

**Resolution No.: 2019-20**

**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  
JOSEPH & SHARON LEDONNE (H/W), 206 WINESAP WAY, GLASSBORO,  
N.J. 08028 REGARDING PROPERTY LOCATED AT 206 WINESAP WAY, AND  
BEING FURTHER SHOWN AS BLOCK 29.02, LOT 9 ON THE TAX MAPS OF  
THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-19-08**

**WHEREAS**, Application No.: ZB-19-08 (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 Joseph & Sharon LeDonne (H/W), 206 Winesap Way, Glassboro, N.J. 08028 (the "Applicant") for bulk variances to accommodate the construction of a swimming pool on property located at 206 Winesap Way (the "Subject Property") and being further shown as Block 29.02, Lot 9 on the Tax Maps of the Township of Elk (the "Township"); and

**WHEREAS**, the Applicant did appear, by way of Mr. and Mrs. Joseph LeDonne, at a meeting and public hearing held by the Board on the Application on November 20, 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. LeDonne 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. LeDonne and Mr. Neilio sworn 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, Affidavit of Publication, and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Plan entitled "Grading/Variance Plan, Block 29.02, lot 9, Township of Elk, Gloucester County, New Jersey" prepared, signed and sealed by Norman K. Rodgers, III, P.E., P.L.S., C.M.E., dated 7/15/19, revised 10/2/19, along with cover letter dated Oct. 2, 2019, signed by Mr. Rodgers, accompanying the Plan.

C. Three black and white photos of the rear of the Subject Property, marked into evidence as Exhibit A-1.

4. The Board entered into the record the following:

A. Letter dated October 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 October 7, 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 the waterline, to permit the construction of an in-ground swimming pool and surrounding amenities and pool-related fixtures. 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 adjacent properties consist of residential dwellings to the east. West & north. To the south of the Subject Property in a 25 foot landscaped buffer.

6. The Subject Property is located within the RE Rural Environmental Residential zoning district and the surrounding properties are also in the Rural Environmental Residential zoning district.

**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	8,500 sf	E
Minimum Lot Depth	200 ft.	110 ft.	E
Minimum Lot Frontage	135 ft.	77 ft.	E
Maximum Height	35 ft.	< 35 ft.	C
Minimum Front Yard Setback	50 ft.	20 ft.	E
Minimum Rear Yard Setback	40 ft.	36.6 ft.	E
Minimum Side Yards (one)	20 ft	11.2 ft.	E
Minimum Side Yards both	50 ft (both)	29.9 ft.	E
Maximum building coverage	15 %	23.8 %	E
Maximum Impervious coverage	20 %	30.4% /31.5%	V
<u>Swimming Pools (Code 96-81 B):</u>			
Rear yard coverage max.	75 %	<75%	C
Min. Setback to waterline	25 ft	10 Ft. Rear 17 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 survey referenced on the *Grading/Variance Plan* is dated 11/10/16. The Applicant agreed, as a condition of approval, to get an updated re-certified survey as a condition of approval.

# 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.

# 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.

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

8. Both Mr. and Mrs. LeDonne and Mr. Neilio testified that they believed that the requested variances could be granted since the Subject Property would be upgraded, and there would be no negative impact to adjacent properties or to the development as a whole. Mr. Neilio reviewed the requested variances, background information regarding nearby pools that had been approved, the pool plan, grading, impervious coverage and drainage. The pool would be 18 ft. X 35 ft.



9. Ms. Kanaplue's letter of October 30, 2019, which had been entered into the record, was reviewed with 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 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:

1. 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 fact that the existing lot is undersized for the proposed pool does not constitute a hardship for the homeowner to be permitted to encroach on the required pool setbacks and exceed 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.

a. 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 17 feet and rear yard setback of 10 feet are proposed.

b. A variance from impervious coverage of 20% is required by §96-71D(12) where 31.5% is proposed. Tyhe Board's Planner defers to the Board's Engineer regarding this issue.

2. The Board's Planner noted that the Subject Property backs up to a 25 foot landscaped buffer.

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. 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.

10. Mr. Bitgood's letter of October 7, 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 includes a complete bulk requirements and conformance summary. It appears that the proposed swimming pool would need zoning variances for distance to property lines.

A. The appellants have not offered reasons to approve the reduced distances to property lines below 25 feet, which is required in code section 96-81.B(1). Justification for this is required by the NJSA 40:55D, Municipal Land Use Law. It should be noted that at N.J.S.A. 40:55D-70.c.(1), the law authorizes the Board to approve under certain conditions which are deemed to be ... (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon. The appellants should provide testimony to address this and how their lot should be considered unique or exceptional and extraordinary, within the subdivision.

3. Drainage. The proposed pool and grading will minimally affect the current flow of runoff on the subject lot.
4. Grading. The Grading Plan is adequate in that it focuses any runoff from the pool along the sides of the rear yard towards the back of the lot, as the existing lot grading does.
5. Limit of Disturbance. Currently no part of the proposed pool area extends beyond the 5 foot minimum limit of disturbance to the property lines. The proposed pool equipment should be situated in an area not within the 5 foot limit of disturbance, as the shown intent suggests on the plan.
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 31.5% where 20% is the maximum permitted.
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.

#### Recommendations:

A. A variance is recommended with the condition that all new walks, pool decks, and steps be constructed with porous pavers over crushed stone and filter fabric. All underlined items should be addressed prior to or as conditions of approval. i.e., prior to issuance of UCC permits.

B. The Applicant may request a C.A. to operate or use the pool upon submission of an As-built Survey and final inspection.

11. 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 has agreed to submit such additional information as requested, and to comply with the Board engineer's and planner's letters. The Board also 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.



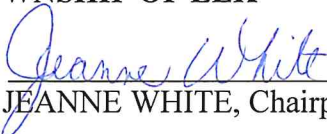
7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., required with respect to the relief as granted herein.

8. The Applicant must submit all requested information for review and approval prior to construction permits being issued. The Applicant must comply with all requirements and conditions as set forth in the Board engineer's review letter referenced above.


**WHEREUPON**, a motion was made by Board member Afflerbach, which was seconded by Board member Swanson, 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: Clark, Schmidt, Shoultz, White, Hughes, Afflerbach, and Richardson (Alternate # 1) and Swanson (Alternate # 2). There were no votes in the negative, and no abstentions or recusals. The following Board Members were absent: Poisker, McKeever, and Nicholson.

**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 December 18, 2019, as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on November 20, 2019 on the above referenced Application.

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

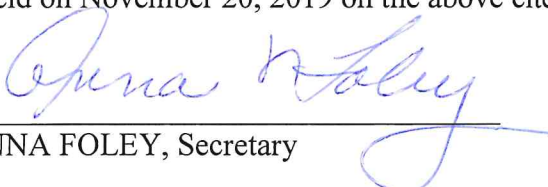
By:   
JEANNE WHITE, Chairperson

**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 18th day of December 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 November 20, 2019 on the above cited Application.

  
ANNA FOLEY, Secretary