

RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING A "D" USE VARIANCE TO KEVIN EASE, 28 GLASSBORO ROAD, MONROEVILLE, NJ 08343 REGARDING PROPERTY LOCATED AT 1198 AURA ROAD (COUNTY ROUTE 667), AND BEING FURTHER SHOWN AS BLOCK 175, LOTS 8 & 9 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-16-09

WHEREAS, Application No.: ZB-16-09 (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 Kevin Eaise, 28 Glassboro Road, Monroeville, NJ 08343 (the "Applicant") for a "D" Use Variance so as to permit a mixed use on property located at 1198 Aura Road (County Route 667), (the "Subject Property") and being further shown as Block 175, Lots 8 & 9 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 September 21, 2016 at 7:30 P.M., time prevailing, at which time were the following present on behalf of the Applicant: William F. Ziegler, Esq., Holston, MacDonald, Uzdavinis, Ziegler & Myles, 66 Euclid Street, Woodbury, NJ 08096 (the Applicant's Attorney); Kevin Eaise, 28 Glassboro Road, Monroeville, NJ 08343 (the Applicant); and Gary R. Civalier, P.E., P.P., P.L.S., Civalier Engineering & Surveying, Inc., 12 West Mantua Avenue, Wenonah, NJ 08090 (the Applicant's Professional Engineer, Professional Planner, and Professional Land Surveyor); and

WHEREAS, Mr. Civalier had not appeared in front of the Board for quite some time, and did he therefore place his credentials, experience, and licensing information on the record, at which time was it determined by the Board that Mr. Civalier was a licensed Engineer, Professional Planner, and Professional Land Surveyor in the state of New Jersey, and was qualified to testify as an expert in those respective fields on behalf of the Applicant for the purposes of the Application, after which were Messrs. Civalier and Eaise 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 certain requests for waivers of certain submission requirements made by the Applicant. Because the Application involved a Use Variance, under the New Jersey Municipal Land Use Law, the Combined Planning/Zoning Board of Adjustment had to reconfigure itself into a seven-member Zoning Board of Adjustment, as only a Zoning Board of Adjustment can grant or act on a Use Variance. As such, Mayor Poisker, and Township Committeewoman Nicholson recused themselves, and removed themselves from the hearing. Accordingly, the Board thereafter 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, P.A., 307 Greentree Road, Sewell, NJ 08080, were both sworn as to any testimony that they would give on behalf of the Board for the purposes of the Application.

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, Certification of Taxes Paid on the Subject Property, Affidavit of Service, Affidavit of Publication, and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Use Variance Plan for Kevin Eaise, regarding Plate 40, Block 175, Lots 8 & 9, prepared by Civalier Engineering & Surveying, Inc., and signed and sealed by Gary R. Civalier, P.E., P.P., P.L.S., dated June 13, 2016.

C. Letter dated August 5, 2016, from Steven M. Bach, PE, RA, PP, CME, Bach Associates, the Board's professional planner, regarding his review of the Application that was submitted to the Board.

D. Letter dated August 3, 2016 from Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., the Board's professional Engineer, to the Board regarding his review of the Application.

E. Letter dated August 15, 2016 from Gary R. Civalier, P.E., P.P., P.L.S., Civalier Engineering & Surveying, Inc., regarding Mr. Civalier's analysis as to the issue of wetlands on the Subject Property.

F. Memorandum to the Board from the Elk Township Environmental Commission dated September 13, 2016 regarding their review of the Application.

G. Exhibit A-1 through A-40, which were 40 color photographs of various aspects and views of the Subject Property.

4. The 7.5 acre Subject Property is comprised of two lots. Lot 8 currently contains a residential dwelling and three farm buildings. It appears lot 9 is currently farmland. The Subject Property is located on the west side of Aura Road (County Route 667) within the RE Rural Environmental Residential zone district. The site currently contains one dwelling, and three frame farm buildings and an asphalt driveway. The Subject Property is surrounded to the north and west by other properties also in the RE zoning district, to the south (across Buck Road) southeast east by C2 Commercial zoning, and to the east (across Aura Road) by R Rural Residential zoning district. The adjacent uses are predominantly comprised of farmland. There is a commercial property across Aura Road to the north of the Subject Property.

5. Zoning and Use

In accordance with Section 96-71 of the Township's zone code, the RE Rural Environmental Residential zoning districts' "purpose and intent is to provide appropriate regulations in the areas, which include substantial amounts of wetlands and other sensitive lands, generally consistent with the rural environmentally sensitive planning area of the SDRP." The district permits Agricultural uses and buildings; Single-family detached dwellings; Public parks and playgrounds, woodlands, conservation areas and similar public uses. Conditionally permitted uses include Institutional uses such as schools, religious uses, libraries and the like in accordance with § 96-79B; Home occupations in accordance with § 96-79A; Golf courses; Campgrounds in accordance with § 96-79E and Chapter 50. and Commercial solar energy operations in accordance with § 96-79H. The proposed use is not permitted in the RE zoning district. A D(1) use variance is required to permit a use or principal structure in a district restricted against such use or structure

The Applicant is to provide details about the proposed use so that the Zoning Board has a better idea of what exactly is proposed, including the approximate frequency of trucks entering and exiting the site, whether the trucks are loaded when at the site, operating hours, building plans, and anticipated number of employees, etc.

6. Standard of Proof for "D" Variances

For "D" variances it is the Applicant's obligation to present the "Positive" and "Negative" criteria to justify the variance. The Applicant must prove to the satisfaction of the Board that there are "special reasons" for the Board to exercise its jurisdiction to grant the requested relief, demonstrating that the site is particularly suited to the proposed use and that the proposal will advance the

purposes of Municipal Land Use Law (N.J.S.A. 40:55D-2) and the Township's Master Plan and Zoning ordinances (POSITIVE). The Applicant must also show that the variance can be granted without substantial detriment to the public good and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance (NEGATIVE). The Applicant should provide testimony demonstrating that the proposal will meet the variance criteria.

7. RE Zone Bulk Standards

The Application is currently seeking use variance approval only. A Variance Plan has been submitted to give the Board an idea of the proposed layout. A site plan waiver must be requested at this time. However, a site plan should be required as a condition of use variance approval. Several new buildings along with parking lots and a new septic system is being proposed. If the use variance is approved, the Applicant will need to return to the Board for site plan approval. The bulk standards provided within Section 96-71 are those found for single family detached units in the RE zoning district. The applicability of these requirements are not in line with the proposed use. The proposed landscaping business falls under a contractor establishment. This use is permitted under section 96-78 Manufacturing Light (M-1) district. Therefore, should this use be approved, the Board's Planner recommends the Board require the Applicant to conform to the bulk standards under Section 96-78.F. They are listed in the table below.

Section	Required	Proposed	Compliance
96-47.1 Vegetated Agricultural buffers	50 feet side yards and 100 feet rear yards	None proposed	Variance
96-78F(1)(a) Minimum Lot size	2 acres	7.5 acres	Complies
96-78F(1)(b) Min Lot Frontage	200 feet	908 feet	Complies
96-78F(1)(c) Minimum Lot Depth	200 feet	412 feet	Complies
96-78F(1)(d) Maximum Building Coverage	20 %	6.2%	Complies
96-78F(1)(e) Front Yard	100 feet	110 feet	Complies
96-78F(1)(f) Side Yard	50 feet each	20 feet	Variance
96-78F(1)(g) Rear Yard	75 feet	40 feet	Variance
96-78F(1)(i) Maximum Building Height	40 feet	<35 feet	Complies

96-54 Parking Requirements		41 car spaces, 15 landscape trailer spaces	Information needed
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8. Standard of Proof for “C” Variances

Typically the Applicant must provide testimony to justify the requested “C” variances. For a C(1) variance, the Applicant must demonstrate that the strict application of the zoning regulations to the Subject Property 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 municipal land use law and that the benefits of the deviation would substantially outweigh any detriments.

If the use variance is approved and a site plan is required, any “C” variance requests may be considered at the time of site plan review.

9. Mr. Ziegler, on behalf of the Applicant, provided a brief overview, consistent with the information set forth above.

10. The Applicant requested certain waivers from submission requirements as follows:

#8 requires copies of applications to and certification of approvals from all outside agencies with jurisdiction. The Applicant is bifurcating the use variance from a site plan application. *A waiver is recommended for the use variance review, but the Applicant will need to make Applications to the Gloucester County Planning Board and potentially for the Gloucester County Health Department for the well and septic system at the time that a site plan application is filed. The Applicant agreed to comply.*

#41 location of existing wells and septic systems and distances between them, and on adjacent properties where required by the Board. *A waiver is recommended for the use variance Application only, and this information should be added to the plan if the use variance is approved and the Applicant moves forward to site plan approval. The Applicant agreed to comply.*

#53 location of historic features within 200 feet. *The Applicant should confirm that there are no historic structures within 200 feet. Mr. Civalier testified that there were no historic features within 200 feet.*

#55 requires the applicant to provide contours at 20 foot intervals on the

tract and within 100 feet of the tract in accordance with the grading plan requirements. *Because this is a bifurcated use variance and site plan, the Board's Planner recommends a waiver for use variance only.*

#67 requires that if on-site sewerage disposal is required, the results and location of all percolation tests and test borings must be provided. *The Applicant has located the approximate location of the septic system on the plan. Details can be waived for this use variance Application, however this information will be required at site plan filing. The Applicant agreed to comply.*

#77 requires the size and location of proposed signs. *The Applicant should indicate whether a sign would be proposed for the business, and if so provide the location and details in accordance with the requirements of section 96-60. Mr. Ziegler, on behalf of the Applicant, stated that any signs that are proposed will be part of a site plan Application.*

WHEREUPON, a motion was made by Board Member Hughes, which was seconded by Board Member Schmidt, to grant the above referenced submission waivers, based on the representations and agreements made by the Applicant, with the following Board members voting in favor of the motion to approve: Clark, Hughes, Shoultz, White, Schmidt, Barbaro, and Goss (Alternate Member #1). The Alternate Member #2, Mr. Swanson, did not vote. Mayor Poisker and Township Committeewoman Nicholson had recused themselves since the Board had reconfigured itself into a seven-member Zoning Board of Adjustment, from a nine-member Planning Board.

11. Mr. Eaise, testified as to various elements regarding the Application. Mr. Eaise provided background as to his business which is a landscaping and lawn servicing business. Mr. Eaise testified that the Subject Property was particularly well suited for his needs based on the size of the Subject Property, its location and the availability of open space, and its close proximity to county and state highways, which made the Subject Property better positioned in his market area than his current site, which is in Pittsgrove Township. Mr. Eaise provided an outline of what he will propose when a site plan application is filed, upon approval of the Use Variance Application. Mr. Eaise testified that his company had approximately 35-40 employees and the normal hours of operation were 7 am to 4-5 pm, and that the number of trucks on the Subject Property would be approximately 20. Mr. Eaise indicated that there would be no significant use of pesticides on the Subject Property; a trash dumpster would be supplied to deal with trash issues; and the additional buildings that he proposed to construct will be for uses such as storage of equipment, a workshop, and an office.

12. Mr. Civalier testified that in his professional opinion, he believed that the Use Variance should be granted for the following reasons:

This site is particularly well suited for the proposed business given its location, the size of the Subject Property, and the topographical features thereon; the proposed use provides sufficient space in an appropriate location for a combination of commercial and agricultural uses; the proposed use is in close proximity to adequate roads and highways which will facilitate the business of the Applicant; and the proposed use on the Subject Property would provide adequate light, air and open space. All of these factors contributed to the burden upon the Applicant to meet the “positive” criteria set forth in the Municipal Land Use Law. Mr. Civalier also testified that, in his professional opinion, the proposed use would not impose a substantial detriment to the zone plan, the Township’s master plan, the Subject Property, or the surrounding areas if approved. Mr. Civalier testified that there would be appropriate access and egress to the Subject Property pursuant to a site plan which was to be filed with the Board, and buffers, and landscaping, and other amenities will be shown on the site plan, which will create a use that does not have a substantial detriment to the surrounding properties or to the zone in which the Subject Property is located.

13. The Board’s Professional Planner, Steven M. Bach, PE, RA, PP, CME, reviewed with the Board and his Applicant his letter of August 5, 2016 as follows:

1. **Use.** The Applicant indicates that the site will be a “quasi-agricultural use”, a landscaping business with a small nursery and multiple existing and proposed farm buildings on the Subject Property. Additional information is needed about the proposed use. The Applicant should also provide any relevant information about the history of the existing structures and uses on the site. The Applicant provided the following information:

- a. The proposed business and operation;
- b. The approximate number of landscaping trailers that may be stored on the site;
- c. The number of anticipated trips per day (i.e. how many trucks will enter and exit the site each day);
- d. Whether this will be a retail nursery and landscaping use or only a contractor use. (The Applicant testified that there would be no “retail”);
- e. The type and method of materials that will be stored on the site;
- f. The hours of operation;
- g. The number of on-site and off-site employees.

2. Trash and Recyclables.

- a. The Applicant should indicate how trash and recyclables will be managed. It is recommended that trash management be addressed as part of the site plan approval if the use variance is approved. Dumpsters will not be permitted to be placed on the site out in the open without a trash enclosure. It is recommended that a trash enclosure large enough for containers for trash and

construct a landscape buffer along lot 11. The buffer should be shown on the plan and the side yard dimensioned from the interior edge of it.

3. Traffic. As the site fronts only on County Routes, the County has jurisdiction over access, traffic, and sight triangles, and street openings.
 - A. Even though the County has jurisdiction, it is strongly recommended that the two driveways closest to, and within the intersection, be moved north and combined for safety of the motorists in the area and of those using the site. While details can be deferred until a site plan is submitted, the Use Variance Plan should be revised as a condition of approval. The Applicant agreed to comply.
4. Drainage. Will be considered at Site Plan Review.
5. Utilities. No services are shown on the plan. Existing well and septic field are shown.
 - A. The plan should be revised so the well is at least 10 feet from any parking areas. Final layout can be deferred until site plan submission if this is a condition of approval of the Use Variance. The Applicant agreed to comply.
 - B. It is recommended that all utility services be installed underground.
6. Parking. At Site Plan Review, the plans should include a table showing parking requirements and spaces provided. The Applicant has provided testimony regarding the number of additional employees that these improvements will require. Testimony has been provided regarding the maximum number of trailers that will be parked on site, the duration of such parking, and on how these will be screened from the public streets.
7. Trash. Will be considered at Site Plan Review.
8. Fire Safety. The plans should be reviewed by the Fire Chief & Fire Marshal and should be revised to show any additional clear fire zones, hydrants, safety placards, building numbers, or other safety measures that they may require. The Applicant agreed to comply.

15. The hearing on the Application was opened to the public, at which time the following member of the public was sworn and provided testimony on the Application: Kathy Haynicz, 1091 Elk Road, questioned the nature of the Use Variance that was being requested and whether or not any retail sales would be held on the Subject Property. Mr. Eaise confirmed that there would be no retail sales from the Subject Property. There being no further members of the public wishing to give testimony, the public portion was closed.

CONCLUSIONS

The Board concluded that the Applicant has met its burden with regard to both the “positive” and “negative” proofs pursuant to the NJ Municipal Land Use Law. In particular, the Board concludes that the Subject Property is uniquely suited for the proposed use in that it provides ample space in an appropriate location to accommodate the proposed use, and is situated with regard to local roads and larger highways to conduct such business as is proposed. The Board concludes that based on the use variance plan, there would be adequate light, air, and open space, in which to conduct the proposed business. The Board further concludes that the Subject Property is particularly suited based on its location, size, and topographical features as well as access to local roads in which to conduct the business. The Board also concludes that there will not be a substantial detriment on the zone plan, the master plan, or the neighboring properties, based on the representations made by the Applicant, which will be further stipulated to at the time the site plan is submitted to the Board in terms of providing buffers, landscaping, and other design standards to minimize the impact of the proposed use on adjacent properties.

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 approval granted herein is subject to the Applicant filing a Major Site Plan Application to the Board which will finalize the nature of the use and manner the use can properly be exercised given sound planning and engineering principals.

WHEREUPON, a motion was made by Board member Goss (Alternate # 1), which was seconded by Board member Schmidt, to grant the above referenced Use Variance, subject to the conditions, representations, and agreements as set forth above under findings of fact based on the Applicant's testimony at a meeting following a public hearing held on the Application on September 21, 2016 with the following Board members voting in favor of the motion to grant approval: Clark, Hughes, Shoultz, White, Schmidt, Barbaro, and Goss (Alternate # 1). There were no abstentions or votes in the negative. The following Board Members had recused themselves since the Board had configured itself into a seven-member Zoning Board of Adjustment: Poisker, and Nicholson. Board Member McKeever was absent. Alternate Member # 2 Swanson participated in the hearing on the Application, but did not vote.

THIS RESOLUTION WAS ADOPTED at a regularly scheduled meeting of the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on October 19, 2016 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on September 21, 2016 on the above referenced Application.

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

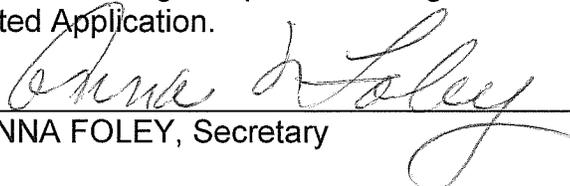
By: 
JEANNE WHITE, Chairperson

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 19th day of October 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 September 21, 2016 on the above cited Application.


ANNA FOLEY, Secretary

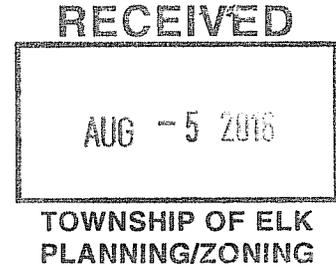


August 5, 2016

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

Attn: Anna Foley, Land Use Board Administrator

Re: Kevin Eaise
Block 175, Lots 8 & 9
1198 Aura Road (County Route 667)
"D" Use Variance; RE Rural Environmental Residential District
Elk Township Application ZB-16-09
Bach Associates Proj. # ET2016-10



Dear Chairwoman and Members of the Board:

We have reviewed the application and supporting documents submitted by Kevin Eaise for a "D(1)" use variance to permit the landscaping business on a lot in the RE zoning district. The 7.5 acre property is comprised of two lots. Lot 8 currently contains a residential dwelling and three farm buildings. It appears lot 9 is currently farmland.

The 7.5 acre property is located on the west side of Aura Road (County Route 667) within the RE Rural Environmental Residential zoning district. The site currently contains one dwelling, and three frame farm buildings and an asphalt driveway. The property is surrounded to the north and west by other properties also in the RE zoning district, to the south (across Buck Road) southeast east by C2 Commercial zoning, and to the east (across Aura Road) by R Rural Residential zoning district. The adjacent uses are predominantly comprised of farmland. There is a commercial property across Aura Road to the north of the subject property.

We have received the following materials in support of the variance application:

1. Use Variance Application to the Combined Planning and Zoning Board dated July 1, 2016, proof of taxes paid, 200 ft list, escrow agreement.
2. Use Variance Plan for Block 175 Lots 8&9 prepared by Gary R. Civalier, PE, PLS of Civalier Engineering and Surveying, Inc., dated June 13, 2016.

Completeness Review

The application is for a use variance. The applicant has not provided the land development checklist. However, we have reviewed the application against the completeness requirements for a use variance request. **The application is incomplete as outlined below. It is recommended that the applicant respond to items 38 and 73 prior to the hearing. The applicant is bifurcating the site plan at this time.** If the use variance is granted, the Board may opt to require a site plan as a condition of approval. At that time the site plan requirements would be addressed.

- **#1.b. Copy of completed checklist.** The applicant has not submitted the land development checklist. We have reviewed the checklist in accordance with variance requirements and provide the following comments.
- **#8 requires copies of applications to and certification of approvals from all outside agencies with jurisdiction.** The applicant is bifurcating the use variance from the site plan application. *A waiver is recommended for the use variance review, but the applicant will need to make applications to the Gloucester County Planning Board and potentially for the Gloucester County Health Department for the well and septic system.*
- **#38 requires photographs of the site.** The applicant has not provided these. *For the benefit of the Board, the applicant should submit photographs prior to or at the hearing. An aerial photo may also be useful for reference at the hearing.*
- **#41 location of existing wells and septic systems and distances between them, and on adjacent properties where required by the Board.** *A waiver is recommended for this variance application only, this information should be added to the plan if the use variance is approved and the applicant moves forward to site plan approval.*
- **#53 location of historic features within 200 feet.** *The applicant should confirm that there are no historic structures within 200 feet.*
- **#55 requires the applicant to provide contours at 20 foot intervals on the tract and within 100 feet of the tract in accordance with the grading plan requirements.** *Because this is a bifurcated use variance and site plan, we recommend a waiver for use variance only.*
- **#67 requires that if on-site sewerage disposal is required, the results and location of all percolation tests and test borings must be provided.** *The applicant has located the approximate location of the septic system on the plan. Details can be waived for this use variance application, however this information will be required at site plan.*
- **#73 requires the applicant to submit a NJDEP LOI for wetlands or a statement/certification from an expert stating that there are no wetlands on or in close proximity to the site.** *The applicant should at a minimum provide a signed statement from the applicant's expert in accordance with the checklist requirement.*
- **#77 requires the size and location of proposed signs.** *The applicant should indicate whether a sign would be proposed for the business, and if so provide the location and details in accordance with the requirements of section 96-60.*

Zoning and Use

In accordance with section 96-71 the RE Rural Environmental Residential zoning district's "purpose and intent is to provide appropriate regulations in the areas, which include substantial amounts of wetlands and other sensitive lands, generally consistent with the rural environmentally sensitive planning area of the SDRP." The district permits Agricultural uses and buildings; Single-family detached dwellings; Public parks and playgrounds, woodlands, conservation areas and similar public uses. Conditionally permitted uses include Institutional uses such as schools, religious uses, libraries and the like in accordance with § 96-79B; Home occupations in accordance with § 96-79A; Golf courses; Campgrounds in accordance with § 96-79E and Chapter 50. and Commercial solar energy operations in accordance with § 96-79H. The proposed use is not permitted in the RE zoning district. A D(1) use variance is required to permit a use or principal structure in a district restricted against such use or structure

The applicant should provide details about the proposed use so that the Zoning Board has a better idea of what exactly is proposed, including the approximate frequency of trucks entering and exiting the site, whether the trucks are loaded when at the site, operating hours, building plans, and anticipated number of employees, etc.

Standard of Proof for "D" Variances

For "D" variances it is the applicant's obligation to present the "Positive" and "Negative" criteria to justify the variance. The applicant must prove to the satisfaction of the Board that there are "special reasons" for the Board to exercise its jurisdiction to grant the requested relief, demonstrating that the site is particularly suited to the proposed use and that the proposal will advance the purposes of Municipal Land Use Law (N.J.S.A. 40:55D-2) and the Township's Master Plan and Zoning ordinances (POSTIVE). The applicant must also show that the variance can be granted without substantial detriment to the public good and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance (NEGATIVE). The applicant should provide testimony demonstrating that the proposal will meet the variance criteria.

RE Zone Bulk Standards

The application is currently seeking use variance approval only. A Variance Plan has been submitted to give the Board an idea of the proposed layout. A site plan waiver must be requested at this time, however a site plan should be required as a condition of use variance approval. Several new buildings along with parking lots and a new septic system is being proposed. If the use variance is approved, the applicant will need to return to the Board for site plan approval. The bulk standards provided within Section 96-71 are those found for single family detached units in the RE zoning district. The applicability of these requirements are not in line with the proposed use. The proposed landscaping business falls under a contractor establishment. This use is permitted under section 96-78 Manufacturing Light (M-1) district. Therefore, should this use be approved, we recommend the Board require the applicant to conform to the bulk standards under Section 96-78.F. They are listed in the table below.

Section	Required	Proposed	Compliance
96-47.1 Vegetated Agricultural buffers	50 feet side yards and 100 feet rear yards	None proposed	Variance
96-78F(1)(a) Minimum Lot size	2 acres	7.5 acres	Complies
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96-78F(1)(e) Front Yard	100 feet	110 feet	Complies
96-78F(1)(f) Side Yard	50 feet each	20 feet	Variance
96-78F(1)(g) Rear Yard	75 feet	40 feet	Variance
96-78F(1)(i) Maximum Building Height	40 feet	<35 feet	Complies
96-54 Parking Requirements		41 car spaces, 15 landscape trailer spaces	Information needed

Standard of Proof for "C" Variances

Typically the applicant must provide testimony to justify the requested "C" 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.

If the use variance is approved and a site plan is required, any "C" variance requests may be considered at the time of site plan review.

The following comments are provided for the Board's and the applicant's consideration:

1. **Use.** The applicant indicates that the site will be a "quasi-agricultural use", a landscaping business with a small nursery and multiple existing and proposed farm buildings on the property. As indicated above additional information is needed about the proposed use. The applicant should also provide any relevant information about the history of the existing structures and uses on the site. The applicant should provide the following information before or at the hearing.
 - a. The applicant should indicate describe the proposed business and operation.
 - b. The applicant should indicate the approximate number of landscaping trailers that may be stored on the site.
 - c. The applicant should indicate the number of anticipated trips per day (i.e. how many trucks will enter and exit the site each day.
 - d. The applicant should indicate whether this will be a retail nursery and landscaping use or only a contractor use.
 - e. The applicant should indicate the type and method of materials that will be stored on the site.
 - f. The applicant should indicate the hours of operation.
 - g. The applicant should provide the number of on-site and off-site employees.
2. **Trash and Recyclables.**
 - a. The applicant should indicate how trash and recyclables will be managed. It is recommended that trash management be addressed as part of the site plan approval if the use variance is approved. Dumpsters will not be permitted to be placed on the site out in the open without a trash enclosure. It is recommended that a trash enclosure large enough for containers for trash and recyclables be installed at the property (6 foot high decorative fence with steel frame gates).
 - b. The applicant should indicate what type of trash is anticipated for this use.
3. **Agricultural Buffers.** Section 96-47.1 of the Unified Development Code requires vegetated agricultural buffers between different uses, adjacent to farm qualified properties. The adjacent lots 7 and 11 to the north and west are agricultural.
4. **Buffers.** Section 96-47 of the Unified Development Code requires buffers between different uses. Though the adjacent properties appear to be agricultural, Lot 11 to the north contains a dwelling.
5. **Well and Septic System.** If the use variance is approved the wastewater facilities will need to be reviewed by Gloucester County Health Department.

6. **Signage.** The applicant should be prepared to discuss any site identification signage that may be proposed. All signage must conform to the Elk Township sign regulations (Section 96-60).
7. **Site Plan Waiver.** The applicant requests a site plan waiver at this time. It is our opinion that a site plan waiver is not appropriate for a change of commercial use on a site that has not been recently updated. Typically in a situation such as this, the application may be "bifurcated", meaning that the use variance may be considered first, and if approved, the applicant would return to the Board for a site plan prior to occupying the property. The applicant has provided a "variance plan" to give the Board an idea of the proposal. Some details such as parking, access, lighting, landscaping, signage, etc could be deferred to site plan review.

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

cc: Dale Taylor, Esq
Steven M. Bach, RA, PE, PP, CME
Kevin Eaise, applicant
William F. Zeigler, Esq.
Gary R. Civalier, PE, PLS, PP
Elk Environmental Commission

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FEDERICI & AKIN, P.A.
CONSULTING ENGINEERS

Joseph P. Federici, Jr., P.E., P.P.

President

Douglas E. Akin, P.L.S., P.P.

Vice President

Bret T. Yates

Director of Marketing

307 Greentree Road

Sewell, New Jersey 08080

(856) 589-1400; Fax (856) 582-7976

August 3, 2016

File No. 16116

Township of Elk
680 Whig Lane
Monroeville, New Jersey 08343

**Re: Kevin Eaise, Use Variance Application ZB-16-09
Block 175, Lots 8 & 9 - 1198 Aura Road
Review No. 1**

Dear Chairwoman White & Members of the Board:

I received the following items in support of an application for site plan approval to permit the construction of a new landscaping business on Aura Road.

- | | |
|---|---------|
| ◇ Use Variance Plan of Block 175 lots 8 & 9 | 6/13/16 |
| ◇ Land development application | 7/1/16 |

Introduction

The subject property is located along the intersection of Richwood-Aura Road (Aura Road, County Route 667) and Glassboro-Monroeville Road (Buck Road, County Route 553) and lies within the RE, Rural Environmental Residential zoning district. The applicant requests approval of a Use Variance to allow the operation of a landscaping business, construction of additional buildings along with a large stone driveway, a nursery. The plan includes demolition a dwelling structure currently on the property. The new buildings will serve to house his main office and his current landscaping business at this site.

The additional buildings will be two pole barns, one 5,000 S.F. and the other 2,400 S.F., along with an 1,800 S.F. office, and a 2,400 S.F. pavilion.

Technical Review

1. Zoning Use. A part of the intended use can be considered agricultural while the bulk of the use is commercial.
 - A. Testimony should be provided to justify the proposed use variance in accordance with the Municipal Land Use Law.

2. Bulk Requirements. The plan includes a land use summary table which indicates that the proposed site improvements will not require any zoning or bulk variances.
 - A. If the use is agricultural, agricultural buffers are required, by Code section 96-47.1, along the residential side. The applicant proposes to construct a landscape buffer along lot 11. The buffer should be shown on the plan and the side yard dimensioned from the interior edge of it.
3. Traffic. As the site fronts only on County Routes, the County has jurisdiction over access, traffic, and sight triangles, and street openings.
 - A. Even though the County has jurisdiction, I strongly recommend that the two driveways closest to, and within the intersection, be moved north and combined for safety of the motorists in the area and of those using the site. While details can be deferred until a site plan is submitted, the Use Variance Plan should be revised as a condition of approval.
4. Drainage. Will be considered at Site Plan Review.
5. Utilities. No services are shown on the plan. Existing well and septic field are shown.
 - A. The plan should be revised so the well is at least 10 feet from any parking areas. Final layout can be deferred until site plan submission if this is a condition of approval of the Use Variance.
 - B. It is recommended that all utility services be installed underground.
6. Parking. As Site Plan Review the plans should include a table showing parking requirements and spaces provided. The Applicant should provide testimony regarding the number of additional employees that these improvements will require. Testimony should be provided regarding the maximum number of trailers that will be parked on site, the duration of such parking, and on how these will be screened from the public streets.
7. Trash. Will be considered at Site Plan Review.
8. Fire Safety. The plans should be reviewed by the Fire Chief & Fire Marshal and should be revised to show any additional clear fire zones, hydrants, safety placards, building numbers, or other safety measures that they may require.

Recommendations:

The underlined items should be addressed prior to approval or as conditions of approval.

If approved, a site plan application should be submitted for review prior to any work on site.

If you have any questions, please contact me at your convenience.

Very truly yours,
FEDERICI & AKIN, P.A.

Stan M. Bitgood

Stan M. Bitgood, P.E., C.M.E
Joint Land Use Board Engineer

Email copy:

Anna Foley, Land Use Secretary
Gary Civalier, P.E., P.L.S., Applicants Engineer & Surveyor
Dale Taylor, Esq. Board Solicitor
Candace Kanaplue, P.P., Bach Associates, Board Planner
William Zigler, Esq. Applicant's Attorney