two-family dwellings will have two bedrooms which per Code would require a minimum of three on site parking spaces.

10. Applicant testified he would comply with all the requirements of the Township's tree ordinance.

11. There are no current specifications for a new dwelling on proposed Lot 58.01; however, the testimony was that it will be designed to comply with all the requirements of the

zoning ordinance regarding height, and side, rear yard setbacks, lot coverage but due to a request by the Board the front yard setback will match the existing house on Lot 58.02 of 16.7 feet and thus will require a variance.

12. The Applicant originally planned to conform to the front yard setback requirements of the zone for the new proposed dwelling on Lot 58.01; however, the Board preferred that parking for the proposed house be located in the rear of the property and further were of the opinion that matching the front yard setback of the new house on Lot 58.01 (16.71 feet) was a better fit with the neighborhood.

13. The Applicant's Planner, Matt Flynn, P.P. testified that there were many other properties on this street that were two-family (or even three-family and in one case four-family) on lots equal or smaller than proposed.

14. Applicant will satisfy the district parking requirements with rear yard parking in accordance with the conditions set forth below which will require that Applicant establish safe turning templates for both properties.

15. **The front yard area of both lots, in the area where Applicant originally planned to have parking, must be maintained as green space (grass, landscaping etc.).**

16. Applicant's planner also testified that the proposed subdivision and development is supported by the case of Kaufman v. Planning Board for Warren Tp, 110 N.J. 551 at 563 (1988) as the Court stated that "the focus of a c(2) case, ...will not be on the characteristics of the land that, in light of the current zoning requirements, create a "hardship" on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community."

17. The Application requires the following variance relief from the Board:

SECTION/REQUIREMENT	PERMITTED/REQUIRED	PROPOSED
25-7.1	7,500 sq. ft. of lot area for two-family dwelling	5,000 sq. ft. (both lots 58.01 and 58.02)
25-7.1	Minimum lot width of 75ft for two-family dwelling	50 ft lot width (both lots 58.01 and 58.02)
25.7.1	8 ft. side yard setback	2 ft. (for lot 58.02- existing house)
25.71	30 ft. front yard setback	16.71 ft. (for lot 58.01- pre-existing lot 58.02)

and N.J.S.A. 40:55D-18, 40:55D-47 a. and b. and N.J.S.A. 40:55D-50a. govern the Board's review of subdivision application, 11.3 the preliminary and final subdivision application. N.J.S.A. 40:55D-47a. provides that an "ordinance requiring approval of subdivisions by the planning board may authorize the planning board to waive notice and public hearing for an application for development if the planning board ... finds that the application for development conforms to the definition of "minor subdivision" and "Minor subdivision of approval shall be deemed to be final approval of the subdivision by the board; provided that the board ... may condition such approval on terms ensuing the provision of improvements pursuant to N.J.S.A. 40:55D-38, N.J.S.A. 40:55D-39, N.J.S.A. 40:55D-40 and N.J.S.A. 40:55D-53. N.J.S.A. 40:55D-46a further provides that "The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient." N.J.S.A. 40:55D-50a. provides that final approval of major subdivisions "shall" be granted if the detailed drawings, specifications, and estimates of the

application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such if the applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super.

201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first

exception is where an application does not comply with all ordinance requirements

but the Board grants relief in terms of variances or exceptions. In that case, the Board

then must review the application against all remaining ordinance requirements and

grant approval if the application complies with all such remaining requirements.

19. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a "d" variance as part of site plan or subdivision review. The variance proofs are the same as for "c" variances as set forth in N.J.S.A. 40:55D-70. A c (2) variance may be granted when the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a "c (2)" variance must include benefits to the community as a whole, not just the applicant or property owner. A "c" variance must address the "negative criteria," and affirmatively demonstrate that the variance can be granted "without substantial

detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality.

20. Applicant’s planner testified that the variance for the lot area of 5,000 and lot width of 50 feet for each of the proposed lots, and the side yard setback of 2 feet for lot 58.02 and the existing house can be granted as a c(2) variances as the proposed subdivision and resulting variances satisfy several of the purposes of the MLUL.

Specifically, Applicant’s planner testified that Applicant satisfies N.J.S.A. 40:55D-2a in that the variances are justified under the c(2) criteria as they promote purpose: a. (promotes the public health, safety, morals, and general welfare by improving old housing, and creating new modern housing for middle income families), g. (provides sufficient space in appropriate locations for residences in order to meet the needs of all New Jersey citizens as the subdivision and new house is compatible with the neighborhood conditions) and i. (promotes a desirable visual environment by creating more uniform lots within the neighborhood.)

22. Applicant’s planner also testified that the negative criteria for a c(2) variance was satisfied because the project supplies sufficient on site parking and will not create any negative traffic impact.

23. Applicant testified that the subdivision will be perfected by the filing of a deed.

NOW, THEREFORE, based upon the foregoing findings of fact, the Board reaches the following conclusions of law:

1. The use at the site is a permitted use.

2. The requested variances for minimum lot area, lot width and side yard setback for lot 58.02 and 58.01 and front yard setback as to lot 58.01 satisfy the c(2) criteria because the project as a whole advances the purpose of the MLUL as they advance the purposes set forth in N.J.S.A. 40:55D-2a., g., and i., presents no negative impact and have benefits that substantially outweigh any detriment.

NOW, THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that approval for minor subdivision approval with c(2) variances for minimum lot area, minimum lot width for both Lots 58.01 and 58.02, side yard setback for Lot 58.02 and front yard setback for Lot 58.01 is granted; and

IT IS FURTHER RESOLVED that the approval granted to Johny R. Perez, is subject to the following terms and conditions:

The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations, and directives, including without limitation, obtaining all applicable local, state, and federal approvals, or permits. If another governmental entity or agency grants a waiver or a variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.

2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those

municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.

3. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.

4. The Applicant shall pay all outstanding application fees and technical review fees, and board attorney fees for preparation of the resolution, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.

5. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.

6. Applicant agrees to abide by all of the suggestions and directives set forth in the CME reports dated January 28, 2026 and December 16, 2025 and the reports by the Board Planning Consultant, Heyer Gruel, dated June 26, 2026.

7. Applicant will abide by and comply with all the requirements of the Township Tree Ordinance.

8. Applicant's deed of subdivision must include a reduced copy of the subdivision plan as an attachment.
9. Applicant will submit a grading and drainage plan and **obtain and provide any required stormwater permits for the new lot 58.01 to the** office of the municipal engineer for their review and approval at the time of obtaining building permits.
10. The proposed subdivision will be perfected by deed and said deeds must be approved by the Planning Board attorney and Planning Board engineer prior to filing.
11. Each apartment unit must be at least 1,100 sq.ft.
12. Applicant will comply with the Township design standards.
13. Parking for each lot will comply with RSIS standards as to number and size of parking spaces.
14. Parking spaces will be located in the rear of both lots (no parking spaces shall be situated in the front of either lot **and the area in front of the houses must remain as green space, no impervious coverage**).
15. **Should the change in the location of the parking from the front to the rear result in an increase in impervious coverage of more than is allowed by Code, Applicant must return to the Board for a determination as to whether a variance will issue and/or a modification to the site plan must be made.**
16. Applicant must submit a turning template for each lot with a minimum driveway width of 10 feet demonstrating parking ingress and egress for each proposed parking space to the satisfaction of the Board Engineer. To effectuate satisfactory turns into and out of the designed parking spaces, Applicant may reduce the size of the addition on Lot 58.58.02; but still must maintain minimum unit sizes of 1,100 sq. ft.

17. Applicant must remove the shed at the rear of the property **prior to any COO being issued.**
18. Applicant shall list all conditions of approval onto the final site plan submission.

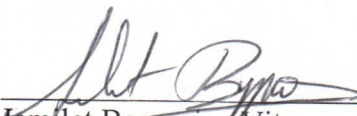
The undersigned secretary certifies the decision set forth herein was made by this Board on

8/12/26

, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on

9/2/26.

Jamilet Baquerizo Vite
Planning Board Secretary



Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on August 12 2026:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino			X			
L.Klein			X			
S. McCartney			X			
C. Morgan			X			
S. Scarpa					X	
F. Noborine		X	X			
W. Wilkes						---
J. Cardoza			X			
L. Kapferer					X	
R. Bagoff	X		X			

Vote on Memorialization on September 2, 2026:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino		X	X			
L.Klein						---
S. McCartney			X			
C. Morgan			X			
S. Scarpa						---
F. Noborine			X			
W. Wilkes						---
J. Cardoza						---
L. Kapferer						---
R. Bagoff	X		X			