Resolution No.: 2021-13

RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF

ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,

# STATE OF NEW JERSEY, GRANTING A BULK VARIANCE FROM THE REAR YARD SETBACK REQUIREMENTS FOR AN ACCESSORY

STRUCTURE, TO EDWARD AND PATRICIA GREEN (H/W), REGARDING PROPERTY LOCATED AT 1271 ELK ROAD AND BEING FURTHER SHOWN AS BLOCK 217, LOT 1.02 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,

# APPLICATION NO.: ZB-20-10

WHEREAS, Application No.: ZB-20-10 (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 Edward and Patricia Green (H/W), (together, the "Applicant"), of residence at 1271 Elk Road, for a bulk variance from the rear yard setback requirements for an accessory structure (a garage), regarding property located at 1271 Elk Road (the "Subject Property") and being further shown as Block 217 Lot 1.02 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 April 21, 2021 at 7:00 P.M., time prevailing, said meeting being held virtually via Zoom due to the Covid-19 pandemic, at which time were the following present: Applicants Edward and Patricia Green (H/W), and Roger Matson, Esquire, 26 Newton Avenue, Woodbury, N.J. 08096 (the Applicant's attorney); and

WHERERAS, were Mr. And Mrs. Green 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, due to the Applicant's additional submission of photographs of the Subject Property. 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,

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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.

1. The Board entered into the record the following:
   1. Application, Application fee, Escrow Agreement, Escrow deposit, Certification of Taxes Paid on the Subject Property, Affidavit of Ownership, 200 foot property owners list, Land Development Checklist, Notice of Hearing, Affidavit of Service, and Affidavit of Publication.
   2. Review letter on the Application dated March 22, 2021 received from the Board's Planner, Candace Kanaplue, P.P., Bach Associates.
   3. Review letter on the Application dated March 5, 2021 received from Stan Bitgood, P.E., Federici & Akin, the Board's Engineer.
   4. Plan entitled "Individual Lot Grading Plan for the Green Residence": Township of Elk, Gloucester County, New Jersey" prepared by GS Engineering, P.O. Box 124, Swedesboro, N.J. 08085.
   5. An aerial photograph of the Subject Property, and a land-based photograph of the Subject Property fronting on Elk Road; (both undated).
2. The Subject Property is located within the MD Moderate Density Residential Zone District. The Applicant proposes to construct a 900 sq. foot detached garage, which is a permitted accessory structure. The Applicant seeks a bulk variance to permit the proposed garage to be 12.27 feet from the rear property line, where the rear yard setback requirement in the MD Zone District is 35 feet.
3. The Subject Property is located along the north east side of Elk Road (a/k/a County Route 538), approximately 950 feet southeast of the intersection of Elk Road and

Cedar Bridge Road. Adjacent to the Subject Property on both sides and in the rear is Lot 1, which is qualified farmland. Several farm buildings exist within 200 feet of the north rear lot corner.

1. The applicable zone standards in the MD Residential Zone District, as applied to the Applicant's Application, are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Section  Min. | Required | Existing/Proposed | Compliance |
| Lot Size  Min. | 25,000 sq. ft. | 44,783 sq. ft. | Complies |
| Lot Frontage | 75 ft. | 248.45 ft. | Complies |

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|  |  |  |  |
| --- | --- | --- | --- |
| Max Bldg. Ht.  96.68D(11) Max. Bldg. | ft | < 35 ft | Complies |
| Coverage |  | 4.70/0 | Complies |

## Section Required Existing/Proposed Compliance



|  |  |  |  |
| --- | --- | --- | --- |
| Min. Width at |  |  |  |
| Bldg. Line | 85 ft. | 248.45 ft. | Complies |



|  |  |  |  |
| --- | --- | --- | --- |
| Front Yard |  |  |  |
| Setback  96-68D(4)  Rear Yard | Min. 30 ft. | 109.83 ft. | Complies |
| Setback  96-68D.(5)  Min Side | 35 ft. | 42.55 ft | Complies |
| Yard (one)  96-68D.(5)  Min Side Yard | 10 ft | 83.56 ft. | Complies |
| (both)  96-68D(7) | 25 ft | 208.7 ft. | Complies |
| Min. Lot Depth | 100 ft | 180.25 ft | Complies |



|  |  |  |  |
| --- | --- | --- | --- |
| Max Impervious |  |  |  |
| for lots standard  96-80.A(6)  Accessory  Structures, Rear |  | 13.5% | Complies |
| Yard Setback  96-80: Accessory Structures: | 35 ft. | 12.27 ft. | Variance |
| Max. Structure Size | 900 sq. ft | 900 sq. ft. | Complies |
| Max. Structure Ht. | 25 ft. | 12.4 ft.\* | Complies |

Note:

\* Ceiling Height, per Applicant

1. Mr. Mattson provided a overview of the Application, consistent with the information set forth above.
2. Mr. Mattson represented that a rear yard setback variance was requested by the Applicant for a proposed garage, due to the fact that, to comply with the 35 foot rear yard setback for an accessory structure, it would make it impossible for a vehicle backing out of the garage to make the appropriate turnaround on the driveway, so that the front of the vehicle could properly exit the Subject Property on to Elk Road. Otherwise, without the relief requested, a vehicle existing the Subject Property would have to "back out" on to Elk Road, which would create a significant safety issue given the speed of vehicles travelling on Elk Road,
3. The Board's Professional Planner, Candace Kanaplue, P.P., reviewed with the Board her letter of March 22, 2021 regarding the Application. Ms. Kanaplue reviewed the nature of the variance requested, existing conditions, and the burden upon the

Applicant to provide sufficient proofs as to why the requested variance should be granted.

1. 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 March 5, 2021. Mr. Bitgood reviewed the zoning standards, and information about the proposed garage, which have been addressed by the Applicant. Mr. Bitgood testified that he agreed with the Applicant that there is insufficient distance between the driveway and the rear property line for the proposed garage to be located outside the required 35 foot rear yard setback, without there being significant disruption and interference with the existing driveway turn-around area.
2. Mr. Bitgood testified that the provided plan of survey does not show any spot shots or existing contours between the rear lot line and the proposed garage. The plan does suggest that existing water runoff can flow from Lot 1 into the Applicant's Lot 1.02, at or near the proposed garage. Accordingly, Mr. Bitgood required that the Applicant revise the grading plan to make it clear how the runoff can continue to flow into and through Lot 1.02, without being redirected into the adjacent lot. The Applicant agreed to comply.
3. Mr. Bitgood testified that roof runoff shall be discharged not less than 25 feet from any property line and shall be prevented from flowing off of the Applicant's lot into adjacent Lot 1. The Applicant agreed to amend the plan to address this issue.
4. Mr. Bitgood requested testimony from the Applicant to confirm that the intended use will result in no intrusive impact to adjacent properties, including uses of the proposed garage, noise levels, dust, odors and lighting. The Applicant confirmed that no

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such negative impacts would occur, and that no new (additional) driveways would be constructed. The Applicant also testified that all proposed exterior lighting will be shielded so that the lens cannot be seen from any adjacent property or from any public street. Lighting will be shown on either the Lot Grading Plan or the architectural plans to be submitted when construction permits are requested. In addition, in response to Mr. Bitgood's request, an architectural floor plan and elevations for the garage shall be submitted, along with notes as to the materials to be used, as a condition of approval. The Applicant agreed to comply.

1. 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 bulk variance from the rear yard setback requirements for a garage (accessory structure) should be granted on the basis that all other bulk requirements will be met, and the variance should be granted under both a "hardship" standard and a "substantial benefit" standard, based on the testimony and finding of facts as are set forth above, due largely to pre-existing conditions. The Board concluded that the positive criteria has been met due to the nature of the proposed structure and the need for the associated variance, and that the bulk relief requested will not create a substantial detriment to the Zone Plan, the Master Plan, or the immediate area.

# 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 ofjustice.
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 shall amend the plans, if required, and submit such additional information as is requested under Findings of Fact above. The Applicant must also submit requests for all permits and other governmental requirements prior to construction and inspection of the proposed dwelling.

WHEREAS, a motion was made by Board member Clark, which was seconded by Board member Schmidt, to grant the above bulk variance to the Applicant, at a meeting following a public hearing held on the Application on April 21, 2021 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approval: Clark, Hughes, Shoultz, White, Nicholson, McKeever, Afflerbach, Schmidt, and Richardson (Alternate Member #1). Board Member Swanson (Alternate Member # 2) participated in the hearing but did not vote. There were no votes in the negative and no abstentions or recusals. The following Board Member was absent: Poisker. After the vote, Board member Hughes indicated that he had certain relationships with Mr. Mattson, and felt that it was best if he withdrew his vote out of an abundance of caution so as not to have an appearance of any conflicts. The Board concurred and Mr. Hugh's vote was struck from the record.

THIS RESOLUTION WAS ADOPTED at a regularly scheduled meeting ofthe

Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on May 19, 2021, 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 April 21, 2021 on the above referenced Application.

COMBINED PLANNING/ZONING

BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK

By: ATTEST:

By



Ann

Marie

eitzel,

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 19th day of May 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 April 21, 2021 on the above cited Application.



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