

Resolution No.: 2019-18

RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING APPROVAL TO DENNIS M. BROWN, 470 GRUBB ROAD, NEWFIELD, N.J. 08344, OF A MINOR SUBDIVISION, REGARDING PROPERTY LOCATED AT BUCK ROAD (CR 553), AND BEING FURTHER SHOWN AS BLOCK 108, LOT 1, ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: SD-19-06

WHEREAS, Application No.: SD-19-06 (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 Dennis M. Brown, 470 Grubb Road, Newfield, N.J. 08344 (the "Applicant") for a Minor Subdivision regarding property located on Buck Road (CR 553), (the "Subject Property") and being further shown as Block 108, Lot 1, 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 September 18, 2019, at 7:00 P.M., time prevailing, at which time the Applicant was sworn and testified that he did not wish to have the hearing on his Application carried to the next monthly meeting of the Board so that he might have the opportunity to seek representation by an attorney, and further did the Applicant also testify that he not wish to continue the hearing to the next monthly meeting of the Board so that he could seek representation by an expert such as a professional engineer, planner or surveyor;

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, 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, 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 Board entered into the record the following:

A. Review letter on the Application dated August 13, 2019 from the Board's Planner, Ms. Kanaplue, P.P., A.I.C.P., Bach Associates.

B. Review letter on the Application dated July 22, 2019 from Stan Bitgood, P.E., C.M.E., Federici & Akin, the Board's Engineer.

C. Land Development Application for Minor Subdivision (received by Elk Twp. July 11, 2019); Escrow Agreement; Affidavit of Applicant and Affidavit of Ownership; Certification of Taxes Paid for Block 108 Lot 1, dated 6/18/19; Disclosure Statement; and Application Checklist;

D. Plan of Minor Subdivision titled: "Proposed Minor Subdivision Plan for 209 Buck Road", dated 4/30/19 by Ewing Associates, Land Surveyors, 900B N. Delsea Drive, Clayton, N.J. 08312, signed and sealed by Bruce A. Ewing, P.L.S.

E. Subdivision Application on the Subject Property filed with the Gloucester County Planning Board, dated 6/5/2019.

F. Three colored aerial photographs of the Subject Property, and three ground-level colored photographs of the Subject Property from Buck Road.

G. Three legal descriptions, each of Block 108: Proposed Lots 1, 1.01 & 1.02, Prepared By Ewing Associates, Clayton, N.J. 08312, and dated April 30, 2019

4. The Subject Property is located within the MD Moderate Density Residential zone district and is located of the south east corner of Buck and Aura Roads. The Subject Property is bounded to the east by an unimproved portion of Arch Street. The Subject Property is further bounded by other properties in the MD zone district, which are primarily residential, with surrounding outlying areas being agricultural and wooded in nature.

5. A church is located east of the Subject Property and across the street on an unimproved section of Arch Street. The Neighborhood Commercial Overlay, in addition to the MD Zoning, is located across Buck Road from the Subject Property. The submitted Plan of Subdivision shows the proposed subdivision of existing Lot 1 into a proposed Lot 1.01 consisting of 0.60 acres

(+/-); proposed Lot 1.02 consisting of 0.60 acres (+/-); and a remainder Lot 1 consisting of 0.60 acres (+/-).

6. The MD zone standards as applied to the proposed lots, are as follows:

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 1</u>	<u>Proposed Lot 1.01</u>	<u>Proposed Lot 1.02</u>	Compliance
96-68D(2) Minimum Lot Size	25,000 SF	26,000 SF	26,000 SF	26,000 SF	Complies
98-68.(9)(a) Minimum Lot Frontage	75 ft	130 ft.	130 ft.	130 ft.	Complies
96-68D.(6)(a) Minimum Width at Bldg. Line	85 ft	130 ft.	130 ft.	130 ft.	Complies
96-68(3)(a) Front Yard Setback	Min. 30 ft	8.35 ft	30 ft.	30 ft.	(Note 1)
96-68D(4) Rear Yard Setback	35 ft	N/A	N/A	N/A	None proposed
96-68D.(5) Min Side Yard (one)	10 ft	7.71 ft,	10 ft	10 ft	(Note 1)
96-68D.(5) Min Side Yard (both)	25 ft	89.45 ft	25 ft.	25 ft.	Complies
96-68D(7) Minimum Lot Depth	100 ft	200 ft	200 ft	200 ft	Complies
96-68D(10) Max Bldg. Ht.	35 ft	25 ft.	N/A	N/A	Complies
96.68D(11) Max. Bldg.					

Cover	30%	6.8%	N/A	N/A	Complies
96-68D(12)(b) Max Impervious for lots standard	35%	10 %	N/A	N/A	Complies

Note 1: Lot 1 has a pre-existing non-conformity; Lots 1.01 & 1.02 comply

7. The Applicant was requesting waivers from submission requirements as follows:

A. **Item 19**, Confirmation that the tax assessor has approved the lot numbers. Proposed lots numbers are noted on the Plan of Subdivision. Lot numbers will be confirmed upon approval of the Minor Subdivision.

B. **Item 49**, Tree locations and sizes. Tree masses are indicated on the plan, individual species and sizes are not. A waiver is recommended by the Board's Planner.

C. **Item 50**, Tree clearing and protection plan. A waiver is recommended by the Board's Planner.

D. **Item 55**, Contours at 20 foot intervals. A conditional waiver is recommended by the Board's Planner, subject to full grading plans being submitted in conformance with Sec. 96-66 M, prior to the issuance of building permits. The Applicant agreed to comply.

E. **Item 57**, Topographic information within and adjacent to the tract. The same response as is set forth above (item 55) applies. The Applicant agreed to comply.

F. **Item 58**. A soil erosion and sediment control plan should be submitted. A waiver is recommended by the Board's Planner.

G. **Item 59**, Soil Borings and a statement of intended importation and disposition of soils. A waiver is recommended by the Board's Planner.

H. **Item 66**, Statement from the MUA (New Jersey American Water Co.) of available capacity, if within the Sewer Service Area. A waiver is recommended by the Board's Planner.

I. **Item 67**, Soil boring and percolation data for on-site sewerage disposal. A waiver is recommended by the Board's Planner.

J. **Item 73**, LOI, if any. This requirement was satisfied by the Note on the submitted plans.

K. **Item 75**, Utilities Plans. A waiver is recommended for completeness only. This is subject to providing the same at the time that building permits are applied for.

L. **Item 83**, requires existing and proposed curb openings. A waiver is recommended by the Board's planner.

WHEREUPON, a motion was made by Board Member Afflerbach, which was seconded by Board Member Clark, to grant the above referenced submission waivers, subject to the representations and testimony given by the Applicant as are set forth above, with the following Board members voting in favor of the motion to grant the waivers: Nicholson, Hughes, McKeever, Shoultz, White, Clark, Schmidt, Afflerbach, and Richardson (Alternate Member #1). Board member Swanson (Alternate # 2) was present but did not vote. There were no votes in the negative and no abstentions or recusals. Board Member Poisker was absent. The Board, having granted the submission waivers, subject to the representations and agreements made by the Applicant, the Application was deemed to be complete.

8. Mr. Brown provided an overview of the Application.

9. The Board's Professional Planner, Candace Kanaplue, P.P., on behalf of Stephen M. Bach, PP, reviewed with the Board Mr. Bach's and her letter of August 13, 2019, regarding the Application.

10. The Board's professional engineer, Stan Bitgood, P.E., reviewed with the Board his letter of July 22, 2019, as follows:

A. The listed existing side yard on the plan is 81.74 ft. However, the existing side yard in the zoning requirements is listed at 89.45 ft. The plan should be revised to show the correct value in the plan and on the table. The Applicant agreed to comply.

B. Each legal description should include the bounds of the adjacent properties. The Applicant agreed to comply.

C. Existing storm system plans should be provided for Buck Road showing the existing inlets, and all pipes conveying runoff from these inlets to the outlet or receiving stream or lot. The Applicant agreed to comply.

D. A drainage easement 20 ft. wide, on the proposed lot line between Lots 1 and 1.01, should be provided to the Township. The Applicant agreed to comply.

E. Individual lot grading plans are required for residential construction, prior to applying for building permits. The Applicant agreed to comply.

F. Each lot shall retain all runoff from the NJDEP 25 year, 24 hour storm event on site with no discharge to adjacent properties on Arch Street. The grading of each lot shall be designed so that runoff from larger storms, up to a 100 year, 24 hour storm, is directed to the county storm system, or is retained and recharged on the lot. The Applicant agreed to comply.

G. The minor subdivision shall be perfected by the filing of deeds. All deeds must be recorded within 190 days of the adoption of the resolution of approval. Prior to recording, the deeds shall be submitted to the Board's Attorney for review and approval as to the form of the deeds, and to the Board's engineer for review and approval as to the legal descriptions. The Applicant agreed to comply.

11. The hearing on the Application was open to the public, at which time no member of the public present spoke either in favor of or opposed to the Application.

CONCLUSIONS

The Board recognized that the Applicant's request for a minor subdivision was permitted as a matter of law, insofar as the subdivision met all area and bulk requirements. The Board further noted that the conditions set forth in the Board's Planner and Engineer review letters were agreed to by the Applicant, as were the conditions pursuant to the conditional waiver of submission requirements. While there were some nonconformities as to setbacks for Lot 1, these were based on pre-existing conditions that could not be cured, and the same did not impair the Subject Property as a result of the proposed minor subdivision. Therefore, variances were not required due to their pre-existing nature.

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, if applicable.

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 Professionals' Review Letters, as set forth under Findings of Fact above, and meet the conditions that were agreed upon by the Applicant during the discussion of waivers of submission requirements.

9. The Applicant agrees to file the subdivision through deeds and will submit copies of the deeds to the Board's Planner and Engineer for their approval, prior to recording the deeds.

WHEREAS, a motion was made by Board member Afflerbach, which was seconded by Board member Schmidt, to grant a Minor Subdivision to the Applicant, based on the representations and agreements made by the Applicant at a meeting following a public hearing held on the Application on September 18, 2019 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Clark, Hughes, Shoultz, White, Schmidt, Afflerbach, McKeever, Nicholson and Richardson (Alternate # 1). Board member Swanson (Alternate # 2) was present but did not vote. There were no votes in the negative and no abstentions or recusals. Board Member Poisker was absent.

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 October 16, 2018 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on September 18, 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 16th day of October 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 September 18, 2019 on the above cited Application.


ANNA FOLEY, Secretary