

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, DENYING AN APPLICATION FOR A MINOR
SUBDIVISION WITH BULK VARIANCES TO THOMAS ROSA, REGARDING
PROPERTY LOCATED AT WEST BOULEVARD, AND BEING FURTHER
SHOWN AS BLOCK 162, LOTS 6 & 7 ON THE TAX MAPS OF THE TOWNSHIP
OF ELK, APPLICATION NO.: SD-16-04**

WHEREAS, Application No.: SD-16-04 (the "Application") was submitted before the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the "Board") by Thomas Rosa, 1239 Little Mill Road, Franklinville, NJ 08322 (the "Applicant") for a Minor Subdivision with bulk variances regarding property located on West Boulevard, (the "Subject Property") and being further shown as Block 162, Lot 6 & 7 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 July 20, 2016 at 7:30 P.M., time prevailing, at which time were the following present: Thomas Rosa, 1239 Little Mill Road, Franklinville, NJ 08322 (the Applicant); and Tara L. Vargo, Esq., 2771 Delsea Drive, Franklinville, NJ 08322 (the Applicant's Attorney); and

WHEREAS, Mr. Rosa was sworn as to any testimony that he might give 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 certain requests for waivers from submission requirements. As such, the Board had jurisdiction to act on the Application.

2. The Board's professional planner, Candace Kanaplue, PP, AICP, 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, 307 Greentree Road, Sewell, NJ 08080, were both sworn as to any testimony that they would give on behalf of the Board with respect to the Application presently before the Board.

3. The Subject Property (both lots) consists of 34,745 SF of vacant land. The Application is for a minor subdivision with a bulk variance to modify an existing property line in an effort to redistribute a portion of Lot 6 to Lot 7. No new lots are being created with this Minor Subdivision Application. The Subject Property is located within the MD Moderate Density Residential zone district and is surrounded on the North, West and South by the MD Moderate Density Residential zoning district and on the East by the adjoining Borough of Glassboro. The opposite side of West Boulevard is Glassboro Borough. The Application requires variances from the requirements of the MD zoning district for minimum lot size.

4. The Subject Property is located in the Lawns section at the west side of West Boulevard, between Second and Third Avenues. Both existing lots are adjacent to the undeveloped lot 5 immediately west of lots 6 & 7. Both lots have frontage on two streets although Second Ave is an unimproved "paper" street. Third Avenue and West Boulevard consist of paved asphalt, without curbs, sidewalks, drainage improvements, or underground utilities. Water and sewer services are not proposed although the lots are within the approved GCUA Elk Township sewer service area.

5. Ms. Vargo, on behalf of the Applicant, provided an overview of the Application consistent with the information set forth above.

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

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

B. Affidavit of Ownership and Corporate Disclosure Statement.

C. Submission Checklist.

D. Owner's Policy of Title Insurance.

E. Four Colored Photographs of the Subject Property, the Adjacent Streets, and Adjacent Properties to the Subject Property.

F. Letter dated March 9, 2016 from Tara L. Vargo, Esq. to Arthur L. Swanson, Owner of Block 162, Lot 5, which is the adjacent property to the

Subject Property, inquiring as to whether or not Mr. Swanson would be willing to sell a portion of his adjacent lot 5 to the Applicant so that the Applicant could enlarge its lot 7 so that it would conform to the zone code. In addition, the letter also inquired of Mr. Swanson if in fact Mr. Swanson would be interested, as an alternative, in purchasing Mr. Rosa's lot 7. This letter was entered into evidence as Exhibit A-1. Mr. Rosa testified that he had spoken to Mr. Swanson's widow, and she was not interested in selling a portion of lot 5.

G. Proposed Minor Subdivision Plan regarding block 162, lots 6 & 7, prepared by Ewing Associates, Land Surveyors, signed and sealed by Bruce A. Ewing, on 12/30/15.

7. MD Moderate Density Residential Zone Bulk Standards and "C" Variances

The Subject Property is within the MD Moderate Density Residential District which permits agricultural uses and buildings, single-family detached dwellings, public parks and playgrounds, and accessory uses that are customarily incidental and subordinate to the primary use on site. Bulk variances are required for the proposed lot sizes. The zoning standards are provided below.

| Section | Required | Proposed lot 6 | Proposed lot 7 | Compliance |
|---|-----------------|-----------------------|-----------------------|--|
| 96-68D(2) Minimum Lot size | 25,000 sf | 20,800 sf | 13,945 sf | Variance Required for both lots |
| 96-68D.(9)(a) Minimum Lot Frontage | 75' | 100.21' | 100.21' | Complies |
| 96-68D.(6)(a) Minimum Width at Building line | 85' | 100.21' | 100.21' | Complies |
| 96-68D(3)(a) Front Yard Setback | 30' | 30' | 30' | Complies |
| 96-68D(4) Rear Yard Setback | 35' | 35' | 35' | Complies |
| 96-68D.(5) Min Side Yard (one) | 10' | 10' | 10' | Complies |
| 96-68D.(5) Min Side Yard (both) | 25' | * | * | ** |
| 96-68D(7) Minimum Lot depth | 100 feet | 211.25' | 136.21 | Complies |
| 96-68D(10) Max Bldg. Height | 35' | * | * | ** |
| 96.68D(11) Max. Bldg. Cover | 30% | * | * | ** |

| | | | | |
|--|-----|---|---|----|
| 96-68D(12) Max Impervious for lots under 25,000 sf | 40% | * | * | ** |
|--|-----|---|---|----|

* Denotes information to be provided on plan.

** Unable to determine.

8. The Applicant was requesting certain waivers from submission requirements as follows:

- **#8** requires copies of applications to and certifications from all outside agencies. It is recommended that the outside agency approvals be provided as a condition of any approval by the Planning Board. The Applicant agreed to comply.
- **#19** requires proposed block and lot numbers approved by the tax assessor. The subdivision is being proposed to modify an existing property line in an effort to redistribute a portion of Lot 6 to Lot 7. No new lots are being proposed. It is recommended that proof of tax assessor approval be provided prior to the adoption of a resolution so that the numbers can be correctly indicated for future reference. The Applicant agreed to comply.
- **#33** requires statement demonstrating compliance with affordable housing requirements as applicable including section 70-4. The applicant does not propose any new dwellings. A waiver was recommended by the Board's Planner.
- **#36** copy of protective covenants, easements, and deed restrictions of record, and Title Policy. The Applicant has submitted an Owner's Policy of Title Insurance.
- **#41** requires the location of all existing wells and septic systems and distances between them, and on adjacent properties where required by the Board. No new structures are proposed at this time. It is recommended that the location of any well and/or septic systems be shown on the required Plot Plans or Surveys when they are submitted for review and approval. The Applicant agreed to comply.
- **#43** requires grade elevations for all structures. No new structures are proposed at this time. A waiver is recommended, but if and when dwellings are proposed, the Applicant will need to provide the Township with individual Plot Plans or Surveys for review and approval. The Applicant agreed to comply.
- **#49** requires the Applicant to provide the location of all existing tree masses, indicating general sizes and species. A waiver is recommended

by the Board's Planner as no tree removal is proposed at this time. The Applicant will be required to provide this information on any Plot Plans or Surveys submitted in the future for proposed dwellings. The Applicant agreed to comply.

- **#50** requires the Applicant to provide a tree protection plan. A waiver is recommended by the Board's Planner as no tree removal is proposed at this time. The Applicant will be required to provide this information on any Plot Plans / Surveys submitted in the future for proposed dwellings. The Applicant agreed to comply.
- **#57** requires the Applicant to provide a grading plan. A waiver is recommended by the Board's Planner but if and when dwellings are proposed, the Applicant will need to supply the Township with individual Grading Plans for review and approval. The Applicant agreed to comply.
- **#58** requires the Applicant to provide a soil erosion and sediment control plan. The Applicant requests a waiver, as no grading or improvements are proposed at this time. A waiver is recommended by the Board's Planner.
- **#59** requires soil borings to determine soil suitability. The waiver is recommended by the Board's Planner as no improvements are proposed at this time.
- **#66** requires a written commitment from the MUA of sufficient sewer and water service capacity. The Applicant shall provide information as to whether the lots will be serviced by public sewer and water or private septic system and well. A waiver is recommended by the Board's Planner for completeness only. Ms. Vargo stated that there no public sewer or water systems service the Subject Property.
- **#67** Soil boring and percolation data for on-site sewage disposal. The Applicant agreed to provide as a condition of approval.
- **#73** Letter of Interpretation or other indicating compliance with NJDEP Wetlands. The Applicant agreed to comply as a condition of approval.
- **#75** requires the Applicant to submit a Utility Plan. The Applicant shall provide information as to whether the lots will be serviced by public sewer and water or private septic system and well. The Utility Plan may be waived until such time as Plot Plans are provided for review. Ms. Vargo stated that a private water well and septic system would service the Subject Property.
- **#83** requires existing and proposed curb openings. A waiver is recommended but if and when dwellings are proposed, the Applicant shall

provide this information on proposed Plot Plans/Surveys for review and approval. The Applicant agreed to comply.

WHEREUPON, a motion was made by Board Member White, which was seconded by Board Member Shoultz, to grant the above submission waivers, based on the conditions, and agreements by the Applicant as to further submissions as a condition of approval, with the following Board members voting in favor of the motion to grant completeness based on the conditions set forth above: Poisker, Clark, Nicholson, Hughes, McKeever, Shoultz, White, Schmidt, and Goss (Alternate Member #1). There were no votes in the negative and no abstentions or recusals. Alternate Member #2 Swanson did not vote. Board Member Barbaro was absent. The Board, having granted the requested submission waivers, some on a conditional basis, the hearing on the Application continued.

9. Ms. Vargo, on behalf of the Applicant, reviewed the plan of subdivision. Ms. Vargo indicated that at the present time, existing lot 6 was conforming as to the area requirements. However, what was proposed was to remove a portion of the lot line for lot #6, and to incorporate some of lot #6 into lot #7 which is a nonconforming lot, to create a larger lot #7. The result of the requested subdivision/lot line adjustment, is that both lots 6 & 7 would become nonconforming as to size, but that lot 7 would become less nonconforming based on the additional land that it would receive from lot #6. Ms. Vargo opined that although both lots would become nonconforming, the proposed subdivision would at least enlarge lot #7 so that a home could possibly be built on the same.

10. The Board reviewed the plan of subdivision, and expressed its concern that the hardship which the Applicant was attempting to demonstrate was, in fact, a self-created hardship. In particular, the Board noted that by merging existing lot 7 with existing lot 6, then there would be one large, totally conforming lot, on which one house could be built, with ample room for a well and septic system. The Board expressed the belief not enough evidence had been provided to show that a hardship existed that would merit the Board's approval to create two separate nonconforming lots, instead of simply merging the two lots which would make one conforming lot.

11. The Board's planner, Candace Kanaplue, PP, AICP, reviewed her letter of May 3, 2016 with the Applicant and the Board. Ms. Kanaplue pointed out that, in particular, existing Lot 7 is an undersized lot as a current condition. It is irregularly shaped and undersized at approximately 8,650 sf. The Board could consider that, while the subdivision will make Lot 6 an undersized lot as well as Lot 7, it would create two (2) more viable building lots than what currently exists.

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 Subject Property would create a hardship or result in exceptional practical difficulties by reason of the exceptional shape of the Subject Property, or the exceptional topographic conditions uniquely affecting the Subject Property, or the structures lawfully existing upon the Subject Property. For a C(2) variance the Applicant must show that the proposed variance advances the purposes of the 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.

12. Board's Professional Engineer, Stan Bitgood, P.E., C.M.E., reviewed with the Applicant and the Board his letter of May 3, 2016 on the proposed minor subdivision.

1. Bulk Requirements: The site is in the Moderate Density Residential (MD) zone. The table of zoning requirements correctly indicates the bulk requirements. Setback lines are shown on the site plan. Two new bulk variances are proposed:
 - A. Existing lot 6 is a conforming lot. The proposed remainder of lot 6 will become non-conforming as to the minimum lot area.
 - B. Proposed lot 7 will be enlarged to better conform to the required lot area, but will remain a non-conforming lot.
2. Plat/Plan Requirements: The plan of minor subdivision appears to conform to the Map Filing Law. The Applicant should advise the Board if the subdivision will be filed by deeds or a plan of subdivision. Legal descriptions should be submitted for review. The Applicant stated that he would perfect the subdivision through the filing of deeds, and the deeds and legal descriptions will be given to the Board's Engineer and Attorney for review and approval.
 - A. The plan references a Plan of the Lawns subdivision map. A copy of this should be submitted. The Applicant agreed to comply.
 - B. The plans shows only corners set but does not show any found corner markers or monuments by which the limits of the tract have been recovered. At least two found corners and/or monuments, and the source or basis for the validity of the found control points, should be shown on the plan. The Applicant agreed to comply.
 - C. Addresses and Lot numbers: The plan should show the lot addresses as well as the block and lot numbers. The Applicant agreed to comply.

3. Parking: The Application will not change existing parking capacity or locations.
4. Curbs & Sidewalks: This Application does not include curbs or sidewalks. A waiver seems appropriate for construction of these items. However, the width of West Boulevard is not adequate for future sidewalks to be constructed within the Right of Way. The Applicant should agree to dedicate a 5 ft. wide street & pedestrian easement along the frontage of West Boulevard and the two intersections. The Applicant agreed to comply.
5. Utilities: Sanitary Sewer and water mains do not exist within 200 feet of the site. The Applicant shall request sewer service from New Jersey American Water Co. A copy of NJAW's response to said request shall be provided to the Board Engineer. If NJAW cannot provide service prior to applying for building permits, the lot owners shall obtain approval for on-site sewerage disposal systems from Gloucester County Health Department. Note that if and when public sewers are constructed within 200 feet of any part of these lots, the owners will be required to connect to the public sewer system within 90 days of notice from the Township for the Utility Co. The Applicant agreed to comply if approved.

Lot grading: No grading is shown on the plan of subdivision. While this is normally required for all subdivisions, the Board's Engineer does not object to deferring this until Individual Lot Grading Plans are submitted for review prior to building permit applications. Lot grading plans shall show grading within the lots, and within adjacent lots and the adjacent rights of way, extending not less than 50 feet from the tract, and clearly showing the existing drainage areas that drain into these lots. The Applicant is advised, and it shall be a condition of approval, that the adjacent rights of way drain into this site. The existing runoff shall not be obstructed or increased by any improvements on these lots. Low areas within the lots shall be preserved and enlarged, as the Township Engineer may require, to ensure that runoff from the rights of way and/or the lots, is not redirected to other areas. The Applicant agree to comply.

6. Stormwater Management: It is not anticipated that the disturbance and impervious thresholds for stormwater management will be exceeded. The Applicant is advised that if the total new impervious areas will exceed $\frac{1}{4}$ acre, or the total disturbance area will exceed 1 acre stormwater management plans and calculations will be required.
7. Fences: No new fences or modification are proposed.
8. Street Paving: The pavements are in fair condition. Lot grading plans shall show in detail the existing grades and limits and shall detail how the

new driveways will be constructed. It is presumed that lot 7 will front on West Boulevard. The Applicant agreed to comply.

13. The hearing on the Application was open 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 was taking one conforming lot as to size (lot 6) and subdivided a portion of lot 6 to be merged with the adjacent lot 7, which is currently a nonconforming as to size, in order to provide a larger area for lot 7 on which a house can be build. The Board concludes that by taking a conforming lot as to size and creating two nonconforming lots, is not appropriate or consistent with sound planning since, as an alternative, both lots 6 & 7 could be merged into one lot which would be conforming. This would further insure a better opportunity for the provision of a private well and private septic systems given the larger lot area that would be afforded by a single lot. The Board concludes that there is no hardship but rather the purpose of the proposed subdivision appears to be to generate higher economic value for the Applicant while providing a subdivision which is contrary to the zone code and master plan, especially since the Subject Property is located in an area where there are already many nonconforming lots high water tables, and wetlands.

2. It is the purpose of Elk Township to eliminate as many nonconforming residential lots as opposed to creating more nonconforming residential lots, which is what the proposed subdivision does.

3. The Board concludes that the Applicant has failed to demonstrate that the strict application of the Township's zone regulations would create a hardship insofar as no evidence was submitted that the purposes of zoning would be advanced by a grant of the requested variance, pursuant to N.J.S.A. 40:55D-2, and the fact that there is no hardship if both lots 6 & 7 are simply merged. The Applicant is not taking an existing nonconforming lot for which nothing else can be done with it. To the contrary, it is taking a current conforming lot, and an adjacent nonconforming lot, and wishes to create two nonconforming lots. The Board concludes that this is contrary to the intent of the Master Plan and the Zone Plan of the Township of Elk, and it is contrary to sound planning, the public good, and the development of the general area in which the Subject Property is located.

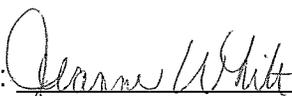
CONDITIONS

1. The Applicant remains obligated to fund its escrow account in order to properly cover the Board's review of the Application by the Board's Engineer, Planner, and Attorney.

WHEREUPON, a motion was made by Board member Nicholson to deny the Applicant's request for a minor subdivision and bulk variances, with said motion being seconded by Board member Poisker, and the following Board members voting in favor of the motion to deny at a meeting following a public hearing held on the Application on July 20, 2016: Poisker, Clark, Nicholson, Hughes, McKeever, Shoultz, White, Schmidt, and Goss (Alternate # 1). There were no votes in the negative, and no abstentions or recusals. Alternate Member # 2, Mr. Swanson, participated in the hearing but did not vote. Board Member Barbaro was absent. The Board, having voted to deny the Application for minor subdivision and bulk variances, the Application was denied with prejudice.

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 August 17, 2016 as a memorialization of the action taken by the Board on the above referenced Application following a meeting and public hearing held on said Application on July 20, 2016.

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

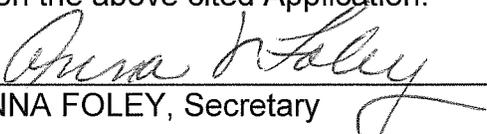
By: 
JEANNE WHITE, Chairperson

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 17th day of August 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 July 20, 2016 on the above cited Application.


ANNA FOLEY, Secretary