

***Resolution No.: 2019-09**

RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING VARIANCES FROM THE MINIMUM REQUIRED LOT AREA, AND MINIMUM WIDTH AT THE BUILDING LINE, TO JOSEPH BAALS AND PATRICIA BREUNICH, 3300 CRESCENT BLVD., COLLINGSWOOD, N.J. 08107 REGARDING PROPERTY LOCATED AT 338 MOODS ROAD, AND BEING FURTHER SHOWN AS BLOCK 20, LOT 3 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-18-11

WHEREAS, Application No.: ZB-18-11 (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 Joseph Baals and Patricia Breunich, 3300 Crescent Blvd., Collingswood, N.J. 08107 (together, the “Applicant”) for bulk variances to permit a pre-existing building lot having 37,000 square feet where 40,000 square feet is required, and to reduce the minimum width at the building line, regarding property located at 338 Moods Road (the “Subject Property”) and being further shown as Block 20, Lot 3 on the Tax Maps of the Township of Elk (the “Township”); and

WHEREAS, the Applicant did appear by way of Mr. Baals 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. Baals sworn as to any testimony that he would give on the Application, and did also appear Robert Swartz, Esquire, Florio, Perrucci, Steinhardt & Capelli, LLC, 1010 Kings Highway South, Bldg. 2, Cherry Hill, N.J. 08034, the Applicant’s attorney;

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 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 Submission Waivers requested, Affidavit of Publication, and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Notices from an adjacent property owner, George Parker, owner of Block 20, Lot 4.01, and Russell Tirrell, Block 20, Lot 3 indicating that they were not interested in subdividing off a portion of either of their properties to the Applicant, nor were they interested in purchasing the Applicant's property;

C. Plan entitled "Plan of Survey" for 338 Moods Road, Block 20, Lot 3, Township of Elk, Gloucester County, New Jersey", prepared by Christopher J. Bouffard, P.L.S., dated 10-07-15, revised 11-2-15.

D. Transmittal letter from Joseph Baals dated October 17, 2018.

E. Colored 8 in X 10 in Arial photograph of the Subject Property, submitted by Mr. Baals, marked as Exhibit A-1.

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 5, 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 within the LD – Low Density Residential Zone District. Ewan Lake is located to the east, directly adjacent to the Subject Property. The Subject Property is located adjacent to the northwest corner of Ewan Lake. Surrounding properties (Lots 4.01 and 4.02) are residential in nature.

6. Zoning and Use

In accordance with Section 96-69 of the Township’s zone code, the LD - Low Density 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</u>	<u>Proposed</u>	<u>Compliance</u>
Minimum Lot Size	40,000 sf	37,728 sf	37,738 sf	Variance (1)
Min. Lot Width at Bldg. Line	150 ft.	164 ft.	Unknown (2)	Variance
Minimum Lot Depth	200 ft.	329.31 ft.	329.31 ft.	Complies
Minimum Lot Frontage	135 ft.	163.2 ft.	163.2 ft.	Complies
Maximum Bldg. Height	35 ft.	35 ft.	35 ft.	Will Comply
Minimum Front Yard	40 ft.	40 ft.	40 ft.	Will Comply
Minimum Rear Yard	40 ft.	40 ft.	40 ft.	Will Comply
Minimum Side Yards (one)	10 ft.	10 ft.	10 ft.	Will Comply
Minimum Side Yards both	50 ft (both)	50 ft.	50 ft.	Will Comply
Maximum Bldg. Coverage	20%	Unknown	20%	Will Comply
Maximum Impervious coverage	25%	Unknown	25%	Will Comply
Accessory Uses & Structures – 10 ft. setback				
Rear and side yards	10 ft.	Unknown	10 ft.	Will Comply

V = Variances: (1) a Pre-existing condition; (2) Currently estimated to be 100 ft.

Will Comply = Applicant testified that any new home to be constructed will comply with all zone standards, save the two variances requested, or else an application for further 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 for completeness only, subject to proper documentation as a condition of approval.

11 requires source and date of current or recertified property survey prepared and sealed by a registered N.J. Land Surveyor, prepared or certified with the last year. This waiver is recommended by the Board’s Planner for completeness only. An updated survey shall be submitted prior to any permits being issued.

#27 requires a north designation arrow on each sheet. The survey doesn't have this. A waiver is recommended by the Board's planner for completeness only, subject to an updated survey being submitted.

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 structures on the Subject Property will be demolished, and a new survey will be submitted, 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 those 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. However, the Applicant shall provide the location of adjoining wells and septic systems on adjacent lots on the updated survey, to affirm that all proposed new systems on the Subject Property will be a minimum of 100 feet from existing systems on adjacent lots.

43 requires the location of existing and proposed structures. Because the existing structures will be demolished, and there are no proposed structures at this time, a waiver is recommended by the Board's Planner.

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. The Applicant has requested a waiver, as no construction is planned at this time. The Board's planner supports a granting of same for completeness only, subject to future compliance when building permits are applied for.

67 requires for on-site sewage disposal, 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, subject to compliance when a building permit is applied for.

73 requires the Applicant to submit an LOI regarding wetlands from NJDEP. The Applicant has requested a waiver. The Board's Planner recommends a waiver for completeness only, subject to a condition of approval that the Applicant must submit a signed statement that flood hazard areas, wetlands or environmental buffers are not present on the Subject Property, by a licensed PLS or PE in accordance with the requirements outlined in the checklist.

WHEREUPON, a motion was made by Board Member Nicholson, which was seconded by Board Member Swanson, to grant the above referenced submission waivers, subject to the above 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. Swartz provided a brief overview of the Application.

9. Mr. Baals provided testimony to confirm that all structures on the Subject Property will be demolished, and the existing trailers and other vehicles /equipment will be removed from the property and stored elsewhere. Mr. Baals believes that a rancher style home will be built on the Subject Property, and that any proposed well and septic systems will be located in accordance with all regulations.

10. Mr. Bach's letter of December 5, 2018, which had been entered into the record, was reviewed by Board members and the Applicant. Mr. Bach pointed out that the Applicant has indicated that all other current bulk standards will be complied with (subject to the requested variances) when the existing structures are demolished and a new single-family detached dwelling with a garage is constructed. Any proposed structures not complying with area and bulk standards shall require an application for additional variance(s) to be made at that time.

11. Mr. Bitgood's letter of November 5, 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. Lot grading should be designed to direct runoff so that ponding is not created within either of the road right-of-ways. The Applicant agreed to comply.

B. The current driveway is less than 5 feet from the property line. This will require a design waiver or correction during construction. The lot grading plan must show this. The Applicant agreed to comply.

C. Sidewalks do not exist on Moods Road which has no paved shoulder in this area. Consideration should be given to requiring a sidewalk, a sidewalk easement, and/or grading of the front 10 feet of the lot to provide a safer roadside border for pedestrians.

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. The Applicant acknowledged the same.

E. The proposed variances 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. Careful attention to N.J.A.C. 7:9A will be necessary in order to construct both a new dwelling and a septic disposal field on the lot. The Applicant acknowledged the same.

12. The hearing on the Application was opened to the public, at which time the following member of the public was sworn and testified on the Application: Kelly Parker, 336 Moods Road, resided on adjacent Lot 4.01. Ms. Parker submitted thirteen 3 in x 6 in color photographs of the Subject Property, which were entered into evidence, without objection from the Applicant, as Exhibit O-1. Ms. Parker asked the Applicant the following: will additional outbuildings would be added; (Mr. Baals replied "no"). Will any businesses be conducted on the Subject Property; (Mr. Baals replied "no"). Is his business located in Collingswood; (Mr. Baals replied "yes"). Ms. Parker also inquired if there would be any future construction of accessory buildings that would block the Parker's view of the lake; (Mr. Baals replied "no"). Ms. Parker also asked if Mr. Baals would level off the existing dirt piles on the Subject Property and remove the existing wood piles, directly adjacent to Ms. Parker's property, to which Mr. Baals replied "yes". There being no other members of the public wishing to be heard, the public portion was closed.

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; and (b) it is not feasible to purchase property from the adjacent lot owner who has expressed no interest in doing so. In addition, as it is presently unknown whether or not the minimum width at the building line can be met (the proposed construction of a new home would be to the rear of the existing garage, at which point the lot width is 100 ft.) a variance is requested. The Board concludes that locating any new residential dwelling further back on the lot would be appropriate, and in the best interests of the zone plan, the development of the Subject Property, and for aesthetic purposes. As to the two variances requested, the Board concludes that a grant of the same would not create a substantial negative impact on the immediate area or the Zone Code and Master Plan of Elk Township.

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., 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, and the Applicant's acknowledgements and agreements also set forth above.

WHEREUPON, a motion was made by Board member Clark, which was seconded by Board member McKeever, 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, 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**

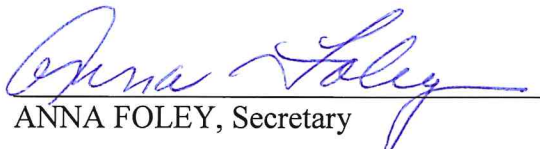
By: 
JEANNE WHITE, Chairperson

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