

**Resolution No.: 2019-16**

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING APPROVAL OF A MINOR SUBDIVISION TO GREENTECH BUILDERS, LLC, P.O. BOX 725, MULLICA HILL, N.J. 08062, REGARDING PROPERTY LOCATED AT RAILROAD AVENUE, AND BEING FURTHER SHOWN AS BLOCK 35, LOT 4 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: SD-19-05**

**WHEREAS**, Application No.: SD-19-05 (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 Greentech Builders, LLC, P.O. Box 725, Mullica Hill, N.J. 08062 (the “Applicant”) for a Minor Subdivision regarding property located on Railroad Avenue, (the “Subject Property”) and being further shown as Block 35, Lot 4 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 August 21, 2019 at 7:30 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Vincent Zadjeka, Managing Member of Greentech Builders, LLC; Jeffrey Downs, Esquire, J. Downs Law, 69 S. Main Street, Mullica Hill, N.J. 08062 (the Applicant’s attorney); and Gregory J. Simonds, P.E., GS Engineering, P.O. Box 124, Swedesboro, N.J. 08085 (the Applicant’s Professional Engineer); and

**WHEREAS**, Mr. Simonds had not previously appeared in front of the Board and therefore did he place his credentials, experience, and licensing information on the record, at which time was it stipulated by the Board, without objection, that Mr. Simonds is a licensed Engineer in the state of New Jersey, and was qualified to testify as an expert in the field of engineering on behalf of the Applicant for the purposes of the Application, and were Messrs. Zadjeka and Simonds thereafter sworn and provided testimony 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 deemed to be complete, subject to the Board acting on certain requests for submission waivers. Accordingly, the Board had jurisdiction to act on

the Application.

2. The Board's substitute professional planner, Richard Fini, P.P., on behalf of the Board's Planner, Steven M. Bach, PE, RA, PP, CME, Bach Associates, PC, 304 White Horse Pike, Haddon Heights, NJ 08035 and the Board's substitute professional engineer, Paul Brier, P.E., on behalf of the Board's 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, Certification of Taxes Paid on the Subject Property, and Elk Township Land Development Checklist.

B. "Plan of Minor Subdivision" for Greentech Builders, regarding Plate 17, Block 35, Lot 4, prepared by Stephen Datz, P.L.S., 109 Woodland Avenue, Mullica Hill, N.J. 08062, signed and sealed by Stephen Datz, P.L.S., consisting of two Pages and dated May 24, 2019.

C. One 8 in. X 11 in. color photograph, undated, showing the Subject Property on Railroad Avenue looking South.

D. Copy of Deed dated May 31, 2019 from We Farms, LLC to Greentech Builders, LLC, conveying the Subject Property to the Applicant, recorded in Deed Book 6098, Gloucester County Clerk's office, beginning at page 286, on June 6, 2019.

E. Copy of letter dated May 22, 2019 from NJDEP to Vincent Zadjeka, Greentech Builders, regarding NJDEP's Freshwater Wetlands LOI as to the Subject Property.

F. Report of Title on the Subject Property from H&H Settlement Services, Glenside, PA, dated July 09, 2019.

G. Letter dated July 9, 2019 from Gregory J. Simonds, P.E., GS Engineering, with Mr. Simonds' response to the June 17, 2019 review letter from the Board's engineer, Stan M. Bitgood, P.E., and the July 3, 2019 review letter from Candace Kanaplue, P.P., the Board's Professional Planner.

H. Minor Subdivision Application to the Gloucester County Planning Board from the Applicant dated 5/24/19.

4. The Board entered into the record the following:

A. Letter from Stan Bitgood, P.E., Federici & Akin, P.A., regarding Mr. Bitgood's second review of the Application.

B. Letter from Candace Kanaplue, P.P., Bach Associates, regarding Ms. Kanaplue's second review of the Application.

5. The Subject Property is located within the Township's RE- Rural Residential Zone District. It is located on the west side of Railroad Avenue, north of the intersection with Elk Road. The Subject Property is surrounded by other properties and the area is predominantly agricultural and wooded in nature.

**5. Zoning and Use. RE Zone Bulk Standards**

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 4</u>	<u>Proposed Lot 4.01</u>	<u>Proposed Lot 4.02</u>	<u>Compliance</u>
96-71D(2) Minimum Lot Size	80,000 sf	256,677 sq ft	201, 690 sq ft	216, 425 sq. ft	Complies
96-71D(3) Front Yard Setback	50 feet	50 feet	50 feet	50 ft.	Complies
96-71D(4) Rear Yard Setback	40 feet	40 feet	40 feet	40 feet	Complies
96-71D.(5) Minimum Side Yard	20 ft. /50 ft. aggregate	20 ft./50 ft.	20 ft./50 ft.	20 ft./50 ft.	Complies
96-71D.(6)(a) Min.Width at the Bldg. line	150 ft	619.02 ft.	252.57 ft.	581.32 ft.	Complies
96-71D(7) Minimum Lot depth	200 ft.	775.87 ft.	692.24 ft.	692.24 ft.	Complies
96-71D.(9)(a) Minimum Lot Frontage	135 ft.	661.65 ft.	252.57 ft.	605 ft.	Complies
96-71D.(10)(a) Maximum Bldg. Ht.	35 ft.	< 35 feet	< 35 feet	< 35 feet	Complies

96-71D.(11)(a) Maximum Coverage	15%	< 15%	< 15%	< 15%	Complies
96-71D(12) Impervious	20% max	< 20%	< 20%	< 20%	Complies

6. The Applicant requested the following waivers from submission requirements:

**# 6** Names and addresses of witnesses. The Applicant entered into the record by way of testimony, its witnesses. No waiver is required.

**# 8** requires copies of applications to, and certification of, approvals from outside agencies. The Applicant indicates on the Application that an application has been submitted to the County Planning Board. Copies must be submitted to the Township of any and all applications and certification of approvals. Mr. Simonds testified that the Applicant will comply, and that the Gloucester County Planning Department is the only applicable outside agency.

**# 12.** Certification and monumentation required by Map Filing Law, if required. Mr. Simonds testified that this was not required.

**# 36** requires the Applicant to submit copies of protective covenants, easements and restrictions of record, including a current title policy. The Applicant must comply. Mr. Simonds testified that there were no protective covenants, easements or restrictions of record, and the Applicant has submitted a copy of the Deed and Report of Title.

**# 38** requires that the Applicant provide photograph(s) of the site. The Applicant has now submitted the same.

**# 48** requires the Applicant to provide distances along the streets to the nearest intersection. The Applicant requests a waiver, and a waiver is recommend by the Board's Planner.

**# 49** requires the Applicant to provide the location of all existing tree masses, indicating general sizes and species. The Applicant has requested a waiver, as no tree removal is proposed. A waiver is recommended by the Board's Planner.

**# 50** requires the Applicant to provide a tree protection plan. The Applicant has requested a waiver, as no tree removal is proposed. The waiver is recommended by the Board's Planner.

# 53 requires that the Applicant provide information on any structure of historic significance on or within 500 feet of the Subject Property. The Applicant shall provide testimony regarding the historic significance of any structure. Mr. Simonds testified that there were no historic structures within 500 feet of the Subject Property.

# 55 requires the Applicant to indicate contours at 20 ft. intervals. The Board's Planner recommends a waiver with the understanding that a full grading plan in conformance with Section 96-66M of the Township Code must be submitted prior to the issuance of a building permit. The Applicant acknowledged the same and agreed to comply.

# 57 requires the Applicant to provide a grading plan. The Applicant requests a waiver, as no grading or construction is proposed. The waiver is recommended by the Board's Planner. A grading plan must be submitted prior to the issuance of a building permit. The Applicant acknowledged the same and agreed to comply.

# 58 requires the Applicant to provide a soil erosion and sediment control plan. The Applicant requests a waiver, as no grading or improvements are proposed at this time. The waiver is recommended by the Board's Planner.

# 59 requires soil borings to determine soil suitability. The waiver is recommended by the Board's Engineer, as no improvements are proposed at this time. The Applicant noted that such borings would be required by, and are under the jurisdiction of, the Gloucester County Health Department, prior to a well and septic system being constructed.

# 66 requires a written commitment from the Township's MUA of sufficient sewer and water service capacity, if within the sewer service area. Insofar as the Subject Property is not within the sewer service area, the Board's Planner recommends a waiver.

# 67 requires the results and location of all percolation tests and borings for an on-site sewerage disposal system. The Applicant requests a waiver, as such information will be required by the Gloucester County Health Department, which has jurisdiction over the same.

# 75 requires the Applicant to submit a Utility Plan. The Applicant has requested a waiver, as no utilities are proposed at this time. The waiver is recommended by the Board's Planner.

# 83 requires existing and proposed curb openings. The Applicant requests a waiver, as no new construction is proposed. The waiver is recommended by the Board's Planner.

**WHEREUPON**, a motion was made by Board Member Clark, which was seconded by Board Member Hughes, to grant the above referenced submission waivers, based on the representations and agreements made by the Applicant as are set forth above, with the following Board members voting in favor of the motion to approve: Clark, Nicholson, Hughes, Shoultz, White, McKeever, Poisker, Schmidt, and Afflerbach. Board member Richardson (Alternate Member #1) and Board member Swanson

(Alternate Member # 2) participated in the Completeness Hearing but did not vote. There were no absences, votes in the negative, or any abstentions or recusals. The Board, having granted the above referenced submission waivers, some on a conditional basis, the hearing on the Application proceeded.

7. Mr. Downs provided an overview of the Application, consistent with the foregoing information.

8. Mr. Simonds testified as to the size and configuration of the proposed lots, the wetland and upland areas on each lot, and the nature of the adjacent properties, which were in agricultural use, mainly in the nature of forestation management. Mr. Simonds testified that no improvements were planned at this time as to either of the proposed lots. In the event that homes were constructed on the proposed lots, Mr. Simonds pointed out that no buffers would be necessary on the proposed lots as to adjacent properties, given the location and depth of wetlands on each of the proposed lots. Mr. Simonds noted and testified to the fact that there were no variances needed with respect to the plan of subdivision, since all zone code standards in the RE Zone District were being met. Mr. Simonds also testified that there were no existing covenants and/or restrictions with respect to the Subject Property, and none were anticipated in the future.

9. Mr. Zadjeka testified that the Applicant had not made up its mind, at this point, as to whether or not the individual lots would be put up for sale for individual buyers to have a home constructed on same, or whether the Applicant would construct homes on some or all of the lots, for sale.

10. The Board's substitute Professional Engineer, Paul Brier, P.E., on behalf of the Board's Engineer, Stan M. Bitgood, P.E., C.M.E. reviewed with the Board and the Applicant, Mr. Bitgood's letter of July 24, 2019. (Review # 2) as follows

A. The Applicant must demonstrate that the proposed lots have areas of high ground and, therefore are buildable in the future. Mr. Simonds had testified to, and has confirmed the same.

B. Code Section 96-50.G-1. requires a landscape management/maintenance specification be provided. Mr. Simonds testified that a waiver was requested, insofar as this regulation didn't apply as the proposed development isn't large enough.

C. The adjacent lots are qualified farm lots. Upon confirmation that they are all woodlands management approved, agricultural buffers will not be required. Mr. Simonds, through testimony, had confirmed the same.

D. The current right-of-way conditions should be corrected and updated. The Applicant should provide the Township a right-of-way dedication. Mr. Simonds testified that the Applicant will comply, and that the deeds of subdivision will contain the same, and will be submitted to the Board's engineer and attorney for review and approval prior to being filed and recorded.

E. The front property corners for the new lots shall be set and shown on the plan and shall be included in all legal descriptions. Legal descriptions shall be submitted to the Board's engineer for review and approval. Mr. Simonds testified that the Applicant will comply.

11. The Board's substitute planner, Richard Fini, P.P., reviewed with the Board and the Applicant, Ms. Kanaplue's letter of August 6, 2019 on the Application:

(A) Page 2 of the Application states that the proposed use is single-family residences, however, on page 3 of the Application, it states that the proposed use is vacant land. The Applicant should clarify this. Mr. Simonds had testified that the ultimate use would be for residences, but it wasn't clear at this time if the Applicant would put the lots up for sale for a buyer to build a residence thereon, or whether the Applicant will construct one or more of the residences, or both.

(B) Per Section 96-47.1(2)(a)[1][c] of the Township Code, an agricultural buffer is not required if the adjacent farm assessed lands are wetlands or woodlands. As is set forth above, Mr. Simonds confirmed the same. The Board's attorney requested that the Applicant, prior to selling off either or all the proposed lots (either as undeveloped lot(s) or with homes built thereon), provide a point-of-sale disclosure to a buyer in the Purchase Agreement, notifying the buyer of the presence of wetlands on each lot, the location of such wetlands on each lot, and state and municipal regulations and restrictions upon a land owner regarding same. The Applicant agreed to comply.

12. The hearing on the Application was opened to the public, at which time no member of the public present testified for or against the Application. There being no member of the public wishing to give testimony, the public portion was closed.

## CONCLUSIONS

The Board concluded that the Applicant's Application should be approved, insofar as all bulk and area standards were being met, with no variances required, and in compliance with the RE Zone District. The Board recognizes that the limited area of wetlands on the Subject Property will not hinder development based on enough uplands being present on each lot. The Board also recognizes that the Applicant will submit additional information requested by the Board, and will comply with all representations and agreements that it has made, as are set forth in detail under Findings of Fact above.

## 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 of 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, if said list had been provided to the Applicant by the Township pursuant to N.J.S.A. 40:55D-12.c., and/or 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 or other covenants and/or 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.

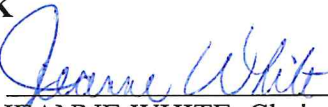
8. The approval granted herein is subject to the Applicant making amendments to the plans as may have been requested by the Board's professionals, as well as submitting such additional information as requested by the Board's professionals, and compliance with all representations, agreements and consents by the Applicant's professionals, the same being set forth under Findings of Fact above.

**WHEREUPON**, a motion was made by Board member Schmidt, which was seconded by Board member Clark to grant approval of the above referenced Minor Subdivision following a public hearing held on the Application, and subject to the above Conditions, with the following Board members voting in favor of the motion to grant approval: Afflerbach, Clark, Hughes, McKeever, Nicholson, Poisker, Schmidt, Shoultz and White.

Board Member Richardson (Alternate # 1) and Board member Swanson (Alternate # 2) participated in the hearing but did not vote. There were no abstentions, recusals, absences or votes in the negative.

**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 September 18, 2019 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on August 21, 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 18<sup>th</sup> day of September 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 August 21, 2019 on the above cited Application.

  
ANNA FOLEY, Secretary