

**RESOLUTION NO. 2015-22**

**RESOLUTION OF THE ELK TOWNSHIP PLANNING BOARD GRANTING MINOR SUBDIVISION APPROVAL WITH WAIVERS AND VARIANCES FOR A PROPERTY LOCATED ON WHIG LANE, BLOCK 37, LOT 1 IN THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY**

**WHEREAS**, George C. Lewis, with an address of 850 Whig Lane, Monroeville (Elk Township), New Jersey 08343 has applied to the Planning Board of the Township of Elk for minor subdivision approval for a property known as Block 37, Lot 1 on the Official Tax Map of the Township of Elk for the purpose of subdividing a portion of Lot 1 for a residential building lot, together with waivers and variances requested; and

**WHEREAS**, the portion of the property sought to be subdivided (one acre) is part of a property which was preserved through the Farmland Preservation Program through an agreement which was entered into between the Gloucester County Board of Chosen Freeholders and the Applicant dated January 8, 2004; and

**WHEREAS**, the Applicant was represented at a public hearing on this matter by Wayne C. Streitz, Esq., Ware, Streitz & Thompson, 10 Pitman Avenue, Pitman, New Jersey 08071; and

**WHEREAS**, the Applicant has submitted to the Board and its professionals certain documents and plans which have been relied upon by the Board and its professionals which consist of the following:

- A. Land Development Application for Minor Subdivision (received by Elk Township August 4, 2015); Escrow Agreement of the same date; Affidavit of the Applicant and Ownership; Tax Certification; Disclosure Statement; and List of Property Owners within 200 feet;
- B. Minor Subdivision Checklist;
- C. Deed dated September 5, 2000 for Block 37, Lot 1;
- D. Plan of Minor Subdivision dated September 26, 2014 prepared by Edward F. Kuhn, Jr., PLS, Federici & Akin P.A., Consulting Engineers, 307 Greentree Road, Sewell, New Jersey 08080; and
- E. Deed of Easement between George and Catherine Lewis and the County of Gloucester dated January 8, 2004 for Block 37, Lot 1 pursuant to the State of New Jersey Agriculture Retention and Development Program.

**WHEREAS**, the Applicant has been granted submission waivers by the Board and has been deemed complete following a completion review hearing which was heard on September 16, 2015; and

**WHEREAS**, the Board has received a report from its Professional Planner, Ms. Leah Furey Bruder, PP, AICP of the firm of Bach Associates, PC, dated August 31, 2015, and the Applicant’s representatives have testified as to their agreement with comments as set forth in said report which are incorporated herein by reference as if fully set forth herein; and

**WHEREAS**, the Board has received as part of the same report referenced in the above paragraph a report of the same date by Anthony DiRosa, PE, PLS of Bach Associates, the Board’s Conflict Engineer, and the Applicant’s representatives have testified as to their agreement with comments as set forth in said report which are incorporated herein by reference as if fully set forth herein; and

**WHEREAS**, after carefully considering the evidence presented by the Applicant in support of his application, at a public meeting that was held on September 16, 2015 which was opened to the public for comments, the Board has made the following findings of fact, and conclusions:

1. The Applicant seeks minor subdivision approval for a property known as Block 37, Lot 1 on the Official Tax Map of the Township of Elk for the purpose of subdividing a one-acre portion of Lot 1 which is an exception to the Deed of Easement of the State of New Jersey Agriculture Retention and Redevelopment Program, as specifically set forth in said Deed of Easement dated January 8, 2004, recorded January 22, 2004 at Deed Book 3719, Page 171 in the Office of the Gloucester County Clerk, for the purposes of developing said one-acre lot as a single family home, together with certain waivers and variances requested.

2. The Applicant was present at the hearing, was sworn, and provided testimony.

3. The Board Professionals were sworn and provided testimony at the hearing.

4. The Applicant requested the following waivers and variances:

<b>Section</b>	<b>Required</b>	<b>Lot 1</b>	<b>Proposed Lot 1.01</b>	<b>Compliance</b>
96-71D(2) Minimum Lot Size	80,000 sf	1,486,757 sq ft	43,560 sq ft	Variance Required
96-71D(3) Front Yard Setback	50 feet	n/a	22.7 feet to existing dwelling	Variance Required (existing condition)
96-71D(4) Rear Yard Setback	40 feet	n/a	140 ft dwelling 8.6 feet to garage	Variance required
96-47.1 Agricultural Buffers	50 feet along property lines adjacent to active farm	n/a	0	Variance Required
96-80	Not more than 2 accessory structures	n/a	3 structures	Variance Required (existing condition)

5. The Applicant presented testimony as to the necessity for the variances. As indicated by the Applicant and represented by his counsel, the property consists of 35.86 acres and is part of the Farmland Preservation Program. That Program however allows for an exception for a dwelling as contained in the Deed of Easement, specifically contained in Paragraph 14 of the same. The Applicant provided testimony and his counsel represented that at the time that the Deed of Easement was entered into, one-acre lots for the construction of residential structures was permitted. Therefore, the Applicant has requested for Proposed Lot 1.01 a variance to allow a 43,560 sq. ft. lot whereas the Ordinance (96-71D(2)) would require a minimum 80,000 sq. ft. lot. The Applicant also testified as to the existence of an already constructed dwelling on the property which has a front yard setback of 22.7 ft. and a rear yard setback of 8.6 ft. to an existing garage whereas 50 ft. and 40 ft. respectively, would be required. These are existing conditions since the residence has already been constructed. The Applicant provided testimony that the proposed subdivision would not adversely affect the surrounding properties and community, nor would it be a detriment to the Zoning Plan and Ordinance of the Township of Elk.

6. The Applicant and his counsel provided information to the Board with regard to two garages and one shed that are located on the property whereas the Ordinance only would permit three additional structures. The Applicant provided testimony that these are existing conditions on the property and considering the surrounding acreage as a whole, which is a preserved farm, there is no adverse effect upon any surrounding properties justifying the requested variance.

7. The Applicant testified that presently there is access to the “farm” portion of the property through the intended lot to be subdivided (Lot 1.01). The Applicant provided testimony that should the one acre residential lot ever be sold, that there is ample access from many access points to the farm without the necessity of going through the residential lot.

8. With regard to the agricultural buffer issue, the Applicant provided testimony that the Applicant’s son will be residing within the residence and is part and parcel of the operations of the farm. Given that the house is utilized by the operators of the farm, agricultural buffers are not required. The Board Planner testified that a waiver from the requirement to provide the buffer is appropriate. However, the Board Planner suggested that a Deed Notice be placed within the Deed as to the existence of the agricultural activity so that any subsequent purchasers of Lot 1.01 will be on specific notice of said activity. The Applicant has agreed to this condition of approval.

9. Two photographs were admitted into evidence which depict the house that exists on proposed Lot 1.01 and the access to the farm.

10. The Applicant’s attorney made the representation that the minor subdivision would be memorialized by way of Deed.

**WHEREAS**, the Planning Board, after carefully considering the evidence presented in support of the application and after the meeting was opened to the public, has come to the following conclusions:

1. The application was deemed complete by the Board on September 16, 2015 after the granting of certain submission waivers detailed within the report submitted by both the Board

Planner and Conflict Engineer from Bach Associates, PC, which were recommended by both the Board Planner and Engineer.

2. The Applicant has satisfied all the requirements imposed upon it by the Planning Board and/or in accordance with the Ordinance except for any conditions that may be herein contained.

3. It is understood and concluded that the Board has given approval to the Applicant's plans as submitted and presented at the September 16, 2015 hearing, but with the required additional submissions and modifications to said plans that the Applicant agreed to supply in accordance with its representations at the hearing on this application, and by further agreement to the comments set forth in the report of the Board Planner and Engineer.

4. The Applicant's request for variances and submission waivers as heretofore described can be granted without substantial detriment to the Zoning Plan and Ordinance of the Township of Elk. The Applicant has submitted sufficient testimony and other evidence with regard to the basis for the variances requested due to the hardship presented by the existing configuration of the subject proposed subdivided property, and the one-acre limitation being set forth in the Deed of Easement pursuant to the State of New Jersey Agriculture Retention and Development Program provides sufficient evidence of said hardship.

**NOW, THEREFORE,** be it resolved by the Planning Board of the Township of Elk on this 21<sup>st</sup> day of October 2015, that this Board hereby GRANTS to the Applicant minor subdivision approval for a property known as Block 37, Lot 1 for the purpose of subdividing one acre from Lot 1 to create a proposed Lot 1.01 for an existing residence, in accordance with the plans and specifications submitted by the Applicant (and any addition and amendments thereto agreed to by the Applicant at the hearing), subject to the following conditions:

1. Subject to any and all other approvals or permits including Gloucester County Planning Board approval and any and all other approvals as may be required by law, by other governmental agencies, and by the Township and Planning Board in general.
2. Subject to the condition that all review fees must be paid by the Applicant prior to endorsement of the plans by Township Officials.
3. Subject to the condition that documentation of all outside agency approvals must be provided prior to certification of the plans by Township Officials.
4. Subject to the condition that the Applicant must memorialize said subdivision by way of Deed to be recorded at the County Clerk's Office within one hundred and ninety (190) days of the date of this approval.
5. Subject to the comments contained in a report dated August 31, 2015, of the Board Planner, Leah Furey Bruder, PP, AICP, of Bach Associates.
6. Subject to the comments contained in a report dated August 31, 2015, of the Board Conflict Engineer, Anthony DiRosa, PE, PLS of Bach Associates.

7. Subject to the condition that the plans must be certified by the appropriate public officials including, but not limited to, the Chairman and Secretary of the Planning Board prior to filing any Deeds with the County of Gloucester.
8. Conditioned upon the Applicant submitting to the Board Solicitor and Board Conflict Engineer for review and approval of Deeds reflecting the subdivision approval applied for and granted herein.
9. Subject to the condition that the Applicant will set forth in the subdivision Deed to be filed in the County of Gloucester that the property is adjacent to an active farm/agricultural use in order to place subsequent purchasers/owners on notice of said condition.

**BE IT FURTHER RESOLVED**, that this Resolution will be published within ten (10) days of the date of the adoption of this Resolution in the South Jersey Times, which is designated as the official newspaper of publication of the Township of Elk Planning Board.

**ROLL CALL VOTE**

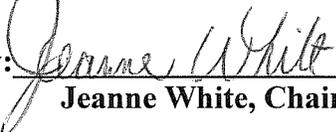
THOSE IN FAVOR:           8  
 THOSE OPPOSED:         0  
 THOSE ABSTAINING:     0

Adopted at a regular meeting of the Planning Board of the Township of Elk held on October 21, 2015.

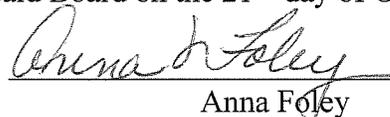
**ATTEST**

By:   
 Anna Foley, Secretary

**ELK TOWNSHIP PLANNING BOARD**

By:   
 Jeanne White, Chairperson

The undersigned, Secretary of the Planning Board of Elk Township, hereby certifies that the above is a true copy of a resolution adopted by said Board on the 21<sup>st</sup> day of October 2015.

  
 Anna Foley



August 31, 2015

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

Attn: Anna Foley, Board Secretary

Re: George C. Lewis  
880 Whig Lane (County Route 619)  
Block 37 Lot 1  
Minor Subdivision with bulk variances  
RE Rural Environmental Residential District  
Elk Township Application SD-15-08  
Bach Associates Proj. # ET2015-8

Dear Chairwoman and Members of the Board:

We have reviewed the application and supporting documents submitted by George Lewis for a minor subdivision with variances at the above referenced site. The property consists of 35.86 acres and contains a single family dwelling, 2 garages, and a shed along with a farm field. The property is a preserved farm and the applicant proposes to subdivide the property to create one new lot for the existing residential dwelling and accessory structures, and one remainder lot that will remain as active farmland.

The property is located within the RE Rural Environmental Residential zoning district and is surrounded in all directions by properties also in the Rural Environmental Residential zoning district. All of the surrounding properties, except for the garage/commercial structure to the west, are preserved farms. The application requires variances from the requirements of the RE zoning district for minimum lot size, minimum front yard setback, and minimum rear yard setback.

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

1. Land Development Application for Minor Subdivision (received by Elk Twp August 4, 2015), Escrow Agreement dated August 4, 2015, Affidavit of Applicant and Ownership, Tax Certification, disclosure statement, list of property owners within 200 feet.
2. Minor subdivision checklist and list of requested waivers.
3. Two colored site photographs.
4. Letter from Edward F. Kuhn, PLS certifying that there are no wetlands or wetland buffers within the residential lot to be subdivided.
5. Deed dated September 5, 2000

6. Deed of Easement, State of New Jersey Agriculture and Development Program, dated January 8, 2004.
7. Plan of Survey and Minor Subdivision, prepared by Edward F. Kuhn, PLS of Federici & Aikin, PA dated September 26, 2014.
8. Gloucester County Planning Board Subdivision Application dated July 30, 2015.

### **Completeness**

The applicant has submitted the land development checklist and has requested a number of submission waivers as outlined below. **The application is incomplete.** Most of the waivers are recommended or may be provided as a condition of approval given the nature of the proposed subdivision.

- **#8** requires copies of applications to and certifications from all outside agencies. *The applicant has submitted the application to the Gloucester County Planning Board. It is recommended that the outside agency approvals be provided as a condition of any approval by the Planning Board.*
- **#13** requires metes and bounds description with dimensions, bearings, curve data, etc. *The applicant requests that the metes and bounds description be permitted to be submitted as a condition of approval on the final plan. This may be provided as a condition of approval, to be reviewed and approved prior to signing of the plan.*
- **#19** requires proposed block and lot numbers approved by the tax assessor. *The applicant indicates that the lots will be lot 1 and lot 1.01. 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.*
- **#25** requires the plan be at a minimum scale of 1"=50'. *The overall plan is at a 1"=100' scale, so a waiver is required. There is a detail of proposed lot 1.01 at 40' scale. The waiver is recommended.*
- **#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 is recommended.*
- **#36** requires the applicant to submit copies of protective covenants, easements and restrictions of record, including a current title policy. *The applicant has provide the deed for lot 1 in block 37 dated September 5, 2000 and the 2004 farmland preservation easement. We defer to the Board's solicitor to affirm whether this information is sufficient.*
- **#41** requires the location of all existing wells and septic systems and distances between

them, and on adjacent properties where required by the Board. *This information is not provided on the plan. It is recommended that the location of the well and septic system be shown on the plan to ensure that they are within the proposed 1 acre lot.*

- **#43** requires grade elevations for all structures. *The applicant requests a waiver because no new structures are proposed. The waiver is recommended.*
- **#49** requires the applicant to provide the location of all existing tree masses, indicating general sizes and species. *The applicant has requested a waiver, as no tree removal is proposed. The waiver is recommended.*
- **#50** requires the applicant to provide a tree protection plan. *The applicant has requested a waiver, as no tree removal is proposed. The waiver is recommended.*
- **#57** requires the applicant to provide a grading plan. *The applicant requests a waiver, as no grading or construction is proposed. The waiver is recommended.*
- **#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. The waiver is recommended.*
- **#59** requires soil borings to determine soil suitability. *The waiver is recommended, as no improvements are proposed*
- **#66** requires a written commitment from the MUA of sufficient sewer and water service capacity. *The applicant requests a waiver, as the site is served by a private septic system and well. The waiver is recommended.*
- **#73** requires the applicant to submit an LOI from the NJDEP. *The applicant has provided a letter from a qualified professional indicating that he has reviewed wetland maps and visited the site and finds that there are no wetlands or buffers on the 1 acre lot proposed to be subdivided. Since no further disturbance is proposed, the waiver is recommended.*
- **#75** requires the applicant to submit a Utility Plan. *The applicant has requested a waiver, as no changes are proposed. The waiver is recommended.*
- **#83** requires existing and proposed curb openings. *The applicant requests a waiver, as no changes are proposed. The waiver is recommended.*

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

The property is within the RE Rural Environmental Zoning District which permits agricultural uses, single-family dwellings, public parks and playgrounds, and accessory uses that are customarily incidental and subordinate to the primary use on site. The existing agricultural and residential uses on the site are permitted. Bulk variances are required for the proposed one

acre residential lot and for the location of structures on the lot. The zoning standards are provided below.

Section	Required	Proposed lot 1	Proposed lot 1.01	Compliance
96-71D(2) Minimum Lot size	80,000 sf	1,486,757 sq ft	43,560 sq ft	Variance Required
96-71D(3) Front Yard Setback	50 feet	n/a	22.7 feet to existing dwelling	Variance Required (existing condition)
96-71D(4) Rear Yard Setback	40 feet	n/a	140 ft dwelling 8.6 feet to garage	Variance Required
96-71D.(5) Minimum Side Yard	20 feet/ 50 feet aggregate	n/a	34.8 feet	Complies
96-71D(7) Minimum Lot depth	200 feet	924.63 feet	208.71	Complies
96-71D.(6)(a) Minimum Width at Building line	150 feet	238.83 feet	158.71 feet	Complies
96-71D.(9)(a) Minimum Lot Frontage	135 feet	274.68 feet	208.71 feet	Complies
96-71D(12) Impervious	20% max	0	9.5%	Complies

**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.

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

1. **Preserved Farm and Proposed Subdivision.** The applicant proposes a subdivision to separate the existing residential dwelling, yard and accessory structures from the

preserved farm. The farmland preservation easement executed in January 2004 describes a one acre "exception area" around the existing dwelling, and provides that the remainder of the lot must be dedicated to agricultural use. In accordance with the farm preservation easement, the applicant would not be permitted to create a conforming 80,000 square foot lot. The alternative to the proposed subdivision is to maintain the lot in its current configuration.

- a. As part of their testimony in support of the variances, the applicant should indicate the reasons for the proposed subdivision.
  - b. The applicant should affirm that the proposed subdivision is permitted by the Gloucester County Agriculture Development Board in accordance with the farmland preservation easement.
2. **Variances.** The requested variances relate to the size of the proposed residential lot and the location of structures on the lot.
- a. There is a conflict between the Township's minimum lot size requirement for the zone (80,000 square feet) and the size of the "exception area" (43,560 square feet) carved out by the farmland preservation easement. The applicant should indicate whether the residential lot will remain affiliated with the farm or whether the applicant proposes to sell them separately. It is our understanding that this is a severable exception area, which means it is permitted to be separated from the preserved farm.
  - b. The existing house is 22.7 feet from the proposed right-of-way line. This is an existing condition that will not change as a result of the subdivision.
  - c. There are 2 garages and one shed on the property. According to section 96-80, each residential property ranging from 25,000 square feet to six acres may have a maximum of one detached garage or similar accessory structure not to exceed 900 square feet and one additional accessory structure/shed not to exceed 200 square feet. Accessory structures 200 square feet or less must be set back from the side and rear property lines a minimum of 10 feet for lots greater than 12,000 square feet. Accessory structures over 200 square feet must meet the side and rear yard setbacks for the zoning district. There are 3 accessory structures where 2 are permitted. Additionally, the 820 square foot garage is 8.6 feet from the proposed property line where 40 feet are required.
3. **Access.** If the two lots will be sold separately, a separate access may be required for the farm. This should be addressed.
4. **Agricultural Buffers.** Section 96-47.1 requires agricultural buffers between active farms and residential uses. The agricultural buffers are intended to protect and buffer parcels adjacent farms to ensure that the residential or commercial use will not impede

agricultural activities, and to protect farming operations from nuisance complaints. The required buffer area is 50 feet along the property lines adjacent to the active farm. Since the "exception area" is only one acre, and since this residential structure has been part of the farm, agricultural buffers were not contemplated. However, since the subdivided lot may be sold separate from the farm, the buffers are required, and a variance is needed.

Though the proposal cannot meet the agricultural buffer requirements, the applicant may endeavor to meet the intent of the requirements by providing a vegetated buffer around the perimeter of the residential lot and by providing a deed notice to future buyers of the residential lot as required by the ordinance. The deed notice will ensure that future buyers are aware of the farming activities that may take place as-of-right on the adjacent property.

#### **5. Subdivision Comments.**

- a. The plan indicates that the subdivision is to be filed by deed. As of May 1, 2012 all minor subdivisions must conform to the Title Recordation Law for filing maps. All proper certification must shown on the minor subdivision map even though the subdivision will be filed by deed.
- b. The reference meridian should be shown on the plan or a copy of the survey referenced in Note #6 should be provided for review.
- c. There are no structures proposed with this application however it should be noted that the application with conform with the grading plan requirements in section 96-66M prior to the issuance of any building permits.
- d. Legal Descriptions of the proposed lots and any easements located on the proposed lots shall be provided.
- e. The 39.00 foot proposed R.O.W. dedication to the County of Gloucester is shown and labeled; any and all additional easements within the proposed subdivision lots shall be dimensioned and labeled.
- f. A point of beginning should be labeled on the plan for proposed lot 1.01 to match the deed that was submitted with the application.
- g. The direction of the bearings listed for the proposed lot 1.01 do not match the bearings listed in the deed and should be clarified on the plan.
- h. A certification that the new lot numbers have been assigned by the tax assessor must be provided.

George C. Lewis  
880 Whig Lane  
Minor Subdivision with bulk variances  
RE Rural Environmental Residential District  
Elk Township Application SD-15-08  
Bach Associates Proj. # ET2015-8  
August 31, 2015  
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Please call with any questions. We reserve the option to make additional comments as more information becomes available.

Very truly yours,  
BACH Associates, PC



Leah Furey Bruder, PP, AICP



Anthony DiRosa, PE, PLS

Cc: John Eastlack, Esq.  
Steven M. Bach, RA, PE, PP, CME  
George C. Lewis, applicant  
Wayne Streitz, Esq.  
Edward F. Kuhn, PLS