

RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING TO DAN SMITH, 220 FISHPOND RD., SEWELL, N.J. 08080 APPROVAL OF A PRELIMINARY AND FINAL MAJOR SUBDIVISION, REGARDING PROPERTY LOCATED AT UNION STREET (CR 619) AND BEING FURTHER SHOWN AS BLOCK 67, LOTS 23 & 25 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: SD-19-01

WHEREAS, Application No.: SD-19-01 (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 Dan Smith, 220 Fishpond Road, Sewell, N.J. 08080 (the "Applicant") for Preliminary and Final Major Subdivision approval, regarding property located at Union Street (CR 619) (the "Subject Property") and being further shown as Block 67, Lots 23 & 25 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 17, 2019 at 7:00 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Dan Smith (the "Applicant") and Steven Smith (the Applicant's father), at which time were both individuals sworn and provided testimony on the Application, and did Mr. Dan Smith testify that he was not represented by an attorney or a professional expert such as a licensed engineer, licensed professional planner, or licensed professional land surveyor, and did Mr. Smith further testify that he did not wish to have the Application carried to the next monthly meeting of the Board so that he could avail himself of the opportunity to retain an attorney or professional expert;

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., A.I.C.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 Applicant submitted and the Board entered into the record the following:

A. Application, Application Fee, Escrow Agreement, Escrow Deposit, Notice of Hearing, Affidavit of Service, Affidavit of Publication, Certification of Taxes Paid on the Subject Property, and Certified List of Property Owners within 200 ft. of the Subject Property and Disclosure Statement.

B. Submission checklist.

C. Minor Subdivision Plan prepared by James A. Clancy, P.E., P.L.S., HCE&S, LLC, dated January 17, 2019 and last revised March 11, 2019.

D. Legal descriptions for Lots 23 & 25, post-subdivision, prepared by James A. Clancy, P.E., P.L.S., HCE&S, LLC, dated March 11, 2019.

E. Report of the Gloucester County Planning Board granting approval to the subdivision on March 5, 2019.

F. Previous Application resolutions regarding the Subject Property: Res. # 2016-20; Res. # 2015-17, and Res. # 2017-18.

G. Property Title, Easement and Deed Documents.

4. The Board entered into the record the following:

A. Letter dated April 16, 2019 from Candace Kanaplue, P.P., A.I.C.P., Bach Associates, PC, the Board's professional planner, to the Board regarding Ms. Kanaplue's review of the Application.

B. Letter dated April 10, 2019 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 to the Board.

5. The Subject Property is located within the M-1 Light Manufacturing District, and is surrounded to the north, east and west by other properties in the same zone district, as well as properties located in Glassboro, and to the south across Union Street by land in the RE – Residential Zone District. The surrounding uses are generally residential in nature. There are light industrial

uses to the north in Glassboro and the west in Elk Township (on Jacob Harris Lane), but those uses are separated from the Subject Property by woods and wetlands.

6. The plans show the layout of the subdivision, consisting of conveying about 4 acres of land from Lot 25 to Lot 23. The remainder of Lot 25 will be about 2 acres in size, and Lot 23 will increase to about 12.4 acres.

7. Although the Application represents a lot line adjustment between two lots, because of the Township's definition of a Minor Subdivision (Elk. Twp. Code Sec. 96-5.C.), the Application is considered a Major Subdivision, since a prior minor subdivision was approved in 2015 (less than five years ago) and, under the Code, any lots subdivided from the same tract within the last five years, must be counted toward the total number of lots to be subdivided.

8. The M-1 Zone Bulk Standards are as set forth below:

Section	Required	Remainder Lot 25	Proposed Lot 23	Compliance
96-78F(1)(a) Minimum Lot size	2 acres	2.003 acres	12.399 acres	Complies
96-78F(1)(b) Min. Lot Frontage	200 feet	185 feet*	229.54 feet	*Pre-existing non-conforming Lot 25; Lot 23 Complies
96-78F(1)(c) Min. Lot Depth	200 feet	470.14 feet	1,395.30 feet	Complies
96-78F(1)(d) Max. Bldg. Coverage	20 %	< 20%	< 20%	Complies / Will comply
96-78F(1)(e) Front Yard	100 feet	100 feet Minimum	50.7 feet*	Complies / *Pre-Existing Nonconformity
96-78F(1)(f) Side Yard	50 feet each	50 feet min.	54.3 feet	Complies
96-78.F(1)(g) Rear Yard	75 feet	75 ft. min.	1,320 ft. +/-	Will Comply / Complies
96-78.F(1)(i) Max. Bldg. Ht.	40 feet	< 40 feet	, 40 feet	Will Comply

96-71D.(1)(i) Maximum Bldg. Ht. (Accessory)	25 feet	< 25 feet	< 25 feet	Will Comply

9. The Applicant was requesting certain waivers from submission requirements, as follows:

- **#8** Requires copies of applications to and certification of approvals from outside agencies. The Applicant should submit copies of any required applications/approvals to the Township. A waiver is recommended for completeness only. The Applicant agreed to comply.
- **#21** The Applicant is required to submit a list of waivers requested. The Board's Planner has provided this list. At the hearing, the Applicant must testify as to the reason why they are not providing the completeness and other necessary items. A waiver is recommended by the Board's Planner.
- **#22** The Applicant is required to submit a list of waivers and variances from the Elk Township Unified Development Ordinance. The Board's Planner has provided these items within her review letter, however the Applicant must be prepared to testify as to the reasons for these waivers/variances. A waiver is recommended. The Applicant agreed to comply.
- **#29** requires an environmental impact statement per §96-44. A waiver is recommended by the Board's Planner.
- **#30** requires a Phase 1 Environmental Assessment in accordance with § 62-A. The Applicant should comply or a waiver should be requested. The Applicant testified that there were no environmental concerns associated with the Subject Property, and a waiver is requested.
- **#31** requires a Traffic Impact Study. A waiver is recommended by the Board's Planner.
- **#33** requires statement demonstrating compliance with affordable housing requirements, as applicable, including section 70-4. The Applicant does not propose any new dwellings at this time. However, at time that as building permit is applied for, compliance will be required. A waiver is recommended.
- **#37** requires drafts of proposed deed restrictions, easements or covenants. The Board's Planner recommends a waiver for completeness only. The Applicant

did not foresee any deed restrictions, easements or covenants, but if any were to occur, the Applicant agreed to submit same to the Board's Attorney and Engineer for review and approval. (See the need for drainage easements under the Board engineer's comments below).

- **#38** requires the Applicant provide photographs of the site. A waiver is recommended by the Board's Planner.
- **#40** requires the Applicant provide new structures. A waiver is recommended by the Board's Planner as no new structures are proposed at this time.
- **#42** requires that the Applicant provide structures and wooded areas within 200 feet. A waiver is recommended by the Board's Planner.
- **#44** requires the Applicant provide location, dimensions and arrangements of proposed streets. Since there are no proposed streets, a waiver is recommended by the Board's Planner.
- **#45** requires that the Applicant provide parking. A waiver is recommended by the Board's Planner.
- **#47** requires that the Applicant provide a landscape plan. A waiver is recommended by the Board's Planner.
- **#50 through #60** Waivers are recommended by the Board's Planner..
- **#62 through #68** Waivers are recommended by the Board's Planner.
- **#70** requires a lighting plan. A waiver is recommended by the Board's Planner.
- **#72** requires NJDOT permits, if applicable. A waiver is recommended by the Board's Planner, as no NJDOT permits are required..
- **#73** requires the Applicant to submit a LOI or PE certification of no wetlands. Wetlands are located on the Subject Property. The Board's Planner deferred to the Board's Engineer. The Board's engineer agreed to a waiver for completeness only, but that the Applicant had to comply as a condition of approval. The Applicant agreed to comply.
- **#74** requires consistency with stormwater drainage requirements. A waiver is recommended by the Board's Planner.
- **#75** requires that the Applicant to submit a Utility plan. A waiver is recommended by the Board's Planner.
- **#76 – 82** Waivers are recommended by the Board's Planner.

- **#83** requires curb cuts. A waiver is recommended by the Board's Planner.
- **#84** requires cross sections and center line profiles of existing and proposed streets. A waiver is recommended by the Board's Planner.
- **#85** requires items to be covered by a performance guarantee. A waiver is recommended by the Board's Planner.

WHEREUPON a motion was made by Board member Afflerbach, which was seconded by Board member Swanson, to grant the above noted waivers from submission requirements, on a conditional basis, based on the agreements and acknowledgements made by the Applicant, with the following Board Members voting in the affirmative: Poisker, Clark, Nicholson, Shoultz, Hughes, Afflerbach, Schmidt, White and Richardson (Alternate # 1). There were no votes in the negative, and no recusals or abstentions. Board member McKeever was absent.

10. The Board's Professional Planner, Candace Kanaplue, P.P., A.I.C.P., reviewed with the Board and the Applicant her letter of April 16, 2019 regarding the Application.

The following comments were provided for the Board's consideration:

1. In accordance with Elk Township's Code § 96-5C., the definition of a minor subdivision is as follows:

SUBDIVISION, MINOR

A subdivision of land that does not involve the creation or alteration of more than two lots in addition to any retained portion of the original lot; does not involve a planned development; does not involve the creation of a new street or any off-tract improvement. In counting the lots to determine whether a proposed subdivision may be considered a minor subdivision, the following shall be counted: (1) All lots to be created or altered by the proposed subdivision, including the lots to be retained by the subdivider. (2) No lot shall be counted twice, and in the case of a resubdivision or lot line adjustment, any eliminated lots shall be deducted. (3) All lots created out of the original parcel by subdivisions since 1956. (4) Any lot subdivided from the same tract within the last five years.

The Applicant's last minor subdivision was in 2015, less than 5 years ago, and thus this Application would be defined as a Major Subdivision under the ordinance definition.

2. The Applicant should update the zoning requirement/table on the plan to accurately indicate existing lot conditions in addition to proposed lot conditions. It appears the table has the proposed lot information reversed. The table should be amended to accurately reflect each of the proposed lot statistics. The Applicant agreed to comply.

3. No variances are required as part of this subdivision. The Applicant should be aware that when time for grading plan and building permit, the dwelling must comply with all bulk standards or an application will need to be made to the Land Use Board for variances associated with the dwelling. The Applicant agreed to comply.

4. The plan is titled "Minor Subdivision". This should be revised to reflect "Major Subdivision". The Applicant agreed to comply.

5. The Applicant should be prepared to provide testimony regarding the proposed lot line adjustment. The Applicant provided such testimony in the course of the hearing.

11. 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 April 10, 2019. Mr. Bitgood pointed out that the Applicant must provide a drainage easement within each new deed with respect to Lots 23 and 25. Each such deed must be submitted to the Board's engineer for review and approval as to the legal descriptions set forth therein, and to the Board's attorney for review and approval as to the form of the deed, prior to a recording of the same. The Applicant agreed to comply.

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: Al Crittneen, 241 Union Street, asked questions about drainage, the location of wetlands, and where to get a copy of the revised plan. He did not oppose approval of the Application. There being no other members of the public giving testimony, the public portion was closed.

CONCLUSIONS

The Board concluded that the Application should be approved, as there were no variances involved (just pre-existing non-conforming conditions), and the proposed residential development would not impose a negative impact upon the Master Plan, the Zone Plan, or the immediate area. Although the Subject Property is located in the M-1 Light Manufacturing Zone District, the pre-existing uses on the Subject Property, and that of surrounding properties, are residential in nature, and the Applicant is entitled to continue with said use.

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 agrees to amend the plan of subdivision consistent with the Board Professional's Review Letters, as set forth under findings of fact above.

9. The Applicant agreed to perfect the subdivision through the filing of deeds and will submit copies of the deeds to the Board's Planner and Engineer for their approval, prior to recording the deeds. The Applicant has 190 days to do so pursuant to the Municipal Land Use Law.

WHEREAS, a motion was made by Board member Nicholson, and was seconded by Board member Poisker, to grant Preliminary and Final Major Subdivision Approval, based on the representations, acknowledgments and agreements made by the Applicant as are more fully set forth above under Findings of Fact, at a meeting following a public hearing held on the Application on April 17, 2019 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Poisker, Clark, Nicholson, Hughes, Shoultz, White, Schmidt, Afflerbach, and Richardson (Alternate # 1). There were no votes in the negative and no abstentions or recusals. Board Member McKeever was absent. Board Member Swanson (Alternate Member # 2) participated in the hearing, but did not vote.

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 15, 2019 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on April 17, 2019 on the above referenced Application.

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

By: Jay Hughes
JEANNE WHITE, Chairperson
Jay Hughes, Vice Chair

ATTEST:

By: Anna Foley
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 15th day of May 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 April 17, 2019 on the above cited Application.

Anna Foley
ANNA FOLEY, Secretary