

Resolution No.: 2018-08

RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING BULK VARIANCES AND/OR DESIGN WAIVERS, TO ACCOMMODATE THE CONSTRUCTION OF A SWIMMING POOL TO MATTHEW & RENEE PLISKIN (H/W), 216 WINESAP WAY, GLASSBORO, N.J. 08028 REGARDING PROPERTY LOCATED AT 216 WINESAP WAY AND BEING FURTHER SHOWN AS BLOCK 29.02, LOT 4 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-17-09

WHEREAS, Application No.: ZB-17-09 (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 Matthew & Renee Pliskin (H/W), 216 Winesap Way, Glassboro, N.J. 08028 (together, the “Applicant”) for bulk variances to accommodate the construction of a swimming pool on property located at 216 Winesap Way, Glassboro, N.J. 08028 (the “Subject Property”) and being further shown as Block 29.02, Lot 4 on the Tax Maps of the Township of Elk (the “Township”); and

WHEREAS, the Applicant did appear, by way of Matthew Pliskin, at a meeting and public hearing held by the Board on the Application on December 20, 2017 at 7:30 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Matthew Pliskin, and Rosemary Franco, Design Consultant with Anthony Sylvan Pools, 146 Rt. 73 North, Marlton, N.J. 08053 (appearing as a fact witness), at which time were Mr. Pliskin and Ms. Franco sworn as to any testimony that they would give on the Application; and

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 subject to a Completeness Hearing, to address certain requested waivers from submission requirements. The Board had jurisdiction to act for said purpose.

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, Disclosure Statement, Submission Checklist, List of Waivers requested, Affidavit of Publication, and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Final Survey (with proposed pool hand drawn) prepared by James Sassano, PLS of James Sassano Associates, Inc., dated November 11, 2016.

C. Lot Grading Plan and Driveway Apron Application and Site Inspection Request Form, dated October 11, 2017.

D. Pool Grading Plan by James Maccariella, Jr., P.E., dated 10/4/17.

E. Plan of Topography dated 10-02-17, signed by Daren Leeper, P.L.S. (not sealed).

4. The Board entered into the record the following:

A. Letter dated November 27, 2017 from Steven M. Bach, P.E., R.A., P.P., C.M.E., Bach Associates, the Board's professional planner, regarding his review of the Application.

D. Letter dated December 5, 2017 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.

5. The Subject Property is located along the southeast side of Winesap Way, in the Aura 1 subdivision, adjacent to a landscape buffer and stormwater management basin. Single-family homes are adjacent to the Subject Property on the left and right sides. The subdivision was initially approved for an age-restricted community under the then-applicable ARC zone district regulations. It was converted to market-rate homes in 2011. Bulk requirements were shown on the approved subdivision plans. The approving Resolution #2011-13 also stated, at item # 22 under Findings of Fact and Conclusions of Law, that with regard to accessory structures, the proposed development shall comply with the ordinances in place at the time that the construction of these types of structures are undertaken. The Subject Property now exists in the RE – Rural Environmental Residential Zone District. As initially submitted, the Application requires variances from the requirements of the RE Zone District and other ordinances for maximum impervious coverage, property line to the waterline minimum (rear and side), grading minimum from the property line, lot grading contours extending, and slope away from dwelling.

6. 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 permitted in the RE zoning district. The Applicant’s use, that of a single-family residential dwelling, is a permitted use in the RE Zone District. The zone standards, as applied to the Applicant’s Application, are as follows:

<u>Bulk Requirement</u>	<u>Required</u>	<u>Existing / Proposed</u>	<u>V/C/E</u>
Minimum Lot Size.	80,000 sf	10,800 sf	E
Minimum Front Yard	50 ft	20 ft	E
Minimum Rear Yard	40 ft.	20 ft	E
Minimum Side Yards one	20 ft (one)	5 ft	E
Minimum Side Yards both	50 ft (both)	15 ft	E
Maximum building coverage	15 %	15 %	E
Maximum Impervious coverage	20 %	23 %	E
Proposed:		43 %	V
<u>Swimming Pools (Code 96-81 B):</u>			
Rear yard coverage max.	75 %	< 50 %	C
Property line to waterline min.	25 ft.	10 ft rear	V
Property line to waterline min.	25 ft	8 ft side	V
<u>Lot Grading plan (Code 96-66 m):</u>			
Grading min. from prop. line	5 ft	2 ft	V
Lot grading contours extending	50 ft	0 ft	V
Slope away from dwelling	5 % in 10 ft	not shown	V
Maximum slope	3:1	1.6:1	C

V=Variance required or Design Waiver required.

C=Complies

E=Existing condition (in this instance a result of complying with the subdivision plans)

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

- #8 requires copies of applications to and certifications from all outside agencies. The applicant has indicated this is not required. This waiver is recommended by the Board's planner.
- #9 requires plat/plan signed and sealed by a licensed professional. The applicant has provided a survey with a hand drawn proposed pool/patio, however it has not been sealed. A waiver should be requested or a sealed plan should be provided.
- #11 requires source and date of survey, signed and sealed within the last one year. The survey provided is dated November 22, 2016 and is not sealed. *Similar to # 9 above, as the present hearing is for completeness only, the Applicant agreed to submit an updated and signed survey*
- #14 requires certification from the tax collector that all taxes are paid to date. A certification has been provided that the taxes have been paid through November, the Applicant should provide an updated certification prior to the hearing in December. *The Applicant agreed to provide the same as a condition of granting completeness.*
- #35 requires schedule of zoning requirements. This has not been provided. A waiver is recommended by the Board's professionals insofar as their review letters have set forth the same.
- #38 requires the Applicant to submit site photographs. Site photographs could be helpful for the Board to determine the appropriate distance from the adjacent neighbor. A waiver is not recommended. The Applicant should provide photographs at the hearing. *As the hearing is for completeness only at this time, the Applicant agreed to provide photographs as a condition of granting completeness.*
- #41 requires the location of all existing wells and septic systems and distances between them, and on adjacent properties where required by the Board. The Applicant is requesting a waiver. There are no existing septic or well systems on the Subject Property and the Applicant requests a waiver from the surrounding properties. A waiver is recommended by the Board's planner.
- #53 requires the Applicant to indicate any historic structures locate within 200 feet of the Subject Property. The Applicant has requested a waiver because there are no historic structures within 200 feet. Due to the nature of the Application, the Board's Planner recommends this waiver.
- #73 requires the Applicant to submit an LOI from the NJDEP. The Applicant is requesting a waiver from this requirement, indicating there are no wetlands present. This waiver is recommended by the Board's Planner.
- #77 requires the Applicant to submit sign information. The Applicant has requested a waiver from this item as no signage is proposed. A waiver is recommended by the Board's Planner.

8. The Board determined that the above requests for submission waivers should be granted, noting that the following items # 11 (a current, sealed survey), #14 (a current certification of taxes paid on the Subject Property), and # 38 (site photographs of the Subject Property) are conditionally waived for completeness only, and must be submitted prior to a hearing on the merits of the Application.

WHEREUPON, a motion was made by Board Member Clark, which was seconded by Board Member Swanson, to grant the above referenced submission waivers, with the exception of items #11, #14 and #38, based on the representations and agreements made by the Applicant, with the following Board members voting in favor of the motion: Clark, Hughes, Shoultz, White, Schmidt, Afflerbach, Nicholson, Goss (Alternate Member #1) and Swanson (Alternate Member #2). There were no votes in the negative, and no abstentions or recusals. Board Members Poisker and McKeever were absent. Insofar as there were still three (3) submission items that had to be submitted in order for the Application to be deemed complete, the Application was carried, with the Applicant's consent, to the February 21, 2018 meeting of the Board.

9. The hearing on the Application reconvened at the Board's February 21, 2018 meeting and public hearing, at which time again appeared Mr. Pliskin and Ms. Franco, who were advised by the Board's attorney that they remained sworn as to any testimony that they would give with regard to the Application. The Board's Professional Planner, Mr. Bach, and the Board's professional engineer, Mr. Bitgood, were also sworn as to any testimony that they would give as to their review of the Application. The Applicant submitted a current signed and sealed survey, a current certification of taxes paid, and nine colored photographs of the Subject Property (marked into evidence as Exhibits A-2 through A-10). The Application was then deemed to be formally complete. In addition, the Applicant introduced into evidence Exhibit A-1, which was a survey of the Subject Property dated 11/22/16, prepared by James Sassano Associates, Inc. (unsealed), on which the Applicant hand drew the location of his proposed pool and other dimensions associated with the same. Mr. Pliskin testified as to the changes requested, including setbacks, location of pool equipment, patio, distance from the house, etc.

10. Mr. Bitgood's letter of December 5, 2017, which had been entered into the record, was reviewed by Board members and the Applicant. Mr. Bitgood reviewed the Applicant's revised plan (Exhibit A-1) and testified that he had no objection to the proposed changes. Mr. Bitgood testified that the proposed plan met the intentions of the zone code, provided adequate clear distances for proper grading, presented the necessary area for pervious needs, and that, on balance, Mr. Bitgood supported the changes made by way of Exhibit A-1. As a condition of approval, Mr. Bitgood indicated that the Applicant must submit a detailed grading plan. Based on the revised plan, as submitted by the Applicant, the following variances/waivers are required:

(A) R-E Zone Bulk Requirements (Code 96-71): Maximum Impervious within the R-E Zone coverage – 20% required, 23% existing, <34% proposed.

(B) Swimming Pools (Code 96-81 B): property line to waterline min. - 25 ft required, 10 ft rear proposed; property line to waterline min. – 25 ft. required, 8 ft. side proposed.

(C) Lot Grading Plan (Code 96-66 m): lot grading contours extending 50 ft required, 0 feet proposed

11. Mr. Bach’s letter of November 27, 2017, which had been entered into the record, was reviewed by Board members and the Applicant. Mr. Bach recommended that a ten (10) foot setback from the rear property line to the coping of the pool was acceptable, the pool could be backwashed by channeling the water away from any neighboring properties toward the open space and basin to the rear of the Subject Property, and that the grading as proposed will comply with the ordinances. Mr. Bach supported the revised plan and necessary variances, as submitted.

12. The hearing on the Application was opened to the public, at which time no member of the public testified either for or against the Application.

CONCLUSIONS

The Board concluded that the Applicant’s request for bulk variances and/or design waivers to accommodate the construction of an in-ground swimming pool should be approved. The Board noted that there was ample room on the Subject Property to position the proposed pool, and that the Applicant had worked diligently with the Board and the Board’s professionals regarding revisions to proposed setbacks, location of pool equipment, adequate clear distances for proper grading, and the ability to backwash the pool water in a way that it would not impact any neighbors or other improvements. Variances for maximum impervious coverage, setbacks for property line to the waterline minimums (rear and side) and a waiver/ variance from the need for lot grading contours extending 50 feet, were proper given the adjustments that the Applicant made to his plan. In addition, the Applicant is required to make additional submissions prior to construction permits being issued, as are set forth below under Paragraph 8 of “Conditions”. The Board concludes that the “c.(2)” standards for variance approvals have been met in that the Applicant would be advancing the purposes of the Zone Code by upgrading the Subject Property, and that the benefits of deviating from the Zone Code substantially outweigh any detriments and, further, that any detriment that might occur would not be substantial.

CONDITIONS

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

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

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

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

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

submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Attorney, Engineer and Planner.

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

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

8. The Applicant must submit the following prior to construction permits being issued:

(A) Lot grading plan for in-ground swimming pool, signed and sealed by a professional engineer, who is licensed in the State of New Jersey; and

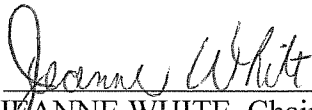
(B) Plan of Survey and topography, signed and sealed by a Professional Land Surveyor licensed in the State of New Jersey; (this can be a certified update of the prior as-built survey for the lot);

(C) Both of the above plans shall conform to Elk Twp. Code 96-66, et. seq., but topographic information need not extend to 50 feet beyond the property lines. Both of the above plans shall be on the same datum as the plans for the Aura Development and as was used for the Lot Grading Plans prior to the first occupancy of the Subject Property.

WHEREUPON, a motion was made by Board member Afflerbach, which was seconded by Board member Schmidt, to grant the above referenced variances, subject to the conditions, representations, and agreements as set forth above under Findings of Fact above and the requirements set forth by the Board's engineer and planner, with the following Board members voting in favor of the motion to grant approval: Poisker, Clark, Hughes, Shoultz, White, Schmidt, Afflerbach, Nicholson, and Swanson (Alternate # 2). There were no abstentions, recusals or votes in the negative. The following Board Members were absent: McKeever and Goss.

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 March 21, 2018 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on February 21, 2018 on the above referenced Application.

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

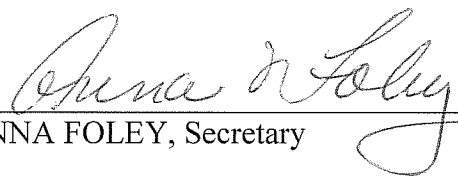
By: 
JEANNE WHITE, Chairperson

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 21st day of March 2018 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 February 21, 2018 on the above cited Application.


ANNA FOLEY, Secretary