

Resolution No.: 2018-17

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 CHRISTOPHER AND KRISTEN VOGEL (H/W), 306 WINESAP WAY, GLASSBORO, N.J. 08028 REGARDING PROPERTY LOCATED AT 306 WINESAP WAY AND BEING FURTHER SHOWN AS BLOCK 29.01, LOT 2 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-18-07

WHEREAS, Application No.: ZB-18-07 (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 Christopher and Kristen Vogel (H/W), 306 Winesap Way, Glassboro, N.J. 08028 (together, the "Applicant") for bulk variances to accommodate the construction of a swimming pool on property located at 306 Winesap Way, Glassboro, N.J. 08028 (the "Subject Property") and being further shown as Block 29.01, Lot 2 on the Tax Maps of the Township of Elk (the "Township"); and

WHEREAS, the Applicant did appear, by way of Christopher Vogel, at a meeting and public hearing held by the Board on the Application on November 28, 2018 at 7:30 P.M., time prevailing, at which time was Mr. Vogel sworn as to any testimony that he would give on the Application, and did Mr. Vogel testify that he was not represented by an attorney, or a professional expert such as an engineer, land surveyor or professional planner, and that he did not want the Board to carry the hearing to a later date so that he might have the opportunity to seek representation of counsel, or retain a professional expert on his behalf;

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, Affidavit of Ownership, 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. Denied Zoning Permit Application dated June 11, 2018.

C. Deed of New Construction regarding the Subject Property dated December 9, 2015 (unrecorded copy).

D. Plot Plan for the Subject Property showing the proposed located of the proposed swimming pool, dated 8/15/18, and revised through 10/20/18, signed and sealed by Thomas N. Tolbert, PLS and John M. Pettit, P.E.

4. The Board entered into the record the following:

A. Letter dated October 9, 2018 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.

B. Letter dated September 27, 2018 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 northeast 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	6,600 sf	E
Minimum Lot Width	150 ft.	60 ft.	E
Minimum Lot Depth	200 ft.	110 ft.	E
Minimum Lot Frontage	135 ft.	60 ft.	E
Maximum Height	35 ft.	< 35 ft.	C
Minimum Front Yard	50 ft	11 ft	E
Minimum Rear Yard	40 ft.	40.9 ft	C
Minimum Side Yards one	20 ft (one)	11 ft	E
Minimum Side Yards both	50 ft (both)	22 ft	E
Maximum building coverage	15 %	23.48 %	E
Maximum Impervious coverage	20 %	33.5 %	E
Proposed:		48.56 %	V
<u>Swimming Pools (Code 96-81 B):</u>			
Rear yard coverage max.	75 %	< 75 %	C
Property line to waterline min.	25 ft.	10 ft rear	V
Property line to waterline min.	25 ft	11 ft side	V

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:

5 requires a Corporate Ownership List. Since the Applicant is not a corporation, this requirement does not apply.

6 requires a list of witnesses appearing on behalf of the Applicant. Since there are no witnesses, this requirement does not apply.

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.

15 requires a statement providing an overview of proposed uses of the land and improvements, alterations or additions. The Applicant requests a waiver. The waiver is recommended by the Board's Planner.

18 requires a tax map sheet. The Board's engineer supports a waiver of this requirement.

21 requires a waiver list and reasoning for the requested waivers. The Board's engineer supports waiver of this requirement.

22 List of other waivers and variances. The Applicant requests a waiver. This waiver is recommended by the Board's Planner

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.

40 requires the location and dimensions of wooded areas. The Board's engineer supports a waiver of this requirement.

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.

43 requires the existing and proposed use of all buildings and structures including bridges, culverts, paving, lighting, signs and grade elevations for each structure. The Applicant requests a waiver. The 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.

55 requires contours at 20 foot intervals for the entire tract and within 100 feet of the Subject Property and conformance with the grading plan requirements in Section 96-66M, prior to the issuance of any building permits. The Applicant has requested a waiver. The Board's engineer supports a granting of same.

67 requires – if on-site sewage disposal is required – the results and locations of all percolation test and test borings to be provided. The Applicant has requested a waiver, as the site is serviced by public sewer. The Board's Planner supports a grant of the waiver requested.

#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.

WHEREUPON, a motion was made by Board Member Hughes,, which was seconded by Board Member Swanson, to grant the above referenced submission waivers, with the following Board members voting in favor of the motion: Hughes, Shoultz, White, Schmidt, Afflerbach, Nicholson, McKeever and Swanson (Alternate Member #2). There were no votes in the negative, and no abstentions or recusals. Board Members Poisker, Clark and Goss (Alternate # 1) were absent. The waivers of submission requirements having been granted, the hearing on the Application proceeded.

8. Mr. Bach's letter of October 30, 2018, which had been entered into the record, was reviewed with by Board members and the Applicant, as follows: The requested variances relate to the approval of the initial subdivision when the bulk standards were approved under the ARC – Age-Restricted zoning requirements. The code for pools requires larger rear and side yard setbacks. In addition, much smaller lot sizes are permitted for an age-restricted community as it relates to a single-family community. The variances are caused by a small lot that would not otherwise not be permitted in the RE Zone District. The Applicant has included reasons for the variances requested in their Application. However, the fact that the existing lot is undersized for the proposed pool does not constitute a hardship for the homeowner to be permitted to more than double the permitted impervious coverage for the zone. The Applicant and their professionals should be prepared to provide testimony to the Board and the public at the hearing. Lot grading is not permitted within five (5) feet of a property line. The Applicant shall indicate on the plot plan that no grading will occur within five feet of the property line or a variance will be required.

9. Mr. Bitgood's letter of September 27, 2018, which had been entered into the record, was reviewed with the Board members and the Applicant as follows:

A. Zoning Use. Swimming pools are a permitted accessory use in the R-E Zone.

B. Bulk Requirements. The plan does not include a complete bulk requirements and conformance summary. It appears that the proposed swimming pool would need zoning variances for impervious coverage and for distance to the property lines.

i. Yard Dimensions should be shown on the Plan.

ii. The Appellants have not offered reasons to approve the reduced distances to property lines below 25 feet, which is required in code section 96-821.B(1). Justification is required for this by N.J.S.A. 40:55D (the Municipal Land Use Law). It should be noted that at N.J.S.A. 40:55D-70.c.(1), the law authorizes the Board to approve under certain conditions which are deemed to be ... (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon. The Appellants should provide testimony to address this and how their lot should be considered unique or exceptional and extraordinary, within the subdivision.

C. Drainage. The proposed drainage will concentrate runoff along the fence lines and will force additional runoff onto the adjacent lots 1 and 3. While the quantity of added runoff may be small, the channelizing of it that will occur if the pool deck is permitted to be less than 10 feet from the property line, will likely cause erosion at and adjacent to the fence. That erosion will very likely extend into adjacent lots 1 and 3. **Mr. Vogel testified that he will shift the pool and deck, and the grading, to the right by 3 feet.**

D. Grading. Grading will not be reviewed until a lot grading plan has been signed, sealed and submitted by a professional engineer. If the requested variance is approved, a proper lot grading plan and application will be required in, accordance with code section 96-66.M. **The Applicant agreed to comply.**

E. Limit of Disturbance. The proposed limit of disturbance extends to within 1 foot of the property line that is shared with lot 3. The limit of disturbance must be moved at least 5 feet away from the property line, although it is strongly recommended that it be moved to 10 feet from the property line. The proposed limit of disturbance that is shared with Lot 1 must also be moved. The proposed limit of disturbance must be moved 5 feet away from the property line. These 5 foot minimum distances must be called out and shown on the plan. **The Applicant agreed to comply.**

i. Limit of disturbance must include all proposed fence and gate changes and the area of the proposed pool equipment. **The Applicant agreed to comply.**

F. Impervious Coverage. The existing lot was designed and constructed to conform to the zoning requirements of the subdivision. Therein, a maximum of 20% impervious coverage shows on the approved subdivision plans. The proposed accessory structure must conform to the applicable zoning ordinance at the time of construction. This is also stated in the approving resolution # 2011-13. Thus the Rural Environmental

district rules apply to this Application. The proposed impervious coverage is 48.56% where 30% is the maximum permitted. Impervious coverage (not including the pool water surface) should be limited to 34% in accordance with the approved subdivision design. **The Applicant stated that they were requesting a variance from the impervious coverage requirements. Furthermore, the Applicant agreed that, in the event that pool water needed to be emptied from the pool, it would be pumped out so as to discharge the flow through the rear of the Subject Property into the basin.**

G. Stormwater Management. While the proposed disturbances do not require stormwater management under the NJDEP rules and the Elk Township Code, it should be noted that the runoff from this lot, and other lots in the subdivision, was approved for a maximum impervious coverage of 23%. No values are provided in the approved subdivision plans with which could be allowed additional on-lot impervious areas, and still be confident that the total impervious coverage would remain below 23%. However, the Board's engineer reviewed the stormwater management design report for the subdivision, and confirmed that the basin and the portion of the system for the subdivision within which the Subject Property is located, were in fact designed to handle an impervious coverage of 34%. Since not every house will have a pool behind it, the Applicant's request for impervious coverage relief should be able to be handled by the existing stormwater basin.

i. It should also be noted that the operation, cleaning and maintenance of the subdivision's stormwater management system are currently the responsibility of the Developer, and will remain so until the contributing sections of the subdivision are built out.

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, and the current capacity of the existing stormwater management basin. 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

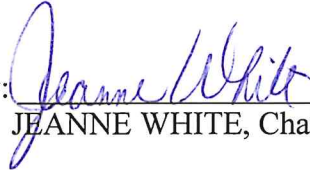
(B) Plan of Survey and topography, signed and sealed by a Professional Land Surveyor licensed in the State of New Jersey; (this can be a certified update of the prior as-built survey for the lot);

(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: Hughes, Shultz, White, Schmidt, Afflerbach, Nicholson, McKeever, and Swanson (Alternate # 2). There were no abstentions, recusals or votes in the negative. The following Board Members were absent: Poisker, Clark and Goss (Alternate Member # 1).

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 December 19, 2018 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on November 28, 2018 on the above referenced Application.

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

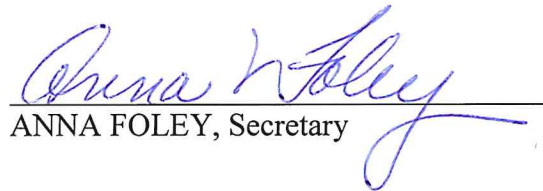
By: 
JEANNE WHITE, Chairperson

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 19th day of December 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 November 28, 2018 on the above cited Application.


ANNA FOLEY, Secretary