

Resolution No.: 2019-08

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING A VARIANCE FROM THE MINIMUM
REQUIRED LOT AREA TO ROBERT J. BARBARO, 108 30TH STREET,
MONROEVILLE, N.J., REGARDING PROPERTY LOCATED AT 1863
WILLOW GROVE ROAD, AND BEING FURTHER SHOWN AS BLOCK 51,
LOT 4.03 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION
NO.: ZB-18-09**

WHEREAS, Application No.: ZB-18-09 (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 Robert Barbaro, 108 30th Street, Monroeville, N.J. (the “Applicant”) for a bulk variance to permit a pre-existing building lot having 51,465 square feet where 80,000 square feet is required, regarding property located at 1863 Willow Grove Road, (the “Subject Property”) and being further shown as Block 51, Lot 4.03 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 March 20, 2019 at 7:00 P.M., time prevailing, at which time was Mr. Barbaro sworn as to any testimony that he would give on the Application and, further, Mr. Barbaro was not represented by an attorney, or a professional expert such as an engineer, land surveyor or professional planner, and he did not indicate that he wanted 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 complete, subject to the Board acting on certain requests for submission waivers. As such, the Board had jurisdiction to act on the Application.

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. Notices from two adjacent property owners that each would be willing to sell to Mr. Barbaro 10,000 sq. feet from their property for \$ 20,000.00.

C. Wetlands Certification letter regarding the Subject Property, dated 10/31/18 from Ewing Associates, P.O. Box 145, Clayton, N.J. 08312.

D. Affidavit of Ownership.

E. Submission Checklist.

F. Copy of Page 27 of Elk Township Tax Map showing location of Subject Property.

G. Survey of Subject Property dated 10/26/18 from Ewing Associates, 900B N. Delsea Drive, Clayton, N.J. 08312, signed and sealed by Bruce A. Ewing, P.L.S.

H. Listing sheets from Weichert Realtors indicating land-only properties for sale and listing prices.

4. The Board entered into the record the following:

A. Letter dated December 6, 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 November 26, 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 Willow Grove Road, about a half-mile south of Elk Road. Adjacent Lots 4.02 and 4.04 are developed with single-family dwelling units. The Subject Property is located in the Rural Residential – R Zone District. It is surrounded to the north, east and south by properties also in the Rural Residential – R Zone District, and to the west by the Rural Environmental Residential District.

6. Zoning and Use

In accordance with Section 96-70D of the Township's zone code, the Rural Residential Zone District standards for single-family detached dwellings, as applied to the Subject Property, are as follow:

<u>Bulk Requirement</u>	<u>Required</u>	<u>Existing / Proposed</u>	<u>Compliance</u>
Minimum Lot Size	80,000 sf	51,465,32 sf	V
Minimum Lot Width	150 ft.	150 ft.	Will Comply*
Minimum Lot Depth	200 ft.	288.92 ft.	Complies
Minimum Lot Frontage	135 ft.	150 ft.	Complies
Maximum Bldg. Height	35 ft.	35 ft.	Will Comply*
Minimum Front Yard	50 ft	50 ft	Will Comply*
Minimum Rear Yard	40 ft.	40 ft	Will Comply*
Minimum Side Yards one	20 ft (one)	20 ft	Will Comply*
Minimum Side Yards both	50 ft (both)	50 ft	Will Comply*
Maximum building coverage	15%	15 %	Will Comply*
Maximum Impervious coverage	20%	20%	Will Comply*

V = Variance * Will Comply = Applicant testified that any new home to be constructed will comply with all zone standards, or else an application for relief will be filed with the Board

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

8 requires copies of applications to and certifications from all outside agencies. This waiver is recommended by the Board's planner, subject to proper documentation, as a condition of approval.

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

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 and proposed structures. Because the Subject Property is vacant, the Board's planner 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. A waiver is recommended by the Board's Planner for completeness only.

53 requires the Applicant to indicate any historic structures located 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 planner supports a granting of same for completeness only.

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. The Board's Planner supports a grant of the waiver requested for completeness only.

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

8. Mr. Bach's letter of December 6, 2018, which had been entered into the record, was reviewed by Board members and the Applicant. Mr. Bach pointed out that the lot was lawfully created prior to the current zoning, which increased the lot size. Mr. Bach noted the adjacent property owners on either side of the Subject Property could not legitimately convey part of the land to the Applicant, since their lots were also non-conforming as to size, and the sale of a portion of their property to aid the Applicant would make their lots even more non-conforming. The Applicant also testified that the price of \$20,000.00 for 10,000 square feet, from each of the adjacent property owners, was far in excess of the value of the properties in that area.

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. Lot grading. No grading is shown. A lot grading plan is required prior to any disturbances on site and prior to applying for any building permits. The Applicant agreed to comply. Note: Lot grading should be designed to direct runoff so that ponding is not created within the road right-of-way.

B. Site Plan. The proposed variance will not necessitate a site plan. Any improvements within the Right of Way, ie., a connection to the gas main or other utility services, will require a street opening permit. The Applicant agreed to comply.

C. The Applicant was advised that Willow Grove Road will remain under a pavement opening moratorium until October 31, 2021. The Applicant acknowledged the same.

D. Stormwater Management is not applicable to this variance request. Stormwater management will be required in connection with a future dwelling if the impervious coverage area is to exceed ¼ acre, or if total disturbance exceeds 1 acre. The Applicant acknowledged the same.

E. The proposed variance will have no impact on traffic or circulation.

F. Utilities: Proposed well and septic systems and distance to an adjacent lot's well and septic system shall be shown on the lot grading plan prior to applying for a building permit and prior to construction. The Applicant acknowledged the same.

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 variance from the lot area requirements should be granted since (a) the lot was legally conforming when it was created; (b) it is not feasible to purchase property from adjacent lots on either side of the Subject Property because these lots are also non-conforming as to size at present, and any sale of a portion of said properties to the Applicant would make the adjacent lots even more non-conforming; and (c) the price being asked for land from adjacent properties is far in excess of property values in that area. As such, to not grant the variance would leave the Applicant with a piece of land that was conforming at the time of purchase, but is now without any economic value unless the variance being granted.

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 construction or other activity commencing on the approved project, or any certificate of occupancy being issued.

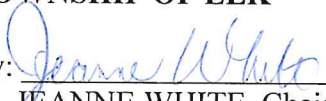
7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., that may be required with respect to the relief as granted herein.

8. The Applicant must comply with the Board engineer's requirements as are set forth above under Findings of Fact.

WHEREUPON, a motion was made by Board member Afflerbach, which was seconded by Board member Swanson, 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, Shoultz, White, Schmidt, Afflerbach, Nicholson, Clark, McKeever, and Swanson (Alternate # 2). There were no abstentions, recusals or votes in the negative. The following Board Members were absent: Poisker and Richardson (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 April 17, 2019 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on March 20, 2019 on the above referenced Application.

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

By: 
JEANNE WHITE, Chairperson

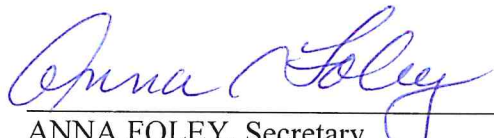
ATTEST:

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 17th day of April 2019 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:00 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on March 20, 2019 on the above cited Application.


ANNA FOLEY, Secretary