

Resolution No.: 2023 - 07

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING A “D(3)” USE VARIANCE TO
ADELANTE PARTNERS, LLC REGARDING PROPERTY LOCATED AT 125
BUCK ROAD AND BEING FURTHER SHOWN AS BLOCK 72, LOT 4 ON THE
TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: ZB-23-01**

WHEREAS, Application No.: ZB-23-01 (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 Adelante Partners, LLC, 38 N. Summit Avenue, Chatham, N.J. 07928 for a “d(3)” use variance to permit a self storage facility on a lot larger than what is permitted by Township Code, regarding property located at 125 Buck Road (the “Subject Property”) and being further shown as Block 72, 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 February 15, 2023, at which time were the following present on behalf of the Applicant: Rebecca C. Lafferty, Esquire, Cooper Levenson, 1125 Atlantic Avenue, Atlantic City, N.J. 08401 (the Applicant’s attorney); Jason T. Sciullo, PE, PP., Sciullo Engineering Services, LLC, 137 South New York Avenue, Suite 2, Atlantic City, New Jersey 08401 (the Applicant’s professional engineer and professional planner); and Richard Alvarado, Member, Adelante Partners, LLC (appearing as a fact witness); and

WHEREAS, Mr. Sciullo entered into the record his licensing, experience and professional background as an engineer and professional planner, after which it was stipulated on the record, without objection, that Mr. Sciullo was entitled to testify on behalf of the Applicant, as to the present Application, as an expert in the fields of engineering and planning; and

WHEREAS, Messrs. Sciullo and Alvarado were sworn as to any testimony that they would give on behalf of the Applicant;

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. Because the Application involved a “use” (d.3)

variance, the Class I Board member (Mr. Lucas) and the Class III member (Ms. Nicholson) recused themselves from the hearing. Thereafter, the Board was constituted as a 7-member Zoning Board of Adjustment.

2. The Board's professional planner, Candace Kanaplue, P.P., A.I.C.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., Bryson and Yates Consulting Engineers, 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 Hearing, Affidavit of Service, Affidavit of Publication, Certification of Taxes Paid on the Subject Property, Certified List of Property Owners within 200 ft. of the Subject Property, Affidavit of Ownership, Authorization for Contract Purchaser, Disclosure Statement, and Purchase and Sales Agreement, dated January 20, 2023 (largely redacted).

B. Submission checklist.

C. Plan of Survey and Topography, prepared by Bruce R. McKenna, P.E., P.L.S., Monarch Surveying and Engineering, dated 09/09/22.

D. Self Storage Facility Conceptual Plan prepared by Jason T. Sciuлло, P.E., P.P., dated 1/05/2023.

E. Colored photographs of self-storage facilities similar to what is proposed by the Applicant;

4. The Board entered into the record the following:

A. Letter dated February 2, 2023 from Candace Kanaplue, P.P., A.I.C.P., Bach Associates, PC, the Board's professional planner, to the Board, regarding Ms. Kanaplue's review of the Application.

B. Letter dated February 3, 2023 from Stan M. Bitgood, P.E., C.M.E., Bryson & Yates, the Board's professional Engineer, to the Board, regarding his review of the Application.

5. The Applicant proposes to construct a self storage facility with 9 single-story buildings on a 12.1 acre lot on Buck Road approximately 1800 feet north of Arthur Avenue. Adjacent to the lot are residences to the northwest and south, BMP Mechanical to the North, the railroad and Clayton to the east. Buchanan Avenue runs along the rear portion of the southern property line. The lot is within the MD Moderate Density zoning district and within the Neighborhood Commercial Overlay zone. The use is permitted, on

lots up to 6 acres in size. The Applicant requests a variance for the use to be on a 12.1 acre lot.

6. The Subject Property is located on the east side of Buck Road, south of the intersection with East Ave. The property is bordered by the Conrail line and the Borough of Glassboro to the east. The subject property is within the MD Moderate Density Zoning District with the NCO Neighborhood Commercial Overlay. The Subject Property is surrounded by other properties also in the MD zoning district. Adjacent properties to the west, north and south are also in the NCO. The adjacent uses are residential dwellings to the west, commercial property (BMP Mechanical) to the north, and vacant woodlands to the south and east. The general vicinity is comprised of single-family residential dwellings and commercial.

7. The applicable zone standards are as follow:

NCO Zone Bulk Standards

The Applicant is currently seeking use variance approval only, as no site improvements are proposed at this time. If the use variance is approved, a site plan application will be required. The bulk standards provided within Section 96-78.1 and Section 96-76.C are required to be adhered to. The applicant has submitted a conceptual site plan with standards. They are listed in the table below to the extent provided.

Section	Required	Proposed	Compliance
96-77C(1) Minimum Lot size	1 acre	12.1 acres	Complies
96-77C(2) Min Lot Frontage	150 feet	445 ft	Complies
96-77C(3) Min Lot Depth	250 feet	>500 ft	Complies
96-77C(4) Max Building Cov	20%	17.2%	Complies
96-77D(1)(a) Min Front Yard	100 feet	100 ft	Complies
96-77D(1)(b) Min Side Yard	30 feet	50 ft	Complies
96-77D(1)(c) Min Rear Yard	50 feet	85 ft	Complies
96-77D(3)(a) Maximum Principal Building Height	35 feet	18 feet	Complies

Section	Required	Proposed	Compliance
96-76C(1) Use	Self-storage	Self-Storage	Complies
96-76C(2) Min Rental Storage Area	40,000 sf	90,650 sf	Complies
96-76C(7)(a) Min/Max Lot Size	3 acres / 6 acres	12.12 acres	Variance for exceeding max (D(3))
96-76C(7)(b) Max Single Building Area	12,000 sf	12,000 sf	Complies
96-76C(7)(c) Max Building Length	300 feet	270 ft	Complies
96-76C(7)(d) Min Front Yard	75 feet	75 ft	Complies
96-76C(7)(d) Min Setback to Res	50 feet	50 ft	Complies
96-76C(7)(c) Min Other Setback	25 feet	50 ft	Complies
96-76C(7)(f) Maximum Principal Building Height	18 feet / 1 story	18 feet / 1 story	Complies
96-76C(7)(h) Min Parking	4 spaces	13 spaces	Complies
96-76C(7)(j) Drive Aisle Width	30 feet	30 feet	Complies
96-76C(7)(l) Planting buffer	25 feet non-res / 50 feet res	25 feet / 50 feet	Complies
96-76C(7)(m) Roadway buffer	50 feet	50 feet	Complies

8. The Applicant requested certain waivers from submission requirements, some on a conditional basis, pending approval of the present Application and submission of a site plan application:

8 Copies of applications and approvals from outside agencies;

41 Location of existing wells and septic systems, and distances between them on Adjacent properties.

43 Use and Grade elevations;

53 Location of historic structures within 200 feet;

67 Location and results of soil borings;

73 Wetlands LOI, Permit or Certification by a P.E. or P.L.S.

WHEREUPON a motion was made by Board member Afflerbach, which was seconded by Board member Hughes, to grant the above waivers from submission requirements, subject to said requirements being submitted at the time of a site plan application being filed (if appropriate), with the following Board Members voting in the affirmative: Shoultz, White, Hughes, Afflerbach, Goetsch, McKeever, and Richardson. There were no votes in the negative, and no abstentions. Alternate Board members Swanson and Wolf did not vote. The Application was deemed to be complete.

9. Ms. Lafferty provided a brief overview of the Application, consistent with the above information.

10. Zoning and Use

In accordance with Section 96-78.1 Neighborhood Commercial Overlay District permits all uses 96-76 and 96-77 Commercial Districts 1 and 2. In accordance with Section 96-76.C. Conditional Uses include self-storage uses on a minimum of 3 acre and maximum of 6 acre property. The proposed use is permitted as a conditional use in the NCO zoning district. However, it is a conditionally permitted use and since the condition of lot size is not conforming, a “d(3)” use variance is required.

Standard of Proof for “D” Variances

For “d” variances, it is the Applicant’s obligation to present the “Positive” and “Negative” criteria to justify the variance.

The “Positive” Criteria. The Applicant must prove to the satisfaction of the Board that there are “special reasons” for the Board to exercise its jurisdiction to grant the requested relief, demonstrating that the site can accommodate the potential problems associated with the use that the governing body sought to address through the conditions proposed on the proposed use and that the proposal will advance the purposes of Municipal Land Use Law (N.J.S.A. 40:55D-2) and the Township’s Master Plan and Zoning ordinances.

The “Negative” Criteria. The Applicant must also show that the variance can be granted without substantial detriment to the public good and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Applicant must provide testimony demonstrating that the proposal will meet the variance criteria.

11. Mr. Sciullo testified as to the conceptual plan layout, access/egress to/from the site, the nature of the proposed self-storage business, hours of operations planning and technical matters.

12. Mr. Sciullo testified as to both the “positive” and “negative” criteria as to why the Applicant’s Use Variance should be granted, as follows:

The “positive” criteria.

Mr. Sciullo testified that, in his professional opinion, the proposed use met the purposes of zoning. In particular, the site accommodates the potential problems associated with the use in the context of inconsistency with the condition of maximum lot size; the proposed use would be particularly suited for the Subject Property given its location, shape, and accessibility (N.J.S.A. 40:55D-2.g); the proposed use would also provide adequate light, air and open space (N.J.S.A. 40:55D-2.c); it would not conflict with the development of neighboring municipalities, the county or the state as a whole (N.J.S.A. 40:55D-2.d); and it would provide a desirable visual environment through creative development techniques (N.J.S.A. 40:55D-i).

The “negative” criteria

As to the “negative criteria”, Mr. Sciullo testified that the proposed use is less intensive than many of the permitted uses that would be permitted in the MD Zone District with the NCO overlay so a larger lot size than permitted does not create negative impacts at the location. Therefore, the proposed use would not have a substantial detriment on the zone plan, the master plan, or the surrounding area.

13. The Board’s Professional Planner, Candace Kanaplue, P.P., A.I.C.P., reviewed with the Board and the Applicant her letter of July 2, 2020 regarding the Application.

14. The Board’s Professional Engineer, Stan M. Bitgood, P.E., C.M.E., Bryson & Akin, P.A., reviewed with the Applicant and the Board, his letter of February 3, 2023, as follows:

Access. The driveway access to Buck Road, C.R. 553 appears generally adequate for small trucks and vehicles with small trailers. A deceleration lane with curbs may be needed so vehicles with trailers and rental box trucks, which are often difficult to maneuver for the unfamiliar drivers, can enter and exit the site safely. Approval by the County Planning Board and Engineer will be required with the future Site Plan Application.

Buffers. Buffers are required between the commercial use and residential uses to the northwest and south. The existing wetlands to the south appear to provide adequate buffer in that direction. To the northwest, additional evergreens should be considered to improve buffering of headlights and noise. The conceptual building arrangement will help in this regard, but the large basin area will reduce the effectiveness.

Bulk Zoning Requirements. The table of bulk requirements and proposed values is adequate. No variances are proposed except as required for allowing the use on a lot greater in area than 6 acres.

Circulation. The layout provides a 24 ft entrance drive and 30 ft cartways

between the buildings with parking for the manager and visitors. The drive aisles appear to be satisfactory. However, if approved, either the gate should be moved toward the front so it's more visible from Buck Road, or a loop should be provided by which oversized vehicles can enter and leave without the potential to get stuck between buildings. The rationale for locating all of the parking at building 1 should be explained, along with the internal layout of the buildings, at the time of site plan submission.

- a. The location and widths of the drive aisle may require adjustments to ensure adequate emergency access to all buildings. The proposed layout provides for a single unit truck to circulate around the ends of building 8, only if no vehicles are parked within near the ends of buildings 4, 6, 8, 9 and 10. If the Applicant has similar sites with a method of controlling loading and unloading of the units that avoids the potential obstructions, testimony with copies of the site plan for it should be provided.
- b. If approved, a traffic report and site plan shall be submitted to the Fire Chief and Fire Marshall with the site plan application.

Curbs. Curbs are not required along Buck Road. Buck Road, even though posted at 35 mph, is a high speed road.

Environmental Report. Not required for a Use Variance. If approved, the application for site plan shall include an environmental report which at a minimum should conform to USEPA Phase 1 standards. Any contamination reports should be further investigated and results submitted for review.

Sidewalks. Sidewalks are not provided nor required.

Stormwater Management. Not required for a Use variance. The concept plan, would require full stormwater management design as part of any Site Plan Application. Such application will require permanent stormwater operation and maintenance, an easement to the Township, and approval by both the Township and NJDEP.

Site Plan. The conceptual plan is all that is required for this Use Variance application.

Wetlands. The site has delineated wetlands along the southern boundary to which stormwater drains. Copies of the application to NJDEP Land Use are required. Approved permit(s) from NJDEP Land Use shall be condition of any future Site Plan approval.

14. The hearing on the Application was opened to the public, at which time no the members of the public testified on the Application. There being no members of the public giving testimony, the public portion was closed.

CONCLUSIONS

The Board concluded that the requested use variance shall be granted on the basis of the concept plan submitted, the testimony given by the Applicant and the Applicant's experts, and the testimony rendered in support of the "positive" criteria (that the purposes of zoning are met), and the "negative" criteria (i.e., that there will not be a substantial detriment to the zone plan or the master plan if the use variance is approved). In particular, the Board finds that the Subject Property accommodates the potential problems associated with the use in the context of inconsistency with the condition of maximum lot size; that the proposed use will provide adequate light, air and open space; the proposed use will not conflict with the development and general welfare of the neighboring municipalities, the county and the state; and that the requested use provides sufficient space in an appropriate location. The Board further recognizes that a site plan filing will be necessary as a result of the granting of the herein use variance.

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 in 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.

WHEREAS, a motion was made by Board member Afflerbach, and was seconded by Board member Richardson, to grant Use Variance Approval to the Applicant, based on the representations, acknowledgments and agreements made by the Applicant as are more fully set forth above under Findings of Fact, at a meeting following a public hearing held on the Application on February 15, 2023 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approval: Shultz, Afflerbach, McKeever, Goetsch, Hughes, and Richardson. Board member White voted "No". Board members Lucas and Nicholson had recused themselves. Board Members Wolf (Alternate Member # 1) and Swanson (Alternate # 2) did not vote.

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 March 15, 2023, as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on February 15, 2023 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 15th day of March 2023 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 February 15, 2023 on the above cited Application.


Ann Marie Weitzel, Secretary