

Resolution No.: 2022 - 11

**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
FRONT YARD SETBACK REQUIREMENTS FOR A FENCE, TO HOUSE 19,
LLC CHEN, REGARDING PROPERTY LOCATED AT 499 BRIDGETON PIKE
AND BEING FURTHER SHOWN AS BLOCK 6, LOT 29 ON THE TAX MAPS
OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-22-03**

WHEREAS, Application No.: ZB-22-03 (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 House 19, LLC Chen, (the “Applicant”), by way of its managing member, Cunlin Chen, of residence at 499 Bridgeton Pike (the “Subject Property”), located in the LD – Low Density Residential (“LD-R”) Zone District, a bulk variance from the front yard setback requirements in order to accommodate a six foot (6 Ft.) high fence within the front yard setback area at 36.95 feet (+/-), where the required setback is 40 feet; and

WHEREAS, the Applicant did appear at a meeting and public hearing held by the Board on the Application on September 21, 2022 at 7:00 P.M., time prevailing, at which was the Applicant present and was duly sworn as to any testimony that he might give 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. 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, 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 Board entered into the record the following:

A. 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.

B. Review letter on the Application dated August 24, 2022 received from the Board's Planner, Candace Kanaplue, P.P., Bach Associates, 304 White Horse Pike, Haddon Hts., N.J. 08035.

C. Review letter on the Application dated August 10, 2022 received from Stan Bitgood, P.E., Federici & Akin, 307 Greentree Road, Sewell, N.J. 08080, the Board's Engineer.

D. Copy of survey, (undated, unsigned and without authorship), over which the proposed location of the fence is shown.

4. The Subject Property is located within the Low Density (LD) Residential Zone District. The Applicant proposes to construct a six-foot high white vinyl opaque fence within the front yard setback area, adjacent to the front plane of an existing home.

5. The Subject Property is approximately 43,560 sq. ft. (+/-), or 1 acre. The Subject Property has frontage on Bridgeton Pike of 210 feet, and a depth of 208 ft. (+/-).

6. The proposed fence is to be attached to the left and right corners of the front plane of the house. The front plane of the pre-existing house is set back 36.95 ft. from the front property line. Under Ordinance 96-80.1, the front yard setback for structures is 40 feet. While the front yard setback for the house is pre-existing, the addition of the fence, on the same plane as the front of the house, requires a variance from the front yard setback requirements.

7. The Applicant testified as to his need for privacy. The Applicant confirmed that the proposed gate and fence from the driveway will not impede any turn-around movements by residents, guests or delivery vehicles.

8. The Board's Professional Planner, Candace Kanaplue, P.P., reviewed with the Board her letter of August 24, 2022 regarding the Application. Ms. Kanaplue reviewed the nature of the variance requested, and existing conditions. Ms. Kanaplue testified that the submission of a current survey with overlay as to the proposed fencing was sufficient, as was the Applicant's testimony during the hearing. Ms. Kanaplue supported a grant of the variance, given its minimal impact on the Subject Property.

9. 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 August 10, 2022. Mr. Bitgood reviewed the zoning standards, and information about the proposed fence, which have been addressed by the Applicant. Mr. Bitgood testified that he had no objection as to a grant of the variance.

10. 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 front yard setback requirements for a six foot high fence should be granted on the basis that all other bulk requirements will be met, and the variance should be granted under both a "substantial benefit", in that the Applicant's need for privacy can be accommodate by the proposed location of the fence, and its attachment to the corners of the front plane of house would be more practical and would not diminish the aesthetic appearance of the fence or the house.

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 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 Richardson, to grant the above bulk variance to the Applicant, at a meeting following a public hearing held on the Application on September 21, 2022 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, Schmidt, Richardson (Alternate Member #1), and Swanson (Alternate Member # 2). There were no votes in the negative and no abstentions or recusals. The following Board Members were absent: McKeever and Afflerbach. Board members Lucas and Nicholson had recused themselves since the jurisdiction for the Application was relegated to the Board sitting as a Zoning Board of Adjustment.

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 October 18, 2022, 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 September 21, 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 18th day of October 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 September 21, 2022 on the above cited Application.


Ann Marie Weitzel, Secretary