

Resolution No.: 2022 - 10

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, SITTING AS A ZONING BOARD OF
ADJUSTMENT, GRANTING A VARIANCE TO CONSTRUCT AN ACCESSORY
STRUCTURE THAT EXCEEDS THE MAXIMUM SQUARE FOOTAGE
PERMITTED, TO JOSEPH COSGROVE, REGARDING PROPERTY LOCATED
AT 300 FISLERVILLE ROAD, AND BEING FURTHER SHOWN AS BLOCK 2,
LOT 1 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION
NO.: ZB-22-01**

WHEREAS, Application No.: ZB-22-01 (the “Application”) was submitted before the Combined Planning/Zoning Board Adjustment, sitting as a Zoning Board of Adjustment, of the Township of Elk, County of Gloucester, State of New Jersey (the “Board”) by Joseph Cosgrove, 23 Peach Ridge Drive, Mullica Hill, N.J. 08062 (the “Applicant”) for a bulk variance to permit the construction of a 2,400 sq. foot pole barn (where a maximum of 1,200 sq. feet is permitted) on property located at 300 Fislerville Road (the “Subject Property”), and being further shown as Block 2, Lot 1 on the tax maps of the Township of Elk (“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 Mr. Cosgrove sworn as to any testimony that he would give on the Application, and did also appear Jeffrey M. Brennan, Esq., Baron & Brennan, Staffordshire Professional Center, Building F – Suite 600, 1307 White Horse Road, Voorhees, N.J. 08043 (the Applicant’s attorney);

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 submission waivers. 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., Bryson & Yates, LLC, 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, List of Submission Waivers requested, Affidavit of Publication, Certified List of Property Owners within 200 ft. of the Subject Property, and Addendum/Narrative attached to the Application.

B. Letter of Interpretation to the Applicant from NJDEP, dated February 14, 2022, regarding the footprint of disturbance determination as to the Subject Property;

C. A Variance Plan dated 6/1/2022 signed and sealed by Adam R. Grant, P.L.S.; and a Grading Plan dated 2/25/2022 signed and sealed by O. Andrew Simkins, P.E., both with Consulting Engineer Services (CES), 645 Berlin-Cross Keys Road, Suite 1, Sicklerville, N.J. 08081;

D. Notice dated December 8, 2021 to interested parties, signed by the Applicant, regarding an application to NJDEP regarding an LOI;

E. Copy of Tax Map of Subject Property supplied by CES dated 06-12-2021;

F. Five (5) colored 8 in X 11 in. photographs of the Subject Property;

G. One aerial photograph of the Subject Property via Google Earth, dated 6/8/22;

H. Elevations of the proposed pole barn;

4. The Board entered into the record the following:

A. Letter dated May 25, 2022 from Steven M. Bach, P.E., R.A., P.P., C.M.E., Bach Associates, the Board's professional planner, regarding his review of the Application.

B. Letter dated June 13, 2022 from Stan M. Bitgood, P.E., C.M.E., Bryson & Yates, P.A., the Board's professional Engineer, to the Board regarding his review of the Application.

5. The Subject Property is located within the LD – Low Density Residential Zone District. The Subject Property consists of 32.5 acres and contains a single-family residence and woodlands. The Subject Property is located on the east side of Rt. 77, south of Fislerville Road. The site is surrounded by other residential properties which are

also in the LD zone district to the west and south, and the commercial zone district at the southwest and northwest corners of the Subject Property.

6. The Subject Property is bordered to the east by the Raccoon Creek and residential properties in Harrison Township. The adjacent uses are residential dwellings, farmland, and an animal hospital at the northwest corner of the Subject Property. The general vicinity consists of agricultural uses and single-family residential dwellings.

7. Zoning and Use

In accordance with Section 96-69 of the Township’s zone code, the LD - Low Density Residential Zone District standards for single-family detached dwellings, as applied to the Subject Property, are as follow:

<u>Bulk Requirement</u>	<u>Required</u>	<u>Existing/Proposed</u>	<u>Compliance</u>
Minimum Lot Size	40,000 sf	+/- 32 acres	C
Min. Lot Width at Bldg. Line	150 ft.	+/- 810 feet	C
Minimum Lot Depth	200 ft.	+/- 1,590 feet	C
Minimum Lot Frontage	135 ft.	759.53 feet	C
Maximum Bldg. Height	35 ft.	< 35 ft.	Will Comply
Minimum Front Yard	40 ft.	+/- 720 feet	C
Minimum Rear Yard	40 ft.	+/- 830.515.1 feet	C
Minimum Side Yards (one)	10 ft.	+/- 258 ft./229.9 ft.	C
Minimum Side Yards both	50 ft (both)	+/- 683/487.9 ft.	C
Maximum Bldg. Coverage	20%	0.3% / 0.5%	C

Sec. 96-80; Accessory Uses and Structures

Structure Size	1,200 sq. ft.	2,400 sq. ft.	V
Structure Height	25 ft.	< 25 ft.	C

V = Variances:

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

8 requires copies of applications to and certifications from all outside agencies. This waiver is recommended by the Board’s engineer planner for completeness only, subject to proper documentation from the Gloucester County Soil Conservation District.

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.

WHEREUPON, a motion was made by Board Member Shoultz, which was seconded by Board Member Clark, to grant the above referenced submission waivers, subject to the above conditions, with the following Board members voting in favor of the motion: Clark, McKeever, Shoultz, White, and Richardson (Alternate Member #1). There were no votes in the negative, and no abstentions or recusals. Board Members Afflerbach and Hughes, and Swanson (Alternate # 2) were absent. The waivers of submission requirements having been granted, the hearing on the Application proceeded.

9. Mr. Brennan provided a brief overview of the Application, consistent with the Addendum to the Application which had been entered into the record. Mr. Brennan stated that the Applicant was seeking a "Flexible C variance" pursuant to N.J.S.A. 40:55D-70.c.(2). Mr. Brennan stated that the Applicant met the "positive" criteria, pursuant to the purposes of zoning as is set forth under N.J.S.A. 40:55D-2, particularly sub-sections (a), (g), and (i), which Mr. Brennan elaborated on. As far as the "negative" criteria, given the size of the Subject Property, and the proposed location of the accessory structure on the Subject Property, Mr. Brennan opined that there would not be a significant negative impact on the neighborhood, the zone code or the master plan of Elk Township and, to the extent that there was any negative impact, such an impact would be *de minimis* at best, and certainly not "substantial".

10. Mr. Cosgrove testified as to background information regarding the Subject Property. He testified that there is a tree buffer in the rear of the Subject Property; that there would be no commercial activities on the Subject Property, including the proposed pole barn; and that the pole barn would only be used for the storage of vehicles (including all terrain vehicles), and equipment.

11. Mr. Bach's letter of May 25, 2022 which had been entered into the record, was reviewed by Board members and the Applicant. Mr. Bach set forth the standards to be met for a grant of a C(1) and C(2) variance.

12. Mr. Bitgood's letter of June 13, 2022, which had been entered into the record, was reviewed with the Board members and the Applicant as follows:

1. Bulk Requirements. The plan has been revised to show the correct bulk requirements. The only variance needed is for the oversized pole barn, 2,400 s.f. where 1,200 sf is permitted.

A. The appellants have offered reasons to approve the increased footprint for the pole barn and stated "...a 2400 square foot pole barn which will be utilized to store multiple farm vehicles and equipment as well as personal automobiles. The proposed

pole barn will enable these vehicles, equipment and automobiles to be neatly arranged under cover from the weather.”

2. Testimony shall be provided, as required by the Municipal Land Use Law, regarding the intended use, necessary justification for the size of the barn, and why a smaller barn cannot reasonably be used. The Applicant had complied.

3. Drainage. Characteristics of runoff are not being changed in a significant manor.

4. Driveways. No new impervious surface driveways are proposed.

5. Grading. All grade changes have been minimized effectively and remain within the NJDEP approved footprint of disturbance.

A. The Grading Plan submitted as sheet 2 of 2 is satisfactory. However, testimony should address how stability of the dirt driveway will be provided. The Applicant complied.

6. Fences. No new fences are proposed.

7. Lighting. No new lighting is proposed. If exterior lights will be installed on the building or on separate poles, a lighting plan and a Professional Engineer's certification that no illumination of adjacent lots will occur shall be submitted. The Applicant agreed to comply.

8. Parking. No new parking or loading areas are proposed.

9. Traffic. The Applicant should provided testimony confirming that no increase in traffic will be associated with the proposed use. The Appluicant confirmed the same.

10. Utilities. No new utilities services are proposed. Testimony and building plans should be provided which confirm there will be no new restrooms or other features that would require plumbing, wastewater, or oil-water separation. The Applicant confirmed the same.

11. Repairs & Maintenance. Testimony should confirm that no commercial auto repairs or equipment repairs or services will be done on the lot. Repairs of personal vehicles and equipment would be subject to all applicable health, safety and environmental rules. The Applicant confirmed the same.

12. Impact to Adjacent Lots. Testimony should be provided to confirm that intended used will result in no intrusive impacts, to adjacent properties. The testimony should address uses, noise levels, dust, odors, and lighting. The Applicant provided said testimony to the satisfaction of the Board.

13. The hearing on the Application was opened to the public, at which time no members of the public provided testimony for or against the Application.

CONCLUSIONS

The Board concluded that the Applicant's request for bulk variance to permit a 2,400 sq. ft. accessory building (a "Pole Barn") should be granted given the size of the Subject Property, the proposed location of the pole barn on the Subject Property, and the limits as to the use of the pole barn. The Board concludes that the "positive" and "negative" criteria are met, insofar as the proposed pole will be located in an appropriate space to serve the needs of the landowner, thereby promoting the general welfare; it will not be used for commercial purposes; and it will not have a negative impact on either the Subject Property, the immediately adjacent properties, or the Township as a whole.

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.

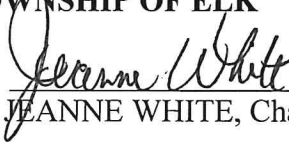
7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., that may be required with respect to the relief as granted herein.

8. The Applicant must comply with the Board engineer's requirements as are set forth above under Findings of Fact, and the Applicant's acknowledgements and agreements also set forth above.

WHEREUPON, a motion was made by Board member Shoultz, which was seconded by Board member Clark, to grant the above referenced variance, 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: Shoultz, White, Clark, McKeever, and Richardson (Alternate # 1). Board Members Hughes, Afflerbach, Schmidt and Swanson (Alternate # 2) were absent. There were no abstentions, recusals or votes in the negative.

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 20th 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