

Resolution No.: 2020-07

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING A MINOR SUBDIVISION TO ROBERT
JR. AND ELIZABETH CONTARINO (H/W), REGARDING PROPERTY
LOCATED AT 801 AURA ROAD AND BEING FURTHER SHOWN AS BLOCK
31, LOT 4 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: SD-19-09**

WHEREAS, Application No.: SD-19-09 (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 Robert Jr. and Elizabeth Contarino (H/W), (together, the “Applicant”) for a Minor Subdivision regarding property located at 801 Aura Road (the “Subject Property”) and being further shown as Block 31 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 February 19, 2020 at 7:00 P.M., time prevailing, at which time were the following present: Robert Contarino, Jr., (Applicant); Ryan James Contarino, (son of the Owner/Applicant), and Stephen Datz, P.L.S., Datz Engineering & Land Surveying, 109 Woodland Avenue, Mullica Hill, N.J. 08062 (the Applicant’s Professional Land Surveyor); and

WHEREAS, Mr. Contarino, Jr. stated that he was not represented by counsel and did not wish to have the Board carry the Application/meeting to the next month in order for him to have the opportunity to obtain the services of counsel; and

WHEREAS, Mr. Datz, having previously appeared before the Board, and had previously provided his background information, experience and licensing, after which he was stipulated on the record by the Board as an expert in the field of land surveying, and was qualified to testify as such on behalf of the Applicant for the purposes of the Application, and was said stipulation made again, on the record and without objection, as to the present Application, after which were Messrs. R. Contarino, Jr., Ryan Contarino, and Stephen Datz, P.L.S., 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 waivers from submission requirements. As such, the Board had jurisdiction to act on the Application.

2. The Board's professional planner, Candace Kanaplue, P.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 Board entered into the record the following:

A. Application, Application fee, Escrow Agreement, Escrow Deposit, Certification of Taxes Paid on the Subject Property, Disclosure Statement, Affidavit of Ownership and Land Development Checklist.

B. Minor Subdivision and Footprint of Disturbance Plan for Robert Jr. and Elizabeth Contarino (H/W), Elk Township, Gloucester County, Tax Map Sheet 15, Block 31, Lot 4, prepared by Stephen Datz, P.L.S., dated November 13, 2108.

C. E-Mail correspondence from Gloucester County Office of Assessment regarding official Block and Lot numbers, dated October 2, 2019.

D. Letter dated August 23, 2019 from NJDEP to Ryan Contarino RE: Letter of Interpretation: Footprint of Disturbance Determination (FOD), as to the Subject Property.

E. Copy of Gloucester County Department of Health and Human Services Application for Permit to Construct an Individual Subsurface Sewage Disposal System with regard to the Subject Property, dated 9/17/19.

F. Copy of Application for Minor Subdivision of the Subject Property, to Gloucester County Planning Board dated 9/17/19.

G. Copy of Deed to Subject Property from M/M Duncan to M/M Contarino dated August 21, 1984, recorded 8/23/84 in the Gloucester County Clerk's Office in Deed Book 1497, beginning at page 487.

H. Title Report dated 1/22/20 from West Jersey Title Agency, Woodstown, N.J. on the Subject Property.

I. Ten (10) black and white photographs of the Subject Property.

J. Review letter on the Application dated November 26, 2019, received from the Board's Planners, Steven M. Bach, P.E., and Candace Kanaplue, P.P., Bach Associates.

K. Review letter on the Application dated October 24, 2019, received from Stan Bitgood, P.E., Federici & Akin, the Board's Engineer.

4. The Application and supporting documents submitted by Robert Jr. and Elizabeth Contarino are for a minor subdivision at the above referenced site. Currently, Block 31 Lot 4 consists of 9.7 acres with an existing residential dwelling, masonry garage, a greenhouse, shed and three carports of varying sizes. The Subject Property is on the east side of Aura Road, north of Whig Lane. The Applicant proposes to subdivide the parcel, leaving the existing structures on one lot and creating a new lot 4.01 for a residential dwelling in the future.

5. The Subject Property consists of predominantly agricultural fields with a greenhouse in disrepair and a trailer with an overhang. The Subject Property is located within the R Rural Residential Zone District and is surrounded to the north, east and south by properties also in the R Rural Residential Zone District. Across Aura Road is the RE Rural Environmental District.

6. The R Rural Residential Zone District permits agricultural uses and buildings, single-family detached dwellings, public parks and playgrounds, and accessory uses that are customarily incidental and subordinate to the primary use on site. The zone standards as applied to the Application are as follows:

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 4.01</u>	<u>Proposed Lot 4 (remainder)</u>	<u>Compliance</u>
966-70D(2) Minimum Lot size	1.84 acre	163,386 sf	1 04,366 sf	Complies
96-70D(3) Minimum Front Yard	50 feet	>50 feet	12.1 feet	Lot 4.01 Complies; Lot 4 is Existing nonconforming
96-70D(4) Minimum Rear Yard	40 feet	>40 feet	>125 feet	Complies
96-70D(5) Min. Side Yards	20 feet, 50 feet aggregate	20 feet, 50 feet aggregate	111.7 feet, 370 feet aggregate	Complies

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 4.01</u>	<u>Proposed Lot 4 (remainder)</u>	<u>Compliance</u>
96-70D(6) Minimum lot width	150 feet	161.33 feet	452.73 feet	Complies
96-70D(7) Minimum lot depth	200 feet	675.25 feet	365.25 feet	Complies
96-70D(9) Min Lot Frontage	135 feet	161.43 feet	452.73 feet	Complies
96-70D(10) Min Principal Height	35 feet	Must Comply	Unknown	TBD
96-70D(11) Max. Bldg. Coverage	15 %	Must Comply	Unknown	TBD
96-70D(12)(a) Maximum Impervious Coverage	20%	Must Comply	Unknown	TBD
96-47 Agricultural Buffer	50 feet side / 100 feet rear	Must Comply	TBD	TBD
Accessory Structures 96-80 A(2) Max SF Detached Garage	900 SF	Must Comply	Approx. 1,500 SF	Lot 4 is non-conforming existing condition
Accessory Structures 96-80 A(4) Max SF second structure	200 SF	Must Comply	5 structures total SF unknown	Lot 4 is non-conforming existing condition
Accessory Structures 96-80 A(6) Over 200 sf must meet rear yard setbacks	40 feet	Must comply	30 feet	Lot 4 is non-conforming existing condition

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 4.01</u>	<u>Proposed Lot 4 (remainder)</u>	<u>Compliance</u>
Accessory Structures 96-80 A(11) min separation	15 feet	Must Comply	0 feet	Lot 4 is non-conforming existing condition
Accessory Structures 96-80 A(12) max. ht.	25 feet	Must Comply	Unknown	TBD

TBD = To Be Determined

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

#8 Copies of applications to, and certification of approvals from, outside agencies are required. The Applicant shall submit copies of the application to outside agencies. Approvals should be submitted to the Township. A waiver is recommended for completeness only. The Applicant agreed to comply.

#21 The Applicant is required to submit a list of waivers requested. The Board's Planner has provided this list. The Applicant must testify as to the reason why they are not providing the completeness and other necessary items. A waiver is recommended by the Board's Planner.

#22 The Applicant is required to submit a list of waivers and variances (if any) from the Elk Township Unified Development Ordinance. The Board's Planner has provided these items within its review letter. However the Applicant must be prepared to testify as to the reasons for any waivers/variances. The Applicant agreed to comply. A waiver is recommended by the Board's Planner.

#33 A statement demonstrating compliance with affordable housing requirements as applicable including section 70-4, is required. A waiver is not recommended. The Applicant agreed to comply with all lawfully enforceable affordable housing requirements.

#36 The Applicant is to submit copies of protective covenants, easements and restrictions of record, including a current title policy. The applicant must comply. The Applicant has submitted a current Report of Title and Deed. A waiver is not required.

#38 The Applicant must provide photographs of the site. The Applicant has complied.

#48 The distance along right-of-way lines of existing streets to the nearest intersection with other streets is required. This has not been provided. A waiver is recommended by the Board's Planner.

#49 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. The 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 the Applicant to provide information on any structure of historic significance on or within two hundred feet of the tract. The Board's Planner recommends a waiver.

#57 requires that the Applicant submit a grading plan. Since no structures are proposed, at this time, a waiver is recommended by the Board's Planner.

#58 requires the Applicant to submit a soil erosion and sediment control plan. A waiver is recommended by the Board's Planner due to the nature of the Application.

#66 requires a letter of sufficient capacity from the MUA. A waiver is recommended by the Board's Planner due to the nature of the Application.

#75 requires that the Applicant submit a Utility Plan. A waiver is recommended by the Board's Planner due to the nature of the Application.

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

7. Messrs. Contarino and Datz provided a brief overview of the Application.

8. The Board's Professional Planner, Candace Kanaplue, P.P., on behalf of Stephen M. Bach, PP, reviewed with the Board Mr. Bach and Ms. Kanaplue's letter of November 26, 2019 regarding the Application, as follows:

1. There is information needed for several required bulk standards. The Applicant should supply the requested information from the table above. At that point the need for variances can be determined. The Applicant testified that since no development of the Subject Property was imminent, no additional information was available at this time.

2. In accordance with Section 96-47.1 a vegetated agricultural buffer of 50 feet along side yards and 100 feet along the rear yard is required. If the Applicant cannot comply a variance will be required. The Plan should be revised to include buffers per the ordinance. The Applicant agreed to comply.

3. Per Section 96-47.1.B.(2)(b), the buffer strip area shall be excluded from the measurements for establishing lot width and depth, and all setback requirements. This will alter the bulk measurements and may potentially cause the need for additional variances. The Applicant should submit a revised plan and bulk standard table prior to the hearing for review. The Applicant will amend the plan.

4. The bulk standard table on the plan must be revised to include all bulk standards. The Applicant will provide all such information when available.

5. Side yards should be corrected to reflect a side yard of a minimum of 20 feet on one side, and an aggregate of 50 feet in total. The Applicant agreed to comply.

6. Proposed Lot 4.01 is constrained by wetlands, however it appears there will be available land along the rear of the proposed lot to build a conforming dwelling.

10. The Board's Professional Engineer, Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., reviewed with the Applicant and the Board, his letter of October 24, 2020 as follows:

1. Bulk Requirements: The site is in the Rural Residential District. The table of zoning requirements indicates the bulk requirements and that no variances are proposed.

A. The list neglects Maximum Building Height, Maximum Building Coverage, and Maximum Total Impervious Coverage. These Items should be added to the list of bulk requirements. The Applicant agreed to comply.

B. The lot to be subdivided is surrounded by lots that are qualified farmland on all sides. Agricultural Buffers should be added to both the proposed Lot 4.01 and the remainder of Lot 4. The Applicant agreed to comply.

C. The side yard setbacks must be revised on the Remainder of Lot 4 and Proposed Lot 4.01. Per the Bulk Requirements, standard side yards are 20 feet one / 50 feet both. Proposed side yard setbacks have 20 feet on two sides, and should be revised to specifically identify one side as 20 feet and the other as 30 feet. The Applicant agreed to comply.

2. Plat/Plan Requirements:

A. The table of Bulk Zone Requirements should be revised on the plan to reflect the full list of requirements specified in the Elk Township Code section 96-70 – Rural Residential District (R). The Applicant agreed to comply.

B. Block names, setback lines, and the site location on the Location and Key Maps should be revised on the plan. The Applicant agreed to comply.

C. The yard setbacks should be adjusted to indicate specific dimensions and all agricultural buffers should be added. The Applicant agreed to comply.

D. The driveway location should be revised to be a minimum 10 feet from any property line as per the Elk Township Code 96-66.M.4. – Grading Plan Checklist. The Applicant agreed to comply.

E. The extra line and bearing added to the plan should be removed if it is unnecessary. The Applicant agreed to comply.

F. The existing trees/woods in the front portion of the existing lot should be added to the plan. The Applicant agreed to comply.

G. The original lot area in General Note #3 does not equal the sum of the proposed Lot areas. The Plan must be corrected. The Applicant agreed to comply.

3. Minor subdivision Plan has been submitted for review.

A. The bearings and distances of the original Lot 4 are different than the submitted Deeds. This discrepancy should be resolved and revised on the plan if necessary. A Title Report should be submitted as well. The Applicant agreed to comply. A Title Report has been submitted.

B. The Deed of Conveyance for the subdivision shall contain the deed notice specified in the Elk Township Code 96-47.1.B.a. regarding agricultural buffers. This should also be included in the Deed for the remainder of the lot. The Applicant agreed to comply.

C. The corner marker required by the Map Recordation Act must be set in the front lot corner between the new Lot 4 and Lot 4.01 and be called out in the legal description(s). The Applicant agreed to comply.

D. Item 49 may be waived, but it shall be recognized that the quantities and sizes of all trees to be removed shall be shown on future lot grading plans. In addition, tree clearing shall comply with any and all ordinances at the time of building application. The Applicant agreed to comply.

E. Addresses and Lot numbers: This Application will not change the existing address for lot 4.

1. If approved, the Applicant must obtain new lot number for the proposed lot (referred to as lot 4.01 on the plans) from the tax assessor and provide a copy. The Applicant agreed to comply.

2. If approved, the Applicant must obtain new address for the proposed lot (referred to as lot 4.01 on the plans) from Gloucester County 911 Coordinator and provide a copy. The Applicant agreed to comply.

F. Parking: This Application will not change existing parking capacity or locations.

G. Photos: Recent photos of the site shall be submitted. The Applicant has complied.

4. Wetlands: Item 73: A Letter of Interpretation has been submitted by the NJDEP regarding a footprint of disturbance area on the proposed Lot 4.01. NJDEP confirmed that the area defined was free of any wetlands. In order to comply with the Elk Township Code 96-66.M.4. – Grading Plan Checklist, which requires all driveways to be a minimum 10 feet from any property line, a Wetlands permit will be required prior to applying for Lot Grading Plan or Building Permits. The Applicant agreed to comply.

5. Curbs & Sidewalks: This Application does not include, nor requires, curbs or sidewalks.

6. Lot grading: Individual Lot Grading plans are required prior to obtaining building permits for the proposed new residence. These plans shall not alter the present drainage of the entire site as to negatively affect the adjacent lots. The Applicant agreed to comply.

7. Stormwater Management: New improvements are proposed, and due to the current grading of the lot, a blanket drainage easement should be made to provide for surface drainage from the Remainder of Lot 4 to the proposed Lot 4.01. The Applicant agreed to comply.

8. Fences: No new fences or modifications are proposed or required.

9. Street Paving: A road widening easement is proposed for the new Lot 4.01 to be dedicated to the County of Gloucester to be consistent with current similar easements on adjacent lots. No new Paving is shown or required. A copy of the recorded easement shall be provided. The Applicant agreed to comply.

A. Legal Descriptions for both lots shall include the road easement and drainage easement. The Applicant agreed to comply.

10. Accessory Uses & Structures: No new accessory structures are proposed on either lot at this time.

Recommendations:

1. All items listed above should be addressed prior to, or as conditions of, approval. Revisions should be submitted with a point by point response letter.
2. All taxes, escrow fees and other fees must be paid to the Township prior to signatures by the Chairman and Secretary.
3. The subdivision must be recorded at the County Clerk's office within 190 days of approval.
4. If approved, the deeds of the proposed lots, their associated legal descriptions, covenants, all easements, and restrictions of record shall be provided by the Applicant for review by both the Board's engineer and the Board's Attorney. 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 spoke either in favor of or opposed to the Application.

CONCLUSIONS

The Board concluded that the Applicant's request for a minor subdivision should be granted, subject to the representations made by the Applicant, and the requirements made by the Board, on the basis that all area and bulk requirements will be met. As such, the Application is a "by-right" application and is entitled to approval as a matter of law. In the event that a variance becomes necessary as the subdivision is further developed, the Applicant shall be required to file a separate application with the Board for variance relief, and such other relief as may become necessary. The Applicant shall be responsible for complying with all requirements set forth above, including the submission of such additional data, or revisions to the plans, as requested by the Board's professionals as a condition of approval.

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 disclosed to the Board, but which would have had a materially negative impact upon the Subject Property which had not been known or had not been 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 perfect the approved subdivision through the recording of deeds, and will submit copies of the deeds to the Board's Engineer for approval as to the legal descriptions in the deeds, and to the Board's attorney for review and approval as to the form of the deeds, prior to recording the same. The Applicant shall record said deeds within 190 days of the adoption of this resolution.


WHEREAS, a motion was made by Board member White, which was seconded by Board member Hughes, to grant a Minor Subdivision to the Applicant, at a meeting following a public hearing held on the Application on February 19, 2020 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Hughes, Shoultz, White, Schmidt, Afflerbach, McKeever, Richardson (Alternate member # 1) and Swanson (Alternate Member # 2). Board Members Poisker, Nicholson, and Clark were absent. There were no votes in the negative and no abstentions or recusals.

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 May 20, 2020 as a memorialization of the approval granted in the above referenced matter by the Board at its regularly scheduled meeting and public hearing held on February 19, 2020 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 March 2020 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 February 19, 2020 on the above cited Application.


ANNA FOLEY, Secretary