

Resolution No.: 2020-09

**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 WITH BULK
VARIANCES TO JOHNSON E. HURFF, SR., REGARDING PROPERTY
LOCATED AT 201 DUTCH ROW ROAD, AND BEING FURTHER SHOWN AS
BLOCK 47, LOT 1 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: SD-19-02**

WHEREAS, Application No.: SD-19-02 (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 Johnson E. Hurff, Sr., 1167 Monroeville Road, Monroeville, N.J. 08343 (the "Applicant") for a Minor Subdivision with Bulk Variances regarding property located on Monroeville Road (the "Subject Property") and being further shown as Block 47, 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 May 15, 2019 at 7:00 P.M., time prevailing, at which time was the Applicant present and sworn, and did also appear Herb L. Daley, Esquire, Daley Law Office, 39 East Avenue, Woodstown, N.J. 08098, the Applicant's attorney;

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, Steven M. Bach, PE, RA, PP, CME, 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 Applicant and the Board entered into the record the following:

A. Application, Application Fee, Escrow Agreement, Escrow Deposit, Notice of Hearing, Affidavit of Ownership and Affidavit of Applicant, Affidavit of Service, Affidavit of Publication, Certification of Taxes Paid on the Subject Property, and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Submission checklist.

C. Minor Subdivision Plan dated 1/02/19 by Datz Engineering & land Surveying, 109 Woodkland Avenue, Mullica Hill, N.J. 08062

D. Fifteen 8.5" X 14 " photographs entered into evidence as Exhibit A-1, said photographs showing various views of the Subject Property.

E. Letter dated April 3, 2019, from Steven M. Bach, PE, RA, PP, CME, Bach Associates, PC, the Board's professional planner, to the Board regarding Mr. Bach's review of the Application. This letter was supplemented by Mr. Bach's letter of April 29, 2020.

H. Letter dated May 7, 2019 from Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., the Board's professional Engineer, regarding his review of the Application to the Board.

I. Copy of Resolution 1980 47/1 of the Elk Township Zoning Board of Adjustment granting the Applicant permission to construct an addition to the-then existing house on the Subject Property.

J. Copy of Minor Subdivision Application from the Applicant to the Gloucester County Planning Board dated 2/21/19.

K. Copy of letter dated January 17, 2019 from Office of Assessment, County of Gloucester, approving new Lot Number 1.01 as shown on the Applicant's Plan of Minor Subdivision.

L. Letter of Representation from Herb L. Foley, Esquire, dated July 8, 2019.

M. Report of Action from the Gloucester County Planning Board dated 3/17/20.

N. License to Operate Septic System, 201 Dutch Row Road, Block 17, Lot 1, from Gloucester County Department of Health and Human Services, dated 3/3/2020.

4. The Subject Property consists of predominantly agricultural fields and a single family residence. The Subject Property is located within the RE Rural Environmental Residential zoning district and is surrounded in all directions (in Elk Township) by properties also in the Rural Environmental Residential zoning district. The Subject

Property fronts on Dutch Row Road (County Route 611) and Monroeville Road (County Route 604). The Plan of Minor Subdivision shows the layout of the subdivision, consisting of conveying about 1.6 acres of land from Lot 1 to proposed Lot 1.01 (on which the existing residence is located). The Remainder Lot 1 will be about 3.5 acres in size and is in farmland preservation.

5. The Zone Bulk Standards and required “C” Variances are as follows:

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 1</u>	<u>Proposed Lot 1.01</u>	<u>Compliance</u>
96-71D(2) Minimum Lot size	80,000 sf	153,249 sq ft	69,153 sq ft	Variance (Lot 1.01)
96-71D(3) Front Yard Setback	50 feet	50 Feet Farmland Preserved	25 feet *	Existing Condition
96-71D(4) Rear Yard Setback	40 feet	40 feet (Farmland Preserved)	206.7 feet	Complies
96-71D.(5) Minimum Side Yard	20 feet/50 feet aggregate	20 feet/50 feet (Farmland)	76.7 feet / > 50 feet	Complies
96-71D.(6)(a) Minimum Width at Building line	150 feet	> 150 feet	313.70 feet	Complies
96-71D(7) Minimum Lot depth	200 feet	9.6 feet	239.9 feet	Variance (Lot 1)
96-71D.(9)(a) Minimum Lot Frontage Complies	135 feet	> 135 feet	313.70 feet	Complies
96-71.D.(10) Max. Height	35 feet	< 35 feet	< 35 feet	Complies
96-71D.(11)(a) Maximum Coverage	15%	<15%	1%	Complies

96-71D(12) Impervious Coverage	20%	< 20%	1 %	Complies
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* Existing non-conformity; (prior variance obtained by Applicant in 1980)

6. The Applicant requested waivers from certain submission requirements as follows:

5 names and addresses of all stockholders or partners if the Applicant is a corporation or partnership. A waiver is recommended by the Board's engineer as the Applicant is an individual.

6 names and addresses of witnesses. The Applicant testified that there are no witnesses. A waiver is recommended.

#8 requires copies of applications to and certification of approvals from outside agencies. The Applicant should submit copies of applications/approvals to the Township. The Applicant has submitted the County Application, The Applicant should provide the County response when received. A waiver is recommended for completeness only. **The Applicant agreed to comply.**

12 requires certification and monumentation required by Map Filing Law. The Applicant testified that iron pins have been set. The Board's engineer feels that this is adequate and recommends that a waiver be granted.

19 requires proposed street names and new block and lot numbers approved by the County Tax Assessor. There are no new streets being created and the County Tax Assessor has approved the proposed lot numbers. A waiver is recommended.

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

#33 requires a statement demonstrating compliance with affordable housing requirements as applicable including section 70-4. The Applicant does not propose any new dwellings. A waiver is recommended.

#36 requires the Applicant to submit copies of protective covenants, easements and restrictions of record, including a current title policy. A waiver is recommended for completeness only. **The Applicant agreed to comply.**

#38 requires that the Applicant provide photographs of the site. Photographs have now been submitted by the Applicant.

#41 requires the Applicant to locate existing wells and septic systems and the distances between them and on adjacent properties where required by the Board. A well is indicated on proposed Lot 1.01, however the septic location is unclear. A waiver is recommended for completeness only, subject to the Applicant agreeing to locate the septic system and drainage fields on the plan. **The Applicant agreed to comply.**

49 requires the location of all existing trees and tree masses. A waiver is recommended since the photographs submitted of the Subject Property show few trees and no tree masses.

#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 Subject Property. The Board's Planner recommended a waiver as the Applicant confirmed that there are no historic structures on the Subject Property, or within 200 feet of the Subject Property.

#57 requires the Applicant to submit a grading plan. As no new structures are proposed, a waiver is recommended. A full grading plan in conformance with Section 96-66M must be provided prior to the issuance of any building permits in the future. **The Applicant agreed to comply.**

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

#59 requires soil borings. A waiver was recommended by the Board's Planner due to the nature of the Application.

#66 requires a letter of sufficient capacity from the MUA. Since the Subject Property is serviced by a septic system, a waiver was recommended by the Board's Planner.

#67 requires Soil boring and percolation data for on-site sewerage disposal. A waiver was recommended by the Board's Planner due to the nature of the Application.

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

WHEREUPON, a motion was made by Board Member Schmidt, which was seconded by Board Member McKeever, to grant the above referenced submission waivers, based on the conditions also set forth above, with the following Board members voting in favor of the motion to grant the waivers: Poisker, Clark, Nicholson, Hughes, McKeever, Shoultz, Afflerbach and Schmidt. There were no votes in the negative and no

abstentions or recusals. Board Members White, Richardson (Alternate # 1) and Swanson (Alternate # 2) were absent. The Board, having granted the requested submission waivers, subject to the representations and agreements made by the Applicant, the Application was deemed to be complete and the hearing on the Application continued.

7. The Applicant's attorney, Mr. Daley, provided a brief overview of the Application, consistent with the above information.

8. Discussion took place by and between the Board and the Applicant regarding the septic system, which was located on proposed Lot 1.01, and the septic field which extended onto Remainder Lot 1. The Board requested more information as to whether or not the septic field would be permitted to remain on Remainder Lot 1, which was in farmland preservation, by either of the applicable State or County entities regulating farmland preservation. In the alternative, the Board requested that the Applicant consider, through its engineer or surveyor, if the septic field could be re-directed or relocated so that the same would be on proposed Lot 1.01 where the septic system is located.

9. The Board's Professional Planner, Stephen M. Bach, PE, RA, PP, CME, reviewed with the Board and the Applicant his letter of April 3, 2019. Mr. Bach pointed out the statutorily required burden upon the Applicant for a grant of the requested C(1) variances. Mr. Bach reviewed the variances requested as were previously set forth above.

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 May 7, 2019. Mr. Bitgood testified as to the need for agricultural buffer areas pursuant to Code Sec. 96-47.1. The Plan of Subdivision needed to be amended to address this issue or a variance needed to be requested in lieu of providing a buffer in conformance with the ordinance. Mr. Bitgood also addressed the issue of the septic field being located on proposed Lot 1 and whether or not this would have a negative impact on the grant of Farmland Preservation status to Lot 1. Mr. Bitgood also raised a concern as to whether or not there would be a drainage problem with water runoff on Lot 1.01 behind the house located on same, to Lot 1. Mr. Bitgood testified that a blanket drainage easement should be granted by Lot 1 to Lot 1.01 by deed. The Applicant should determine whether or not this would impact the Farmland preservation status already granted to Lot 1.

11. The Board discussed the issues of the septic system, septic fields, agriculture buffer, and drainage from Lot 1.01 to Lot 1, with the Applicant. The Board expressed its concern that it could not grant the requested minor subdivision until the plans were revised to address these issues, and/or the County Farmland Preservation office and the appropriate Farmland Assessment authority from the State of New Jersey, provided a written opinion on these issues. The Applicant agreed to work on providing such additional information and amendments to the plan of minor subdivision, and requested that the Application be carried to the July 17, 2019 meeting of the Board in order to give him enough time to do so. The Applicant also consented to waive the tolling of time upon the Board to act on the Application, in order to accommodate the Application being carried to the Board's July 17, 2019 meeting, or until a later meeting is necessary.

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.

13. A motion was made by Board Member Poisker to carry the hearing on the Application to the Board's July 17, 2019 meeting, and any additional time necessary, for the reasons and conditions set forth above, with the consent of the Applicant. The motion was seconded by Board Member Nicholson, with the following Board members voting in the affirmative: Poisker, Clark, Nicholson, McKeever, Shoultz, Hughes, Afflerbach and Schmidt. There were no votes in the negative, and no abstentions or recusals. Board members White, Richardson (Alternate # 1) and Swanson (Alternate # 2) were absent.

14. The Applicant made multiple requests to carry the hearing, which requests were granted by the Board, in order for the Applicant to obtain the necessary approvals.

15. The Board finally reconvened a hearing on the Application on August 19, 2020 at 7:00 PM, time prevailing. The hearing was held virtually due to the Covid -19 Pandemic. Appearing virtually on the behalf of the Applicant was Mr. Johnson E. Hurff, Sr., and his attorney, Herb L. Daley, Esquire, Daley Law Office, 39 East Avenue, Woodstown, N.J. 08098. Mr. Hurff was sworn as to any testimony that he would give on the Application. The Application had been previously deemed to be complete at the first hearing.

16. Attending virtually on behalf of the Board was Candace Kanaplue, P.P., A.I.C.P., Bach Associates (the Board's Professional Planner) and Stan Bitgood, P.E., C.M.E., Federici & Akin, P.A., the Board's Professional Engineer. Both Ms. Kanaplue and Mr. Bitgood were sworn as to any testimony that they would give on the Application.

17. Board members present, and participating virtually, were Poisker, White, Hughes, Shoultz, Schmidt, Afflerbach, McKeever, Nicholson and Richardson (Alternate Member # 1). Absent were Board members Clark and Swanson (Alternate Member # 2).

18. Mr. Daley provided an update on actions taken by Mr. Hurff regarding getting approval from Gloucester County as to the septic system.

19. Ms. Kanaplue reviewed her letter of April 29, 2020. She noted that the following had been received by the Applicant: (1) a Septic Application Approval dated November 18, 2019; (2) a copy of a Septic Application dated November 12, 2019; and (3) a Revised Minor Site Plan prepared by Stephen Datz, PLS, of Datz Engineering and Land Surveying, dated December 5, 2019.

20. Ms. Kanaplue also testified that a frame shed is located within the agricultural buffer. Either the shed would have to be removed or a variance requested as Section 96-47.1.B.(2)(b) of the Township Code sets forth that structures are not permitted in the agricultural buffer area. Mr. Daley, on behalf of the Applicant, stated that the shed has now been removed. In accordance with Section 96-47.1.B.(3), agricultural buffers are

required to be vegetated. The Applicant requested a variance, as he owns the adjoining properties and they are all farmed. In addition, anyone purchasing the property would recognize the adjoining farm uses. Furthermore, the Applicant testified that the drainage easements for the septic fields and approvals were obtained.

21. Mr. Bitgood requested the following from the Applicant: (1) the addition of a corner marker to perfect the subdivision; (2) the Applicant should obtain a letter from the County as to whether or not a drainage easement is required across the rear property (Lot 1) from Lot 1.01; and (3) the deed for Lot 1.01 should reference the required 50 foot buffer on the property. The Applicant agreed to comply.

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

CONCLUSIONS

1. The Board concluded that the Minor Subdivision should be granted given the history of the Subject Property, its agricultural history, and the steps that the Applicant has taken to obtain septic approval, and meet all other county requirements.

2. The Board further concluded that a variance from the minimum lot size for new lot 1.01; a variance from the minimum lot depth for Lot 1; and a variance from having to vegetate the agricultural buffer; should all be granted given the shape, size and topography of the lots, the rural character of the area, and the existing uses on and around the Subject Property.

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, as applicable.

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

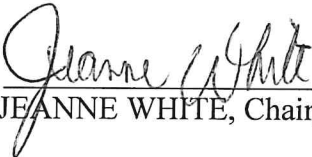
8. The Applicant agrees to take such actions as agreed to, consistent with the Board Professional's Review Letters, as set forth under Findings of Fact above.

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 Schmidt to grant the Minor Subdivision and Variances to the Applicant, based on the representations made by the Applicant and the agreements entered into by and between the Applicant and the Board, as are more fully set forth under Findings of Fact above, at a meeting following a public hearing on the Application on August 19, 2020 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Poisker, Hughes, Shoultz, White, Schmidt, Afflerbach, McKeever, Nicholson, and Richardson (Alternate # 1). There were no votes in the negative and no abstentions or recusals. The following Board Members were absent: Clark and Swanson (Alternate Member # 2).

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 September 16, 2020 as a memorialization of the approval granted in the above referenced matter by the Board at its regularly scheduled meeting held on August 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 16th day of September 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 August 19, 2020 on the above cited Application.


ANNA FOLEY, Secretary