

***Resolution No.: 2016-09**

**RESOLUTION OF THE JOINT LAND USE BOARD OF THE TOWNSHIP OF ELK,
COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING
A DE MINIMIS EXCEPTION TO THE RESIDENTIAL SITE IMPROVEMENT
REQUIREMENTS, REGARDING A PREVIOUSLY APPROVED MINOR
SUBDIVISION, SO THAT UTILITIES CAN BE PLACED OVERHEAD INSTEAD OF
UNDERGROUND, TO MR. STEPHEN RANSON, REGARDING PROPERTY
LOCATED ON BUCK ROAD, AND BEING FURTHER SHOWN AS BLOCK 72, LOTS
3 AND 3.01 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.:
AD-16-01**

WHEREAS, Application No. AD-16-01 (the "Application") was submitted before the Joint Land Use Board of the Township of Elk, County of Gloucester, State of New Jersey (the "Board"), by Stephen Ranson (the "Applicant") requesting a de minimis exception to R.S.I.S. requirements that utilities be placed underground instead of overhead, so as to change a condition of a previously granted Minor Subdivision, so as to permit overhead utilities (electrical, telephone, cable, etc.), regarding property located on Buck Road (the "Subject Property") and being further shown as Block 72, Lots 3 and 3.01 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 February 17, 2016 at 7:30 PM, time prevailing, at which time the following were present: Stephen Ranson (Applicant); Gary D. Thompson, Esquire, Ware, Streit & Thompson, 10 Pitman Avenue, Pitman, N.J. 08071 (the Applicant's attorney); and John Melleady (the Applicant's builder and a "fact witness"), after which were Messrs. Ranson and Melleady sworn and provided testimony on the Applicant; and

WHEREAS, Mr. Stan M. Bitgood, PE, CME, Federici & Akin, P.A., 307 Greentree Road, Sewell, N.J. 08080, the Board's engineer, was sworn in as to any testimony that he may give with respect to the Application before the Board;

NOW, THEREFORE, BE IT RESOLVED by the Joint Land Use Board of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

FINDINGS OF FACT

1. The Application was deemed complete and properly before the Board. As such, the Board had jurisdiction to act on the Application.

2. The Applicant submitted the following, which were entered as evidence into the record:

A. Application, Application Fee, Escrow Agreement, Escrow Deposit, and Certification of Taxes Paid on the Subject Property.

B. Letter from the Applicant's attorney, Gary D. Thompson, Esquire, dated January 7, 2016, attached to which were the following:

i. Statement of Request for a Change of Condition of an Approved Minor Subdivision not Constituting a Significant Change to a Substantial Condition.

ii. Resolution No. 2013-10 of the Elk Township Planning Board [sic] granting the prior Minor Subdivision, and Variance for Diminished Front Yard, for the Subject Property commonly Known as 121 Buck Road, Block 72, Lot 3.

iii. Letter dated December 6, 2012 from Corey Ronald Gaskill, PE & CME, Fralinger Engineering, regarding the Applicant's prior Minor Subdivision Application, (Application No. ZB-12-07).

iv. Letter dated December 4, 2012 from Leah Furey Bruder, PP, AICP, BACH Associates, PC, (the Board's professional planner) regarding Ms. Bruder's review of the Applicant's prior Minor Subdivision and Bulk Variance Application.

v. Survey (undated and unsigned) of Subject Property by way of exhibit that had been attached to the prior Application for Minor Subdivision and Bulk Variance approval.

vi. Copy of an e-mail from John Lago, New Jersey Department of Community Affairs, to the Board's engineer, Mr. Stan Bitgood, regarding Mr. Lago's understanding of *de minimis* exceptions pursuant to NJAC 5:21-3.1.

vii. Estimate as to the cost to install underground electrical utilities to the Subject Property, owned by the Applicant, from Plasket Technologies, LLC, undated.

3. Mr. Ranson entered into evidence Exhibit A-1, which were four (4) photographs taken of the Subject Property. Mr. Ranson testified that the adjacent properties all have overhead (not underground) utilities. Mr. Ranson also testified that there were no homes in the neighborhood that had underground utilities. Mr. Ranson referenced the submission of Plasket Technology, LLC estimate of the cost that it would take to install underground utilities (\$3,000) and testified that such a cost would create an economic hardship on him.

4. The Subject Property is located on the east side of Buck Road approximately 1,200 ft. south of the Township Line with Glassboro. The original Lot 3 and the created Lot 3.01 both front on Buck Road. The subdivision did not create new roads or access easements or rights-of-way. The properties on each side of the two subdivided lots in question are served by aerial utilities from Buck Road.

5. On or about June of 2012 Mr. Ranson, the Applicant, applied for a minor subdivision of his property known as Lot 3 in Block 72 on the official tax maps of Elk Township for the creation of one (1) new lot to be known as Lot 3.01 together with a dimensional variance for a pre-existing, non-conforming front yard of only 24.4 ft. where 30 ft. was required for the existing dwelling on proposed Lot 3. The minor subdivision and variance were granted by the Board on December 19, 2012. The Board memorialized the approvals by way of the adoption of Resolution No. 2013-10 on February 20, 2013. A copy of said resolution was attached to the Applicant's present Application. The minor subdivision was consummated by the filing of minor subdivision deeds in the Office of the Clerk of Gloucester County on July 7, 2014.

6. Lot 3.01 is situated on Main Street a/k/a Buck Road a/k/a County Route 553.

7. The Applicant had been advised by his builder that in accordance with N.J.A.C. 5:21-4.12 of the Residential Site Improvement Standards (R.S.I.S.), lots that abut existing public rights-of-way where overhead electric or telephone distribution supply lines and service connections have heretofore been installed, may be supplied with electric and telephone service from those overhead lines, but the service connections from the utility's overhead lines must be installed underground. The State has acknowledged that this underground wiring requirement can be costly for small subdivisions. (In an e-mail from John Lago, New Jersey Department of Community Affairs, to Stan Bitgood, P.E. the Board's engineer, dated October 14, 2015 it was noted that municipal reviewers can and have granted a *de minimis* exception for this requirement). The Subject Property is located on the east side of Buck Road approximately 1,200 ft. south of the Township Line with Glassboro. The original Lot 3

and the created Lot 3.01 both front on Buck_Road. The subdivision did not create new roads or access easements or rights-of-way. The properties on each side of the two subdivided lots in question are served by aerial utilities from Buck Road.

8. All of the properties immediately adjacent to Lot 3.01 and across from Lot 3.01 have electric, telephone and cable service from existing utility poles to their respective dwellings or commercial unit by overhead lines. The Applicant had submitted with his Application, an estimate from Plasket Technologies, LLC for installation of underground electric service to Lot 3.01 at a cost of \$3,000.00.

9. In Mr. Lago's e-mail of October 14, 2015, he set forth the following:

A. "A minor subdivision or minor site plan typically is one that does not require new streets. This definition comes from the Municipal Land Use Law. The Site Improvement Advisory Board (SIAB) has a clarification on minor subdivision, because it was once a trigger for when the Residential Site Improvement Standards (RSIS) applied to new, residential development."

B. "This trigger, however, is no longer in the RSIS. NJAC 5:21-1.5(A) requires application of the rules in connection with any application for residential subdivision, site plan approval, or variance before any Planning Board or Zoning Board of Adjustment... "

C. As to "... the underground wiring requirement at NJAC 5:21-4.12. The underground wiring requirement can indeed be costly for small subdivisions. Municipal reviewers can and have granted de minimis exceptions for this requirement. If the municipality does this, it should follow the exception process at NJAC 5:21-3-1. This requires either the developer or reviewer to notify SIAB of the exception. Such notices can simply be a copy of the Planning Board resolution approving the subdivision, providing it clearly identifies the standard within the RSIS for which the exception was given and the reason(s) for it".

10. Mr. Thompson, on behalf of the Applicant, provided an overview of the Application consistent with the information set forth above.

11. The Board's professional engineer, Stan M. Bitgood, Federici & Akin, P.A., reviewed with the Board and the Applicant his letter of January 12, 2016 as follows:

Technical Review:

1) No changes in the approved bulk requirements, lot size, location, grading, driveways, or other items previously reviewed and approved in resolution 2013-10 are proposed.

2) The requested change stems from the requirement in the New Jersey Residential Site Improvement Standards (R.S.I.S.) which explicitly requires all building services and utilities within subdivisions to be constructed underground. Unfortunately, it does not provide or consider minor subdivision within areas that are surrounded by existing aerial utilities services. The R.S.I.S. does provide a mechanism by which the Board can consider and approve such a deviation, as a “de minimis exception”. (N.J.A.C. 5:21-3.1)

Recommendations:

1) Assuming the Applicant demonstrates to the Board that requiring the utilities to be underground would be unreasonable and that allowing the utilities to be constructed above ground would not have a negative impact on the neighborhood or the Township, and Mr. Bitgood recommended granting the de minimis exception.

2) If approved, the Applicant (and the Township) must notify the Site Improvement Advisory Board (“SIAB”), at the New Jersey Department of Consumer Affairs, of the approval of the exception by the Board, as a condition of approval.

Mr. Thompson, on behalf of the Applicant, agreed to comply.

3) County Planning Approval or a waiver is not needed.

4) All taxes, escrow fees and other fees must be paid to the Township prior to signatures by the Chairman and Secretary.

The Applicant agreed to comply.

5) If the request is denied, or the Applicant decides to relocate the utilities underground for other reasons, the Applicant shall notify the Township Engineer 48 hours prior to the work and shall be required to submit an updated as-built survey upon completion.

The Applicant agreed to comply.

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

CONCLUSIONS

1. The Board concurs that R.S.I.S. regulations provide a mechanism by which the Board can consider and approve a deviation from the requirement to install utilities underground instead of overhead, as a *de minimis* exception, pursuant to N.J.A.C. 5:21-3.1.

2. The Board concluded that the Applicant demonstrated to the Board that requiring the utilities to be placed underground would be unreasonable and constitute a hardship on the Applicant, and that allowing the utilities to be constructed above ground would not have a negative impact on the immediate neighborhood, or on the Township's Master Plan and Zone Code, and therefore the Applicant has met its burden of proof which permits the Board to grant the *de minimis* exception that is being requested.

3. The Board further concludes that the following conditions placed upon the Applicant with respect to the Board's approval, are appropriate in light of all of the submissions and testimony given in this matter.

CONDITIONS

1. The Board presumes that the Applicant's Application, all exhibits, maps 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 upon by the Board as they bear on facts which were essential in the granting of the relief sought by the Applicant, the Board may rescind its approval and rehear the Application, either upon 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 of interest appeal to the Board for an order vacating or modifying any term or

condition as set forth herein, upon 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 facts at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems 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 (if required) 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(if required) in accordance with the 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 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 Solicitor, 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 the 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 construction or other activity commencing on the approved project.

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

8. The Applicant shall notify the Site Improvement Advisory Board of the New Jersey Department of Community Affairs ("SIAB") of the approval of the *de minimis* exception granted by the Board in this matter, by way of submitting a copy of this resolution to the SIAB, with a copy of said submission being provided to the Board's secretary and Board's engineer.

11. If the Applicant decides to relocate the utilities underground for any reason, the Applicant shall notify the Township's engineer at least 48 hours prior to the work commencing, and shall also be required to submit an updated as-built survey upon completion.

WHEREUPON, a motion was made by Board member Hughes to grant the Applicant's request for a *de minimis* exception for utilities to be placed overhead instead of underground, subject to the terms and conditions set forth herein, with said motion being seconded by Board member Poisker, at a meeting following a public hearing held on the Application on February 17, 2016, at 7:30 p.m., time prevailing, with the following Board members voting in favor of the motion to approve: Poisker, McCreery, McKeever, Nicholson, Hughes, White, Schmidt, Shoultz, and Goss (Alternate Member # 1). The following Board members were absent: Barbaro and Penza (Alternate Member # 2). There were no votes in the negative and no abstentions or recusals.

THIS RESOLUTION was adopted by the Joint Land Use Board of the Township of Elk, County of Gloucester, State of New Jersey at a meeting of the same held on March 16, 2016, as a memorialization of the approvals granted by the Board on the above Application at the Board's meeting and public hearing on February 17, 2016.

TOWNSHIP OF ELK JOINT LAND USE BOARD

By: 
JEANNE WHITE, Chairperson

ATTEST:


ANNA FOLEY, SECRETARY

CERTIFICATION

I hereby certify that the above referenced resolution is a true copy of a resolution adopted by the Joint Land Use Board of the Township of Elk, County of Gloucester, State of New Jersey, at a meeting of the Board held on the 16th day of March, 2016, at the Elk Township Municipal Building, 680 Whig Lane, Monroeville, New Jersey 08343, as a memorialization of the action taken by the Board at the Board's February 17, 2016 meeting and public hearing held on the Application cited hereinabove.


ANNA FOLEY, Secretary



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

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

January 12, 2016
File# 15028

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

**Re: Mr. Stephen Ranson – Request for de minimis exception for utilities
Block 72 Lots 3 & 3.01 – Buck Road
Review No. 1**

Dear Chairman White & Members of the Board

We received the following items for review as part of the request for a de minimis exception to the Residential Site Improvement Standards requirement that all utilities services be underground:

- Statement of Request for a Change of Condition of an Approved Minor Subdivision Not Constituting a Significant Change to a Substantial Condition
by Gary Thompson, Esq. 11/30/15
- Resolution 2013-10 with review letters & copy of subdivision plan 2/20/13
- Email response from John Lago, NJDCA, to Stan Bitgood 10/14/15

Property Location:

The property is located on the east side of Buck Road approximately 1,200 feet south of the Township Line with Glassboro. The original lot 3 and the created lot 3.01 both front on Buck Road. The subdivision did not create new roads or access easements or rights of way. The properties on each side of the two subdivided lots in question are served by aerial utilities from Buck Road.

The following comments are provided for your consideration:

Completeness: The submitted information appears to be adequate for the Board to make an informed consideration of the request.

Technical Review

1. No changes in the approved bulk requirements, lot size, location, grading, driveways, or other items previously reviewed and approved in resolution 2013-10 are proposed.
2. The requested change stems from the requirement in the New Jersey Residential Site Improvement Standards (R.S.I.S.) which explicitly requires all building services and utilities within subdivisions to be constructed underground. Unfortunately, it does not provide or consider minor subdivisions within areas that are surrounded by existing aerial utilities services. The R.S.I.S. does provide a mechanism by which the Board can consider and approve such a deviation, as a “de minimis exception”. (N.J.A.C. 5:21-3.1)

Recommendations:

1. Assuming the Applicant demonstrates to the board that requiring the utilities to be underground would be unreasonable and that allowing the utilities to be constructed above ground would not have a negative impact on the neighborhood or the Township, I will recommend granting the de minimis exception.
2. If approved, the applicant (and the Township) must notify the Site Improvement Advisory Board, at the New Jersey Department of Consumer Affairs, of the approval of the exception by the Board.
3. County Planning Approval or a waiver is not needed.
4. All taxes, escrow fees and other fees must be paid to the Township prior to signatures by the Chairman and Secretary.
5. If the request is denied, or the applicant decides to relocate the utilities underground for other reasons, the applicant should notify the Township Engineer 48 hours prior to the work and should be required to submit an updated as-built survey upon completion.

Very truly yours,

Stan M. Bitgood

Stan M. Bitgood, P.E., C.M.E.
Planning Board Engineer

Email copies:

Anna Foley, Planning/Zoning Board Secretary
Candace Kanaplue, P.P. Board Planner
John Eastlack, Jr. Esq. Board Solicitor
Gary D. Thompson, Esq., Applicant's Attorney