

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING A "C.2" BULK VARIANCE FROM FRONT YARD SETBACK REQUIREMENT TO NVR, INC., D/B/A RYAN HOMES, REGARDING PROPERTY LOCATED AT 409 CRISPIN WAY, AND BEING FURTHER SHOWN AS BLOCK 29.03, LOT 15 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-16-05**

**WHEREAS**, Application No.: ZB-16-05 (the "Application") was submitted before the Combined Planning/Zoning Board Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the "Board") by NVR, Inc. d/b/a Ryan Homes, 1020 Laurel Oak Road, Voorhees NJ 08043, (the "Applicant") for a "c.2" bulk variance for relief from the residential front yard setback requirement regarding property located at 409 Crispin Way, (the "Subject Property") and being further shown as Block 29.03, Lot 15 on the Tax Maps of the Township of Elk (the "Township"); and

**WHEREAS**, the Applicant did appear at a meeting and public hearing held by the Board on the Application on June 15, 2016 at 7:30 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Joseph Mancini, PE, PP, Tristate Engineering and Surveying, (the Applicant's professional engineer and professional planner), Jason McNee, Production Manager, NVR, Inc., d/b/a Ryan Homes (testifying as a fact witness), and Michael F. Floyd, Esquire, Archer & Greiner PC, One Centennial Square, Haddonfield, NJ 08033, (the Applicant's Attorney); and

**WHEREAS**, Mr. Mancini, having not previously appeared in front of the Board, provided his expertise, background and licensing as a professional engineer and planner in the State of New Jersey, after which it was stipulated by the Board, without objection, that Mr. Mancini was indeed a licensed professional engineer and a licensed profession planner in the State of New Jersey and was qualified to testify as an expert in the fields of engineering and planning on behalf of the Applicant for the purposes of the Application, after which were Messrs. Mancini and McNee sworn and provided testimony on the Application;

**NOW, THEREFORE, BE IT RESOLVED** by the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

## FINDINGS OF FACT

1. The Application was deemed to be complete, subject to the Board acting on a request by the Applicant for a waiver from a submission requirement, as is set forth below. As such, the Board had jurisdiction to act on the Application.

2. The Board's professional planner, Steven M. Bach, PE, RA, PP, CME, Bach Associates, PC, 304 White Horse Pike, Haddon Heights, NJ 08035 and the Board's professional engineer, Stan Bitgood, P.E., C.M.E., Federici and Akin, were both sworn as to any testimony that they would give on behalf of the Board as to the Application presently before the Board.

3. The Applicant submitted and the Board entered into the record the following:

A. Application, Application Fee, Escrow Agreement, Escrow Deposit, Notice of Public Hearing, Certified List of Property Owners within 200 ft. of the Subject Property, Affidavit of Service, Affidavit of Publication, Certification of Taxes Paid, Application Checklist.

B. Foundation Survey entitled "Aura, Block 29.03, Lot 15, Elk Township, Gloucester County, New Jersey," prepared by Consulting Engineer Services, dated May 10, 2014, last revised May 13, 2016 – one (1) signed and sealed original, and fourteen (14) copies

C. Letter from Michael F. Floyd, Esq., Archer and Greiner, to the Board, dated May 24, 2016, in which a narrative was submitted in addition to the Application regarding the Subject Property

D. Email from Stan Bitgood, to the Board, dated May 26, 2016, at which Mr. Bitgood indicated that he had reviewed the Application and had supported a grant of the relief requested.

E. Exhibits submitted by the Applicant's Attorney as follows:

Exhibit A-1      Survey/Plot Plan of Property

Exhibit A-2      Color Photographs of Property and  
Surrounding Uses

4. The Subject Property consists of 6,927 square feet and contains a single-family dwelling. The Subject Property is located within the RE zoning district, however the zoning overlay ARC Age-Restricted Community zoning classification applies to this Application. The Subject Property was approved as part of a Major Subdivision Approval granted in 2006 (Res. 2006-32). While the original application was for age restricted housing, the Applicant received approval to convert from age restricted housing to market rate housing (Res 2011-13) and in this approval, the development retained the ARC zoning standards. The Application requires a front yard setback variance for a front porch, from the requirements of the ARC zoning district for minimum front yard setback.

5. The Applicant was requesting one waiver from submission requirements as follows:

**Submission Checklist Item #8** requires copies of applications to and certifications from all outside agencies. It is recommended that the outside agency approvals, if necessary, be provided as a condition of any approval by the Planning Board. Mr. Floyd, on behalf of the Applicant, agreed to comply.

**WHEREUPON**, a motion was made by Board Member Hughes, which was seconded by Board Member Schmidt, to grant a conditional waiver of the above submission requirement, subject to the agreement of the Applicant as is also set forth above, after which the following Board members voted in favor of the motion to grant the requested waiver: Nicholson, Hughes, Clark, McKeever, Shultz, White, Schmidt, Barbaro, Swanson (Alternate Member #2). There were no votes in the negative and no abstentions or recusals. The following Board members were absent: Poisker, and Goss (Alternate Member #1). The Board, having granted the above request for a conditional waiver of a submission item, the Application was deemed to be complete and the hearing on the Application proceeded.

6. Mr. Floyd, on behalf of the Applicant and consistent with his written Application addendum submitted to the Board by way of his letter of May 24, 2016, now entered into the record, provided an overview of the Application as follows: The Subject Property was originally approved as part of a Major Subdivision Approval granted by the Planning and Zoning Board on October 18, 2006, which Approval was memorialized in Resolution 2006-32 (the "Original Approval"). The Original Approval provided for an Age Restricted Community, which included 318 residential lots and 8 open space lots. The Original Approval was governed by the Bulk and Area Criteria of the ARC Zoning District. The Original Approval was later converted to a "Market Rate Project" pursuant to N.J.S.A. 45:22A-46.3 et seq., which conversion approval was memorialized in Resolution No. 2011-13 (the "Conversion Approval"). The Conversion Approval provides for 218 family units, 7 stormwater management parcels, open and recreational space, and one lot to be developed with a pump station. The

Property was included as part of the Conversion Approval. The Conversion Approval specifically provides that “the proposed single family homes retain the same building setbacks as those which had been approved under the ARC zone standards rather than those required by the existing zone classification of rural environmental, RE.” Therefore, the Bulk and Area Criteria for the ARC Zoning District apply to this Application.

7. Mr. McNee testified as to the reason the relief being requested by the Applicant was before the Board. Mr. McNee testified that the Applicant is proposing the development of a front-porch area that will enhance the street façade of the Subject Property. In order to permit the development of the Property, a “c” bulk variance approval is necessary to allow for a front yard setback of 18.8+/- feet for the front-porch area, when a 20 foot front yard setback is required.

8. Mr. Mancini, on behalf of the Applicant, provided the legal justifications for the requested variance. In so doing, Mr. Mancini provided direct testimony in addition to relying on the Addendum to the Application that was submitted by the Applicant’s Attorney by way of Mr. Floyd’s letter of May 24, 2016.

9. Mr. Mancini testified that, pursuant to the New Jersey Municipal Land Use Law (“MLUL”), the requested variance is a “c” variance, as set forth in N.J.S.A. 40:55D-70.c. Pursuant to the MLUL and N.J.S.A. 40:55D 70(c), as authorized by N.J.S.A. 40:55D-60, the Planning Board has authority to grant “c” variances in connection with its review and approval of site plan applications such as this one. Specifically, the Board shall have the power to:

c. (1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to Article 8 of this act (40:55D-62 et seq.) would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; or

c. (2) Where in an application or appeal relating to a specific piece of property, the purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to article 8 of this act.

However, such relief can only be granted when there is a showing that there will be no substantial detriment to the public good and that the requested

relief will not substantially impair the intent and purpose of the Zone Plan and the Zoning Ordinance. N.J.S.A. 40:55D-70.

Mr. Mancini testified that, with the above statutory criteria in mind, the justification for the requested “c” variance is set forth below in detail.

The “c” Variance to allow relief from the building setback requirement should be granted because it is necessary to alleviate practical difficulties and will provide significant benefits which will outweigh any detriments.

a. The “c-1” Positive Criteria

Mr. Mancini testified that with respect to addressing the “c-1” criteria for Front Yard Setback Variance Approval, the strict application of the Front Yard Setback requirement will result in peculiar and exceptional practical difficulties to, and exceptional and undue hardship upon, the Applicant. First, and as stated above, Lot 15 cannot be developed in accordance with applicable regulations without the requested Front Yard Setback Variance being granted, due to its existing configuration. The foundation for the residence was constructed close to the currently existing front property line. This factor presents practical difficulties in connection with any front-porch addition to the residence if the Front Yard Setback that is required by Ordinance is adhered to. It is necessary to provide the same size front-porch as the other homes in the development in order to ensure consistency in the neighborhood, and to maximize the desirability of the for potential residents. The size and configuration of the proposed front-porch will be consistent with the same amenity on other lots within the development. The proposed front-porch will add to the aesthetics and curb-appeal of the Subject Property, and will only slightly encroach on the Front Yard Setback requirement. Compliance with the Ordinance requirement would require the removal of portions of the proposed front-porch which will make the Subject Property less desirable, and pose an undue hardship upon the Applicant. Granting the requested Variance relief will alleviate the practical difficulty and undue hardship, thereby satisfying the positive criteria for a “c-1” Variance.

b. The “c-2” Positive Criteria

Mr. Mancini testified that with respect to the “c-2” criteria for Front Yard Setback Variance Approval, here the benefits that will be derived from the granting of the requested Front Yard Setback Variance will substantially outweigh any detriment. Granting the requested Front Yard Setback Variance will allow the development of the Subject Property in an aesthetically appealing manner that is consistent with other properties in the development. This promotes the purposes of the MLUL, including, (i) to “promote a desirable visual environment through creative development techniques and good civic design,” pursuant to N.J.S.A., 40:55D-2(i); and, (ii) to provide for “a more efficient use of land,” pursuant to N.J.S.A., 40:55D-2(m).

Mr. Mancini testified that these significant benefits will substantially outweigh any detriment, if there is any, thereby satisfying the positive criteria for a “c-2” Variance.

c. The “c-1” and “c-2” Negative Criteria

Mr. Mancini testified that, as is set forth within the Foundation Survey that has been submitted to the Board in connection with this Application, the proposed front-porch will only encroach 1.2 +/- feet into the Front Yard Setback area, which encroachment is *de minimis* in nature. In addition, the front-porch that is proposed is intended to provide a desirable contemporary amenity and is appropriate for a residence of its size, and in keeping with the surrounding properties. Also, as set forth above, the requested Variance relief promotes several purposes of the MLUL, and the minor deviation from the Front Yard Setback requirement will not be a substantial detriment to the public good or substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance, thereby satisfying the negative criteria for both “c-1” and “c-2” Variances.

The Board’s professional engineer and professional planner, Stephen M. Bach, reviewed with the Applicant and the Board his letter of June 6, 2016. Given the testimony of Mr. Mancini on behalf of the Applicant, Mr. Bach testified that in his opinion, the Applicant had met the burden of proof for the “c-2” criteria, insofar as the requested relief would represent a benefit to the zone code and the master plan, and the requested relief would not have a substantially negative impact on the zone code or the master plan, or the immediate area in which the Subject Property is located.

The hearing on the Application was opened to the public, at which time no member of the public present spoke either in favor of or opposed to the Application.

## CONCLUSIONS

1. The Board concluded that the Applicant had met its burden in terms of the positive and negative criteria for the grant of a “c-2” bulk variance from the front yard set-back requirements. The Board concluded that the benefits that will be derived from a granting of the requested front yard setback variance will substantially outweigh any detriment. In particular, a grant of the relief requested will allow the development of the Subject Property in an aesthetically appealing manner that is consistent with other properties in the development. In addition, the relief requested would benefit creative development techniques, and a good civic design, as well as providing for a more efficient use of land.

2. The Board concluded that the Applicant has met its burden with regard to the “negative criteria”. The Board concluded that the proposed front porch on the Subject Property is intended to provide a desirable contemporary amenity and is appropriate for residents given its size and the desire to keep the porch similar to, and consistent with, the surrounding properties. In addition, the requested relief represents a minor deviation from the front yard setback requirement. As such, the requested relief will not pose a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan or the zoning ordinance.

## CONDITIONS

1. The Board presumes that the Applicant’s Application, all maps, Exhibits, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant’s request for relief. In the event that it appears to the Board, on reasonable grounds, that the Application, exhibits, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied on by the Board as they bear on facts that were essential in the granting of the relief requested by the Applicant, the Board may rescind its approval and rehear the Application, either upon the request or application of an interested party, or on its own motion, when unusual circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice.

2. At any time after the adoption of this resolution of memorialization, should a party on interest appeal to the Board for an order vacating or modifying any term or conditions as set forth herein, upon the proper showing of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present, for the purpose of fact-finding regarding the same. Should the fact(s) at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems to be appropriate at that time, including but not limited to a rescission of its prior approval, a rehearing, a modification of its prior approval, or such other action, as appropriate.

3. The Applicant shall indemnify and hold the Township harmless from any claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to proper service and notice upon interested parties made in reliance upon the certified list of property owners and other parties entitled to notice, said list having been provided to the Applicant by the Township pursuant to N.J.S.A. 40:55D-12.c., and publication of the notice of public hearing in this matter in accordance with law.

4. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed.

5. The Applicant must obtain all approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief. The Applicant is solely responsible for determining which governmental and/or public agencies, if any, such approvals are required of. The Applicant is further required to submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Attorney, Engineer and Planner.

6. The Applicant must maintain an escrow account with the Township and pay the costs of all professional review and other fees required to act on this Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and the N.J. Municipal Land Use Law. The Applicant's escrow account must be current prior to any permits being issued, or constructions or other activity commencing on the approved project, or any certificate of occupancy being issued.

7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., required with respect to the relief as granted herein.

8. The Applicant shall comply with all its representations, acknowledgements, agreements and conditions as are more fully set forth under Findings of Fact above.

**WHEREUPON**, a motion was made by Board member White, which was seconded by Board member Nicholson, to grant the request for a "c" variance as is more fully set forth above under Findings of Fact, at a meeting following a public hearing held on the above referenced Application on June 15, 2016 at 7:30 PM, time prevailing, with the following Board members voting in favor of the motion to approve: Nicholson, Hughes, Clark, McKeever, Shultz, White, Schmidt, Barbaro, and Swanson (Alternate # 2). There were no votes in the negative, and no abstentions or recusals. The following Board members were absent: Poisker, and Goss (Alternate # 1).

**THIS RESOLUTION WAS ADOPTED** by the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on July 20, 2016 as a memorialization of the relief granted by the Board

on the above captioned Application at the Board's regular meeting and public hearing held on June 15, 2016.

**COMBINED PLANNING/ZONING  
BOARD OF ADJUSTMENT OF THE  
TOWNSHIP OF ELK**

By:   
JEANNE WHITE, Chairperson

**ATTEST:**

By   
ANNA FOLEY, Secretary

**CERTIFICATION**

I hereby certify that the foregoing resolution is a true copy of a resolution adopted at a regularly scheduled meeting of the Elk Township Combined Planning/Zoning Board of Adjustment, County of Gloucester, State of New Jersey held on the 20<sup>th</sup> day of July 2016 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:30 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on June 15, 2016 on the above cited Application.

  
ANNA FOLEY, Secretary



**FILE COPY**

June 6, 2016

Elk Township Planning/Zoning Board  
680 Whig Lane  
Monroeville, NJ 08343

**RECEIVED**

JUN - 6 2016

**TOWNSHIP OF ELK  
PLANNING/ZONING**

Attn: Anna Foley, Board Secretary

Re: NVR, Inc., d/b/a Ryan Homes  
409 Crispin Way  
Block 29.03 Lot 15  
"c" bulk variance  
ARC Age-Restricted Community  
Elk Township Application ZB-16-05  
Bach Associates Proj. # ET2016-6

Dear Chairwoman and Members of the Board:

We have reviewed the application and supporting documents submitted by NVR, Inc. for a bulk variance at the above referenced site. The property consists of 6,927 square feet and contains a single family dwelling.

The property is located within the RE zoning district, however the zoning overlay ARC Age-Restricted Community zoning classification applies to this application. The property was approved as part of a Major Subdivision Approval granted in 2006 (Res. 2006-32). While the original application was for age restricted housing, the applicant received approval to convert from age restricted housing to market rate housing (Res 2011-13) and in this approval, the development retained the ARC zoning standards. The application requires a front yard setback variance for a front porch, from the requirements of the ARC zoning district for minimum front yard setback.

**We have received the following materials in support of this application:**

1. Land Development Application for Bulk Variance (received by Elk Twp May 25, 2016), Escrow Agreement dated August 4, 2015, Affidavit of Applicant and Ownership, Tax Certification, disclosure statement, list of property owners within 200 feet.
2. Cover letter from Michael Floyd, Esq explaining reason for relief.
3. Foundation Survey, prepared by Adam R. Grant, PLS of CES dated May 15, 2016.

NVR, Inc., d/b/a Ryan Homes  
409 Crispin Way  
Block 29.03 Lot 15  
"c" bulk variance  
ARC Age-Restricted Community  
Elk Township Application ZB-16-05  
Bach Associates Proj. # ET2016-6  
June 6, 2015  
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### **Completeness**

The applicant has not submitted the land development checklist, however because of the nature of this application, we have reviewed the application against the checklist and recommend the following waivers.

- **#8** requires copies of applications to and certifications from all outside agencies. *It is recommended that the outside agency approvals, if necessary, be provided as a condition of any approval by the Planning Board.*

### **RE Zone Bulk Standards and "C" Variances**

The property is subject to the ARC Age Restricted Community requirements of Section 90-74(D)(1)(a)(4)(a) where a minimum front yard setback of 20 feet is required and 18.8 feet is proposed.

### **Standard of Proof for "C" Variances**

The applicant must provide testimony to justify the requested variances. For a C(1) variance, the applicant must demonstrate that the strict application of the zoning regulations to the property create a hardship or result in exceptional practical difficulties by reason of the exceptional shape of the property or the exceptional topographic conditions uniquely affecting the property, or the structures lawfully existing upon the property. For a C(2) variance the applicant must show that the proposed variance advances the purposes of municipal land use law and that the benefits of the deviation would substantially outweigh any detriments. The applicant should address whether the proposed variance will substantially impair the intent of the Master Plan or zoning plan and whether there are any potential impacts to the public good.

If there are any questions or comments, please contact the undersigned.

Very truly yours,  
BACH Associates, PC



Candace Kanaplue, PP, AICP  
Associate



Steven M. Bach, PE, RA, PP, CME  
President

NVR, Inc., d/b/a Ryan Homes  
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June 6, 2015  
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Cc: Dale Taylor, Esq  
Steven M. Bach, RA, PE, PP, CME  
NVR, Inc., applicant  
Michael F. Floyd, Esq.  
Adam R. Grant, PLS

I-Foley-NVR Bulk Planning Review June 1 2016.doc