

Resolution No.: 2018-12

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING A MINOR SUBDIVISION TO JAMES J.
& PATRICIA FILIPPELLO (H/W), AND KEITH SAUER, REGARDING
PROPERTY LOCATED AT 317 CEDAR BRIDGE ROAD & 220 HOLLYWOOD
AVENUE, AND BEING FURTHER SHOWN AS BLOCK 217, LOTS 15, 5 & 6, ON
THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: SD-18-01**

WHEREAS, Application No.: SD-18-01 (the “Application”) was submitted to the Combined Planning/Zoning Board Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the “Board”) by James J. and Patricia Filippello (H/W), and Keith Sauer (together, the “Applicant”) for a Minor Subdivision regarding property located at 317 Cedar Bridge Road and 220 Hollywood Avenue, (the “Subject Property”) and being further shown as Block 217 Lots 15, 5 & 6, 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 April 18, 2018 at 7:30 P.M., time prevailing, at which time was the Applicant present; and

WHEREAS, Mr. And Mrs. Filippello (H/W), speaking for the Applicant, were sworn and testified that they did not wish postpone the hearing on the Application to the following month so that they could have an attorney, engineer, land surveyor or professional planner present, and that the Applicant wished to proceed with the hearing on the Application, at which time were Mr. and Mrs. Filippello sworn as to any testimony that they would give on the Application;

NOW, THEREFORE, BE IT RESOLVED by the Combined Planning / Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

FINDINGS OF FACT

1. The Application was deemed to be complete, subject to the Board acting on certain requests for waivers from submission requirements. As such, the Board had jurisdiction to act on the Application.

2. The Board's professional planner, Candace Kanaplue, P.P., 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, the Board's Professional Engineer, were both sworn as to any testimony that they would give on behalf of the Board for the purposes of the Application.

3. The Board entered into the record the following:

A. Application, Application fee, Escrow Agreement, Escrow deposit, Certification of Taxes Paid on the subject property, Affidavit of Ownership / Affidavit of Ownership, authorization of contract purchaser, Agreement of Sale, 200 foot property owners list, Land Development Checklist, Gloucester County Report of Action dated 1/23/18, indication that there were no county requirements regarding the proposed subdivision

B. Review letter on the Application dated February 21, 2018, received from the Board's Planners, Steven M. Bach, P.E., and Candace Kanaplue, P.P., Bach Associates.

C. Review letter on the Application dated February 7, 2018, received from Stan Bitgood, P.E., Federici & Akin, the Board's Engineer.

D. Plan entitled "Proposed Lot Line Adjustment Plan For: Plate 44, Block 217, Lots 15, 5 & 6, 316 Cedar Ridge Road and 220 Hollywood Avenue, Township of Elk, Gloucester County, New Jersey", prepared by Bruce A. Ewing, N.J. Land Surveyor, dated 12-11-17, no revision.

E. Deeds as follow: Deed Book 5206, beginning at page 162, dated June 30, 2014, from Puja Ishwar to Keith Sauer regarding Block 217, Lots 5 & 6, recorded July 7, 2014; and Deed Book 3158, beginning at page 200, dated August 23, 2000, from Marie Filippello to James J. Filippello and Patricia Filippello (H/W), regarding Block 217, Lot 15, recorded September 1, 2000.

F. Boundary Descriptions dated December, 2017 and prepared by Ewing Associates.

4. Lots 5 & 6, owned by Keith Sauer, are adjacent to each other along Cedar Ridge Road and their rear yards back up to Lot 15, owned by Mr. and Mrs. Filippello, which has its entrance located along Hollywood Avenue. Existing Lot 15 consists of approximately 4.92 acres and is vacant, with a pond and wetlands located on the Subject Property. Existing Lot 5 is approximately 1.54 acres contains a masonry building and a one-story residential dwelling. Existing Lot 6 is approximately 1.54 acres and is not developed. The purpose of the Application is to modify an existing property line so as to transfer approximately a half acre each from the rear of Lots 5 & 6, and add them to Lot 15.

5. The Subject Property is located within the MD Moderate Density Residential Zone District which permits agricultural uses and buildings, single-family detached dwellings, public parks and playgrounds, and accessory uses that are customarily incidental and subordinate to the primary use on site. The zone standards are provided below:

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 5</u>	<u>Proposed Lot 6</u>	<u>Proposed Lot 15</u>	<u>Compliance</u>
96-68D(2) Minimum Lot Size	25,000 sf	46,000 SF	46,000 SF	256,567 SF	Complies
98-68.(9)(a) Minimum Lot Frontage	75 ft	100 ft.	100 ft	400 ft	Complies
96-68D.(6)(a) Minimum Width at Bldg. Line	85 ft	100 ft	100 ft	400 ft.	Complies
96-68(3)(a) Front Yard Setback	Min. 30 ft Avg. 62 ft	50.21 ft.	30 ft.	30 ft.	Complies
96-68D(4) Rear Yard Setback	35 ft.	370 ft.	35 ft.	35 ft.	Complies
96-68D.(5) Min Side Yard (one)	10 ft	5.61 ft.*	10 ft.	10 ft.	Lots 6 & 15 Comply; Lot 5 is a pre-existing non-conformity
96-68D.(5) Min Side Yard (both)	25 ft	59.71 ft	25 ft.	25 ft.	Complies
96-68D(7) Minimum Lot Depth	100 ft	462.37 ft.	462.37 ft.	352.26 ft.	Complies
96-68D(10) Max Bldg. Ht.	35 ft	unknown	N/A	N/A	Pre-existing Condition

96.68D(11) Max. Bldg. Cover	30%	unknown	N/A	N/A	Pre-existing Condition
96-68D(12)(b) Max Impervious for lots standard	35%	unknown	N/A	N/A	Pre-existing Condition
96-80A(3) Accessory Uses And Structures. Max one detached Garage	1,200 sf	+/- 3,006 sf	N/A	N/A	Pre-Existing Condition
96-80A(4) Accessory Uses and Structures Max sq. ft. one Pre-Existing Shed	200 sf	N/A	N/A	N/A	Pre-Existing Condition
96-80A(5) Accessory Uses and Structures 10 foot setback rear and side yards	10 ft	> 10 ft.	> 10 ft	> 10 ft	Complies

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

#25 requires the plan to be a minimum scale of 1"=50'. A waiver is being requested to provide a scale of 1"=60'. Because of the nature of this Application, a waiver is recommended by the Board's Planner and Engineer.

#33 requires a statement of compliance with affordable housing regulations. Because of the nature of this Application, a waiver is recommended. Should Lot 15 or 6 be developed, compliance will be required at that time.

#36. Copy of protective covenants, easements and deed restrictions of record, and Title Policy. The Applicant testified that there were no known easements, protective covenants, or deed restrictions of record, and that the Title Policy did not reflect any negative information that would have an impact on the relief requested.

#38 requires site photographs. The Applicant testified that the portion of the property to be subdivided off consisted of woodlands. A waiver has been requested. Because of the nature of this application, a waiver is recommended by the Board's Planner.

43 requires existing and proposed use of all buildings and structures. Because the area involved will remain as woods, a waiver is requested, and is supported by the Board's planner and engineer.

#49 requires the Applicant to provide the location of all existing trees. A waiver is recommended by the Board's Planner from the tree requirement as no tree removal is proposed at this time.

#50 requires the Applicant to provide a tree protection plan. Because of the nature of this application, a waiver is recommended by the Board's Planner.

#55 requires the Applicant to provide contours at 20' intervals. Because of the nature of this application, a waiver is recommended by the Board's Planner.

#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 by the Board's Planner, subject to a grading plan being submitted prior to lot 6 or 15 being developed. The Applicant agreed to comply.

#58 requires the Applicant to provide a soil erosion and sediment control plan. The Applicant requests a waiver, as no grading or improvements are proposed at this time. The waiver is recommended by the Board's Planner.

#59 requires soil borings to determine soil suitability. The waiver is recommended by the Board's Planner as no improvements are proposed at this time.

#66 requires a written commitment from the MUA of sufficient sewer and water service capacity. The Applicant requests a waiver, as the site is served by a private septic system and well and no new construction is proposed. The waiver is recommended by the Board's Planner.

#67 requires results and location of all percolation tests and borings for an on-site sewerage disposal system. The Applicant requests a waiver, as the site is already served by a private septic system and no new construction is proposed at this time. The waiver is recommended by the Board's Planner.

#73 requires a Letter of Interpretation from NJDEP. The Applicant requested a waiver as no building is proposed, but acknowledged that should the wooded portion property be developed, a Letter of Interpretation would be required.

#75 requires the Applicant to submit a Utility Plan. The Applicant has requested a waiver, as no changes to the existing utilities are proposed. The waiver is recommended by the Board's Planner.

WHEREUPON, a motion was made by Board Member Schmidt, which was seconded by Board Member Hughes, to grant the above referenced submission waivers, subject to the representations and testimony given by the Applicant as are set forth above, with the following Board members voting in favor of the motion to grant the waivers: White, Poisker, Nicholson, Hughes, McKeever, Shoultz, Schmidt, Swanson and Clark. Board members Goss (Alternate Member #1) and Afflerbach were absent. There were no votes in the negative and no abstentions or recusals. The Board, having granted the submission waivers, subject to the representations and agreements made by the Applicant, the Application was deemed to be complete. The hearing on the Application proceeded.

7. Mr. Filippello testified that he intended to keep the portions of Lots 5 & 6 to be deeded to him by way of merger with his adjacent Lot 15, as woodlands. Mr. and Mrs. Filippello reside on Lot 14, which is adjacent to Lot 15 and would back up to the portions to be subdivided off of Lots 5 & 6.

8. The Board's Professional Planner, Candace Kanaplue, P.P., on behalf of Stephen M. Bach, PP, reviewed with the Board Mr. Bach's letter of February 21, 2018 regarding the Application, as follows: No variances are required as a part of the Application since any non-conformities with zoning are due to pre-existing conditions. Ms. Kanaplue questioned the present and future use of an existing masonry building approximately 3,000 square foot in size, on Lot 5 owned by Mr. Sauer. Mr. Sauer testified that said building was used for storage and no business or other use currently exists or will exist in the future.

9. The Board's Professional Engineer, Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., reviewed with the Applicant and the Board, his letter of October 12, 2017 as follows:

1. Bulk Requirements: The site is in the Moderate Density Residential District. The table of zoning requirements correctly indicates the bulk requirements and that no variances are proposed.

A. Agricultural buffers are not proposed and would not be required for the proposed residential uses.

B. Setback lines are shown on the site plan.

C. The proposed lots will be conforming to the minimum lot area.

2. Plat/Plan Requirements: The Applicant should confirm that the subdivision will be filed by deeds. The Applicant confirmed the same. The Board requires that the legal descriptions for the newly configured lots must be submitted and reviewed by the Board's engineer, and the proposed deeds be submitted to the Board's attorney for review and approval as to the form of the deeds, prior to the deeds being recorded. The Applicant agreed to comply. The deeds shall be recorded no more than 190 days from the date that this resolution is adopted. The Applicant acknowledged the same.

3. Legal descriptions have been submitted for review.

A. The plan shows corners set at the proposed new lot line. No new lot lines will intersect the street right of way so no additional new corners are required.

B. Although Item 33 is not applicable for a subdivision without construction, if and when a building permit is requested for Lot 15, compliance with Affordable Housing will be required. This should be a condition of approval. The Applicant agreed to comply.

C. Item 36, copies of deed restrictions and covenants, can be waived, upon satisfactory testimony that no protective covenants, easements, or deed restrictions exist on-site. Said testimony had been given by the Applicant.

D. The County has already reviewed the proposed lot line adjustment and is requiring no improvements and no dedication of right of way or a road easement.

E. A copy of an approved Letter of Interpretation, LOI, from NJDEP, or a Wetlands Permit from NJDEP, or a certification of no wetlands disturbances shall be provided from a licensed professional engineer. Access to the proposed uplands area of lot 15 via Hollywood Avenue would require a wetlands permit from NJDEP. The Applicant had agreed to comply should the referenced property ever be developed.

F. Addresses and Lot numbers: This Application will not change existing addresses or lot numbers.

G. Parking: This Application will not change existing parking capacity or locations.

H. Photos: Recent photos of the site shall be submitted with the Application. This requirement has been waived by the Board.

4. Curbs & Sidewalks: This Application does not include, nor require, curbs or sidewalks.
5. Lot grading: As no physical improvements are proposed, the Board's engineer had no objection to waiving this. Individual Lot Grading plans are required prior to obtaining building permits for residences. The Applicant had agreed to the same.
6. Stormwater Management: No disturbances are proposed, therefore the disturbance and impervious thresholds for stormwater management will not be exceeded.
7. Fences: No new fences or modifications are proposed or required.
8. Street Paving: Both streets are paved and in fair condition with 28 ft cartways and 50 ft Rights of Way. The Board's engineer was not recommending street improvements or easement dedications for this subdivision.
9. Accessory Uses & Structures: The Application does not propose any new structures. The Applicant and owners are reminded that Elk Township Code section 96-80 allows one accessory garage and one additional structure not exceeding 200 square feet on a residential lot. The Applicant acknowledged the same.
 - A. The owner should be prepared to testify regarding the use of the existing masonry structure within lot 5. Mr. Sauer had testified that this building was to be used for storage only, and that no business or other uses are currently occurring, nor will occur.
10. A copy of the Autocad Plan of Lot Line Adjustment shall be submitted to the Planning Board Engineer. The Applicant agreed to comply.
11. Applicant should provide testimony regarding the reason for increasing area of lot 15 above five acres. The Applicant had testified that they wanted to add more wooded areas to their existing land.
12. The hearing on the Application was open to the public, at which time no member of the public present spoke either in favor of or opposed to the Application.

CONCLUSIONS

The Board concluded that the Applicant's request for a minor subdivision for purpose of lot line adjustment should be granted on the basis that the proposed realignment of land between the three lots would meet all of the area requirements, and would promote the maintenance of open space. Any non-conformities were due to pre-existing conditions which did not adversely affect the zone code, development code or master plan of the Township of Elk. On balance, the Board concluded that no substantial detriments to the Zone Code or Master Plan would occur as a result of an approval being granted to the Applicant.

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.

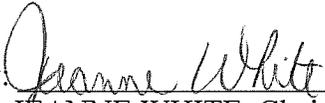
7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., required with respect to the relief as granted herein.

8. The Applicant agrees to perfect the approved subdivision through the recording of deeds, and will submit copies of the deeds to the Board's Engineer for approval as to the legal descriptions in the deeds, and to the Board's attorney for review and approval as to the form of the deeds, prior to recording the same. The Applicant shall record said deeds within 190 days of the adoption of this resolution.

WHEREAS, a motion was made by Board member Schmidt, which was seconded by Board member Hughes, to grant a Minor Subdivision to the Applicant, at a meeting following a public hearing held on the Application on April 18, 2018 at 7:30 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Poisker, Clark, Hughes, Shoultz, White, Schmidt, Nicholson, McKeever, and Swanson (Alternate Member # 2). Board Members Goss (Alternate # 1) and Afflerbach were absent. There were no votes in the negative and no abstentions or recusals.

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 May 16, 2018 as a memorialization of the approval granted in the above referenced matter by the Board at its regularly scheduled meeting and public hearing held on April 18, 2018 on the above referenced Application.

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

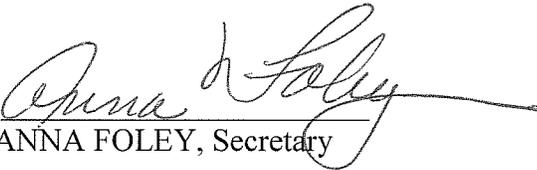
By: 
JEANNE WHITE, Chairperson

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 16th day of May 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 April 18, 2018 on the above cited Application.


ANNA FOLEY, Secretary