

Resolution No.: 2018-13

**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 JOHN
AND WIESLAWA DZIENISZEWSKI (H/W), REGARDING PROPERTY
LOCATED AT 1469 ELLIS MILL ROAD AND BEING FURTHER SHOWN AS
BLOCK 21, LOT 5.01 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: SD-18-04**

WHEREAS, Application No.: SD-18-04 (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 John and Wieslawa Dzieniszewski (H/W), (together, the “Applicant”) for a Minor Subdivision and variances regarding property located at 1469 Ellis Mill Road (the “Subject Property”) and being further shown as Block 21 Lot 5.01 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 April 18, 2018 at 7:30 P.M., time prevailing, at which time were the following present: John Dzieniszewski; John A. Alice, Esquire, 28 Cooper Street, Woodbury, New Jersey 08096 (the Applicant’s Attorney); and Steve Cosaboon, P.E., Sickels & Associates, inc., Sherwood Mews, 833 Kings Highway, Woodbury, N.J. 08096 (the Applicant’s engineer); and

WHEREAS, Mr. Cosaboon, having never previously appeared before the Board, provided his background information, experience and licensing, after which he was stipulated on the record by the Board as an expert in the field of engineering, and was qualified to testify as such on behalf of the Applicant for the purposes of the Application, after which were Messrs. Dzieniszewski and Cosaboon sworn and provided testimony on the Application;

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

FINDINGS OF FACT

1. The Application was deemed to be complete, subject to the Board acting on certain requests for waivers 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, 200 foot property owners list, Land Development Checklist, Gloucester County Planning Board Application, Gloucester County Planning Board Report of Action dated 3/20/18 indicating County approval of the Application, Notice of Hearing, Affidavit of Service, Affidavit of Publication, and list of submission waivers requested by the Applicant.

B. Review letter on the Application dated March 14, 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 March 7, 2018, received from Stan Bitgood, P.E., Federici & Akin, the Board’s Engineer.

D. Plan entitled "Minor Subdivision Plan: #1469 Ellis Mill Road, Plate 8, Block 21, Lot 5.01, Township of Elk, Gloucester County, New Jersey” prepared by Joseph L. Lazok, PLS, Sickels & Associates, Inc., no revision.

4. Lot 5.01 is located at the intersection of Ellis Mill Road and Millstone Way. Proposed Lot 5.04 is located with frontage along Millstone Way. Existing lot 5.01 consists of approximately 4.14 acres and contains a dwelling, above ground pool, possibly two sheds, and associated improvements along with woodlands. The Applicant indicates that the creation of new lot 5.04 would be for a possible future residence.

5. The Subject Property is located within the LD Low 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 5.01</u>	<u>Proposed Lot 5.04</u>	<u>Compliance</u>
96-69D(2)(a) Minimum Lot Size	40,000 sf	111,139.61 sf	69,182.94 sf	Complies

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 5.01</u>	<u>Proposed Lot 5.04</u>	<u>Compliance</u>
98-6D)(3) Minimum Front Yard	40 ft	104.76 ft.	>40 ft.	Complies
96-69D(9)(a) Lot frontage min	135 ft.	475.48 ft.	150 ft.	Complies
96-69D.(6)(a) Minimum Width at Bldg. Line	150 ft	264.86 ft.	150 ft	Complies
96-69D(4) Rear Yard Setback	40 ft.	98.17 ft.	>49 ft.	Complies
96-69D(5)(a) Min Side Yard (one)	10 ft	84.49 ft	10 ft.	Complies
96-69D(5)(b) Min Side Yard (both)	50 ft	189.35 ft	>50 ft.	Complies
96-69D(7) Minimum Lot Depth	200 ft	244.58 ft.	431.33 ft.	Complies
96-69D(10) Max Bldg. Ht.	35 ft	< 35 ft.	<35 ft.	Complies
96.69D(11) Max. Bldg. Cover	20%	1.5%	<20%	Complies
96-68D(12)(a) Max Impervious for lots standard	25%	12.2%	<25%	Complies
96-80A(5) Accessory Uses and Structures. 10 foot setback rear and side yards	10 ft.	Approx. 5 ft. for prior sheds	<10 ft.	Complies Variances not required as 2 sheds were removed

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

#19 requires proposed new block and lot number be approved by the tax assessor. The Applicant is requesting a waiver conditioned on approval. Subject to the Board Engineer's agreement, the Board's Planner recommends a waiver for completeness only. The Board's engineer concurred.

#36 requires copies of deed restrictions, protective covenants and easements be made available. The Applicant testified that he was not aware of any such conditions. Accordingly, a waiver was recommended by the Board's Planner.

#38 requires site photographs. A waiver has not been requested. Because of the nature of this Application, a waiver is recommended by the Board's Planner and Engineer, as proposed Lot 5.04 is wooded, and there are no immediate plans to develop the same.

#40 requires the locations design and dimensions of all existing and proposed structures and wooded areas. The Applicant indicates all existing structures, however a waiver is requested for proposed structures. Because no structure is currently being proposed, a waiver is recommended by the Board's Planner.

#43 requires the existing and proposed use of all existing and proposed structures. The Applicant has indicated all existing structures, and a waiver is requested for proposed structures. Because no structure is currently being proposed, a waiver is recommended by the Board's Planner.

#49 requires the Applicant to provide the location of all existing trees. A waiver is recommended from the tree requirement as no tree removal is proposed at this time. However, trees to be removed must be indicated on future building plans and the applicant must comply with all tree removal ordinance requirements at that time. The Applicant agreed to comply.

#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. The Applicant indicates that compliance will occur at time of building permit.

#53 requires the location of any historic structures within 200 feet. The Applicant should testify as to the location of any properties in the area. The Applicant testified that he is not aware of any historic structures within 200 feet of the Subject Property.

#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. The Township Engineer has required that current drainage and stormwater flow shall be maintained. The Applicant agreed to comply.

#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. A grading plan must be submitted prior to proposed lot 5.04 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, with the concurrence of the Applicant that such a plan shall be submitted should construction be proposed, prior to any building permits being issued. The Applicant agreed to comply.

#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.

#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 the Applicant to submit an LOI regarding wetlands from the NJDEP. The Applicant has requested a waiver. The Applicant must submit a signed statement by a licensed PLS or PE in accordance with the requirements outlined in the checklist, and as required under the Board engineer's review letter of March 7, 2018, paragraph G on page 3. The waiver is recommended by the Board's Planner for completeness only. The Applicant agreed to comply.

#75 requires the Applicant to submit a Utility Plan. The Applicant has requested a waiver, as no changes to the existing utilities are proposed at this time. The waiver is recommended by the Board's Planner until such time as building permits are requested for proposed Lot 5.04. The Applicant agreed to comply.

#83 requires the location of existing and proposed curb openings. The Applicant has requested a waiver from location of proposed curb openings until such time as a building permit is requested. The waiver is recommended by the Board's Planner.

WHEREUPON, a motion was made by Board Member Swanson, 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, Shultz, 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. Alice provided a brief overview of the Application, consistent with the information set forth hereinabove.

8. Mr. Cosaboon reviewed the Plan of subdivision and noted that no bulk variances are required. Mr. Cosaboon testified as to the size and dimensions of the proposed lots, access and egress to and from the proposed new lot and the remainder lot, as well as other aspects of the Plan.

9. 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 March 14, 2018 regarding the Application, as follows: No area or bulk variances are required insofar as the Applicant testified that the two prior sheds on Lot 5.01, which didn't meet the setback requirements, have been removed.

10. 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 Low 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.

2. Plat/Plan Requirements:

A. The Applicant should specify whether the subdivision will be filed by plan or by deeds. The Applicant testified that the subdivision would be perfected by the filing of deeds, and agreed to submit copies of the legal descriptions to the Board's engineer for review and approval, and the deeds to the Board's attorney for review and approval as to the form of the deeds, prior to a recording of the same. The Applicant acknowledged that he had 190 days from the date of adoption of this resolution in which to record the deeds.

B. The Applicant shall submit a copy of the existing property deed as a condition of approval. The Applicant agreed to comply.

3. Minor subdivision plans have been submitted for review.

A. The submitted plan references a previous survey plan titled "Plan of Minor Subdivision, for John & Wieslawa Dzieniszewski, Plate 8, Block 21, Lot 5.01." A copy of this survey referenced shall be submitted as a condition of approval. The Applicant agreed to comply.

B. The well and septic locations for adjacent lot 5.02 shall be shown on the plans in order to better determine the possible future locations of well and septic in proposed lot 5.04. The Applicant agreed to comply as a condition of approval.

C. The monument required by M.L.U.L. must be set and called out in the legal description(s). The Applicant agreed to comply.

D. 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. The Applicant had testified as to the same.

E. Item 49 will be waived, but it shall be recognized that the quantities and sizes of all trees to be removed shall be shown on future building plans. In addition, tree clearing shall comply with any and all ordinances at the time of building application. The Applicant agreed to comply.

F. Item 55, contours at 20' intervals, will be waived, but it shall be noted that the current drainage and storm water flow shall be maintained. The Applicant had agreed to comply.

G. Item 73: This requirement may only be waived if the site is clearly uplands and the applicant submits a signed statement by a New Jersey licensed engineer or land surveyor that a) he has personally visited the subject property and conducted a site investigation as necessary to determine that there are no freshwater wetlands or transition areas on the subject property b) he has examined the subject property on a national wetlands inventory map c) he has reviewed the soils on the subject property as set forth in the Gloucester County Soil Survey Map as issued by the United States Department of Agriculture d) he has certified that there are no freshwater wetlands or freshwater wetland transition areas on the subject property.

H. Addresses and Lot numbers: This Application will not change the existing address for lot 5.01. The Applicant had agreed to comply.

1. If approved, the Applicant must obtain a new lot number for the proposed lot (referred to as lot 5.04 on the plans) from the tax assessor and provide a copy. The Applicant agreed to comply.

2. If approved, Applicant must obtain new address for the proposed lot (referred to as lot 5.04 on the plans) from Gloucester County 911 Coordinator and provide a copy to the Board's engineer and the Board's secretary. The Applicant agreed to comply.

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

J. Photos: Recent photos of the site shall be submitted. This has been waived by the Board as the proposed lot 5.04 is all wooded.

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 consented 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 30 ft and 40 ft cartways and 50 ft Rights of Way. The Boards engineer was not recommending street improvements or any 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.
10. A copy of the AutoCAD file of the updated Minor Subdivision Plan shall be submitted to the Planning Board Engineer. The Applicant agreed to comply.
12. 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

The Board concluded that the Applicant's request for a minor subdivision should be granted on the basis that all area and bulk requirements will be met. As such, the Application is a "by-right" application and is entitled to approval as a matter of law.

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 disclosed to the Board, but which would have had a materially negative impact upon the Subject Property which had not been known or had not been 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.

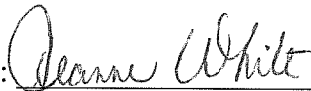
7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., required with respect to the relief as granted herein.

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.

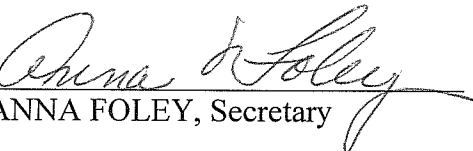
WHEREAS, a motion was made by Board member Shoultz, which was seconded by Board member Schmidt, to grant a Minor Subdivision to the Applicant, at a meeting following a public hearing held on the Application on April 18, 2018 at 7:30 PM, time prevailing, with the following Board members voting in favor 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