

**Resolution No.: 2021-12**

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF  
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,  
STATE OF NEW JERSEY, GRANTING COMPLETENESS APPROVAL OF AN  
APPLICATION FOR A MINOR SUBDIVISION, MAJOR SITE PLAN,  
VARIANCE, AND DESIGN WAIVERS, TO MULLICA HILL DG, LLC,  
REGARDING PROPERTY LOCATED AT 681 BRIDGETON PIKE (NJ RT 77),  
AND BEING FURTHER SHOWN AS BLOCK 10, LOT 12.03 ON THE TAX  
MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: SP-20-08**

**WHEREAS**, Application No.: SP-20-08 (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 Mullica Hill DG, LLC, (“Dollar General”), c/o CGP Acquisitions & Development, LLC, 361 Summit Blvd., Suite 110, Birmingham, AL 35243 (the “Applicant”) for a Minor Subdivision, Major Site Plan, and Design Waivers, so as to construct a Dollar General retail store on property located at 681 Bridgeton Pike (NJ Rt. 77), (the “Subject Property”) and being further shown as Block 10, Lot 12.03, 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, said meeting being held virtually via Zoom due to the Covid-19 pandemic, for purposes of completeness only, on March 17, 2021 at 7:00 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Duncan Prime, Esquire, Prime & Tuvel, Esquire, 14000 Horizon Way, Suite 325, Mt. Laurel, N.J. (the Applicant’s co-counsel);

**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 the Board’s determination of completeness only. Accordingly, the Board had jurisdiction to act on the Application.

2. The Board’s professional planner, Candace Kanapue, P.P., 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. Land Development Application for Minor Subdivision, Major Site Plan, and Design Waivers, Application Fee, Escrow Agreement, Escrow Deposit, Corporate Disclosure Statement, Owner's Consent, W-9, Statement of Operations, Certification of Taxes Paid on the Subject Property, Elk Township Land Development Checklist, Authorization for Contract Purchaser, Corporate Ownership Disclosure Form;

B. Gloucester County Planning Board Site Plan and Subdivision Application, dated 10/19/20;

C. Checklist Justification memorandum prepared by Stonefield Engineering and Design, LLC, 92 Park Avenue, Rutherford, N.J. 07070, dated October 19, 2020;

D. Zoning Relief Memorandum, prepared by Stonefield Engineering and Design, LLC, dated October 19, 2020;

E. Certified Adjoining Property Owners List dated September 14, 2020;

F. Report of Title on the Subject Property;

G. Six Colored photographs of the Subject Property, one from an aerial view and five from a ground view, submitted by Stonefield Engineering & Design, LLC, dated 10/19/2020;

H. Environmental Impact Statement prepared by Stonefield Engineering & Design, LLC, dated Oct. 15, 2020;

I. Stormwater Management Report prepared by Stonefield Engineering and Design, dated October 14, 2020, last revised 2/3/2021;

J. Stormwater Operations and Maintenance Manual, prepared by Stonefield Engineering and Design, LLC, dated October 19, 2020;

K. Traffic and Parking Assessment Report, prepared by Stonefield Engineering and Design, LLC, dated October 19, 2020;

L. Color Elevations prepared by Chadha and Associates, dated September 29, 2020;

M. Survey and Minor Subdivision Plan, prepared by Stonefield Engineering and Design, LLC, dated October 12, 2020;

N. Land Title Survey prepared by Stonefield Engineering and Design, LLC, dated September 24, 2020;

O. 200 Foot features exhibit prepared by Stonefield Engineering and Design, LLC, and dated October 14, 2020;

P. Fifteen sheet set of drawings entitled “Preliminary and Final Major Site Plan”, prepared by Stonefield Engineering and Design, LLC,. dated October 14, 2020;

Q. Three sheet set of Drawings entitled “On-Site Wastewater Treatment and Disposal System”, prepared by Houser Engineering, LLC, dated 11/20/2020;

R. Truck Turning Exhibit prepared by Stonefield Engineering and Design, dated 2/3/21;

S. Gloucester County Fire Marshal’s Review Letter (undated);

T. Gloucester County Soil Conservation District’s Review Letter dated December 8, 2020.

4. The Board entered into the record the following:

A. Most recent letter dated February 11, 2021 from Stan Bitgood, P.E., Federici & Akin, P.A., regarding Mr. Bitgood’s review of the Application.

B. Most recent Letter dated February 23, 2021 from Candace Kanaplue, P.P., Bach Associates, regarding Ms. Kanaplue’s second review of the Application.

C. Memorandum from the Elk Township Environmental Commission to the Board, dated March 16, 2021, regarding their review of the Application;

5. The Subject Property is located within the Township’s Commercial Highway C-2 Zone District. It is located at the northeast side of the intersection of Elk Road and Bridgeton Pike (N.J. Rt. 77). Adjacent to the Subject Property are residences (the Meadowbrook development) to the east, and a farm to the north. Across Bridgeton Pike from the Subject Property, are residences and farmland. Across Elk Road from the Subject Property are a vacant corner lot, a residence and farmland. The Subject Property consists of 4.11 acres of vacant land, with scattered trees and vegetation.

6. The Applicant proposes to subdivide the Subject Property into two (2) lots, and construct a Dollar General retail store on one of the newly created lots (to the north), with no development plans as of yet for the newly created lot to the south (adjacent to Elk Road).

7. Zoning and Use. C-2 Commercial Highway Zone Bulk Standards:

<u>Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed Dollar General Parcel</u>	<u>Proposed Vacant Parcel</u>	<u>Compliance</u>
96-71C(1) Minimum Lot Size	2 acres	4.09 acres	2 acres	2.09 acres	Complies
96-71C(2) Min. Front Yard	150 ft.	350.67 ft.	227 ft.	166 ft.	Complies
96-77C(3) Min. Lot Depth	250 ft.	615.08 ft.	365 ft.	362 ft.	Complies
96-76C(4) Max. Bldg. Coverage	20%	N/A	10.4%	N/A	Complies
96-77D(1)(a) Front Yd. Set-Back (interior lot/corner lot)	50'/100'	N/A	122.7'	N/A*	Complies
96-77D(1)(b) Min. Side Yd – interior lot/corner lot)	30'/100'	N/A	56.0*	N/A*	Complies
96-77D(1)(c) Rear Yd. Set-Back, interior lot/corner lot	50 ‘	N/A	109.2’	N/A*	Complies
96-77D(3)(a) Max Bldg Ht.	35 ‘	N/A	18.5 ft.	N/A*	Complies
96-77F off-street parking buffer from street	10 ft.	N/A	10 ft.	N/A*	Complies
96-47 (Min Buffer to Residential	50 ft.	N/A	50 ft.	N/A*	Complies

96-47.1(2) (A)[1] Ag. Buffer	50 ft	N/A	50 ft.	N/A*	Complies
96-47.1(3) Ag. Buffer Landscaping	Existing veg. or double row evergreens	N/A	None existing or proposed	N/A*	Design Waiver
96-54A off- Street parking	1 space /200 sf GFA (46 ( 46 spaces)	N/A	30 spaces	N/A*	Design Waiver
96-60E(2) façade or wall sign	1/street fron- tage; 10% of facade area or 50 sf	N/A	50.63 sf	N/A*	Design Waiver
96-60E(2) Monument \ or ground sign	16 ft. ht.	N/A	20 ft. ht.	N/A*	Design Waiver

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\* Compliance to be determined when future development proposal submitted

6. The Applicant requested the following waivers from submission requirements:

# 6 Names and addresses of witnesses. The Applicant will comply.

# 12 Certification and monumentation required by Map Filing Law, if required.  
The Board's engineer recommended a waiver for completeness only.

# 19 proposed street names and block and lot numbers. A waiver is recommended by the Board's engineer for completeness only.

#46 Existing or proposed right-of-ways and easements with dimensions. Easements are required for stormwater BMPs. The Board's engineer recommends a waiver for completeness only.

# 53 requires that the Applicant provide information on any structure of historic significance on or within 200 feet of the Subject Property. The Applicant shall provide testimony regarding the historic significance of any structure. The Applicant requests a waiver as there were no historic structures within 500 feet of the Subject Property.

# 60 requires the location, size and direction of flow for all waterways. A waiver is recommended as there are no such waterways .

# 63 Cross sections and center line profiles of all existing or proposed streets or water courses with dimensions at 50 foot intervals. The Board's engineer recommends a waiver.

# 73 requires the Applicant to submit a NJDEP LOI for wetlands. The Applicant's engineer, Mr. Mutch, testified that an application has been submitted to NJDEP; it appears that a marginal area has been identified. The Applicant testified that all NJDEP reports will be provided upon receipt by the Applicant. A temporary waiver for completeness only is recommended.

# 81 requires the Applicant to submit a traffic control and directional signage plan. A waiver is recommended for completeness only.

7. The meeting was opened to the public on issues related to completeness only. The following members of the public were sworn and provided testimony on the Application.

A. Victoria Serreino, 429 Mallard Lane, testified as to a "petition" that had been submitted opposing the Application. The Board's attorney, Dale T. Taylor, Esquire, stated that no "petition" had been submitted to the Board. Mr. Taylor stated that a letter had been sent to the Elk Township Mayor (not the Board) along with a list of hundreds of names and addresses, from the local area and around the United States, which seemed to be opposed to Dollar General stores, in general. Mr. Taylor explained that a formal "petition" has to be in the form of a written request to a governmental body with a specific request. A petition has to be signed by the petitioners. What was submitted did not meet the standards of a petition and, even if it did, it was not admissible since under N.J.S.A. 40:55D-10, an applicant has to the right to cross-examine objectors, and you can't cross-examine a petition, or a personal letter to the Board for that matter. Objectors must appear in person. Mr. Taylor stated that many people who live in states outside of New Jersey, unless they have a rational nexus to the Subject Property, most likely would lack "standing" in any event, thereby prohibiting from them from testifying.

B. Michael Cintron, 421 Mallard Lane, President of the Meadowbrook HOA, testified that a letter sent by the HOA to the Mayor of Elk Township wasn't to indicate what residents liked or did not like about Dollar General, but to give notice to residents in the area of the proposed project and to visit the website to view more details as to the proposed development. Mr. Cintron objected to a continuance without further notice being sent to property owners within 200 feet. Mr. Taylor stated that it was common practice that when notice had already been given, and an application was to be carried to the next monthly meeting, that disclosure of said continuance (with date and time) was properly given, and did not require a re-noticing, just an announcement of the continuance (with date and time) at the present meeting. Mr. Cintron stated that he did

not receive notice of the hearing but that he lives within 250 feet of the proposed Dollar General site. Mr. Taylor stated that the law only required that residents within 200 feet be noticed as to the hearing, and that a municipality cannot compel an applicant to provide notice to anyone living or owning property a greater distance from the site than 200 feet.

C. Ms. Amy Korsakoff, 433 Mallard Lane, objected to a continuance as she wanted the Application to be heard at the present hearing. The Board attorney explained that the Applicant requested additional time to fine-tune their plans prior to a formal hearing. This was a common request and is generally granted for good cause shown, as was done here.

D. Mr. Joseph Paul, 409 Mallard Lane, testified that he was against the entire project.

8. There being no further members of the public wishing to testify, the public portion was closed.

**WHEREUPON**, a motion was made by Board Member Nicholson, which was seconded by Board Member Afflerbach, to grant the above referenced submission waivers, based on the representations and agreements made by the Applicant as are set forth above, with the following Board members voting in favor of the motion to approve: Clark, Nicholson, Hughes, Shoultz, White, McKeever, Poisker, Afflerbach and Richardson (Alternate Member #1). Board member Swanson (Alternate Member # 2) participated in the Completeness Hearing but did not vote. There were no votes in the negative, and no abstentions or recusals. Board Member Schmidt was absent. The Board, having granted the above referenced submission waivers, some on a conditional basis, the hearing on the Application was continued to the April 21, 2021 meeting of the Board, at 7:00 PM, time prevailing.

#### **CONDITIONS (Upon final adjudication of the Application)**

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 of 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, if said list had been provided to the Applicant by the Township pursuant to N.J.S.A. 40:55D-12.c., and/or 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 or other covenants and/or 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.

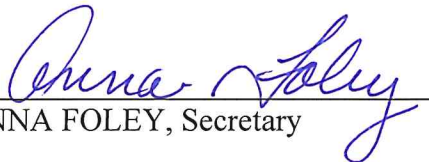
8. The completeness approval granted herein is subject to the Applicant making amendments to the plans as may have been requested by the Board's professionals, as well as submitting such additional information as requested by the Board's professionals, and compliance with all representations, agreements and consents by the Applicant's professionals, the same being set forth under Findings of Fact above.



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

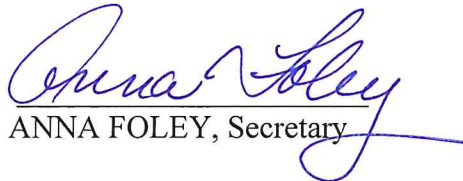
By:   
JEANNE WHITE, Chairperson

**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 21st day of April 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 March 17, 2021 on the above cited Application.

  
ANNA FOLEY, Secretary