

**Resolution No.: 2022 - 07**

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING TO KIRSTEN ORAVEC, 61 BLACK ROAD, PILESGROVE, N.J. 08098, A MINOR SUBDIVISION WITH BULK VARIANCES REGARDING PROPERTY LOCATED AT 36 VALLEY ROAD, AND BEING FURTHER SHOWN AS BLOCK 23, LOT 37 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: SD-21-04**

**WHEREAS**, Application No.: SD-21-04 (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 Kirsten Oravec, 61 Black Road, Pilesgrove, N.J. 08098 (the “Applicant”) for a Minor Subdivision with Bulk Variances regarding property located at 36 Valley Road (the “Subject Property”) and being further shown as Block 23, Lot 37 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 December 15, 2021 at 7:00 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Kirsten Oravec, (the “Applicant”); and Marla D. Gaglione, Esq., Holston, MacDonald, Uzdavinis & Myles, 66 Euclid Street, Woodbury, N.J. 08096 (the Applicant’s Attorney), at which time was Ms. Oravec 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, 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 submitted and the Board entered into the record the following:

A. Application, Application Fee, Escrow Agreement, Escrow Deposit, Notice of Hearing, 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. Proposed Minor Subdivision Plan for 36 Valley Road, Block 23, Lot 37, dated August 11, 2021 and last revised, 10/11/21, signed and sealed by Bruce A. Ewing, P.L.S., Ewing Associates, 900B N. Delsea Drive, P.O. Box 145, Clayton, N.J. 08312.

D. Copy of letter dated October 28, 2021, signed by Leticia Winter, President of the Lake Gilman Owners Association, Inc., (LGO), acknowledging that the LGO owns Block 23, Lot 75, which is selling a portion of same to be merged with the Applicant's Lot 37 so that the Applicant can replace her septic system.

E. Twelve (12) color photographs showing various views of the Subject Property.

F. Letter dated December 7, 2021 from Steven M. Bach, PE, RA, PP, CME, and Candace Kanaplue, P.P., A.I.C.P., Bach Associates, PC, the Board's professional planners, to the Board regarding their review of the Application.

G. Letter dated December 13, 2021, Review # 2, 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.

4. The Application and supporting documents submitted by the Applicant is for a minor subdivision to increase the size of Lot 37, which is residential lot on Valley Road in the Lake Gilman neighborhood, by subdividing off a piece of adjacent Lot 75 and merging it with Lot 37. Currently Lot 37 consists of 12,223 square feet and contains a single-family dwelling, wood deck, carport, well house, and frame shed. Adjacent Lot 75 is owned by Lake Gilman Owners, Inc, which is currently depicted as vacant except for an access drive as a twenty (20) feet easement.

5. The Applicant proposes to subdivide 2,651 square feet off of Lot 75, and add the 2,651 square feet to Lot 37 in order to increase the Lot 37 area to 15,993 square feet, to provide sufficient space for the installation of a new septic system on the residential lot. According to the Application, the proposed lot line adjustment will permit the applicant to upgrade the septic disposal system, which is currently failing.

6. The properties are located within the LGO Lake Gilman Overlay zoning district. The property is surrounded to the north, east, south, and west by properties also

in the LGO Lake Gilman Overlay zoning district. Properties to the north and south contain similarly developed residential dwellings, Lake Gilman is located to the west and property to the east is common area owned by Lake Gilman Owners, Inc. Lot 37 is currently traversed in a north-south direction by the private road, Valley Road, which provides access to the homes along the east side of Lake Gilman.

7. The additional lot area proposed to be added will be east of the existing residential improvements on Lot 37 and east of Valley Road. The Application requires variances from the requirements of the LGO zoning district for accessory and principal side yard setbacks. All of the variances are for existing conditions, since the only improvements proposed are an increase in the lot size and a new septic disposal system.

8. Ms. Gaglione provided a brief overview of the Application, consistent with the above referenced information.

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

#8 requires copies of applications to and certification of approvals from outside agencies. The applicant should submit copies of any approvals to the Township. A waiver is recommended for completeness only.

#33 requires 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 copies of any protective covenants, easements and restrictions of record, including the current title policy. A waiver is not recommended. The Applicant agreed to provide such documents as a condition of approval.

#40 requires the location and dimensions of new structures. The general location of the septic field should be provided. A waiver is recommended for completeness only. The Applicant agreed to comply as a condition of approval.

#49 Requires a the location of existing trees and tree masses. A waiver is recommended.

#50 Requires a tree protection plan. A waiver is recommended.

#53 Requires any structures of historic significance within 200 feet of the tract. A waiver is recommended.

#57 Requires the applicant to provide a grading plan. A waiver is recommended.

#58 Requires the applicant to provide a soil erosion and sediment control plan. A waiver is recommended.

#59 Requires the applicant to provide a location of soil borings. A waiver is recommended for completeness only.

· #67 requires results and locations of all percolation tests and borings if septic is required. A waiver is recommended as this is within the County’s jurisdiction.

· #73 requires an LOI from NJDEP verifying the existence of wetlands boundaries or transition areas on the subject property. A waiver is recommended for completeness only. The Applicant noted that the Applicant’s engineer has submitted a letter.

· #75 requires the applicant to submit a Utility plan. A waiver is recommended for completeness only.

**WHEREUPON**, a motion was made by Board Member Afflerbach, which was seconded by Board Member Clark, to grant the above referenced submission waivers, subject to the representations and testimony given by the Applicant as is set forth above, with the following Board members voting in favor of the motion to grant the waivers: Clark, Nicholson, Hughes, Shoultz, White, Afflerbach, Schmidt, Richardson (Alternate Member #1), and Swanson (Alternate Member # 2). There were no votes in the negative and no abstentions or recusals. Board Members McKeever and Poisker 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.

10. The Subject Property is within the LGO (Lake Gilman Overlay) Zone District, which permits single-family residential dwellings and accessory uses that are customarily incidental and subordinate to the primary use on the site. The existing residential dwelling on the Subject Property is a permitted principal use. The following bulk standards are applicable to the Subject Property:

<b>Section</b>	<b>Required</b>	<b>Proposed Lot 75</b>	<b>Proposed Lot 37</b>	<b>Compliance</b>
96-71.1D(1) Max. Lot Size	15,000 sq. ft.	> 15,000 sq ft	15,993 sq ft	<b>Complies</b>
96-71.1D(2) Min. Lake Frontage (if lake)	60 feet	N/A	100 feet	<b>Complies</b>
96-71.1D(3) Min. Frontage on Private Rd.	50 feet	Unknown	52.12 feet	<b>Complies</b>

96-71.1D.(4) Min. Lot Width	50 feet	Unknown	54.3 feet	<b>Complies</b>
96-71.1D.(5) Minimum Lot Depth	150 feet	Unknown	275 feet	<b>Complies</b>
96-71.1D.(6) Min. Prin. Bldg. Setback from Lake	30 feet	Unknown	30 feet	<b>Complies</b>
96-71D.(9)(a) Minimum Lot Frontage	135 feet	>135 feet	204.41 feet	<b>Complies</b>
96-71.1D.(7) Min. Prin. Bldg. setback fm. Rd.	30 feet	Unknown	86 feet	<b>Complies</b>
96-71.1D(8) Min. Side Yard	10 ft. each side	Unknown	8 feet	<b>Variance – Pre- existing Condition</b>

96-71.1D(9) Min. Accessory Structure setback from lake	30 feet	Unknown	N/A	<b>Complies</b>
96-71.1D(10) Min. Accessory structure set- back from private yard	10 feet	Unknown	N/A	<b>Complies</b>
96-71.1D(11) Min. Accessory Structure set- back from side yards	Shed: 3 feet Carport / Garage: 5 feet	Unknown	Shed: 2.5 ft. Carport/Garage 3.3 ft	<b>Variance: Pre- existing Condition</b>
96-71.1D(12) Max Bldg. Coverage	30%	Unknown	< 6.7%	<b>Complies</b>
97-71.1D(13) Max Impervious	40%	Unknown	<20%	<b>Complies</b>
96.71.1D(14) Min driveway/pavement setback from side yard	5 feet	Unknown	0 feet – bridge/walkway	<b>Variance: Pre- existing Condition</b>
96-71.1D(15) Min total aggregate open space	40 acres	Unknown	N/A	<b>40 acres is available but not associated with Applicant's lot</b>

11. **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 Subject Property or the exceptional topographic conditions uniquely affecting the property, or the structures lawfully existing upon the Subject Property. For a C(2) variance the Applicant must show that the proposed variance advances the purposes of 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.

12. Ms. Gaglione, on behalf of the Applicant, stated that the variances are necessary due to pre-existing conditions that already exist and cannot be cured. Thus, C(1) variances are requested since a hardship exists given the nature of the land, size, location and topography.

13. The Board’s Professional Planner, Candace Kanaplue, P.P., reviewed with the Board her letter of December 7, 2021 regarding the Application.

A. The Applicant should correct the bulk standard table to provide all bulk standards for both proposed Lots 37 and Lot 75. The Applicant indicated that this would be a hardship to survey Lot 75, which is owned by Lake Gilman Owners, Inc., and the Board’s Planner had no objection to granting this request to not survey Lot 75 since it is vacant land.

B. Common property. The Applicant shall confirm by testimony that Lot 75 is vacant except for the paved drive. The Applicant should also indicate the current use of Lot 75 and add the details to the bulk standards above. In addition, the Applicant should indicate whether there are any restrictions that would need to be modified to permit the subdivision and septic system installation. The Applicant confirmed that Lot 75 is vacant and there are no restrictions that would need to be modified to permit the subdivision and the septic system installation, subject to the County’s review and approval.

14. 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 July 28, 2016 as follows:

A. Bulk Requirements: The site is in the Lake Gilman Overlay (LGO) zone. The table of zoning requirements correctly indicates the bulk requirements. Variances are requested for pre-existing non-conforming conditions.

B. Lot 37 currently has a nonconforming area. Subsequent to the lot line adjustment it will conform to the minimum 15,000 S.F. area. Lot 75 will still conform to the area requirement.

C. Lot 37 currently has a minimum principle side yard setback of 8 ft where 10 ft is required. The Board's engineer had no objection to granting the requested variance for the non-conforming side yard setback, as it is pre-existing.

D. The existing shed and carport have nonconforming accessory structure side yard setbacks of 2.5 ft and 3.3 ft respectively where 3 ft and 5 ft minimum distances are required. The Board's engineer had no objection to granting the requested variance for nonconforming side yard setbacks for accessory structures.

E. The existing walkway bridge is less than 3 feet from the lot-line border with lot 75. The Board's engineer had no objection to granting a variance for the location of this accessory structure as well.

F. Plat/Plan Requirements: The plan of minor subdivision shows the existing lot lines and the proposed new lot boundary and existing structures within the lot. The Applicant plans to file by deed, and has provided acceptable drafts of the two deed descriptions.

G. Regardless of how the subdivision is recorded at the County Clerk's office, monuments are required where property lines intersect rights of way. These shall be shown and shall either be guaranteed or installed prior to signatures on the deeds by the Chairman and Secretary. The Applicant agreed to comply.

H. Addresses and Lot numbers: The Applicant shall provide confirmation that the required 911 address number is properly posted and visible from the right of way. The Applicant confirmed the same.

I. Parking: The Application will not change existing parking capacity or locations.

J. Curbs & Sidewalks: The Application does not include curbs or sidewalks, nor are any required.

K. Utilities: Sanitary Sewer and water mains do not exist within 200 feet of the site. All dwellings are served by private wells and sewage disposal systems. Note that N.J.A.C. 7:9 requires separation distances between sewage disposal fields and various improvements and features. A condition of the County approval of the septic design is that the lot be deed restricted, with language acceptable to the County. A copy of the draft document, prior to signatures by the Board Chair and Secretary. A copy of the recorded deed restriction shall be provided within 30 days after signatures, as a condition of approval. The Applicant agreed to comply.



L. Lot grading: No grading is shown on the plan of subdivision. A grading plan need not be required, unless grading is to be changed from what is shown on the approved county septic plans. The Applicant agreed to comply.

M. Stormwater Management: No significant changes in runoff are anticipated. The disturbances will remain below the thresholds for major projects. Accordingly, stormwater management calculations are not required.

N. Fences: No new fences or modifications are proposed.

O. Street Paving: The existing private driveways should be maintained and cleared regularly to ensure safe access for emergency and fire apparatus.

15. The hearing on the Application was open 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 recognized that the minor subdivision of a portion of lot 75, to be merged with adjacent lot 37, was appropriate in order to accommodate the construction of a new septic system which is necessary in order for the residence on Lot 37 to be habitable. A grant of the requested variances is also appropriate given that the bulk standards cannot be followed given pre-existing conditions that cannot be cured. Thus, a hardship exists with the Applicant's property, and that portion of Lot 75 that is to be merged with the Applicant's Lot 37, is both appropriate and necessary.

### **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 agrees to amend the plan of subdivision 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 Swanson, and was seconded by Board Member Afflerbach, to grant the Applicant's Minor Subdivision and Variances,

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 above under Findings of Fact above, at a public meeting and hearing held on the Application on December 15, 2021 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Clark, Nicholson, Afflerbach, Hghes, Shoultz, White, Schmidt, Richardson (Alternate # 1) and Swanson (Alternate # 2). There were no votes in the negative and no abstentions or recusals. Board Members McKeever and Poisker 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 January 19, 2022 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on December 15, 2021 on the above referenced Application.

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

By:   
JEANNE WHITE, Chairperson

**ATTEST:**

By   
ANN MARIE WEITZEL, 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 19<sup>th</sup> day of January 2022 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 December 15, 2021 on the above cited Application.

  
ANN MARIE WEITZEL, Secretary