

Resolution No.: 2022 - 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 ANDREW MELNYCHUCK, III, REGARDING PROPERTY
LOCATED AT 743 CLEMS RUN ROAD, AND BEING FURTHER SHOWN AS
BLOCK 27, LOT 4 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: SD-22-02**

WHEREAS, Application No.: SD-22-02 (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 Andrew Melnychuck, 246 Genesee Road, Clarksboro, N.J. 08020 (the “Applicant”) for a Minor Subdivision with Bulk Variances regarding property located at 743 Clems Run Road (the “Subject Property”) and being further shown as Block 27, Lot 4 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 June 15, 2022 at 7:00 P.M., time prevailing, at which time was the Applicant present and sworn, and was represented Michael A. Aimino, Esquire, Aimino & Dennen, LLC, 40 Newton Avenue, Woodbury, N.J. 08096

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. Minor Subdivision Plan dated 05/06/22 by Daniel V. Pizzelli, P.L.S., Pizzelli Surveying, LLC, 851 East Washington Avenue, Williamstown, N.J. 08094, signed and sealed by Daniel V. Pizzelli, P.L.S.

D. Exhibit A-1: a photo from Clems Run showing the subdivision area and adjacent hedgerow;

E. Exhibit A-2: a photo of the Subject Property to the left of the subdivision area;

F. Exhibit A-3: a photo of the Subject Property to the right of the subdivision area;

G. Exhibit A-4: Clems Run view in front of subdivision property;

H. Exhibit A-5: Photo of subdivision area;

I. Exhibit A-6: Farmland Preservation Deed regarding the Subject Property;

J. Exhibit A-7: Deed for purchase by Applicants;

K. Exhibit A-8: Zoning Permit Application and submitted sketch;

L. Exhibit A-9: Issued Certificate of Occupancy;

M. Exhibit A-10: Septic Application to Gloucester County Board of Health;

N. Exhibit A-11: E-Mail from Gloucester County Tax Assessor and letter from Gloucester County 911 Coordinator, with new Block and Lot number and new address for new lot to be known as Block 27, Lot 4.01;

O. Exhibit A-12: Farmland Preservation Survey;

P. Copy of Letter to abutting property owners dated April 27, 2022;

Q. Letter dated June 8, 2022, 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;

R. Letter dated June 7, 2022 from Stan M. Bitgood, P.E., C.M.E., Bryson & Yates, the Board's professional Engineer, regarding his review of the Application to the Board;

S. Narrative as to the Application, prepared by Applicant's Attorney;

T. Letter submitted to the Board from the client's attorney, Mr. Aimino, dated June 13, 2022, in response to the Board's professional review letters.

4. The Subject Property consists of approximately 45 +/- acres. The Subject Property is located within the RE Rural Environmental Residential (RE) zone district and is surrounded in all directions (in Elk Township) by properties also in the Rural Environmental Residential zoning district.

5. The Applicant proposes a minor subdivision to create a one (1) acre residential lot exception from a 45 +/- acre preserved farm. The preserved farm contains a single-family dwelling with attached garage. In addition to proposing a residential dwelling on the 1 acre lot, the Applicant also proposes a pole bar/detached garage on the same 1 acre lot. Another family member is to reside in the already existing residential dwelling on what will be the remaining 44 +/- acres.

6. Two acre sized lots are required in the RE Zone District. The Subject Property is surrounded to the west, east and south by other properties in the RE Zone District. The Applicant requests variances from the 2-acre minimum lot size, as well as the requirement for agricultural buffers.

7. Mr. Aimino provided an overview of the Application. In 2002, the Subject Property was placed into farmland preservation in 2004, with the exception of a one-acre parcel (the subject of the Application). The Applicant purchased the Subject Property in November of 2021. Prior to the purchase, the Applicant applied for – and received – a zoning permit for the purpose of building a house on the one-acre excepted parcel. Said permit was issued. It was later discovered that prior to the Applicant's purchase of the Subject Property, the minimum lot size in the RE Zone district was changed to 2 acres, which the Applicant was not aware of.

8. Mr. Aimino pointed out that the 2-acre minimum lot size, with required agricultural buffers, has made the existing one-acre excepted lot non-conforming, with an impossibility of performance as to achieving the two acre lot size and buffers, being upon the Applicant. Therefore, through no fault of the Applicant, the Applicant now requests variances from the 2-acre minimum lot size requirement, and the requirement for agricultural buffers, due to a hardship, since they cannot be complied with due to the lawfully pre-existing excepted 1-acre lot size, where now 2 acres are required.

9. As stated above, the Subject Property is within the RE Rural Environmental Zone District, which permits agricultural uses, single-family dwellings, public parks and playgrounds, and accessory uses that are customarily incidental and subordinate to the

primary use on site. The existing agricultural and residential uses on the site are permitted. Variances are requested for the proposed minor subdivision. The zoning standards are provided below.

<u>Section</u>	<u>Required</u>	<u>Proposed Lot 4.01</u>	<u>Proposed Lot 4</u>	<u>Compliance</u>
96-71D(2)(a) Min. Lot size	80,000 sf	1 Acre	44 Acres +/-	Variance Req. Lot 4.01
96-71D(3) Min. Front Yard Setback	50 feet	100 feet	Unknown	Complies
96-71D(4) Min. Rear Yard Setback	40 feet	40 feet	Unknown	Complies
96-71D.(5) Minimum Side Yard	20 feet/50 feet aggregate	30 feet/00 feet	Unknown	Complies
96-71D.(6)(a) Min. Width at Bldg. line	150 feet	Unknown	Unknown	Complies
96-71D(7) Minimum Lot depth	200 feet	200 feet	Unknown	Complies
96-71D.(9)(a) Min. Lot Frontage	135 feet	238 feet	Unknown	Complies
96-71.D(10) Max. Height	35 feet	20 feet	N/A	Complies
96-71D.(11)(a) Max. Bldg. Coverage	15%	6.1%	N/A	Complies
96-71D(12)(a) Max. Impervious Coverage	20%	13.2%	N/A	Complies

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

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

#36 requires the Applicant to submit copies of protective covenants, easements and restrictions of record, if any, including a current title policy. The Applicant agreed to comply.

#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 tract. A waiver is not required, as there is no historic structure within two hundred feet.

#55 contours at 20 foot intervals are required. A waiver is recommended as no new construction is proposed.

#57 requires the Applicant to submit a grading plan. No structures are proposed at this time. A waiver is recommended. However, a grading plan shall be provided at the time that construction permits are applied for. 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 for Completeness only.

#59 requires soil borings. A waiver was recommended by the Board's Engineer for completeness only.

#66 requires a letter of sufficient capacity from the MUA. 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 for completeness only, but all existing and proposed utilities must be shown on an individual lot grading plan. The Applicant agreed to comply.

WHEREUPON, a motion was made by Board Member Nicholson, which was seconded by Board Member Clark, 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: Lucas, Clark, McKeever, Nicholson, Shoultz, White, and Richardson (Alternate Member #1). There were no votes in the negative and no abstentions or recusals. Board Members Afflerbach, Hughes, Schmidt, 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.

10. The Applicant provided testimony consistent with the representations made by Mr. Aimino, as are set forth above.

11. The Board's Professional Planner, Stephen M. Bach, PE, RA, PP, CME, reviewed with the Board his letter of June 8, 2022. Mr. Bach pointed out that for a C(1) variance, the Applicant must demonstrate that the strict application of the zoning regulations would create a hardship or result in exceptional practical difficulties by reason of the exceptional shape of the property or exceptional topographic conditions. For a C(2) variance, the Applicant must demonstrate that the proposed variances advance the purpose of zoning and that the benefits would substantially outweigh any detriments. The Board noted that the Applicant was applying for C(1) variances.

12. The Board's Professional Engineer, Stan M. Bitgood, P.E., C.M.E., Bryson & Yates, reviewed with the Applicant and the Board, his letter of June 7, 2022, as follows:

Technical Review

1. Application: The application indicates a total tract area of 40.04 acres and an entire tract area of 45.04 acres, whereas the tax map and the farmland preservation survey indicates 44.04 acres. The plan and legal descriptions and deeds shall be revised to indicate the proposed and remainder lot areas as determined by the Surveyor. The Applicant agreed to comply.

2. Bulk Requirements: The site is in the Rural Environmental Residential District. The plan shall be revised to include a table of zoning requirements.

A. Agricultural buffers shall be shown outside the required yards. Where the proposed agricultural buffer is less than required, the plan shall indicate that a variance is requested for said non-conformance. The Board concluded that no agricultural buffers are required due to the size of the lot.

B. Front, side, and rear yards shall be shown inside the lot extending inward from the limits of the agricultural buffers. Where a proposed building setback from the proposed interior limit of the agricultural buffer is less than the required yard distance, the bulk requirements table shall indicate that a variance is requested for said non-conformance.

C. The lot to be created will be surrounded by lots that are qualified farmland on all sides. Agricultural Buffers shall be added to the sides and rear of the lot. The Board's engineer did not recommend approval of the subdivision without some significant agricultural buffer area being shown and restricted. The Board concluded that no agricultural buffers were required given the size of the lot, the size of required buffers, and the hardship, if not impossibility, of providing buffers.

1) If the required agricultural buffer depths cannot be provided, the Applicant should indicate what measures are proposed to mitigate the proposed non-conformance and

should provide professional testimony supporting that the reduced buffer will protect the adjacent farmlands adequately. The Board concluded that no such testimony is required as the Applicant will own both the one-acre lot and the adjacent farm field.

2) The agricultural deed notice shall be added to the plan and/or deed as required by Elk Code section 96-47.1 B. (1). The client agreed upon receipt of language to be submitted from the Board's attorney and Planner.

D. The bulk requirements table should also include the accessory building with indication of area and conformances to the code requirements in section 96-80. The Applicant has complied.

3. Plat/Plan Requirements:

A. The title of the plan shall be revised to read ...Lot 4 which is the lot being subdivided. The Applicant has complied.

B. The Deed of Conveyance for the subdivision shall contain the deed notice specified in the Elk Township Code 96-47.1.B. (1) regarding agricultural buffers. The client agreed upon receipt of language to be submitted from the Board's attorney and Planner.

C. Legal descriptions shall include metes & bounds descriptions of any agricultural buffer that is approved by the Board. This no longer applicable.

D. The corner marker required by the Map Recordation Act must be called out in the legal description(s). New corner(s) do not need to be set along the frontage. The Applicant agreed to comply.

E. Parking: This Application will not change existing parking capacity or locations.

F. Photos: Photos of the site were submitted.

4. Wetlands: The General Notes on the plan suggest there are no wetlands or wetland buffers within the proposed lot 11.03 as per the National Wetlands Inventory Map or the NJDEP GeoWeb. Either a NJDEP Letter of Interpretation, or a professional's certification in accordance with checklist Item 73 shall be provided. The Applicant's surveyor provided a signed statement on the plan that he walked the Subject Property and that there are no wetlands on the Subject Property, and that no wetlands are shown on DEP wetlands maps and Gloucester County soils maps.

5. Curbs & Sidewalks: Not required.

6. Lot grading: A Lot Grading Plan is required and may be a condition of approval. The Applicant agreed to provide a lot grading plan at the time that permits are submitted to build the house and pole barn. .

7. Stormwater Management: The proposed disturbances do not exceed the thresholds for which major stormwater management design is required. However, due to the existing grading of the area of proposed lot 4.01, a blanket drainage easement should be prepared to provide for surface drainage from the remainder lot, through proposed Lot 4.01. If approved, this can and should be included in the proposed deed for lot 4.01. Upon discussion with the Board, given that this is not a commercial property, and that a grading plan would be sufficient.

8. Fences: No new fences or modifications are proposed or required. Fencing may be considered as a mitigation measure for reducing the required agricultural buffer depth. If proposed or required as a condition of approval, a fence permit or a site plan should be required prior to construction. The Board does not require fencing.

9. Accessory Uses & Structures: The plan shows a proposed 864 sq. ft. pole barn which is less than the maximum allowed of 900 sf. Distances to the agricultural buffer limits should be added to the plan and the bulk requirements table. This no longer required as there will be no buffers.

10. Water supply: Testimony shall confirm that the well shown in the northwest corner of the lot is for the sole use of the proposed lot. The Applicant confirmed the same.

Recommendations:

1. All taxes, escrow fees and other fees must be paid to the Township prior to signatures by the Chairman and Secretary.
2. If approved, the subdivision must be recorded at the County Clerk's office within 190 days of approval.
3. If approved, the deeds of the proposed lots, their associated legal descriptions, covenants, all easements, and restrictions of record shall be provided for review and approval by the Board's engineer and the Board's attorney. Signed & sealed legal descriptions, once approved by the board's engineer, shall be the attachments to the deeds used for recording. Transcribed versions shall not be used.

The Applicant agreed to comply.

13. The hearing on the Application was opened to the public, at which time Mr. Edward Eivich, 771 Clems Run, was sworn and testified that he wholeheartedly supported the Applicant's Application. There being no other members of the public wishing to testify, the public portion was closed.

CONCLUSIONS

The Board concluded that variances from the minimum lot size and agricultural buffer requirements should be granted, insofar as it is an impossibility of performance for the Applicant to comply, for the reasons set forth under Findings of Fact above, given the lawfully pre-existing nature of the Subject Property in question, and an absolute inability to comply with the current zoning standards.

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 Clark 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 above under Findings of Fact, at a meeting following a hearing on the Application on June 15, 2022 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Lucas, Clark, Shoultz, White, Nicholson, McKeever, and Richardson (Alternate # 1). There were no votes in the negative and no abstentions or recusals. The following Board Members were absent: Afflerbach, Hughes, Schmidt, 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 July 20, 2022 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on June 15, 2022 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 19th day of July 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 June 15, 2022 on the above cited Application.


Ann Marie Weitzel, Secretary