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## Elk Township Combined Planning and Zoning Board

### Regular Business Meeting

October 16, 2019

### Minutes

**Call to Order:** meeting called to order at 7:03pm.

**Roll Call:**

**Present:** Jay Hughes, Ed McKeever, Richard Schmidt, Eugene Shoultz, Jeanne White, Wayne Swanson

**Absent:** Matt Afflerbach, Bob Clark, Donna Nicholson, Ed Poisker, Al Richardson

**Open Public Meeting Act:** was read by the Board Secretary

**Flag Salute:** Chairperson led the flag salute.

**Swear in Professionals**

➤ **General Business:**

**Approval of Minutes:** September 18, 2019

*Mrs. Nicholson moved to approve the minutes of September 18, 2019, Seconded by Mr. Hughes.* With all other members in favor, *the motion was carried.*

**Resolution(s):**

2019-18- 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), block 108, lot 1, Application no.: SD-19-06

*Mr. Schmidt moved to adopt resolution 2019-18. Seconded by Mr. Hughes.*

**Roll Call:**

**Voting in favor:** Hughes, McKeever, Nicholson, Schmidt, Shoultz, White

**Against:** None      **Abstain:** None      **6-0-0**

➤ **Old Business:** None

➤ **New Business:**

- INM Revokable Trust / Paul DelMonte, 913 Whig Lane, block 33, lot 12.08  
Interpretation of the Zoning Code of Preexisting non-conforming use to permit two residences on the same lot. Application ZB-19-07

The applicant was represented by Attorney Dominic Simeone, Esq., of Simeone & Raynor, Cherry Hill, N.J.

The following witnesses were sworn in:

Mr. Paul DelMonte, Trustee, Applicant, 698 Briar Hill Lane, Newfield

Mr. James Schuler, prior owner, 1073 Rt 45, Pilesgrove

Mr. Simeone gave a brief overview.

The property is approximately 1.72 acres in size. It has two residential structures on one lot. One residential structure was recently occupied. The second residential structure is not occupied. The second dwelling was built more than 50 years ago before the current Elk Township Code that does not permit two residential dwellings on one lot. This is a pre-existing use that existed before Elk Township changed its zoning code. The second structure qualifies under Municipal Land Use Land Law, NJSA 45:55D-68 states "any conforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof." The residential use was never abandoned even though the house wasn't occupied. There was no intent to abandon the use.

The prior owner's, James & Bonnie Schuler, took out construction permits in December of 2017 to make repairs. Paul DelMonte of INM Revokable Trust, purchased the property in August of 2018. When the Building inspector completed an inspection related to the 2017 permit, it was discovered that additional work had been done on the rear building and that work was in the nature of restoring the rear structure to a second residential structure. A stop work order was issued until the owner obtained approval to permit a second residential structure on the same property. A Zoning permit was applied for in August of 2018 to permit work to continue on restoring the second structure to a residence but 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.

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 instead file an application with the Board for a determination as to whether or not the second structure on the Property constituted a pre-existing, non-conforming residential use, which had never been abandoned, in lieu of a use variance application.

Mr. Simeone submitted the following items that were marked as exhibits for the file record:

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.

Exhibit A-2: a Framing Inspection Report

Exhibit A-3: a Building Subcode Permit

Exhibit A-4: a Permit placard card

Mr. Schuler testified that he had owned the Subject Property from 2013 to 2018 and that he lived in the front residence and the structure in the rear had been occupied as a residence with tenants under Mr. Wiley. 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 Property at least from 1995.

Extensive testimony took place by and between the Applicant and the Board as to the prior history of the Property. Board member Hughes, who has lived in the Township for over 60 years, had extensive knowledge of the Property which he shared with the Board and the Applicant. Based on Mr. Hughes's personal knowledge of the 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.

Mr. Delmonte testified that when he purchased the property it was his understanding it included two dwelling units and it is not his intention to abandon either use. Mr. Delmonte intends to live in the front house and to add an addition in the future.

Board Planner had no comments.

Board's Engineer inquired about separate wells and septic systems. The Applicant understands both are under the jurisdiction of Gloucester County Health Department.

If approved, the Applicant will be 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.

***Mr. Hughes moved to open to open to the public, seconded by Mr. Swanson.  
With all members in favor, the motion was carried.***

Mr. Lewis John DeEugenio, 500 University Blvd., testified that he was familiar with the Property and that he supported the Applicant's request. He also asked for a farming buffer.

***Mr. Shoultz moved to close to the public portion, seconded by Mr. Swanson.  
With all members in favor, the motion was carried.***

***Mrs. White moved to grant a finding that the two existing structures on the Subject Property were lawful, pre-existing uses that had not been abandoned, and further condition upon all required outside agency approvals. Seconded by Mr. Schmidt.***

***Voting in favor: Hughes, Shoultz, White, Schmidt, McKeever, Swanson (Alternate # 2).  
Against: None            Abstain: None            6-0-0***

➤ **General Public Portion**

***Mr. Shoultz moved to open the general public portion, seconded by Mr. Swanson.  
With all members in favor, the motion was carried.***

With no comment from the public, ***Mr. Shoultz moved to close the general public portion, seconded by Mrs. White.*** With all members in favor, ***the motion was carried.***

➤ **Correspondence:** None

➤ **Adjournment:**

***Mr. Swanson moved to adjourn, Seconded by Mr. Shoultz.  
With all members in favor, the motion was carried.***

Adjournment time: 8:06 pm

Respectfully submitted,

  
Anna Foley, Board Secretary