**Elk Township Combined Planning and Zoning Board**

**Regular Business Meeting**

**November 16, 2022**

**Minutes**

**Call to Order**:

Regular Business Meeting was called to order at 7:06 pm.

**Roll Call:**

**Present:** Mr. Afflerbach, Mr. Clark, Mr. Hughes, Mr. Lucas, Mrs. Nicholson, Mr. Shoultz,

Mr. Richardson (alt 1), Mr. Swanson (alt 2), Madam Chairwoman White,

**Absent:**  Mr. McKeever, Mr. Schmidt,

**Open Public Meeting Act:** was read by the Board Secretary

**Flag Salute:** Madam Chairwoman White led the flag salute.

**Approval of Minutes:**

October 19, 2022

***Mr. Afflerbach moved to approve the minutes of October 19, 2022,***

***Seconded by Mr. Lucas***

***Mr. Hughes and Mrs. Nicholson recused themselves from the vote***

***With all other members in favor, the motion was carried***.

**Resolution:**

**Resolution 2022 – 12 granting Final Major Site Plan Approval to Copart of Connecticut, Inc regarding property located at 735 & 749 Jacob Harris Lane, and being further shown as Block 66, Lot 1.01 on the Tax Maps of the Township of Elk, Application No.:SP-20-12**

***Mr. Afflerbach moved to adopt resolution 2022 - 12. Seconded by Mr. Clark.***

***Roll Call:***

***Voting in favor:***

***Mr. Afflerbach, Mr. Clark****,* ***Mr. Shoultz, Mr. Swanson, Madam Chairwoman White***

***Abstaining:***

***Mr. Hughes, Mr. Lucas, Mrs. Nicholson, Mr. Richardson,***

***For: 5 Against: 0 Abstain: 4 5-0-4***

**Completeness Hearing:**

1) Taylor, Lot Line Adjustment/ Minor Subdivision

360 & 364 Bridgeton Pike, Block 5 Lot 5.03/6

Completeness followed by Public Hearing, Application #SD-22-03

Richard and Patricia Taylor represented themselves at this hearing

Mr. Taylor stated that he has a cesspool on his property now and in order to properly construct a septic field he would need an additional ¾ acre which would be taken from his adjoining property, giving him the necessary 1 acre.

Board Planner, Candace Kanaplue of Bach Associates, referred to her letter dated November 2, 2022 and the Board’s Engineer, Stan Bitgood of Bryson & Yates review letter dated November 11, 2022 regarding the following requested waivers:

Item #48 requires Distance along the Right of Way to nearest intersection.

***A waiver is recommended.***

Item #49 Location of all existing trees or tree masses.

***A waiver is recommended.***

Item #50 Requires a tree protection plan.

***A waiver is recommended.***

Item #57 Requires the applicant to provide a grading plan.

***A waiver is recommended.***

Item #58 Requires the applicant to provide a soil erosion and sediment control plan.

***A waiver is recommended.***

Item #59Requires the applicant to provide a location of soil borings.

***A waiver is recommended.***

Item #67Requires results of percolation tests and test borings.

***A waiver is recommended.***

Item #75Requires the applicant to submit a Utility plan.

***A waiver is recommended.***

Item #83Requires the applicant to provide existing and proposed curb openings.

***A waiver is recommended.***

Mr. Taylor had a question on Mr. Bitgood’s Review Letter regarding item numbers 48, 49, 50, and 57. Mr. Bitgood stated there was a misprint on his Review Letter and he would correct it.

Mr. Bitgood added that he would need a Letter of Interpretation from the State of a Certificate of Exemption regarding Wetlands and the placement of the Septic Field.

***Mr. Afflerbach moved to grant the waivers and deem the application complete.***

***Seconded by Mr. Shoultz***

***Roll Call:***

***Voting in favor:***

***Mr. Afflerbach, Mr. Clark, Mr. Hughes, Mr. Lucas, Mrs. Nicholson,***

***Mr. Shoultz, Mr. Richardson (alt 1), Mr. Swanson (alt. 2), Madam Chairwoman White***

***For: 9 Against: 0 Abstain: 0 9-0-0***

Candace Kanaplue, Board Planner provided these comments:

Her review letter stated the Zoning Standards within the Low Density Residential District and that every item is in compliance with these standards.

Stan Bitgood, Board Engineer provided these comments:

His review letter stated in items:

4B. If approved, the applicant would submit copies of deeds for each new lot and for the Conveyance of part of lot 5.03 to Lot 6 for review with legal descriptions, signed, dated and sealed by the Licensed Surveyor.

L1. A copy of the County Health Department’s approved individual sanitary sewage disposal system plans shall be submitted to the Elk Twp Construction Office prior to any construction or changes.

L2. The applicant shall agree to ensure that the limits of disturbances shall be kept at least 5 feet from the property lines, and well outside any required wetlands transition areas.

7. Testimony shall confirm that there are no other wells within 100 feet of the proposed septic field limits.

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 APPROVALS line shall be changed to “Approval was granted by the Elk Planning/Zoning Board with conditions, by Resolution \_\_\_\_\_\_\_ 2022 memorialized on \_\_\_\_\_\_\_.

3. The owners must sign the plan prior to signatures by the Chair and Secretary.

4. 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. Signed and 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.

5. If approved, the subdivision must be recorded at the County Clerk’s Office within 190 days of approval.

***Mr. Hughes moved to open to the public, seconded by Mrs. Nicholson***

***With all members in favor, the motion was carried.***

***With no comment from the public, Mrs. Nicholson moved to close the public portion,***

***seconded by Mr. Lucas.***

***Mr. Afflerbach moved to approve the Taylor’s Lot Line Adjustment/Minor Subdivision with Bulk Variances,***

***seconded by Mr. Shoultz***

***Roll Call:***

***Voting in favor:***

***Mr. Afflerbach, Mr. Clark, Mr. Hughes, Mr. Lucas, Mrs. Nicholson,***

***Mr. Shoultz, Mr. Richardson (alt 1), Mr. Swanson (alt. 2), Madam Chairwoman White***

***For: 9 Against: 0 Abstain: 0 9-0-0***

***Mr. Lucas and Mrs. Nicholson recused themselves from the next Applicant, a Zoning Issue due to their roles on Township Committee as Deputy Mayor and Mayor’s Designee.***

2) Christopher Spera Use Variance request to park Box Trucks from his business at a residence 836 Clems Run Blk 33 Lot 12.16

Completeness followed by Public Hearing, Application No. ZB-22-03

Mr. Spera was represented by:

Attorney Michael Aimino, Esquire, of Aimino & Dennen LLC,

40 Newton Avenue, Woodbury, NJ 08096

Professional Engineer, Professional Planner and Professional Land Surveyor, James Clancy of Clancy & Associates, Inc.,

601 Asbury Ave, National Park, NJ 08063

Dorothy Crosbee, owner of property

Mr. Michael Aimino gave the Planning & Zoning Board a brief overview of Mr. Spera’s Application stating that Mr. Spera owns a Moving Business and parks two trucks from that business at said residence.

No activities take place at the residence except the use of a phone and computer.

No customers are present and no storage of product and equipment except for the two moving trucks.

The business consists of Mr. Spera, his Business Partner and two helpers.

There are times that both trucks are not parked at the residence, one may be parked at his partners place of business.

Workers come in the morning take the trucks out for the day to do their work and return at night.

Trucks are never backed out onto Clems Run.

Mr. Dale Taylor, Board Solicitor asked that Mr. Aimino clarify what the two variances consist of, the home business and truck parking.

Mr. Aimino replied that there are some disparity whether there are Use Variance, Conditional Use Variances or Bulk Variances.

Mr. Aimino states that Elk Township’s Ordinances permits parking of Commercial Vehicles in Residential Zones with a limit on the tonnage of these vehicles. Thus making this a Use Variance which was advertised for.

This could also be considered a Bulk Variance since it is a permitted activity but the specifics of the Ordinance is being violated.

An E 3 Use Variance was sought also for the Home Occupation which does not meet the Ordinance’s criteria.

Board Planner, Candace Kanaplue of Bach Associates, referred to her letter dated August 18, 2022 regarding the following requested waivers:

Item #9 & 11 requires a current survey. The applicant had provided copies of a survey.

***This waiver is no longer needed.***

Item #15 requires a statement providing an overview of the proposed used of the land and improvements, alterations or additions.

***The applicant provided testimony regarding this, a waiver is recommended.***

Item #21 requires a statement as to any application requirements for which waiver is sought.

***The applicant provided testimony regarding this, a waiver is recommended***

Item #53 requires the location of historic features within 200 feet.

***A waiver is recommended.***

Item #55 requires the applicant to provide contours at 20 foot intervals on the tract and within 100 feet of the tract in accordance with the grading plan requirements.

***A waiver is recommended for completeness only and the applicant will submit this.***

Item #77 requires the size and location of proposed signs.

***The applicant provided testimony regarding this, a waiver is recommended.***

Board Engineer, Stan Bitgood of Bryson & Yates referred to his letter review letter dated August 10, 2022 regarding the following requested waivers:

If a Site Plan is waived it should be waived for Completeness only, the survey which was prepared is not sufficient for a Site Plan.

Mr. Aimino asked for the Site Plan to be waived due to no changes being made to the site for truck to be able to move around.

Mr. Bitgood stated that he has seen vehicles parking on the grass at the residence and has serious doubts as to if the vehicles can both park and turn around on the paved area.

Mr. Bitgood stated that this could pose problems for Soil Erosion, damage to the Culvert that runs under the driveway, etc.

Mr. Bitgood stated that without a Site Plan, he cannot advise the Board to the functionality of the driveway and turn around area.

Madam Chairwoman White stated that Mr. Bitgood is allowing this to be waived for Completeness and to make the determination if this Site Plan is needed for full approval.

***Mr. Afflerbach moved to grant the waivers and deem the application complete.***

***Seconded by Mr. Swanson***

***Roll Call:***

***Voting in favor:***

***Mr. Afflerbach, Mr. Clark, Mr. Shoultz, Mr. Richardson (alt. 1),***

***Mr. Swanson (alt. 2), Madam Chairwoman White***

***Voting Against:***

***Mr. Clark, Mr. Hughes***

***For: 6 Against: 2 Abstain: 0 6-2-0***

***Candace Kanaplue, Board Planner provided these comments:***

***1. There shall be no outdoor storage of display of materials, products or equipment.***

***2. The frequency of the box trucks entering or exiting the site.***

***3. Buffers. Section 96-47 of the Unified Development Code requires vegetated buffers between different uses in addition to minimum yards. The adjacent lot(s) to the east and west are residential and therefore require a 75 foot buffer. The applicant should describe the impacts to adjacent residential dwellings and how they can be minimized. There is an existing evergreen row of trees adjacent to Lot 12.15. However, if there are any gaps, we recommend the applicant add additional landscaping or a solid fence. Our office recommends a solid row of Green Giant arborvitae trees spaced a maximum of eight (8’) on center and six (6’) at planting height be planted along the entirety of the property line adjacent to Lot 12.18 to provide a year-round buffer to the adjacent residential property.***

Mr. Dale Taylor, Board Solicitor suggested that the applicant make their presentation and some of these issues may be answered.

Mr. Aimino stated:

The Moving Business Mr. Spera owns was typical of that kind of moving business where you would call them to schedule a pick up, they would show up and move the items into the truck and transfer them to another location.

The staff consist of Mr. Spera, his business partner and 2 workers

The trucks leave the residence around 7:30am and arrive back at the latest 7:30pm.

No activity is being done at the sight except the moving of the trucks.

No trash is generated as a result of the business activities.

No deliveries are being made to the site for the business.

No customers are on site.

No product/furniture is on site at any time.

The property is about 3.5 acres.

The driveway pad is about 275 feet long, about as long as a football field.

Mr. Aimino referred to the photographs that his client had turned in for reference.

Mr. Spera stated that he is in the middle of the a divorce and living with his children at his

Aunt’s house at 836 Clems Run and running the business out of there.

Mr. Spera stated that he needed to relocate to get himself financially back on track.

Mr. Spera stated that his previous home was in Franklin Township and he was able to park his work trucks at that location.

Mr. Spera’s intent is to find another location to reside at that will allow his work trucks to be housed at the same location.

The drivers of the trucks are Mr. Spera and his partner and the helpers are 2 additional people who bring their vehicles to the residence and then get in the Moving Trucks to go out to the work sites.

Mr. Spera explained that there was enough room on the asphalt pad to park the 2 moving trucks as well as his Aunt’s car in the garage along with space for additional cars.

Mr. Spera stated that no trucks back onto Clems Run at any time.

Mr. Spera stated that he has been at 836 Clems Run since April and have had no complaints from neighbors. Neighbors had attended the prior meeting when the Applicant was to be heard and had given their full support to Mr. Spera.

When the 2 Moving Trucks are pulled out, it leaves space for 4 cars to be parked in their spots.

Both Moving Trucks are not always at the location at the same time.

It is not the intention of Mr. Spera to add additional trucks at this time.

The Moving Trucks are 16 foot and 20 foot in length.

On the right side of the house there is a hedgerow that runs from the street to the back of the property.

Both sides of the house have vegetation blocking the house.

Mr. Aimino directed the Board to Pictures numbered A2 & A4 that show the vegetation.

Mr. Aimino stated that his client was willing to landscape around the pad area where the Moving Trucks park.

Mr. Hughes stated that during the week that there has been cars parking on the grass and if there was indeed room on the paved areas for all the vehicles.

Mr. Spera stated that the grass area is where relatives had always parked.

Mr. Hughes stated that Mr. Aimino spoke of a house to the East and there is open farmland that is part of another lot, undeveloped, unbuilt upon, etc at this point in time, as it had been divided up over time.

Mr. Aimino stated that the owners of this property, stated above, were at the last meeting and spoke with Mr. Aimino.

Chairwoman White stated that without the owners being present and giving testimony the Board cannot take this testimony into consideration.

Mr. Hughes stated with consideration of existing screening at existing properties and dwellings with the potential of another residence/dwelling being built there, shouldn’t the Board should be taking these considerations into our discussion moving forward.

Mr. Aimino again said that the applicant would not be opposed to putting screening around the pad to address this.

Mr. Hughes asked if both of the Moving Trucks could be parked at the partner’s residence.

Mr. Spera stated that his business partner only has the space for one of the Moving Trucks at his residence.

Mr. Afflerbach asked what would stop the company from hiring additional workers and would the Township have the ability to stop that from happening.

Candace Kanaplue, Board Planner, stated that the Board can limit the number of employees, trucks as per the Use Variance that is being sought.

Chairwoman White asked Mr. Taylor if the Variance would go along with the property.

Mr. Taylor stated that yes the Variance does go along with the property as well as the same restrictions would go into effect as when the Variance was granted.

Mr. Aimino stated that his applicant is willing to limit the variance to 3 years on Condition of Approval.

***Stan Bitgood, Board Engineer provided these comments:***

***1. With multiple employees arriving and departing the site as late as 7:30 pm timed or motion detected lights on the parking areas would be required***.

Mr. Spera stated that motion detected lights were just installed at every corner of the home.

Mr. Bitgood stated that he has not been able to inspect the lights regarding shielding and spillover and that would normally take place during a Site Plan Review.

***2. Mr. Bitgood stated that he would like specificity regarding the hours of operation of the Moving Trucks and activity after 7:30pm.***

Mr. Spera stated that it is very rare that the Moving Trucks are entering the property after 7:30pm.

***3. Mr. Bitgood asked if the Moving Trucks had back up beepers.***

Mr. Spera stated that no, they do not.

***4. Mr. Bitgood stated that a Site Plan with turning movement diagrams is required***.

***5. Mr. Bitgood stated that it is important that the dwelling use still has the necessary 2.4 parking spaces available and the business is not encroaching on that.***

Mr. Aimino suggested a compromise to the Site Plan as to limit the Site Plan Submission to the place where the trucks are parked not a full Site Plan for the full 3.5 acres of the property, if a waiver is not granted.

Mr. Bitgood agreed to an existing survey modified to showing what is on site now, as well as any additional aspects as a result of this business.

Mr. Clancy stated that they could show the parking, turning radius, and the lighting on the existing survey.

Mr. Clancy stated that he would like to work with Candace Kanaplue regarding planting Spruce, White Pine or some other vegetation instead of Arborvitaes.

Mr. Afflerbach asked to clarify his understanding that a condition of approval would be the Site Plan and if the Site Plan did not meet the expectations/conditions of Mr. Bitgood, modifications would need to be made and shown to the Board and then approved.

Mr. Taylor clarified that it would be a modification to an existing survey in lieu of a Site Plan that would cover all of these issues. If the two sides cannot agree, the matter would go back to the Board.

Chairwoman White asked about deliveries and trash being left by homeowners.

Mr. Spera stated that he would pick up blankets and moving boxes at the store, no deliveries. No trash is taken back to the business and discarded by the Moving Company.

Chairwoman White stated that there were a number of Zoning/Use Ordinances that are not being met by this application. She gave an analogy regarding not being allowed to paint a truck red, painting it red anyway but if you hide the truck you can paint it any color you want.

Chairwoman White urged the applicant to consider what is law, what is ordinance, what is use and not use based on the advice of our Professionals.

Mr. Clark stated that it was said that no neighbors had complained about this Moving Business yet he received 2 anonymous complaints in March and early April regarding the vehicles on the property.

Mr. Spera stated that he parked those vehicles there before he knew the rules.

Mrs. White asked the tonnage of the Moving Trucks.

Mr. Spera stated that one was 3 tons and the other was 4 tons.

Mr. Clark asked about the Moving Trucks leaking fluids.

Mr. Spera stated that the maintenance of the trucks is kept up to date as this is his livelihood.

Mr. Hughes asked for clarification regarding the modified Variance and if this business has been in violation of the Ordinances of Elk Township.

Mr. Taylor stated that they were notified of the transgressions and have come before the Board to ask for relief from the Ordinances. The applicant is asking for a 3 year window, they have agreed to make modifications, adhere to the modifications and then to obtain another location for the business.

Mr. Clancy stated that the positive criteria is that the building is set far back from the road and heavily buffered and the negative criteria is that doesn’t meet all the requirements but they are willing to meet requirements such as extra buffering and circulation pattern of vehicles.

Mr. Clark asked Mr. Bitgood about the long term effect of parking 3 and 4 ton vehicles on the driveway.

Mr. Bitgood stated that the driveway will wear out faster but most driveways wouldn’t have a problem, especially since the Moving Trucks are always empty on site.

Mr. Clark stated that we would be establishing a precedent with this variance.

Mr. Taylor stated that as a matter of law that is not correct, that all applications stand on its own merit.

Mr. Afflerbach stated that the “Peer Burden” will occur since the members of the Board live in town.

Mr. Clancy stated that granting this variance will not substantially impair the Zoning Code or Master Plan.

Mr. Hughes asked Mr. Bitgood about the pipe under the driveway for drainage and what materials the pipe is constructed of.

Mr. Bitgood does not know what the pipe is constructed of and hopes that the Site Plan will make that clear.

Mr. Hughes asked if the difference of driving a personal vehicle vs a Moving Truck over that pipe and the wear and tear on the pipe.

Mr. Clancy stated that the owners will fix the pipe or driveway if need be.

Mr. Bitgood stated that the Site Plan will show the material, cover and condition of the pipe and culvert.

Mr. Hughes asked Mr. Taylor asked about the Limited Variance of 3 years and the potential of reopening this.

Mr. Taylor stated that after 3 years if the applicant wants to extend or change the variance the applicant would have to file a new application before the Board.

Chairwoman White asked about the frequency of entering and exiting the business.

Mr. Aimino stated that it would be 1 time in the morning and 1 time in the evening.

Mr. Swanson asks who inspects the Moving Trucks.

Mr. Spera stated that the State inspects the vehicles but a local business maintains the vehicles.

Candace Kanaplue, Board Planner, asked the Board for clarification regarding a more condensed Landscape Buffer around the pad of the driveway instead of the entirety of the property.

Chairwoman White stated that they would defer to the expertise of the professionals and if that condensed buffer would accomplish the goal then that would be fine.

***Mr. Shoultz moved to open to the public, seconded by Mr. Hughes***

***With all members in favor, the motion was carried.***

***With no comment from the public, Mr. Shoultz moved to close the public portion,***

***seconded by Mr. Hughes.***

***Mrs. White moved to grant Use Variance Approval to Mr. Spera,***

***seconded by Mr. Clark***

***Roll Call:***

***Voting in favor:***

***Mr. Afflerbach, Mr. Shoultz, Mr. Richardson (alt.1), Mr. Swanson (alt. 2), Madam Chairwoman White***

***Against: Mr. Clark, Mr. Hughes***

***For: 5 Against: 2 Abstain: 0 5-2-0***

***Mr. Swanson moved to enter into our General Public Portion, seconded by Mr. Richardson.***

***With all members in favor, the motion was carried.***

***With no comment from the public, Mr. Shoultz moved to close the General Public Portion,***

***Seconded by Mr. Hughes.***

Correspondence:

1. Rhoads Pool Variance – Orchards at Aura should be at our December 21, 2022 meeting

2. Township Committee is asking that the Planning & Zoning Board change the November 2023 date from Wednesday, November 15, 2023 to Wednesday, November 8, 2023 so that members and professionals can attend the League of Municipalities.

3. Formation of a Subcommittee to choose Professionals for 2023, meeting to be held at a date to be decided in December.

***Adjournment:***

***Mr. Shoultz moved to adjourn, seconded by Mr. Afflerbach***

***With all members in favor, the motion was carried.***

Adjournment time: 8:57 pm

Respectfully submitted,

Ann Marie Weitzel, Board Secretary