

Resolution No.: 2019-19

RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING APPROVAL TO I N M REVOKABLE TRUST OF AN INTERPRETATION AS TO WHETHER OR NOT AN ABANDONMENT OF A PRE-EXISTING, NON-CONFORMING USE OCCURRED REGARDING TWO RESIDENCES ON A SINGLE LOT ON PROPERTY LOCATED AT 913 WHIG LANE ROAD, AND BEING FURTHER SHOWN AS BLOCK 33, LOT 12.08, ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-19-07

WHEREAS, Application No.: ZB-19-07 (the "Application") was submitted to the Zoning Board Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the "Board") by I N M. Revokable Trust, Paul DelMonte, Trustee, 913 Whig Lane, Monroeville, N.J. (the "Applicant") for an interpretation as to whether or not an abandonment of a pre-existing, non-conforming use occurred regarding two residences on a single lot on property located at 913 Whig Lane, (the "Subject Property") and being further shown as Block 33, Lot 12.08, on the Tax Maps of the Township of Elk (the "Township"); and

WHEREAS, the Applicant did appear, by way of Mr. Paul DelMonte, Trustee, at a meeting and public hearing held by the Board on the Application on October 16, 2019, at 7:00 P.M., time prevailing, at which time did also appear the Applicant's Attorney, I. Dominic Simeone, Esq., Simeone & Raynor, 1522 Rt. 38, Cherry Hill, N.J. 08002, and did further appear, as a fact witness, Mr. James Schuler, a prior resident of 913 Whig Lane, and were Messrs. DelMonte and Schuler 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. 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 September 3, 2019 from the Board's Planner, Ms. Kanaplue, P.P., A.I.C.P., Bach Associates.

B. Review letter on the Application dated October 9, 2019 from Stan Bitgood, P.E., C.M.E., Federici & Akin, the Board's Engineer.

C. Application for Appeal (received by Elk Twp. July 16, 2019), attached to which were five pages of photographs and other information regarding the Subject Property; Escrow Agreement; Affidavit of Applicant, Affidavit of Ownership; Certification of Taxes Paid, Checklist, and Disclosure Statement.

D. Copy of Zoning Permit Denial to the Applicant by the Township's Zoning Officer, dated 11/5/18, as to the renovation of a second residence on the Subject Property.

E. Letter dated October 4, 2019 to the Board from Mr. Simeone, attached to which were 20 copies of a revised survey dated October 2, 2019, and an updated checklist.

F. Plan of Survey of the Subject Property dated 9/4/19 from Robert J. Monson, P.L.S, 800 Rosetree Drive, Williamstown, N.J. 08094.

G. E-Mail dated 10/9/19 from the Board's attorney, Mr. Taylor, to the Board's Secretary for further distribution to the Board's members, as to the law regarding the burden of proof as to whether or not a pre-existing non-conforming use has been abandoned. Mr. Taylor sent said e-mail since the matter raised by the Applicant was an issue of first impression for many of the Board members. The Applicant's attorney, Mr. Simeone, was also copied on the same. Mr. Simeone stated that he had no objections as to the same being entered into the record and that he concurred with Mr. Taylor's legal interpretation as set forth in the e-mail.

H. Exhibits submitted by the Applicant, as follows:

i. Exhibit A-1: a Public Records Property Detail report, attached to which was a letter dated July 12, 1995 from a Mr. Wiley to a Mr. Bondiskey regarding proposed repairs and other matters as to the Subject Property.

ii. Exhibit A-2: a Framing Inspection Report

iii. Exhibit A-3: a Building Subcode Permit;

iv. Exhibit A-4: a Permit placard card.

4. The Subject Property is located in the Township's Rural Environmental Residential District. The Subject Property is approximately 1.72 acres in size. It has two residential structures thereon. One residential structure is currently occupied. One residential structure is not occupied, and is in a state of condition that does not meet code standards for residential occupancy. The Subject Property is located on the north side of Whig Lane, east of Hardingville Road (CR 609). The Subject Property has a 21.5 ft. road easement along its frontage, which is dedicated to Gloucester County. The occupied dwelling sits in the front of the Subject Property, and the unoccupied building sits in the rear of the Subject Property.

5. On 12/13/17, a permit was issued to the prior owners, James & Bonnie J. Schuler, to make repairs to the structure behind the occupied residence. On August 8, 2018, the Township's Construction Official inspected the work being done on the rear building and found that the work was in the nature of restoring the rear structure to a second residential structure on the Subject Property. A stop work order was issued until the owner obtained Zoning Board approval to permit a second residential structure on the same property.

6. Thereafter, title to the Subject Property was transferred to the present Applicant. On August 14, 2018, a Zoning permit was applied for, to permit work to continue on restoring the second structure to a residence. The permit application was denied on the grounds that the Applicant had to apply to the Zoning Board for a use variance to permit two residential structures on the same property. Discussion went back and forth between the Applicant and the Township. The Applicant did not appeal the Zoning Officer's denial within the statutorily required time period. After lengthy discussions between the Applicant's attorney and the Board's attorney, over several months, the Applicant decided to file an application with the Board for a determination as to whether or not the second structure on the Subject Property constituted a pre-existing, non-conforming residential use, that had never been abandoned, in lieu of a use variance application.

7. Mr. Schuler testified that he had owned the Subject Property from 2013 to 2018. Mr. Schuler testified that he lived in the front residence and the structure in the rear was occupied as a residence by tenants. The tenants had their own mail box and the rear residence had its own septic and well. Prior to Mr. Schuler's ownership, property records and correspondence show that a Mr. David Wiley had owned the Subject Property at least from 1995.

8. Extensive testimony took place by and between the Applicant and the Board as to the prior history of the Subject Property. Board member Hughes, who had lived in the Township his entire life (over 60 years), had extensive knowledge of the Subject Property, which he had shared with the Board and the Applicant. Based on Mr. Hughes's personal knowledge of the Subject Property over many years, he confirmed that both structures had always been used as a residence, even though at times the rear residence was vacant between tenancies.

9. The Board's Planner and Engineer questioned the Applicant. The Applicant was required to obtain all necessary permits, inspections and approvals from local and outside agencies, including the County Health Department as to an inspection of the current septic system for the second residence. The Applicant will have to meet all local and county code requirements and approvals, to the extent necessary or as required, to address issues of circulation, drainage, driveways, access/egress with Whig Lane, fire access, off-street parking, house numbering, trash recycling and pickup, and other requirements. The Applicant agreed to comply.

10. The hearing on the Application was opened to the public, at which time the following member of the public present was sworn and spoke in favor of the Application: Mr. Lewis John DeEugenio, 500 University Blvd., testified that he was familiar with the Subject Property over many years and that he supported the Applicant's request. There being no other members of the public present wishing to testify, the public hearing was closed.

CONCLUSION

The Board concluded that the Applicant had met its burden, by a preponderance of evidence and testimony, in proving that the second structure on the Subject Property was indeed a pre-existing, yet currently lawful non-conforming 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 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, 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.

WHEREAS, a motion was made by Board member White, which was seconded by Board member Schmidt, to grant a finding that the two existing structures on the Subject Property were lawful, pre-existing uses that had not been abandoned, at a meeting following a public hearing held on the Application on October 16, 2019 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approval: Hughes, Shoultz, White, Schmidt, McKeever, Swanson (Alternate # 2). There were no votes in the negative and no abstentions or recusals. Board Members Poisker, Clark, Nicholson, Afflerbach, and Richardson, were absent.

THIS RESOLUTION WAS ADOPTED at a regularly scheduled meeting of the Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on November 20, 2019 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on October 16, 2019 on the above referenced Application.

**ZONING BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF ELK**

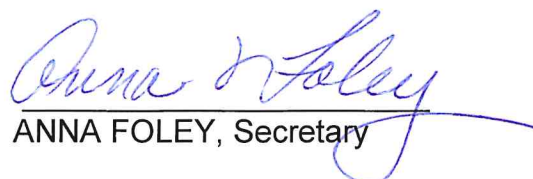
By: 
JEANNE WHITE, Chairperson

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 Zoning Board of Adjustment, County of Gloucester, State of New Jersey held on the 20th day of November 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 October 16, 2019 on the above cited Application.


ANNA FOLEY, Secretary