

RESOLUTION NO. 2015-18

**RESOLUTION OF THE ELK TOWNSHIP PLANNING BOARD GRANTING A
MINOR SUBDIVISION AND VARIANCES FOR THE PROPERTIES KNOWN AS BLOCK 67
LOT 23 COMMONLY KNOWN AS 257 UNION STREET AND BLOCK 67
LOT 25 COMMONLY KNOWN AS 251 UNION STREET**

WHEREAS, the Zoning Board of Elk Township met at its regular meeting on July 15, 2015 and considered the application of Smith Orchards, LLP the owners of property, for a minor subdivision of Block 67 Lot 23 and Block 67 Lot 25 upon the tax map of the Township.

WHEREAS, the Applicant, Smith Orchards, LLP, having a mailing address of 212 Fish Pond Road, Sewell, NJ, is a corporation organized under the laws of the State of New Jersey and is the current owner of the lands identified as Block 67 Lot 23 upon the tax map of the Township. The Applicant appears through its attorney, William Ziegler, Esquire.

WHEREAS, the Applicant, Loring Inc., having a mailing address of 212 Fish Pond Road, Sewell, NJ, is a corporation organized under the laws of the State of New Jersey and is the current owner of the land identified as Block 67 Lot 25 upon the tax map of the Township. The Applicant appears through its attorney, William Ziegler, Esquire.

WHEREAS, David Smith and Desiree Smith, having a mailing address of 212 Fish Pond Road, Sewell, NJ, are the current owners of the land identified as Block 67 Lot 26 upon the tax map of the Township. David Smith and Desiree Smith have consented to the application.

WHEREAS, the Board has received the following items for consideration as part of this application:

- Land Development Application for Minor Subdivision, dated June 1, 2015;
- Statement in Support of Application prepared by William Ziegler, Esq., dated June 2, 2015;
- Affidavit of Publication;
- Land Development Checklist, dated June 1, 2015;
- Minor Subdivision/Use Variance Plan prepared by James Clancy, PE, dated June 3, 2015;
- Gloucester County Planning Board Subdivision Application, dated June 2, 2015;
- Deed for Block 67, Lots 23 & 24, dated December 29, 1994;
- Deed for Block 67, Lot 25, dated November 28, 2014;
- Deed for Block 67, Lot 26, dated November 27, 2006;
- Disclosure Statement, Pursuant to L. 1977, C-366;
- 200 Foot Certified List prepared by Robyn Glocker Hammond and dated June 2, 2015;
- Certification of Real Estate Taxes for Block 67, Lot 23;
- Certification of Real Estate Taxes for Block 67, Lot 25;
- Certification of Real Estate Taxes for Block 67, Lot 26;
- NJPDES Stormwater Checklist;
- Affidavits of Ownership
- Freshwater Wetlands Letter of Interpretation for Block 67, Lot 26 from the New Jersey Department of Environmental Protection, dated August 7, 2008;
- Statement of requested waivers;
- App-1 – Gloucester County Department of Health & Senior Services Septic System Abandonment Request

- App-2 - Four photographs of the subject property;
- App-3 – Freshwater Wetlands Letter of Interpretation/Line Verification
- App-4 – Property Detail / Deed Registration of Block 67, Lot 26

WHEREAS, the Applicant has been granted submission waivers by the Board and the application has been deemed complete; and

WHEREAS, the Board has received the report of its Professional Planner, Mrs. Leah Furey Bruder, PP, AICP dated June 23, 2015 and the report of its Professional Engineer, Mr. Stan M. Bitgood, PE dated June 9, 2015 attached hereto as Exhibit “A” and incorporated herein by reference; and

WHEREAS, The Board met at public hearing on July 15, 2015 to consider the evidence presented; and

WHEREAS, after carefully considering the evidence presented by the Applicant in support of his application, the testimony of the Board’s professionals and the public comments, the Board has made the following findings of fact, and conclusions of law:

1. The subject property consisting of Lots 23, 25 and 26, is located on the north side of Union Street (County Route 619) and extends to the Township line at Glassboro and totals approximately 20.5 acres. Lot 23 was previously consolidated with lot 24. The application is to reconfigure Lots 23 and 25 so that each will be greater than 6 acres in size.
2. The property is located in the M-1 Light Manufacturing District and is surrounded to the north, east and west by other properties in the same zoning district, as well as land in Glassboro, and to the south across Union Street by land in the RE residential zoning district. The surrounding uses are generally residential and agricultural in nature. Presently, a residential home exists on lot 23. Lots 25 and 26 were previously utilized for residential purposes and will be utilized for residential use in the future. The continued utilization of Lots 23, 25 and 26 for nonconforming residential use is authorized by way of a Zoning Board Resolution on August 19, 2015.
3. Block 67 Lot 26 is currently owned by David and Desiree Smith having a mailing address of 212 Fish Pond Road, Sewell, NJ. The property was originally improved with a residential structure situated approximately 41 feet from Whig Lane Road. The property currently has 6.166 acres and will not be altered. The applicant would like to construct a new single-family dwelling within all current setbacks and utilize the balance of the property for agricultural purposes.
4. Block 67 Lot 25 is currently owned by Loring, Inc. having a mailing address of 212 Fish Pond Road, Sewell, NJ. The property as it currently exists is 2.85 acres in size. Following the subdivision, it will be 6.110 acres in size and its frontage will increase from 130 feet to 180 feet where 200 feet are otherwise required by ordinance. The applicant testified that the property was formerly improved by an old dilapidated residential structure which was removed for safety purposes. The applicant testified that he intends to build a single family dwelling on the property.
5. Block 67 Lot 23 is currently 11.552 acres an improved lot with a two story frame dwelling and various outbuildings. That property is owned by Smith Orchards, LLP having a mailing address of 212 Fish Pond Road, Sewell, NJ. Following the subdivision, Lot 23 will be reduced from 11.552 acres to 8.289 acres and its frontage shall be reduced from 284.54 feet to 229.54 feet. The applicant testified that the existing use shall remain residential.

6. Variance relief is granted as follows:

Ordinance Section	Required	Lot 23	Lot 25	Lot 26	Compliance
96-78F(1)(b) Min Lot Frontage	200 feet	229.54 feet	185 feet	143 feet	Variance Improvement over existing condition
96-78F(1)(e) Front yard	100 feet	50.7 feet	100 feet Minimum	206 feet	Variance existing condition

7. The Applicant testified that there are no wetlands or other environmental constraints which affect the site.

8. The meeting was opened to the public. The following testimony was presented:

- a) Al Crittenden inquired about the well and cesspool on Lot 26. The applicant’s attorney confirmed the cesspool had been abandoned, filled in, and inspected by Gloucester County Health Department. A new septic system will be installed and has been approved by Gloucester County Health Department. The existing well on the lot, installed by the S.J. Gas Company, will be used. Mr. Crittenden requested a copy of the approved septic plan. The applicant agreed to provide one.
- b) Karen Crittenden asked to see the plan and the location of the house on Lot 26. Referring to the plan, the applicant’s attorney pointed out where the house was proposed and the location of the new septic system.
- c) Lorraine Townsend also asked to see the plan and the location of the proposed house on Lot 26.

9. The Applicant shall revise the plans and submissions to comply with its affirmative representations at the public hearing and completeness hearing on this matter and the items outlined in the reports of the Board professionals attached hereto.

10. The Applicant acknowledged his obligation to comply with the payment of the mandatory development fee (1.5% of the equalized assessed value) which will be required to be paid 50% at the time the building permit is issued and the balance at the time a certificate of occupancy is issued.

11. The Applicant acknowledged that at the time the building permit is applied for an individual lot grading plan will be required for the review and approval of the Township engineer.

NOW, THEREFORE, be it resolved by the Planning Board of the Township of Elk that it approves the application for a minor subdivision subject to the following conditions:

- A. The applicant shall pay all outstanding application, escrow and review fees associated with the subdivision application to the Township.

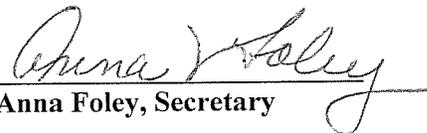
- B. The subdivision shall be perfected by the filing of deeds, which are in full conformity with this approval granted by the Planning/Zoning Board of Elk Township. The deed shall be filed within 190 days of the resolution approving the subdivision and shall be signed by the Chairman and Secretary of the Planning Board of the Township of Elk. The deeds shall contain the following sentence: "We, the undersigned Chairperson and Secretary of the Elk Township Planning Board, hereby certify pursuant to N.J.S. 40:55D-47 that subdivision application for the within parcel of land was approved by the Elk Township Planning Board on August 19, 2015, and memorialized by Resolution No. (Insert number) dated (Insert date)."
- C. The applicant must receive the approval of the Gloucester County Planning Board and all interested state, county and municipal agencies and said approvals must be final and non-appealable and proof of same must be provided to the Planning Board prior to the signature of the deeds perfecting this minor subdivision.
- D. Prior to signature, the subdivision deeds shall be submitted to the Solicitor of the Planning Board for his review and approval as to form and the legal description for all lots shall be submitted to the Planning Board Engineer for his review and approval.
- E. The Applicant must comply with conditions set forth in the reports of the Board's Professionals and the affirmative representations made at the time of the public hearing as well as the conditions set forth herein.

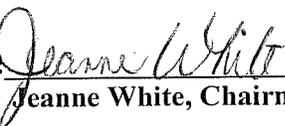
Voting in favor: Hughes, McCreery, McKeever, Ratzell, Schmidt, Shoultz White

Ayes: 7
 Nays: 0
 Other: 0

ATTEST

ELK TOWNSHIP PLANNING BOARD

By: 
 Anna Foley, Secretary

By: 
 Jeanne White, Chairman

Certification

The undersigned, Secretary of the Planning Board of Elk Township, hereby certifies that the above is a true copy of a resolution adopted by said Board on the 19th day of August, 2015, its decision of July 15, 2015.


 Anna Foley



FEDERICI & AKIN, P.A.
CONSULTING ENGINEERS

Joseph P. Federici, Jr., P.E., P.P.

President

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June 9, 2015

File# 15103

Township of Elk
Planning/Zoning Board
680 Whig Lane
Monroeville, NJ 08343

**Re: Smith Orchards, LLP – Lot Line Adjustment & Use Interpretation - ZB-15-05
Block 67 Lots 23,25 & 26 – Union Street (formerly Whig Lane)
Review No. 1**

Dear Chairman White & Members of the Board

I received the following items for review as part of the application for Minor Subdivision Approval to subdivide Block 836, Lot 12 into 3 residential lots:

Plan of Minor Subdivision & Use Variance, by James Clancy	6/3/15
Subdivision Application	6/2/15
Checklist	6/1/15
Statement of Support by William Ziegler, Esquire	undated
Deed for Block 67 Lots 23 & 24	12/29/94
Deed for Block 67 Lot 26	11/27/06
Deed for Block 67 Lot 25	11/18/14

Property Location:

The property is located on the north side of Union Street (CR-619), and extends to the Township Line at Glassboro. Lot 25 is smaller than either of the adjoining lots 23 or 26. Lot 23 was previously consolidated with lot 24. The area is in zone M-1 but has numerous narrow lots with residential uses.

Floodways are mapped as Zone A on the Flood Insurance Rate Map as a relatively narrow band along the stream lines running through the lots 23 & 25 and widening within lot 26. Wetlands are also mapped which include substantial areas within all three lots.

Adjacent lots are wooded and farmed with dwellings fronting on Union Street.

The application requests approval to create 3 lots from the existing 3 lots. Each of the three new lots will exceed 6 acres and is proposed to be used for agricultural purposes and suitable for a residential dwelling in each lot.

No dwelling is shown for lot 25 at this time.

Completeness: The applicant requested waivers for the following required items:

1. Item 8, Copies of applications to other jurisdictions. I have no objection to waiving this for completeness. Copies would be required prior to approval.
2. Item 20, List of owners within 200 feet. A list has been included so I do not see that his waiver is needed.
3. Item 29, Environmental Impact Statement. Upon acceptable testimony confirming that prior/existing uses have not included activities that would potentially contaminate the soils or ground water resources I have no objection to waiving this item. In particular, disposition of all former heating oil tanks and agricultural pesticides, batteries etc should be addressed.
4. Item 33 Demonstration of compliance with COAH. I defer to the Planner & Solicitor on this requested waiver.
5. Item 38 Photographs. I do not see a compelling reason to waive this item. Photographs from the street are easily taken and printed and could be submitted at the hearing.
6. Item 45, Parking calculation. As the lot line adjustment is not technically a subdivision, and the proposed future residences will conform to the setback requirements I have no objection to this waiver.
7. Item 47, Landscape Plan. As the lot line adjustment is not technically a subdivision, and the proposed future residences will conform to the setback requirements I have no objection to this waiver.
8. Item 49, Location of trees. As the lot line adjustment is not technically a subdivision, is for agricultural uses and the proposed future residences will conform to the setback requirements I have no objection to this waiver.
9. Item 50, Tree Protection Plan. As the lot line adjustment is not technically a subdivision, is for agricultural uses, and the proposed future residences will conform to the setback requirements I have no objection to this waiver.
10. Item 55, Contours and Grading Plan. Future submission of Individual Lot Grading Plans will suffice. The extent of topography shown on each will by ordinance and necessity, have to extend at least 100 feet outside the limits of each lot, in all directions.
11. Item 57, Grading Plan. Future submission of Individual Lot Grading Plans will suffice. The extent of topography shown on each will by ordinance and necessity, have to extend

at least 100 feet outside the limits of each lot, in all directions.

12. Item 58, Soil Erosion & Sediment Control Plan. The application does not proposed land disturbances to any extent, and does not require a soil erosion and sediment control plan. Subsequent disturbances for residential improvements may well warrant such a plan and approval by the Soil Conservation District. If this occurs, a copy of the plans and permit must be submitted with the application for Individual Lot Grading Plan approval.

13. Location of Soil Borings, and Soil movement information. I have no objection to waiving this requirement, upon testimony that in the event that soil is to be moved onto or off of any lots in the future, a plan for doing so with detailed information on the soil characteristics would be submitted for review prior to applying for approval of a lot grading plan or site plan.

14. Item 60, Stream and floodplain information. I have no objection to the partial waiver. Sufficient information is shown on the plan.

15. Item 64, Storm drainage plans and calculation. I have no objection to waiving this.

16. Item 66, Commitment from the MUA. I have no objection to waiving this.

17. Item 67, Boring information for septic system. I have no objection to waiving this.

18. Item 68, Floor plan & front elevation. I have no objection to waiving this.

19. Item 69. Gross floor area, ratio, & allocation. I have no objection to waiving this.

20. Item 70, Lighting Plan. I have no objection to waiving this.

21. Item 71, Solid Waste enclosure details. I have no objection to waiving this.

22. Item 73, Wetlands LOI/Permit/Documentation. I have no objection to partially waiving this.

23. Item 74, Stormwater drainage. As the applicant will submit individual lot grading plans for the improvements and grading on each lot, stormwater drainage can be deferred until then.

24. Item 75, Utilities. I have no objection to waiving this.

25. Item 81, Traffic Control Plan. I have no objection to waiving this.

26. While a waiver was not requested, the submitted plan references a plan of survey with a different date than the submitted plan. A signed & sealed copy of the plan of survey should be submitted. This could be waived and submitted as a pre-condition to approval.

27. Also, Metes & Bounds for Lot 26 appear to be incomplete. The bearing along Union Street should be added. Legal descriptions for the two adjusted lots should be submitted for review. This can be a pre-condition of approval.

Technical Review

1. Bulk Requirements: The site is in the M-1 Light Manufacturing Zone. The table of zoning requirements correctly indicates the bulk requirements. Lot 26 was created with only 143 feet of frontage where 200 feet is required. Lot 25 is proposed to have 185 feet of frontage where 200 feet is required. No other new bulk variances are proposed.
 - A. The dwelling in lot 23 is only 54.3 feet from the proposed division line between 23 & 25. Therefore, correcting the frontage of lot 25 would result in a non conforming side yard in lot 23. I believe the proposed straight common property line with one narrow lot is preferable to reduced side yards.
 - B. I defer further comments on the proposed size and shape of the resulting lots to the Board's Planner.
2. Plat/Plan Requirements: The plan of minor subdivision is satisfactory for demonstration of the intent of the lot line adjustment. The applicant should confirm that the adjustment will be filed by deeds thus avoiding further review for compliance with the map filing law.
 - A. Regardless of how the subdivision is recorded at the County Clerks office, it is recommended that a property corner marker be set at the new front lot corner point.
 - B. Addresses and Lot numbers: It is assumed that no new addresses will be needed. Lot numbers are required in accordance with the code.
3. Parking: This application will not change existing parking capacity or locations.
4. Curbs & Sidewalks: This application does not include curbs or sidewalks. A waiver seems appropriate for these items.
5. Utilities: Sanitary Sewer and water mains do not exist within 200 feet of the site. All dwellings are served by private wells and sewage disposal systems.
 - A. Note NJAC 7:9 requires separation distances between sewage disposal fields and various improvements and features. These can be deferred until individual lot grading plans are submitted for lots 23 & 25.
6. Lot grading: No grading is shown on the plan of subdivision. Individual lot grading plans will be required prior to obtaining any future building permits.
7. Stormwater Management: No significant changes in runoff are anticipated. The disturbances will remain below the thresholds for major projects. Accordingly, stormwater management calculations are not required.
8. Fences: No new fences or modifications are proposed.
9. Street Paving: Union Street is County Route 619. No street paving is required.
10. Proposed Use. Testimony should be provided regarding the requirements for the

proposed agricultural use and the impact that the existing floodway and wetlands will have on meeting the requirements.

Recommendations:

1. County Planning Approval or a waiver should be submitted.
2. All taxes, escrow fees and other fees must be paid to the Township prior to signatures by the Chairman and Secretary.
3. Legal descriptions should be submitted for review. They should include call out to new property corner markers that have actually been set between lots 23 & 25.
4. The applicant should submit proposed and as-built lot grading plans for any proposed disturbances. (As required for Lot Grading Plans)
5. A performance guarantee and inspections by the Township Engineer should not be required for the lot line adjustment.
6. While not a subdivision, the applicant should agree to filing the lot line adjustment at the County Clerks office within a reasonably short period of time. Such period might be 190 days as would be applicable in the case of a subdivision.
7. Copy of county road opening permits should be submitted prior to constructing or changing any driveways or any grading or other improvements within or affecting the county right of way.

Very truly yours,

Stan M. Bitgood

Stan M. Bitgood, P.E., C.M.E.

Planning Board Engineer

Email copies:

Anna Foley, Planning/Zoning Board Secretary

Leah Fury Bruder, P.P. Board Planner

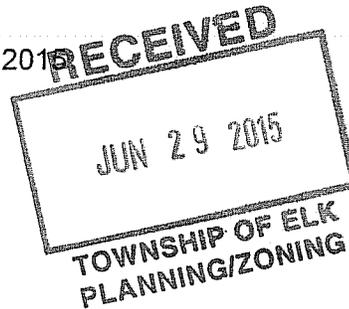
John Eastlack, Jr. Esq. Board Solicitor

James Clancy, P.L.S., Applicant's Surveyor

William Ziegler, Esq. Applicant's Attorney



June 23, 2015



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

Attn: Anna Foley, Board Secretary

Re: Smith Orchards, LLP
Block 67, Lots 23, 25, 26
Union Street (County Route 619)
Special Question (or Use Variance) and Minor Subdivision
M-1 Light manufacturing District
Elk Township Application ZB-15-05
Bach Associates Proj. # ET2015-5

Dear Chairwoman and Members of the Board:

We have reviewed the application and supporting documents submitted by Smith Orchards, LLP for review of a special question related to the pre-existing non-conforming status of the residential use and for a minor subdivision/lot line adjustment at the above referenced site on the north side of Union Street (County Route 619). The subject property includes three lots totaling approximately 20.5 acres. The proposal is to shift the lot line between existing lots 23 and 25 in order to enlarge the size of lot 25 from 2.85 acres to 6.11 acres (and thereby reduce the size of lot 23 from 11.552 acres to 8.29 acres). No new lots would be created. Existing lot 23 contains a single family residential dwelling. The applicant would propose to construct one single family home on each of the other two lots (25 and 26).

The property is located within the M-1 Light Manufacturing District and is surrounded to the north, east and west by other properties in the same zoning district, as well as land in Glassboro, and to the south across Union Street by land in the RE residential zoning district. The surrounding uses are generally residential and agricultural in nature. There are light industrial uses to the north in Glassboro and to the west in Elk (on Jacob Harris Lane), but those uses are separated from the subject site by woods and wetland areas.

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

1. Land Development Application for Special Question/Use Variance and Minor Subdivision (received by Elk Twp June 1, 2015), Certification of Real Estate Taxes Paid, Escrow Agreement dated June 1, 2015, Affidavit of Applicant and Ownership, Disclosure Statement, certified list of property owners within 200 feet (not including Glassboro).
2. Statement in Support of Application prepared by William Ziegler, Esq, dated June 2, 2015.
3. Land Development Checklist, dated June 1, 2015.
4. Minor Subdivision/Use Variance Plan prepared by James A Clancy, PE, PLS of Clancy & Associates, Inc dated June 3, 2015

5. Deed for lots 23 and 24 in block 67, dated December 29, 1994.
6. Deed for lot 25 in block 67 dated November 18, 2014
7. Deed for lot 26 in block 67 dated November 27, 2006
8. Gloucester County Planning Board Subdivision Application dated June 2, 2015.

Completeness

The application is presently incomplete. Due to the nature of the minor subdivision/lot line adjustment, the applicant has requested a number of waivers. A completeness review has been prepared by the Board's engineer Mr. Bitgood. Most of the waivers are recommended. We offer the following additional comments related to completeness. Once the applicant provides the requested items we would recommend that the application be scheduled for a completeness hearing. If the application is deemed complete by the Board, and if notice is properly provided, the applicant may proceed with the minor subdivision application at the same meeting.

- **#13** requires the metes and bounds description for all lots. *We did not receive this information and it is not mentioned in Mr. Bitgood's completeness review. We defer to the Board's engineer for comment.*
- **#33** requires the applicant to include a statement and demonstration of compliance with affordable housing requirements. *Due to the nature of this application, we recommend the waiver. Any new residential structures will be subject to the mandatory development fee (1.5% of equalized assessed value of the land and improvements), which will be deposited into the Affordable Housing Trust Fund and used in support of the Township's Fair Share compliance efforts.*
- **#36** requires that copies of any protective covenants, easements and restrictions of record be provided, including a title policy. *We have not received this information. We defer to the Board solicitor to advise whether the information is needed since this is a lot line adjustment as opposed to a subdivision.*
- **#49 and #50** require the location of all existing trees including size and species and Tree Protection Management Plan. *The applicant requests a waiver, as no tree removal is proposed at this time. It is recommended that the applicant agree to install tree protection fencing if needed prior to construction to ensure that clearing is limited to the areas needed for construction and grading. This may be shown on the Individual Lot Grading Plans that will be required prior to any construction.*
- **#73** requires the applicant to submit an LOI from the NJDEP. *The applicant has provided a verified wetlands line on lot 26, where new construction is proposed. It is recommended that the applicant provide a copy of the LOI issued by NJDEP. The wetlands line shown on lots 23 and 25 is from NJDEP digital data, but has not been verified. It is recommended that the wetland delineation be field verified prior to any new construction on lots 23 and 25.*

Use and Zoning

In accordance with section 96-78 the M-1 Manufacturing-Light zoning district permits production, processing, cleaning, testing, repair, storage and distribution of materials, goods, foodstuffs and products not involving retail activity on the lot; contractors' establishments not engaging in any retail on site; laboratories; public utility installations; agricultural uses; and golf courses. Several uses including retail businesses, residential dwellings, and the manufacture of heavy chemicals, cement and other similar products; and the processing, sale, storage or reclamation of junk, including automobile wrecking and storing; are specifically prohibited. Smith Orchards' application is for a lot line adjustment, continuation of one existing residential dwelling on lot 23, and approval to construct a new dwelling on each of lots 25 and 26. The applicant indicates that dwellings previously existed on lots 25 and 26, but they were removed.

The proposed residential uses are not permitted in the M-1 zoning district. However, the applicant asserts that residential use of the property is a pre-existing non-conformity, which has not been abandoned. Municipal Land Use Law (N.J.S.A. 40:55D-68) provides that the applicant may seek certification from the zoning board that a use and/or structure existed before the adoption of the ordinance which rendered the use non-conforming.

In requesting certification of a nonconforming use, the applicant has the burden of proof in establishing that the use existed prior to the adoption of an ordinance that rendered the use nonconforming.

1. **Lot 26.** The applicant's narrative indicates that lot 26 currently consists of 3.716 acres and that the lot line adjustment will result in a 6.166 acre lot. Based on the plan submitted it appears that lot 26 is already 6.166 acres and will not be altered. The applicant should confirm and the zoning table should be corrected. The tax records indicate that the property is vacant. The applicant indicates that there was previously a dwelling on the site set back 41 feet from the right-of-way. The applicant should indicate the date that the dwelling was removed.
2. **Lot 25.** The applicant's narrative indicates that lot 25 is currently 2.85 acres in size and will be increased to 6.110 acres as a result of the lot line adjustment. The applicant also indicates that there was a dilapidated residential structure on the property, which was removed. The tax records indicate the property is vacant. The applicant should indicate the date that the dwelling was last occupied and the date when the dwelling was removed.
3. **Agricultural Use.** The applicant's narrative indicates that the proposed lot line adjustment and residential uses are related to a small farming operation. It does not appear that the land is currently farmed. The applicant should indicate current and/or future agricultural use of the properties. Given the relatively small size of the lots (6 to 8 acres each), it seems that and farming on the property would be accessory to the dwelling and not the other way around.
4. **Master Plan and Zoning.** Prior to the 1999 Master Plan Revision, the subject properties were within the RE Rural Environmental zoning district. The 1999 Master Plan included a "Land Use Plan" map that proposed the M-1 zoning for the subject properties. When the M-1 zoning was implemented the zone included land on the south/east side of Union

Street. In 2004 the land south/east of Union was returned to the MD residential zone. The subject properties are now in a fairly isolated area of M-1 zoning, since environmental characteristics prevent connecting this area to Jacob Harris Lane. The zoning maps subsequent to 1999 show the properties in the M-1 zone.

5. **Use.** In the event that the Board does not grant pre-existing nonconforming use status to the applicant, and since residential uses are not permitted in the M-1 zoning district, the applicant has applied for a D(1) use variance in the alternative. In that case the standard below would apply. It is recommended that the applicant explain why they believe that the site is better suited to residential use than to light industrial use, and confirm that their position will remain the same if and when permitted uses are developed on adjacent properties.

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 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 is particularly suited to 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 (POSTIVE). 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 (NEGATIVE). The applicant must provide testimony demonstrating that the proposal meets the variance criteria.

M-1 Zone Bulk Standards and “C” Variances

The application indicates that a minor subdivision is not really required for the lot line adjustment, citing the definition of “subdivision” in Municipal Land Use Law, which provides that a subdivision is not required if the division is found by the Planning Board to be agricultural purposes. According to the tax records, none of the lots are currently farmland assessed and from a review of aerial photographs of the site the lots do not appear to be farmed.

Section	Required	Lot 23	Lot 25	Lot 26	Compliance
96-78F(1)(a) Minimum Lot size	2 acre	8.289	6.110	6.166	Complies
96-78F(1)(b) Min Lot Frontage	200 feet	229.54 feet	185 feet	143 feet	Variance, improvement over existing
96-78F(1)(c) Minimum Lot Depth	200 feet	1437 feet	1395 feet	1423 feet	Complies
96-78F(1)(d) Maximum Building Coverage	20 %	<20%	<20%	<20%	Complies
96-78F(1)(e) Front Yard	100 feet	50.7 feet	100 feet minimum	206 feet	Variance existing condition

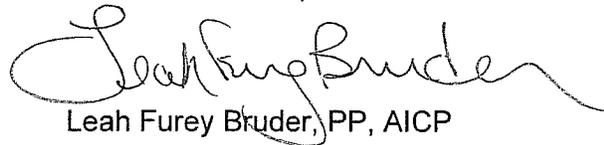
96-78F(1)(f) Side Yard	50 feet each	54.3 feet	50 feet min	60 feet	Complies
96-78F(1)(g) Rear Yard	75 feet	1320 +/-	75 feet min	75 feet min	Complies
96-78F(1)(i) Maximum Building Height	40 feet	<40 feet	<40 feet	<40 feet	Will comply

Standard of Proof for "C" Variances

Typically the applicant must provide testimony to justify the requested "C" 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. In this case the variances are existing conditions and that the proposal will not have a negative impact on the public good. In this case the variances are existing conditions.

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

Very truly yours,
BACH Associates, PC



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