

Resolution No.: 2021-09

**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 STUREK, 505 EMPIRE WAY EAST, GLASSBORO, N.J. 08028
REGARDING PROPERTY LOCATED AT 505 EMPIRE WAY EAST, AND
BEING FURTHER SHOWN AS BLOCK 29.08, LOT 7 ON THE TAX MAPS OF
THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-20-09**

WHEREAS, Application No.: ZB-20-09 (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 Sturek, 505 Empire Way East, Glassboro, N.J. 08028 (the “Applicant”) for bulk variances to accommodate the construction of a swimming pool on property located at 505 Empire Way East (the “Subject Property”), and being further shown as Block 29.08, Lot 7 on the Tax Maps of the Township of Elk (the “Township”); and

WHEREAS, the Applicant did appear, by way of Mr. Sturek, at a meeting and public hearing held by the Board on the Application on January 20, 2021 at 7:00 P.M., time prevailing, at which time the hearing, held virtually due to the Covid 19 Pandemic, did appear, also virtually, was Norman K. Rodgers, III, P.E., P.L.S., C.M.E., C.P.W.M., CES Consulting Engineers, 645 Berlin-Cross Keys Road, Suite 1, Sicklerville, N.J. 08081 (the Applicant ‘s Professional Engineer), and Robert J. Casella, Esq., Testa, Heck, Testa & White, P.A., 424 Landis Avenue, Vineland, N.J. 08360-8198 (the Applicant’s Attorney); and

WHEREAS, did Mr. Rodgers provide information regarding his background, education and licensing, after which was it stipulated on the record, without objection, that Mr. Rodgers was an expert in the field of engineering, and was qualified to testify as an expert in said field on behalf of the Applicant for the purpose of the Application, after which were Messrs. Sturek and Rodgers 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 Applicant's request for waivers from certain submission requirements. Accordingly, 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, 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 29.08, Lot 7, 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 8/24/20 and revised 9/16/20, 12/30/20 and 1/18/21;

C. Drainage Calculations for Grading / Variance Plan, handwritten, consisting of two sheets and undated, submitted by Consulting Engineer Services;

D. Letters dated December 30, 2020 and January 18, 2021 from Norman K. Rodgers, III., P.E., P.L.S., C.M.E., C.P.W.M., commenting on review letters received on the Application from the Board's Engineer and Planner;

E. Three colored photos of the front, rear and side of the Subject Property;

4. The Board entered into the record the following:

A. Letter dated December 1, 2020 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. Letters dated January 1, 2021 and January 12, 2021 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 Subject Property is located within the RE Rural Environmental Residential Zone District and the surrounding properties are also in the Rural Environmental Residential Zone District. The Subject Property is located along the southwest side of Empire Way East in the Aura 1 subdivision, at the intersection of Empire Way East and Winesap Way. Single-family homes are adjacent to the Subject Property on the left and right sides. The subdivision was originally approved as an age-restricted community under the then applicable ARC Zone District regulations. The subdivision was converted to market rate units in 2011. The original approving resolution (R:2011-13) stated that, with regard to accessory structures, the proposed development shall comply with ordinances in effect at the time of the construction of the age-restricted structures. The approving resolution also confirmed that the total impervious coverage will decrease to 17.5 percent from the previously approved 34 percent. Accordingly, the zoning requirements as applied to the herein Application are as follows:

<u>Bulk Requirement</u>	<u>Required</u>	<u>Existing / Proposed</u>	<u>V/C/E</u>
Minimum Lot Size	80,000 sf	8,259 sf	E
Minimum Lot Depth	200 ft.	110 ft.	E
Minimum Lot Frontage	135 ft.	75.08 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)	33.8 ft.	E
Maximum building coverage	15 %	23.8 %	E
Min. Lot Width at Bldg. Line	150 Ft.	75 ft.	E
Maximum Impervious coverage	20 %	39.3% /46.7%	V
<u>Swimming Pools (Code 96-81 B):</u>			
Rear yard coverage max.	75 %	49.3%	C
Min. Setback to waterline	25 ft	10 Ft. Rear	V
		10 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)

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

8 requires copies of applications to and certifications from all outside agencies. The Applicant has indicated that this is not required. This waiver is recommended by the Board’s planner.

18 requires a copy of the tax map sheet. A waiver is recommended by the Board’s Engineer.

21 requires a statement as to any application requirements for which a waiver is sought, together with a statement of reasons why waivers should be granted. The Board's Planner recommends a waiver.

53 requires the Applicant to indicate any historic structures located 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 White, which was seconded by Board Member Nicholson, to grant the above referenced submission waivers, with the following Board members voting in favor of the motion: Poisker, Schmidt, Nicholson, Shoultz, McKeever, White, Hughes, Afflerbach, and Clark. Board Members Richardson (Alternate # 1) and Swanson (Alternate # 2) were present but did not vote. There were no votes in the negative, and no abstentions or recusals. There were no Board Members absent. The waiver of certain submission requirements having been granted, the hearing on the Application proceeded.

7. Mr. Casella provided background information on the Application, consistent with the above information.

8. Ms. Kanaplue's letter of December 1, 2020, 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 the 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.

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 10 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 49.4% is proposed. The Board's Planner defers to the Board's Engineer regarding this issue.

9. The Board's Planner noted that the Subject Property has utility and street tree easements. 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 January 12, 2021, 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 Applicant would need variances for maximum impervious lot coverage and property line distance to waterline.

A. The Applicant is requesting approval for 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 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 Applicant should provided testimony to address this and how their lot should be considered unique or exceptional and extraordinary, within the subdivision.

B. The Applicant requests variance relief be granted due to exceptional narrowness and shallowness of the property. The Applicant has provided a revised lot grading plan including:

1. 10.3 foot side yard distance to a proposed above ground Jacuzzi.

2. 13 foot side yard distance from the northwesterly property line to the pool.

3. 10 foot rear yard distance from the pool line to the rear property line.

3. Drainage. As requested, the Applicant's Engineer has revised the grading plan to preserve the side yard swales and to extend a recharge drainage trench around 3 sides of the proposed pool deck.

A. The revised lot grading plan provides a combination stone and pipe trench together with a 4-inch diameter perforated pipe located adjacent to the edge of three sides of concrete pool deck. The stone trench, which extends from the surface to a depth of 26.5 inches, is intended to collect pool-deck stormwater runoff for maximum infiltration.

1. The Applicant's Engineer shall provide testimony on adequacy of the depth of the combination stone and pipe trench being 26.5 inches below surface as opposed to the recommended 30 inches below ground surface to avoid the frost line, and the extent to which the trench will reduce runoff to the adjacent lots. Mr. Rodgers testified that he will work with the Board's engineer so that the design of the stone trench will demonstrate that there is no increase in stormwater runoff.

2. Grading. The revised grading complies with the grading ordinance with the exception that the limit of grading will be less than 5 feet from the rear property line. Testimony should be provided to justify this design waiver. The part of lot 26 which abuts this lot at the rear was planned to be open space and is undeveloped. If approved, the Applicant should understand that no changes in grade along the fence line are permitted and the fence must remain plumb at and after completion of the work. Mr. Rodgers testified that The Elk Township Ordinance 96-66, M. Grading Plan, (4) Grading Plan Checklist (5)f indicates that grading can occur within 5 feet of a property line if necessary to divert drainage off-site to an acceptable drainage facility. Grading disturbance is proposed within 5 feet of the rear property line to direct drainage to an existing storm inlet structure located 9 feet from the rear property line on Lot 26 (designated as open space). Grading will match existing grade at the fence line.

A. Engineering testimony should be provided to confirm that raising the finished ground level against the rear foundation of the house will not reduce termite clearance to top of block and will not compromise the integrity of the basement wall. Mr. Rodgers testified that the proposed grading provides greater than an 8 inch minimum distance for termite clearance between the proposed grade and top of the block. Also, the increase of soil depth and weight to the final grade does not impact the masonry basement wall.

5. Limit of Disturbance. The grading comments at 4 above are applicable.

6. Impervious coverage. The existing lot was designed and constructed to conform to the zoning requirements of the subdivision. The existing impervious coverage exceeds the current maximum permitted in the zoning district. The Applicant proposes to exceed this

further to 49.4%. While any increase will require a variance, the increases should be limited in order to ensure that the capacity of the stormwater management system is not exceeded. As discussed below, impervious coverage should either be limited to 34%, or the design should improve groundwater recharge so that the increase will not generate additional runoff from the lot.

A. The revised lot grading plan includes a longer stone and pipe trench to accommodate for the increase in runoff. Calculations and testimony should be provided demonstrating that the design and the proposed infiltration will prevent increased runoff. Mr. Rodgers testified that drainage calculations have been submitted that indicate that the combination of perforated HDPE pipe and stone trench provides adequate storage volume to demonstrate no increase in stormwater runoff.

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 the Board's Engineer 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 Homeowner's Association (HOA) and will remain so in perpetuity. The improvements, if approved with an increase in runoff may cause erosion to flow into the basins. This could pose problems for the maintenance and operation of the basins. The Engineer should provide calculations demonstrating that there will be no increase. Mr. Rodgers referred to his response in Section 6.A. above.

Recommendations:

All referenced items above should be addressed prior to or as conditions of approval, i.e. prior to issuance of UCC permits.

If approved and the Board requires changes to the grading, or drainage, the Applicant should be required to apply for an Individual Lot Grading Plan approval and should post the full review and inspection fee. If the plans are approved without changes being required, only a grading inspection fee should be required in addition to any unpaid fees and escrow charges.

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 granting relief to 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.

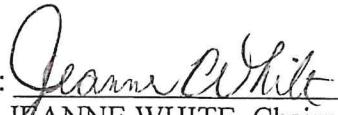
8. The Applicant must submit all requested information for review and approval prior to construction permits being issued. The Applicant must comply with all requirements and conditions as set forth in the Board engineer's review letter referenced above.

WHEREUPON, a motion was made by Board member Hughes, which was seconded by Board member Schmidt, 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: Poisker, Clark, Nicholson, Schmidt, Shoultz, White, Hughes, Afflerbach, McKeever. Board members Richardson (Alternate # 1) and Swanson (Alternate # 2) were present but did not vote. There were no votes in the negative, and no abstentions or recusals. No Board Members were absent.

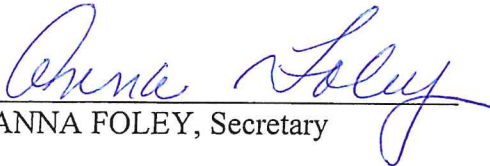
THIS RESOLUTION WAS ADOPTED at a regularly scheduled meeting of the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on February 17, 2021, as a memorialization of the

approval granted in the above referenced matter by the Board at its regular meeting held on January 20, 2020 on the above referenced Application.

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

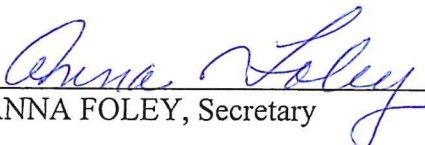
By: 
JEANNE WHITE, Chairperson

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 17th day of February 2021 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 January 20, 2021 on the above cited Application.


ANNA FOLEY, Secretary