

Resolution No. 2013-14

RESOLUTION MEMORIALIZING THE APPROVAL OF BULK VARIANCE TO PERMIT THE CONSTRUCTION OF A SIX FOOT TALL PICKET FENCE IN THE FRONT YARD OF A RESIDENTIAL PROPERTY IDENTIFIED AS 233 UNIONVILLE ROAD BLOCK 29 LOT 12 ON THE TAX MAP.

WHEREAS, Tony J. and Heidi A. Creta with address of 233 Unionville Road, Monroeville are the owners of Block 29 Lot 12 and have made application for variance to permit a six foot height fence in the front yard of that residential property; and

WHEREAS, The Board has considered the following in support of its application:

- a) Notice of Appeal (Bulk Variance Application Form) for Zoning Permit, Escrow Agreement dated November 14, 2012, Affidavit of Ownership, Disclosure statement, list of waivers, Land Development Checklist.
- b) Tax Map sheet 13 showing block 29.
- c) Certification from tax collector dated November 14, 2012.
- d) Partial Plan of Survey prepared by unknown, date unknown.
- e) Photos of property.
- f) Aerial photograph B-1
- g) App-1 a portion of a plot plan showing the new house constructed on the site
- h) App-2 an illustration of the board on board wooden fence proposed.

WHEREAS, with the receipt of submission waivers, the Applicant has complied with all of the requirements to bring this application before the Board and the Board met at public meeting on February 20, 2013 where it took the testimony of the public and the Applicant; and

WHEREAS, the Board carefully considered the reports of its Professional Planner, Mrs. Leah Furey Bruder, PP, AICP dated December 10, 2012 which report is attached hereto and incorporated herein by reference; and

WHEREAS, the Board after consideration of the application, the evidence, the testimony and the representations of the Applicant and the public comment, makes the following factual findings:

1. Block 29 Lot 12 is a 7.3 acre site located on the north side of Unionville Road within the RE Rural Environmental residential zoning district. The property is surrounded in all directions by other properties also in the Rural Environmental residential zoning district. The properties to the east, west, and south contain single family dwellings, and the property to the north (lot 20) is wooded and farmed and is part of an approved residential subdivision that has not yet been constructed. The applicant is proposing a board-on-board six foot tall fence which will run along the western property line of the lot to buffer their property from the neighbor. The six foot tall fencing will also be installed approximately 200 feet from the front of the house to the edge of the proposed right of way in the front yard in violation of the Township ordinances.
2. The aerial photograph of the site shows that a new house and a large accessory building have been constructed on the site which are not shown on the survey submitted by the applicant. The northern portion of the property appears to be wooded.

3. Ordinance section 96-80.1.B provides that the maximum height of the fence in the front yard can be no more than four feet in height
4. For a C(1) variance, the applicant must demonstrate that the strict application of the zoning regulations to the property create a hardship or result in exceptional practical difficulties by reason of the exceptional shape of the property or the exceptional topographic conditions uniquely affecting the property, or the structures lawfully existing upon the property. The applicant must also demonstrate whether the proposed variance will substantially impair the intent of the Master Plan or zoning plan and whether there are any potential detrimental impacts to the public good.
5. The Board observed that typically the permitted height of fences is restricted in the front yard area for safety reasons (to maintain sight lines) and in order to maintain openness throughout the neighborhood for purposes of aesthetics as well as community character.
6. The applicant has depicted the proposed fence location on a photocopy of a survey of the property. The fence is proposed all the way to the edge of the roadway. Unionville Road (or Ewan-Aura Road) is a County Road (Route 623).
7. The applicant testified that the accessory structure on the property to the rear of the house is being utilized for a personal use accessory to the residential dwelling and not for business or commercial use. He desires to erect the fence to provide a buffer and a privacy screen from the adjacent neighbor to the west with which he has a contentious relationship.
8. The applicant testified that he is disabled and that the stress of the conflict with his neighbor is causing significant detriment to his medical condition and his overall health and causing anxiety and fear in his children and grandchildren.
9. Mr. Edward Mick of 239 Unionville Road who is the owner of the residential property to the West of the applicant's lot appeared and testified to his opposition to the variance request. He also advised the board that there was litigation between the parties which has been or which will be filed shortly.
10. The Board found that under these circumstances the erection of the fence would promote the public welfare. Further, the residential structure on Block 29 Lot 12 is situated deep into the lot creating an exceptionally deep front yard inconsistent with the neighboring residential dwelling structures. The other residential lots in this area could legally erect a six foot fence in these parts of their lots without entering their front yards. A variance in this instance would not create a street aesthetic substantially different than the neighborhood.
11. The Board found that a deviation from the ordinance requirements in this instance was significant, but not so much so, that it left a lot which was inconsistent with the other already developed lots in this neighborhood or such that the lot could not be used as a residential building lot with the imposition of conditions designed to address the public safety issues. The Board found that a grant of this variance could occur without the creation of a substantial detriment to the public good or the zone plan for this area provided that the conditions of approval set forth in this resolution are met. The Board found that on balance the benefits of the improvement outweighed any detriment created by the grant of the variance and granted the bulk variances to permit the six foot fence in the front yard of this lot.

12. The applicant shall provide an existing conditions survey prepared and sealed by a licensed land surveyor which includes depictions of the sight triangles and sight lines to ensure that the proposed fence will not interfere with vehicles entering or exiting the driveway. The survey must also include the RE zone standards to demonstrate compliance of the existing development on the site.

13. The proposed fence must conform to all regulations set forth in Section 96-80.1.

14. The fence may not be placed within the County right-of-way. According to the Gloucester County Road Maintenance and Repair website, the proposed roadway width for Route 623 is 44 feet and the proposed right-of-way width is 66 feet. Therefore, the fence may not be placed within 33 feet of the centerline of Unionville Road.

15. The applicant must submit permits from all outside agencies with jurisdiction including but not limited to the Gloucester County Planning Board and all other local, county, state, or other governmental approvals as may be required by any ordinance, regulation, law or statute.

16. The applicant must pay all escrows, review fees and costs associated with this matter within 7 days of notice of same.

NOW THEREFORE BE IT RESOLVED, by the Planning Board of the Township of Elk that bulk variance to permit the construction of a six foot high fence in the front yard of an existing residential property identified as 233 Unionville Road Monroeville, Block 29 Lot 12 shall be **GRANTED** upon the conditions set forth above.

Voting in favor: Barbaro, Carter, McKeever, Shoultz, Spring, White, Hughes, Goss

ELK TOWNSHIP PLANNING BOARD



Chuck Nicholson, Chairperson

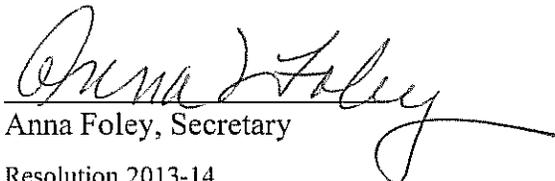
ATTEST:



Anna Foley, Secretary

Certification

I certify that this is a true copy of the resolution passed by the Elk Township Zoning Board of Adjustment at its regular public meeting on April 17, 2013, its decision of February 20, 2013.



Anna Foley, Secretary



Exhibit "A"

December 10, 2012

RECEIVED

Elk Township Planning/Zoning Board
667 Whig Lane Road
Monroeville, NJ 08343

DEC 12 2012

TOWNSHIP OF ELK
CONSTRUCTION OFFICE

Attn: Anna Foley, Secretary

Re: Tony J. and Heidi A. Creta
Block 29, Lot 12
233 Unionville Road
Bulk Variance; RE Rural Environmental Residential District
Elk Township Application ZB-12-08
Bach Associates Proj. # ET2012-8

Dear Chairman and Members of the Board:

We have reviewed the variance application and supporting documents submitted by Tony J. and Heidi A. Creta for a Bulk Variance ("C" variance) for the installation of a six-foot fence running the length of the west side of the above referenced 7.3 acre site. The applicant is proposing a picket fence to buffer their property from the neighbor.

The property is located on the north side of Unionville Road within the RE Rural Environmental residential zoning district. The property is surrounded in all directions by other properties also in the Rural Environmental residential zoning district. The properties to the east, west, and south contain single family dwellings, and the property to the north (lot 20) is wooded and farmed and is part of an approved residential subdivision that has not yet been constructed. The survey provided with the application indicates that the property contains a single family dwelling and a frame shed, though from an aerial photograph it appears that a new house and a large accessory building have been constructed on the site. The northern portion of the property appears to be wooded.

We have received the following materials in support of this application:

1. Notice of Appeal (Bulk Variance Application Form) for Zoning Permit, Escrow Agreement dated November 14, 2012, Affidavit of Ownership, Disclosure statement, list of waivers, Land Development Checklist.
2. Tax Map sheet 13 showing block 29.
3. Certification from tax collector dated November 14, 2012.
4. Partial Plan of Survey prepared by unknown, date unknown.
5. Photos of property.

Completeness

We have reviewed the checklist and the needed waivers are listed below. The application is

incomplete, but the applicant has requested the necessary waivers. The application may be scheduled for a hearing. At the hearing the Land Use Board will first consider the waivers required and if the waivers are granted, the applicant may proceed with the variance hearing.

- **#8 requires copies of applications and certifications of approvals from outside agencies.** *The applicant states this is not applicable. If the variance is granted the applicant will need to confirm the County's requirement for fence setbacks on a County Road (Unionville Road) (see comment 3 below). The waiver is recommended for variance review.*
- **#9 requires the submission of a site plan.** *The applicant has submitted a partial copy of a survey, with the fence line pointed out on the survey. Due to the nature of this application, a site plan waiver is recommended.*
- **#11 requires the source and date of current or re-certified property survey prepared and sealed by a registered NJ Land Surveyor.** *The applicant requests a waiver. The survey provided does not reflect the improvements currently on the property. It is recommended that if the application is approved, that at a minimum the front portion of the property be surveyed to confirm that the proposed fence will not interfere with sight lines. We defer to the Township Engineer for recommendation on this waiver.*
- **#25 requires that the plan be prepared at a maximum scale of 1"=50'.** *The applicant is requesting a waiver. It is not clear what the scale is on the submitted partial plan/survey. Due to the nature of this application, a waiver is recommended.*
- **#35 requires the applicant to submit a zoning schedule showing the proposal's compliance or non-compliance with the applicable bulk and area standards in the RE zone.** *The applicant has not provided the RE standards, or the accessory structure standards. The waiver is not recommended, but the information may be added to the plan as a condition of any approval. The variances from the bulk regulations in section 96-80.1 are listed below.*
- **#40 requires the location, design and dimensions of each new and existing structure and wooded area.** *The applicant requests a waiver because they are requesting only a variance for the fence in the front yard. The waiver is recommended. However, the applicant proposes to sun the fence along the entire western property line. The applicant should indicate whether any tree removal will be required.*
- **#41 requires the location of existing wells and septic systems.** *The applicant is requesting a waiver due to the nature of the application. We recommend this waiver.*
- **#43 requires the existing and proposed use for all buildings and structures.** *The applicant is requesting a waiver due to the nature of the application. We recommend the waiver since the application is for a fence only..*
- **#53 requires the applicant to identify any structures of historical significance within 200 ft of the site.** *The applicant is requesting a waiver due to the nature of the application. We recommend this waiver.*

- #55 requires contours at 20 foot intervals for the entire tract and within 100 feet. *The applicant requests a waiver due to the nature of this application. We defer to the Board Engineer to recommend this waiver.*
- #67 requires the applicant to provide results and locations of percolation tests and borings. *The applicant has requested a waiver. We recommend this waiver since no new wastewater facilities or wells are proposed.*
- #73 requires the applicant to provide either a Letter of Interpretation from the NJDEP verifying whether or not there are wetlands on or in close proximity to the site, or a statement or verification from a NJ licensed Surveyor or Engineer that he or she has reviewed wetlands inventory maps, personally visited the site and conducted a survey to verify that there are no wetlands on or in close proximity to the site. *The applicant requests a waiver since no new construction is proposed. We recommend this waiver since there do not appear to be wetlands on the property, however the applicant should be aware that placing a fence within wetlands or a transition area would require a permit from NJDEP.*
- #77 requires information on proposed signs. *A waiver is requested since no new signage is being proposed. A waiver is recommended.*

RE Zone Bulk Standards and “C” Variances

The property is within the RE Rural Environmental Zoning District (section 96-71) 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 zoning officer has determined that the fence requires a bulk variance for height in the front yard.

“C” Bulk Standards

For the Board’s information, the table below shows the variance required for proposed fence that is the subject of the application, in accordance with the current standards.

Section	Required	Proposed	Compliance
96-80.1.B. Fences	Maximum height of 4 feet in front yard	6 feet high fence in front yard, along western property line	Variance Required

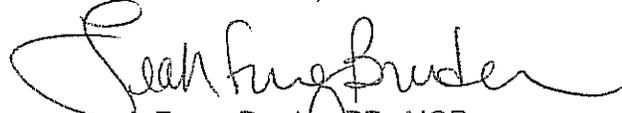
At the hearing the applicant must provide testimony to justify the requested variances. For a C(1) variance, the applicant must demonstrate that the strict application of the zoning regulations to the property create a hardship or result in exceptional practical difficulties by reason of the exceptional shape of the property or the exceptional topographic conditions uniquely affecting the property, or the structures lawfully existing upon the property. For a C(2) variance the applicant must show that the proposed variance advances the purposes of municipal land use law and that the benefits of the deviation would substantially outweigh any detriments. The applicant should address whether the proposed variances will substantially impair the intent of the Master Plan or zoning plan and whether there are any potential detrimental impacts to the public good.

The following comments are provided for the Board's consideration:

1. **Fences.** In accordance with Section 96-5, a fence is defined as "A vertical enclosure, or partial enclosure solid or partially open, to prevent straying from within or intrusion from without (or merely decorative purposes). A fence over seven feet in height is also considered a structure for purposes of this chapter." The proposed fence is six-feet in height, and therefore it is not defined as a structure. The applicant indicates that the proposed fence will be a "picket fence". It is recommended that the applicant bring a detail of the proposed fence to the hearing to confirm whether the fence is open or solid.
2. **Variance.** Fences are regulated by Section 96-80.1 of the Township's Unified Development code. The applicant is requesting a bulk variance to permit six-foot high fence along the western property line on the subject property. A variance is required from Section 90-80.1.B. which provides that fences are not to exceed four feet above ground level in the front yard, where a six foot fence is proposed. In accordance with section 96-5 "front yard" is defined as the area between the street line and the front line of the building, projected to the side lines of the lot. Typically the permitted height of fences is restricted in the front yard area for safety reasons (to maintain sight lines) and in order to maintain openness throughout the neighborhood for purposes of aesthetics as well as community character.
3. **County Road and Sight Lines.** The applicant has depicted the proposed fence location on a photocopy of a survey of the property. The fence is proposed all the way to the edge of the roadway. Unionville Road (or Ewan-Aura Road) is a County Road (Route 623). The fence may not be placed within the County right-of-way. According to the Gloucester County Road Maintenance and Repair website, the proposed roadway width for Route 623 is 44 feet and the proposed right-of-way width is 66 feet. Therefore, if the Board is inclined to grant the variance, the fence may not be placed within 33 feet of the centerline of Unionville Road. Further, the applicant should provide sight lines on an updated property survey to ensure that the proposed fence will not interfere with vehicles entering or exiting the driveway.
4. **Accessory structures.** The applicant should confirm that the accessory structure on the property to the rear of the house is being utilized for a personal use accessory to the residential dwelling and not for business or commercial use.
5. The applicant is reminded that the proposed fence, if approved must to conform to all regulations set forth in Section 96-80.1.

Please call with any questions. We reserve the option to make additional comments as more information becomes available.

Very truly yours,
BACH Associates, PC



Leah Furey Bruder, PP, AICP

Cc: Joan Adams, Esq
Corey Gaskill, PE, CME
Mr. and Mrs Creta, Applicants