

***Resolution No.: 2019-13**

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING BULK VARIANCES TO
ACCOMMODATE THE CONSTRUCTION OF A SWIMMING POOL TO
HEINRICH & STEPHANIE DREYER (H/W), 211 WINESAP WAY,
GLASSBORO, N.J. 08028 REGARDING PROPERTY LOCATED AT
211 WINESAP WAY, AND BEING FURTHER SHOWN AS BLOCK 29.04,
LOT 2 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: ZB-19-04**

WHEREAS, Application No.: ZB-19-04 (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 Heinrich & Stephanie Dreyer (H/W), 211 Winesap Way, Glassboro, N.J. 08028 (the “Applicant”) for bulk variances to accommodate the construction of a swimming pool on property located at 211 Winesap Way, Glassboro, N.J. 08028 (the “Subject Property”) and being further shown as Block 29.04, Lot 2 on the Tax Maps of the Township of Elk (the “Township”); and

WHEREAS, the Applicant did appear, by way of Mr. and Mrs. Heinrich Dreyer, at a meeting and public hearing held by the Board on the Application on June 19, 2019 at 7:00 P.M., time prevailing, at which time did also appear Michael Neilio of Anthony & Sylvan Pools, 186 Bergen Ave., West Deptford, N.J. 08086 (the Applicant’s pool contractor), after which did Mr. and Mrs. Dreyer state that they were not represented by an attorney, professional planner or professional engineer, and that they did not wish to have the hearing adjourned to another date so that she could avail herself of the opportunity to obtain the services of an attorney, professional planner or engineer, after which were Mr. and Mrs. Dreyer and Mr. Neilio worn as to any testimony that they would give on the Application;

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, Candace Kanaplue, PP, 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, 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, Revised Zoning Permit Application dated 5/1/19, Affidavit of Publication, and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Lot Grading Plan and Driveway Apron Application and Site Inspection request Form, dated 5/1/19, including Pool Grading Plan prepared by James E. Maccariella, Jr., P.E., 38 Country Squire, Marlton, N.J. 08053, dated 4/13/19 and sheet, unsigned and unsealed, dated 4/13/19, with impervious coverage calculations.

C. Six (3) 8 in. x 12 in. colored photographs of the Subject Property, marked into evidence as Exhibit A-1.

D. Letter dated June 19, 2019 from the Aura Homeowners Association granting approval of the installation of an in-ground swimming pool on the Subject Property

4. The Board entered into the record the following:

A. Letter dated May 30, 2019 to the Board from Steven M. Bach, P.E., R.A., P.P., C.M.E., and Candace Kanaplue, P.E., A.I.C.P., Bach Associates, the Board's professional planners, regarding their review of the Application.

B. Letter dated May 14, 2019 to the Board from Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., the Board's professional Engineer, regarding his review of the Application.

5. The Applicant is requesting variances from the minimum allowable impervious coverage and side and rear yard setbacks, to permit the construction of an in-ground swimming pool and surrounding patio on the existing lot, in the rear and side yards of the existing dwelling. The Subject Property consists of a residential lot within the Aura Community, which was originally planned as an age-restricted community and received approval for conversion to family residential development in 2011 (Resolution 2011-13). The approving resolution 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 of construction of these types of structures is

undertaken. The approving resolution also confirmed that the total impervious coverage will decrease to 27.5% from the previously approved 34%.

6. The Subject Property is located within the RE Rural Environmental Residential zoning district and is surrounded properties also in the Rural Environmental Residential zoning district. Surrounding properties are residential in nature. The application requires variances from the requirements of the RE zoning district for impervious coverage, side and rear yard setbacks as described below.

7. Zoning and Use

The zoning for the Subject Property has changed from ARC to RE since the subdivision in which the Subject Property exists was approved. Accordingly, and in conformance with the intent of the approving resolution that accessory structures be regulated to comply with the zoning in effect at the time of construction, the RE zoning values are applicable to this Application, as are set forth below:

<u>Bulk Requirement</u>	<u>Required</u>	<u>Existing / Proposed</u>	<u>V/C/E</u>
Minimum Lot Size.	80,000 sf	9,200 sf	E
Minimum Lot Width	150 ft.	80 ft.	E
Minimum Lot Depth	200 ft.	115 ft.	E
Minimum Lot Frontage	135 ft.	80 ft.	E
Maximum Height	35 ft.	< 35 ft.	C
Minimum Front Yard	50 ft.	20 ft.	E
Minimum Rear Yard	40 ft.	40 ft.	E
Minimum Side Yards one	20 ft (one)	5 ft.	E
Minimum Side Yards both	50 ft (both)	15 ft.	E
Maximum building coverage	15 %	20.9 %	E
Maximum Impervious coverage	20 %	27.00 %	E
Proposed:		37.20 %	V
<u>Swimming Pools (Code 96-81 B):</u>			
Rear yard coverage max.	75 %	27.0 %	C
Yard Coverage Maximum	50 %	14.0 %	C
Property line to waterline min.	25 ft.	19 ft rear	V
Property line to waterline min.	25 ft.	20 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 the only witness is the Applicant's pool contractor, who has identified himself and was sworn, this requirement has been met.

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.

#11 requires the source and date of a current or recertified property survey prepared and sealed by a licensed N.J. Land Surveyor. The Applicant testified that no changes have been made since the survey of 10/31/17. A waiver is therefore recommended.

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, as the applicant will provide testimony as to the same.

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

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.

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.

#77 requires the size, type, copy and location of all signs. As no signs are proposed, this waiver is recommended by the Board's Planner.

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

8. Both Mr. and Mrs. Dreyer and Mr. Neilio testified that they believed that the requested variances could be granted since the Subject Property would be upgraded, which will increase the value of the Subject Property and, by extension, the neighborhood, which would meet the “positive” criteria for a grant of the variances. Mr. and Mrs. Dreyer also testified that, in their opinion, a grant of the variances requested would not have a substantial impact on the Subject Property or the neighborhood as water runoff issues have been resolved, there would not be any visual problems given the current fence, and there was already a pool in the immediate neighborhood and no detriments have resulted from the same.

8. Ms. Kanaplue’s letter of May 30, 2019, which had been entered into the record, was reviewed with by Board members and the Applicant, as follows:

Standard of Proof for “C” Variances

The Applicant must provide testimony to justify the requested variances. For a C(1) variance, the Applicant must demonstrate that the strict application of the zoning regulations to the Subject Property create a hardship or result in exceptional practical difficulties by reason of the exceptional shape of the property or the exceptional topographic conditions uniquely affecting the property, or the structures lawfully existing upon the property. For a C(2) variance the Applicant must show that the proposed variance advances the purposes of municipal land use law and that the benefits of the deviation would substantially outweigh any detriments. The Applicant should address whether the proposed variance will substantially impair the intent of the Master Plan or zoning plan and whether there are any potential impacts to the public good.

The following comments are provided for the Board’s consideration:

A. Variances. The requested variances relate to the approval of the initial subdivision in when the bulk standards were approved under the ARC Age restricted zoning requirements. The code for pools requires a 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 be permitted in the RE district. The Applicant has included reasons for the variance request 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 cover for the zone. The Applicant and their

professionals should be prepared to provide testimony to the Board and the Public at the hearing.

B. A variance from §96-81.B. where a pool setback is required to be 25 feet from rear and side yards, when a side yard setback of 20 feet and rear yard setback of 19 feet are proposed.

C. A variance from impervious coverage of 20% is required by §96-71D(12) where 37.2% is proposed. The Board's planner deferred to the Board Engineer regarding this issue.

D. The Subject Property contains a drainage easement along the rear property line and utility and street tree easements along the front property line.

E. Any and all approvals shall be conditioned upon the Applicant addressing the above comments and any and all concerns of the Planning Board contained in the approving resolution.

F. It shall be noted that any requirements noted above as "waived for completeness only" have been waived to allow the application to be deemed complete. These requirements shall be provided as part of the revised application materials unless waived by the Board at the scheduled meeting.

9. Mr. Bitgood's letter of May 14, 2019, which had been entered into the record, was reviewed with the Board members and the Applicant as follows:

Technical Review

1. Zoning Use. Swimming pools are a permitted accessory use in the R-E zone.

2. 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 property lines.

3. Drainage. The proposed grading will concentrate runoff towards the swales between the property and Lots 1 and 3 and towards the storm easement in the rear of the lot.

A. This concentration should be mitigated by piping from the swale on the right between the pool deck and the dwelling, to a popup outlet approximately 5 to 10 feet off the left rear fence corner. This can be a condition of approval and compliance would be documented on a revised lot grading plan. The Applicant agreed to comply.

4. Grading. The Lot Grading Plan refers to the NAVD 88 Datum. This is required by the Elk Township Grading Plan checklist, however the current approved As-Built Survey for this Lot refers to the NGVD 1929 Datum. The Datum on this plan should be converted to match the NGVD 1929 Datum. The elevations of the inlet in the rear left

corner of the lot and the dwelling First Floor Elevation should be checked for consistency.

A. This can be a condition of approval. Compliance would be documented on the required lot grading plan. The Applicant agreed to comply.

5. Limit of Disturbance. All limits of disturbance are well beyond 5 feet of the property line, which complies with the Township Code.

6. Impervious coverage. The existing lot was designed and constructed to conform to the zoning requirements of the subdivision. Therein, a maximum of 20% shows on the approved subdivision plans. The proposed accessory structure must conform to the applicable zoning ordinance at the time of construction. This also is stated in the approving resolution, 2011-13. Thus the Rural Environmental district rules apply to this Application. The proposed impervious coverage is 37.20% where 20% is the maximum permitted.

A. Impervious coverage (not including the pool water surface) should be limited to 34% in accordance with approved subdivision design. The plan should be revised to reduce the impervious coverage by approximately 294 sf. The Applicant agreed to comply.

7. Stormwater Management. While the proposed disturbances do not require stormwater management under the NJDEP rules or 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 we could allow 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 within which the subject property is located, were in fact designed to handle a subdivision impervious coverage of 34%.

A. 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 and accepted by the Township's Committee as complete. Allowing swale changes and likely erosion increases will increase the silt load to the basins and could pose problems for the maintenance and operation of the basins.

1) Accordingly, if approved, strict erosion control measures must be implemented and must be shown on the required Lot Grading Plan. The Applicant agreed to comply.

Recommendations:

All underlined items should be addressed prior to or as conditions of approval. i.e., prior to issuance of UCC permits.

The proposed layout should be revised to reduce the impervious coverage to less than 34% total for the lot. Note, this would leave 0% for future walks, or other small improvements without exceeding the capacity of the stormwater system. A variance would be required, for any future improvements. The Applicant agreed to comply.

The Lot Grading Plan should be updated to provide the NGVD 1929 Datum and schedule of mandated and provided zoning district requirements. The Applicant agreed to comply.

10. 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 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) were proper given the adjustments that the Applicant made to their 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) If the contractor is to access the Subject Property to construct the pool through the rear of the Subject Property, a signed and sealed plan must be prepared and submitted by a professional engineer outlining the access point, how the contractor will reach the access point through the rear property, and how the rear property will be renewed after the construction of the pool is completed. A copy of a written agreement with the HOA and the owners of other lots to be used for access shall be provided to the Township Engineer prior to applying for a lot grading plan.

(C) 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);

(D) 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.

(E) A revised letter of approval shall be submitted by the Aura Homeowners Association, with the following additional language:

The Aura Homeowners Association does hereby indemnify and hold harmless the Township of Elk, the Combined Planning/Zoning Board of Adjustment of the Township of Elk, and all officials of the same acting within the scope of their office, as to any negative impact that the herein improvement may have on the stormwater basin and stormwater management system as a result of the added impervious coverage to accommodate the in-ground swimming pool. The Aura Homeowners Association recognizes that any such negative impact, including additional maintenance costs, will be solely borne by the Aura Homeowners Association.

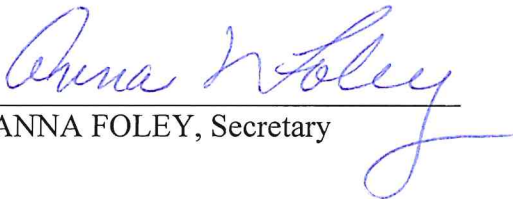
WHEREUPON, a motion was made by Board member McKeever, which was seconded by Board member Shultz, to grant the above referenced variances, subject to the conditions, representations, and agreements as set forth above under Findings of Fact above and the requirements set forth by the Board's engineer and planner, with the following Board members voting in favor of the motion to grant approval: Poisker, Clark, Shultz, White, Nicholson, McKeever, and Richardson (Alternate # 1). There were no votes in the negative, and no abstentions or recusals. The following Board Members were absent: Hughes, Schmidt, Afflerbach, and Swanson (Alternate Member # 2).

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 July 17, 2019, as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on June 19, 2019 on the above referenced Application.

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

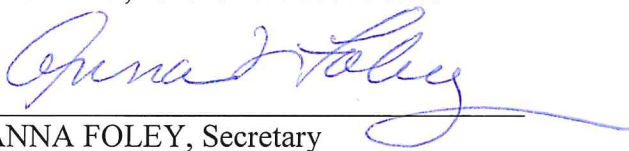
By: 
JAY HUGHES, Chairman
Vice

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 July 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 June 19, 2019 on the above cited Application.


ANNA FOLEY, Secretary