

**RESOLUTION NO. 2019-07**

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY,  
GRANTING A BULK VARIANCE TO COAL BUILDERS, L.L.C.  
LOCATED AT 539 FIFTH AVENUE, AND BEING FURTHER SHOWN AS  
BLOCK 147, LOT 3 ON THE TAX MAPS OF THE TOWNSHIP OF ELK**

**APPLICATION NO. ZB-18-08**

**WHEREAS**, an application was made to the Elk Township Planning/Zoning Board, hereinafter the "Board" by Coal Builders, L.L.C., whose address is 101 Idle Lake Road, Franklinville, NJ 08322, hereinafter the "Applicant" for a bulk variance from the minimum lot size to permit construction of a single family home on an existing lot being Lot 147 in Block 3 on the Elk Township Tax Map, with an area of 21,026sf where a minimum of 25,000sf is required; and

**WHEREAS**, the application was deemed to be complete on December 19, 2018 with waivers granted for completeness purposes only as to Items 38, 53 and 55 on the Elk Township Land Development Checklist; and

**WHEREAS**, a public hearing was held by the Board on December 19, 2018, at which time the Board heard testimony from Gary D. Thompson, Esquire and John Melleady, Managing Member of Coal Builders, L.L.C.; and

**WHEREAS**, the Board reviewed the reports of Steven M. Bach, PE, RA, PP, CME of Bach Associates, PC dated October 29, 2018 and Stan M. Bitgood, P.E., C.M.E. of Federici & Aiken, PA Consulting Engineers dated October 8, 2018, which reports are incorporated by reference herein; and

**WHEREAS**, the Board considered testimony of Mr. Bach and Mr. Bitgood; and

**WHEREAS**, the applicant produced the following Exhibits for consideration by the Board:

1. A Deed dated February 10, 2006 from the Township of Elk to Marcelo Catugas and Elvira Catugas, evidencing that the property conformed to all applicable zoning ordinances of the Township of Elk as of that date. (Exhibit A-1)
2. A plan of survey and sketch of the applicant's lot in question locating the proposed septic tank; the locations of adjacent septic systems; and the Location of Percolation and Soil Bore Tests. (Exhibit A-2)
3. A November 21, 2018 letter from Glenn Schifferdecker, P.G., C.F.M., of Environmental Resource Systems, detailing an on-site inspection of the property and determining that the evidence gathered supported the May 25, 2012 Letter of Interpretation (attached) prepared by the State of New Jersey Department of Environmental Protection finding that regulated wetlands and transition areas are absent on the subject lot. (Exhibit A-3)

4. Applicant's Offer to Abutting Property Owners addressed to Jerome A. and Tanya R. Mitchell at 114 Dunbar Boulevard seeking to sell Block 147, Lot 3 or, in the alternative to purchase the Mitchells' lot or a portion of their lot to bring the property in question into conformity and attached certified mail receipt. (Exhibit A-4)
5. Applicant's Offer to Abutting Property Owners addressed to Ms. Cindy Menszak seeking to sell Block 147, Lot 3 or, in the alternative to purchase Ms. Menszak's lot or a portion of her lot to bring the property in question into conformity and attached certified mail receipt. (Exhibit A-5)
6. Gloucester County Department of Health Soil Logs for Block 147, Lot3, prepared on August 15, 2014. (Exhibit A-6)

**WHEREAS**, the Board opened the hearing to the public:

1. Donald Moore of 145 Douglass Street, Block 148, Lot 2 on the Township of Elk Tax Map testified that he believed that there was not enough land to build and that the Board should require the one half acre as required by the ordinance. Mr. Moore further discussed the issue of unity of title and that the applicant had previously owned the contiguous properties therefore this was a self-created hardship. Further discussion on this issue revealed that the properties were not owned by a singular person or entity, but rather individually and in the name of a corporate entity.
2. Mamie Perry of 544 Fifth Avenue, Block 156, Lot 3 on the Township of Elk Tax Map testified that she believed there to be too much congestion and that building another home would gravitate against the rural nature of the immediate community. Mrs. Perry also testified as to safety concerns and concerns that new construction would hinder her property value.
3. Kathleen Moore of 145 Douglass Street, Block 148, Lot 2 on the Township of Elk Tax Map testified that she was concerned about flooding and drainage. She testified that there was already an issue regarding drainage in the immediate area and that new construction would only aggravate the problem.

**WHEREAS**, the Board made the following findings of fact and conclusions based thereon:

**FINDINGS OF FACT:**

1. The property is located at 539 Fifth Avenue in the Moderate Density Residential Zoning District.
2. The adjacent properties are improved with single family homes.
3. When the subject property, Block 147, Lot 3, was created, having an area of 21,026 square feet, it was a conforming lot. In or about August 2006, Elk Township amended its Unified Development Ordinance to require that lots in the Moderate Density Residential Zoning District to have a minimum area of 25,000 square feet. The amended ordinance provided that lots having an area of not less than 12,500 square feet would be grandfathered through September 1, 2008. Given that this deadline has passed, the property in question is now a pre-existing, non-conforming lot.

4. The applicant testified that neither of the abutting property owners offered to sell applicant additional land to make the area conform to current zoning requirements nor offered to purchase the lot in question for a “fair market value” price.
5. The property in question meets all zoning bulk standards except the lot size.
6. Subject to the accuracy of the testimony of John Melleady, there was no unity of title among the contiguous lots. John Melleady testified that he owned lots personally and as a corporate entity.
7. The applicant agreed to comply with all the recommendations in the reports by the Board’s Engineer and Planner.

**CONCLUSIONS:**

1. The Board has jurisdiction to hear the application.
2. Given the size of the property and the inability of the applicant to acquire additional land to bring the property into conformance with the existing bulk area requirement under the current MD Zoning District criteria, and that the area of the lot is consistent with the two adjacent lots on which single family dwellings exist, and that the lot appears suitable to accept an onsite septic system with onsite water well, the strict application of the requirements as to the lot size would result in peculiar and exceptional practical difficulties to, and exceptional and undue hardship upon the applicant such that it is appropriate for the Board to grant the requested variance from the strict application of the lot area requirement so as to relieve the difficulties and hardship.
3. For the aforesaid reasons it appears that a single family dwelling can be constructed on the lot which would coordinate with the dwellings on the adjacent properties which will be consistent with the character of the existing neighborhood, the variance may be granted without substantial detriment to the public good and the granting of the variance will not substantially impair the intent and purpose of the Elk Township Master Plan and Land Use and Development Ordinance if certain conditions are met.

**NOW THEREFORE BE IT RESOLVED,** by the Elk Township Planning/Zoning Board that the applicant is granted a bulk variance to permit construction of a single family residence on applicant’s lot having an area of 21,026sf known as 539 Fifth Avenue and identified as Lot 3 in Block 147 on the Official Tax Map of Elk Township subject to compliance with the following conditions:

1. The location of any future dwelling and accessory residential improvements must comply with the current yard setbacks unless additional variance or variances are granted.
2. A lot grading plan is required prior to any disturbance on site and prior to applying for any building permits which shall contain contours compliant with Code Section 95-66M.
3. The location of the future well and septic system must be shown on the lot grading plan prior to applying for building permits and prior to any construction of either.

4. The applicant, as a condition of approval, shall provide documentation to show that there exists no unity of title amongst the contiguous lots, sufficient to prove no self-created hardship by the applicant.
5. The applicant shall pay all required fees and escrows that are due or may become due to Elk Township within seven days' notice thereof.
6. The applicant must obtain all approvals from any and all governmental and/or public agencies as required over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein.
7. The applicant shall indemnify and hold the Township harmless from any claims which may be made as the result of any deficiency in the application, or as to any representation 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 by the applicant by the Township pursuant to N.J.S.A. 40:55D-12c and publication of the notice of public hearing in this matter in accordance with law.

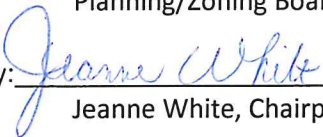
**THIS RESOLUTION WAS ADOPTED** at a public meeting of the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on January 16, 2019 as a memorialization of the motion unanimously adopted by the Board granting the lot area bulk variance at the conclusion of a public hearing at its regular meeting held on December 19, 2018 on the above referenced Application

The following Board members voted in favor of the motion to grant approval:

Voting in favor: Afflerbach, Clark, Hughes, Nicholson, White, Swanson


There were no abstentions or votes in the negative.

Attest:   
 Anna Foley, Secretary

Elk Township  
 Planning/Zoning Board  
 By:   
 Jeanne White, Chairperson

**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 19<sup>th</sup> 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 a public hearing held on March 20, 2019.

  
 ANNA FOLEY, Secretary