

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING TO DANIEL HAYNICZ, 145 HAYNICZ
LANE, MONROEVILLE, N.J. 08343, A MINOR SUBDIVISION WITH BULK
VARIANCES REGARDING PROPERTY LOCATED AT 145 HAYNICZ
LANE/SILVER LAKE ROAD, AND BEING FURTHER SHOWN AS
BLOCK 175, LOT 1 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: SD-16-08**

WHEREAS, Application No.: SD-16-08 (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 Daniel Haynicz, 145 Haynicz Lane, Monroeville, N.J. 08343 (the "Applicant") for a Minor Subdivision with Bulk Variances regarding property located at 145 Haynicz Lane/Silver Lake Road (the "Subject Property") and being further shown as Block 175, Lots 8 & 9 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 September 21, 2016 at 7:30 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Daniel Haynicz (the "Applicant"); and Robert J. Wiltsee, Esq., Hoffman DiMuzio, Box 285, NJ 08322 (the Applicant's Attorney), at which time was Mr. Haynicz sworn and provided testimony on the Application;

NOW, THEREFORE, BE IT RESOLVED by the Combined Planning / Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

FINDINGS OF FACT

1. The Application was deemed to be complete, subject to the Board acting on certain requests for waivers from submission requirements. As such, the Board had jurisdiction to act on the Application.

2. The Board's professional planner, Steven M. Bach, PE, RA, PP, CME, Bach Associates, PC, 304 White Horse Pike, Haddon Heights, NJ 08035 and the Board's professional engineer, Stan Bitgood, P.E., C.M.E., Federici and Akin, P.A., 307 Greentree Road, Sewell, NJ 08080, 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, and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Submission checklist.

C. Minor Subdivision Plan for Daniel and Elinor Haynicz, dated February 29, 2016 by Steven Datz, Professional Land Surveyor signed and sealed on February 29, 2016.

D. Report of the Gloucester County Planning Board granting approval to the subdivision on the basis that there were no county facilities impacted by the subdivision.

E. Letter dated June 28, 2016 from Stephen Datz, PLS, to the Applicant's attorney verifying that there are no wetlands on the Subject Property and also that Mr. Datz was only aware of individual well and septic, along with overhead electric, on the Subject Property.

F. Four color photographs entered into evidence as Exhibits A-1 to A-4, said photographs showing various views of the Subject Property.

G. Letter dated August 11, 2016, from Steven M. Bach, PE, RA, PP, CME, Bach Associates, PC, the Board's professional planner, to the Board regarding Mr. Bach's review of the Application.

H. Letter dated July 28, 2016, from Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., the Board's professional Engineer, regarding his review of the Application to the Board.

4. The Subject Property consists of 29.38 acres of land and contains a two-story single family dwelling, 2 barns, and a shed along with a farm field. The Subject Property is a permanently preserved farm and the Applicant proposes to subdivide the severable exception portion of the Subject Property which contains the existing dwelling, barns and shed, to create one new lot for the existing residential and accessory structures, and one remainder lot that will remain as active farmland. The Subject Property is located within the RE Rural Environmental Residential zoning district and is surrounded in all directions by properties also in the Rural Environmental Residential zoning district. The

Application requires a variance from the requirement of the RE zoning district for minimum lot size. The adjacent land uses are farms to the north and west, and farms and residential to the east and south. Block 175 Lot 4 is unimproved, Block 175 Lots 2, 3, 5 and 13 are residential.

5. Mr. Wiltsee provided a brief overview of the Application, consistent with the above referenced information.

6. The Applicant was requesting waivers from submission requirements as follows:

#19 requires street names and new block/lot numbers approved by the tax assessor. *The Applicant must comply. The Applicant agreed to submit the same once received from the County.*

#33 requires statement demonstrating compliance with affordable housing requirements as applicable including section 70-4. *The Applicant does not propose any new dwellings. A waiver is recommended by the Board's Planner.*

#34 requires the names and widths of all abutting streets, including the right-of-way and cartway width. *A waiver is recommended by the Board's Planner.*

#37 requires the Applicant to submit copies of protective covenants, easements and restrictions of record, including a current title policy. *The Applicant must comply. The Applicant agreed to comply.*

#42 requires the Applicant show the structures and wooded areas within 200 feet of the property lines. *The Applicant shall confirm that no structures on adjoining lots are within 200 feet of the site. The Applicant confirmed the same.*

#49 requires the Applicant to provide the location of all existing tree masses, indicating general sizes and species. *The Applicant has requested a waiver, as no tree removal is proposed. The waiver is recommended by the Board's Planner.*

#50 requires the Applicant to provide a tree protection plan. *The Applicant has requested a waiver, as no tree removal is proposed. The waiver is recommended by the Board's Planner.*

#53 requires the Applicant to provide information on any structure of historic significance on or within two hundred feet of the tract. *The Applicant shall provide testimony regarding the historic significance of any structure. The Applicant testified that there were no historic structures.*

#55 requires the Applicant to provide contours at 20 foot intervals for the entire tract and within 100 feet and conformance with the grading plan requirements. *The applicant requests a waiver, as no grading or construction is proposed. The waiver is recommended by the Board's Planner.*

#57 requires the Applicant to provide a grading plan. *The Applicant requests a waiver, as no grading or construction is proposed. The waiver is recommended*

by the Board's Planner.

#58 requires the Applicant to provide a soil erosion and sediment control plan. The Applicant requests a waiver, as no grading or improvements are proposed. The waiver is recommended by the Board's Planner.

#59 requires soil borings to determine soil suitability. The waiver is recommended by the Board's Planner, as no improvements are proposed.

#66 requires a written commitment from the MUA of sufficient sewer and water service capacity. The Applicant requests a waiver, as the site is served by a private septic system and well and no new construction is proposed. The waiver is recommended by the Board's Planner.

#67 requires results and location of all percolation tests and borings for an on-site sewerage disposal system. The Applicant requests a waiver, as the site is already served by a private septic system and no new construction is proposed. The waiver is recommended by the Board's Planner.

#75 requires the Applicant to submit a Utility Plan. The Applicant has requested a waiver, as no changes to the existing utilities are proposed. The waiver is recommended by the Board's Planner.

#83 requires existing and proposed curb openings. The Applicant requests a waiver, as no new construction is proposed. The waiver is recommended by the Board's Planner.

WHEREUPON, a motion was made by Board Member Hughes, which was seconded by Board Member Barbaro, to grant the above referenced submission waivers, subject to the representations and testimony given by the Applicant as is set forth above, with the following Board members voting in favor of the motion to grant the waivers: Poisker, Clark, Nicholson, Hughes, Shoultz, White, Schmidt, Barbaro, and Goss (Alternate Member #1). There were no votes in the negative and no abstentions or recusals. Board Member McKeever was absent. The Alternate Member # 2, Mr. Swanson, participated in discussion on the waivers but did not vote. The Board, having granted the requested submission waivers, subject to the representations and agreements made by the Applicant, the Application was deemed to be complete and the hearing on the Application continued.

7. The Subject Property is within the RE Rural Environmental Zoning District 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 existing agricultural and residential uses on the site are permitted. A bulk variance is required for the proposed 49,956 square foot residential lot. The zoning standards are provided below, as follows:

Section	Required	Proposed	Proposed	Compliance
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		lot 1	lot 1.01	
96-71D(2) Minimum Lot size	80,000 sf	1,279,766 sq ft	49,956 sq ft	Variance Required
96-71D(3) Front Yard Setback	50 feet	N/A Farmland	58.7 feet	Complies
96-71D(4) Rear Yard Setback	40 feet	N/A Farmland	135 feet	Complies
96-71D.(5) Minimum Side Yard	20 feet/ 50 feet aggregate	N/A Farmland	67.6 feet/ 96.1 feet	Complies
96-71D.(6)(a) Minimum Width at Building line	150 feet	>150 feet	204.41 feet	Complies
96-71D(7) Minimum Lot depth	200 feet	>200 feet	244.39 feet	Complies
96-71D.(9)(a) Minimum Lot Frontage	135 feet	>135 feet	204.41 feet	Complies
96-71D.(10)(a) Maximum Bldg. Ht.	35 feet	*	*	Complies
96-71D.(11)(a) Maximum Coverage	15%	0%	*	Complies
96-71D(12) Impervious	20% max	0%	10%	Complies

7. **Standard of Proof for “C” Variances** 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 Subject Property or the exceptional topographic conditions uniquely affecting the property, or the structures lawfully existing upon the Subject 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 variance will substantially impair the intent of the Master Plan or zoning plan and whether there are any potential impacts to the public good.

8. Mr. Wiltsee, on behalf of the Applicant, stated that the lot that is being subdivided off of the parent lot (proposed Lot 1.01) met the bulk standards as to

minimum lot size when the farmland preservation easement was approved by the State and the County. As such, the Applicant has a hardship since the adjacent property (Remainder Lot 1) is farmland preserved, and it is not possible to expand the size of proposed Lot 1.01 into Lot 1, insofar as Lot 1 has been farmland preserved, and its dimensions and size cannot be altered due to its farmland preservation status.

9. The Board's Professional Planner, Stephen M. Bach, PE, RA, PP, CME, reviewed with the Board his letter of August 11, 2016 regarding the Application.

1. **Preserved Farm and Proposed Subdivision.** The Applicant proposes a subdivision to separate the existing residential dwelling, yard and accessory structures from the preserved farm. The Applicant will provide the easement documentation to the Board's secretary and attorney, and his attorney has presented the reason for proposing a non-conforming residential lot.

a. The Applicant has indicated through his Attorney the reasons for the proposed subdivision.

b. The Applicant has affirmed that the proposed subdivision is permitted by the Gloucester County Agriculture Development Board in accordance with the farmland preservation easement.

2. **Variances.** The requested variance relates to the size of the proposed residential lot. Additional variances may be required as listed below.

a. There is a conflict between the Township's minimum lot size requirement for the zone (80,000 square feet) and the size of the "exception area" (49,956 square feet) separated by the farmland preservation easement. The Applicant should indicate whether the residential lot will remain affiliated with the farm or whether the applicant proposes to sell them separately. This is a severable exception area, which means it is permitted to be separated from the preserved farm. Mr. Haynicz testified that the lot would be separate from the farm, but there is no intention to sell it at the present time.

b. The Bulk Table shown on the plan is inconsistent with the actual setback dimensions. It shall be noted that accessory structures over 200 square feet must meet the side and rear yard setback requirements for the zone per §96-80(A)6. Mr. Wiltsee stated that the table will be corrected.

c. There are two (2) barns and one (1) shed on the Subject Property. According to section 96-80, each residential property ranging from 25,000 square feet to six acres may have a maximum of one detached garage or similar accessory structure not to exceed 900 square feet and one additional accessory structure/shed not to exceed 200 square feet. There are 3 accessory structures where 2 are permitted. A variance is required.

Mr. Haynicz requests a variance due to this being a pre-existing condition.

- d. Variances are not required for maximum building height and maximum building coverage, based on testimony from the Applicant.
3. **Agricultural Buffers.** Section 96-47.1 requires agricultural buffers between active farms and residential uses. The agricultural buffers are intended to protect and buffer parcels adjacent farms to ensure that the residential or commercial use will not impede agricultural activities, and to protect farming operations from nuisance complaints. The required buffer area is 50 feet along the property lines adjacent to the active farm. Since the "exception area" is only one acre, and since this residential structure has been part of the farm, agricultural buffers were not contemplated. However, since the subdivided lot may be sold separate from the farm, the buffers are required, or a variance is needed. The Applicant requests a variance.
4. Though the proposal cannot meet the agricultural buffer requirements, the Applicant may endeavor to meet the intent of the requirements by providing a deed notice to any potential future buyers of the residential lot as required by the ordinance. The deed notice will ensure that future buyers are aware of the farming activities that may take place as-of-right on the adjacent property. Mr. Wiltsee stated that the deed will contain such a notice, and will be submitted to the Board's Attorney for review and approval.

9. The Board's Professional Engineer, Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., reviewed with the Applicant and the Board, his letter of July 28, 2016 as follows:

1. Bulk Requirements: The site is in the Rural Environmental RE Residential zone. The table of zoning requirements correctly indicates the bulk requirements. However, the proposed values for rear yard and side yard set-backs are incorrect. These values should match the dimensions shown on the plan of 40.0 feet and 25.2 feet respectively. The Applicant agreed to correct the same.
 - A. Agricultural Buffers are required, by Code section 96-47.1, along the rear and sides. Yards and set back dimensions should be measured from the interior buffer line inward. Buffer widths should be 50 feet on the sides and 100 feet at the rear.
 - B. The plan and proposed deed shall include the following required notice:
 - 1) "Notice: On the date of the creation of this lot, Elk Township permitted and may continue to permit by ordinance, farming activities which some may deem offensive such as, but not limited to, aerial and ground application of pesticides, use of power-driven

equipment, such as tractors and irrigation pumps, grazing of livestock, etc." The Applicant agreed to comply.

2. Setback lines are shown on the site plan. No new bulk variances are proposed however, as stated above, the buffers should be shown and the setbacks and yards adjusted accordingly, and variances are needed for pre-existing conditions.
 - A. The proposed lot will be non-conforming to the minimum lot area. The Applicant has provided testimony as required by the M.L.U.L.
3. Plat/Plan Requirements: The Applicant should advise the Board if the subdivision will be filed by deeds or plan of subdivision. Legal descriptions should be submitted for review. Mr. Wiltsee stated that the subdivision will be filed by deeds, and copies will be provided to the Board's Engineer and Attorney for review and approval.
 - A. The plan should reference the Farmland Preservation Easement Plan Haynicz Farm II. The Applicant agreed to comply.
 - B. The plan shows corners but does not show corner markers or monuments to be set. Corner markers should be required and set, or guaranteed, at the front corners of the proposed lot. The Applicant agreed to comply.
 - C. The deed for Lot 1 extends to centerline of Haynicz Road. It may be advisable for the Applicant to dedicate the 25 foot strip from centerline to the farmland preserved line to the Township as a Street Right of Way. The dedication strip should run the full frontage of Lot 1. The Applicant agreed to a dedication strip only as to proposed Lot 1.01.
 - D. Addresses and Lot numbers: The plan should show the approved 911 lot addresses as well as the approved block and lot numbers. The Applicant agreed to comply.
4. Parking: This Application will not change existing parking capacity or locations.
5. Curbs & Sidewalks: This Application does not include curbs or sidewalks. A waiver seems appropriate for construction of these items.
6. Utilities: The existing lot has an individual subsurface septic system.
 - A. The plan should show the location of the potable water well that will service the remainder of lot 1. Mr. Wiltsee stated that this is on the plan.
 - 1) Testimony should be provided confirming that no interconnection

exists between the two wells. Mr. Haynicz confirmed the same.

- 2) Confirmation that the existing well has been tested for residential use should be provided. Mr. Haynicz confirmed the same.
7. Lot grading: As no physical improvements are proposed, the Board's Engineer has no objection to waiving this.
 - A. The Applicant is advised, and it shall be a condition of approval, that the existing Lot 1, and the proposed lot, receive runoff from Haynicz Road. The existing runoff shall not be obstructed or increased by any improvements on these lots. Low areas within the lots shall be preserved and enlarged, as the Township Engineer may require, to ensure that runoff from the rights of way and/or the lots, is not redirected to other areas. The Applicant agreed to comply.
8. Stormwater Management: No disturbances are proposed, therefore the disturbance and impervious thresholds for stormwater management will not be exceeded.
9. Fences: No new fences or modifications are proposed.
10. Street Paving: The street is not paved.
11. Accessory Uses & Structures: Code section 96-80 allows one accessory garage and one additional structure not exceeding 200 square feet on a residential lot. The plan should be revised to show removal of one of the three accessory buildings. The Applicant has requested a variance to keep the three buildings as pre-existing conditions.

10. The hearing on the Application was open to the public, at which time no member of the public present spoke either in favor of or opposed to the Application.

CONCLUSIONS

1. The Board recognized that the minor subdivision was permitted as a matter of law insofar as the subdivision resulted from the parent lot (Lot 1) being put into farmland preservation, and the portion being subdivided (proposed Lot 1.01) was considered a severable portion, which is entitled to perfection by way of the present minor subdivision application.

2. The Applicant has requested and the Board agrees with granting the following variances: minimum lot size, due to the pre-existing condition that was created on the basis of the farmland preservation easement; relief from buffering

requirements; and to permit three existing accessory structures where only two are permitted) due to their pre-existing nature. As such, the Applicant is entitled as a matter of law to the now substandard residential lot, which met the zoning requirements at the time that the farmland preservation easement was recorded. In addition, Township Ordinance permits only one garage or accessory building not to exceed 900 square feet, and one additional accessory structure not to exceed 200 square feet. There are three accessory structures located on the lot to be subdivided (proposed Lot 1.01). The Board concludes that a variance should be granted insofar as the three existing structures are pre-existing, and are being utilized without detriment to the Subject property or any other property. With regard to the agricultural buffers, the Applicant requests a variance, and the Board concludes that a variance should be granted, since the size of the lot to be subdivided is only one acre and due to the nature of this size, it isn't possible to have fifty foot buffers along the property line. As to the issue of curbs and sidewalks, a waiver is requested by the Applicant, and approved by the Board, insofar as there are no curbs or sidewalks in the area and it would be inappropriate given the farmland nature of the Subject Property to install curbs and sidewalks. The Board further concurs that the Applicant has agreed to a dedication strip of twenty five foot in front of proposed Lot 1.01 to the benefit of the Township as a street right of way, but does not have to make a dedication as to the remainder lot which is farmland only.

CONDITIONS

1. The Board presumes that the Applicant's Application, all maps, Exhibits, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant's request for relief. In the event that it appears to the Board, on reasonable grounds, that the Application, exhibits, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied on by the Board as they bear on facts that were essential in the granting of the relief requested by the Applicant, the Board may rescind its approval and rehear the Application, either upon the request or application of an interested party, or on its own motion, when unusual circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice.

2. At any time after the adoption of this resolution of memorialization, should a party on interest appeal to the Board for an order vacating or modifying any term or conditions as set forth herein, upon the proper showing of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present, for the purpose of fact-finding regarding the same. Should the fact(s) at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action

it deems to be appropriate at that time, including but not limited to a rescission of its prior approval, a rehearing, a modification of its prior approval, or such other action, as appropriate.

3. The Applicant shall indemnify and hold the Township harmless from any claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to proper service and notice upon interested parties made in reliance upon the certified list of property owners and other parties entitled to notice, said list having been provided to the Applicant by the Township pursuant to N.J.S.A. 40:55D-12.c., and publication of the notice of public hearing in this matter in accordance with law.

4. The relief as granted herein is subject to the discovery of any and all deed restrictions 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 construction or other activity commencing on the approved project, or any certificate of occupancy being issued.

7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., required with respect to the relief as granted herein.

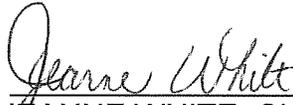
8. The Applicant agrees to amend the plan of subdivision consistent with the Board Professional's Review Letters, as set forth under findings of fact above.

9. The Applicant agrees to file the subdivision through deeds and will submit copies of the deeds to the Board's Planner and Engineer for their approval, prior to recording the deeds.

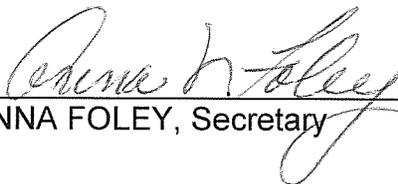
WHEREAS, a motion was made by Board member White to grant the Minor Subdivision, Variances, and Design Waivers, to the Applicant, based on the representations made by the Applicant and the agreements entered into by and between the Applicant and the Board, as are more fully set forth above under Findings of Fact, at a meeting following a hearing on the Application on September 21, 2016 at 7:30 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approvals: Poisker, Clark, Nicholson, Hughes, Shoultz, White, Schmidt, Barbaro, and Goss (Alternate # 1). There were no votes in the negative and no abstentions or recusals. Board Member McKeever was absent. Board Member Swanson (Alternate Member # 2) participated in the hearing, but 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 October 19, 2016 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on September 21, 2016 on the above referenced Application.

**COMBINED PLANNING/ZONING
BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF ELK**

By: 
JEANNE WHITE, Chairperson

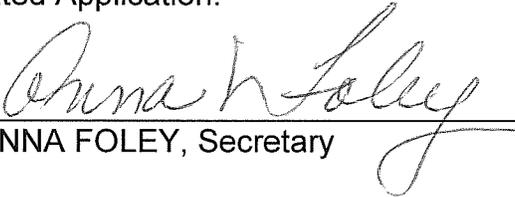
ATTEST:

By 
ANNA FOLEY, Secretary

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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 19th day of October 2016 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:30 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on September 21, 2016 on the above cited Application.


ANNA FOLEY, Secretary



August 11, 2016

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

Attn: Anna Foley, Board Secretary

Re: Daniel Haynicz
145 Haynicz Lane/Silver Lake Road
Block 175, Lot 1
Minor Subdivision with bulk variance
RE Rural Environmental Residential District
Elk Township Application SD-16-08
Bach Associates Proj. No. ET2016-9

Dear Chairwoman and Members of the Board:

We have received the application and supporting documents submitted by Daniel Haynicz for a minor subdivision with a variance at the above referenced site. The property consists of 29.38 acres of land and contains a two-story single family dwelling, 2 barns, and a shed along with a farm field. The property is a permanently preserved farm and the applicant proposes to subdivide the severable exception portion of the property which contains the existing dwelling, barns and shed to create one new lot for the existing residential and accessory structures, and one remainder lot that will remain as active farmland.

The property is located within the RE Rural Environmental Residential zoning district and is surrounded in all directions by properties also in the Rural Environmental Residential zoning district. The application requires a variance from the requirement of the RE zoning district for minimum lot size.

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

1. Land Development Application for Minor Subdivision (received by Elk Twp. June 30, 2016), Escrow Agreement dated August 4, 2015, Affidavit of Applicant and Ownership, Tax Certification, disclosure statement.
2. Minor subdivision checklist (received by Elk Twp. June 30, 2016)
3. List of requested waivers.
4. Letter from Stephen Datz, PLS certifying that there are no wetlands or wetland buffers within the residential lot to be subdivided.
5. Approval letter from the Gloucester County Planning Board, dated 6-14-16

6. Review letter from Federici & Akin, P.A., dated July 28, 2016.
7. Minor Subdivision Plan for Daniel & Elinor Haynicz, prepared by Stephen Datz, PLS, dated Feb. 29, 2016.

Completeness

The applicant has submitted the land development checklist and has requested a number of submission waivers as outlined below. **The application is incomplete.** Most of the waivers are recommended or may be provided as a condition of approval given the nature of the proposed subdivision.

- **#19** requires street names and new block/lot numbers approved by the tax assessor. *The applicant must comply.*
- **#33** requires statement demonstrating compliance with affordable housing requirements as applicable including section 70-4. *The applicant does not propose any new dwellings. A waiver is recommended.*
- **#34** requires the names and widths of all abutting streets, including the right-of-way and cartway width. *A waiver is recommended.*
- **#37** requires the applicant to submit copies of protective covenants, easements and restrictions of record, including a current title policy. *The applicant must comply.*
- **#38** requires the applicant provide photographs of the site. *The applicant must comply.*
- **#42** requires the applicant show the structures and wooded areas within 200 feet of the property lines. *The applicant shall confirm that no structures on adjoining lots are within 200 feet of the site.*
- **#49** requires the applicant to provide the location of all existing tree masses, indicating general sizes and species. *The applicant has requested a waiver, as no tree removal is proposed. The waiver is recommended.*
- **#50** requires the applicant to provide a tree protection plan. *The applicant has requested a waiver, as no tree removal is proposed. The waiver is recommended.*
- **#53** requires the applicant to provide information on any structure of historic significance on or within two hundred feet of the tract. *The applicant shall provide testimony regarding the historic significance of any structure.*

- **#55** requires the applicant to provide contours at 20 foot intervals for the entire tract and within 100 feet and conformance with the grading plan requirements. *The applicant requests a waiver, as no grading or construction is proposed. The waiver is recommended.*
- **#57** requires the applicant to provide a grading plan. *The applicant requests a waiver, as no grading or construction is proposed. The waiver is recommended.*
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- **#59** requires soil borings to determine soil suitability. *The waiver is recommended, as no improvements are proposed.*
- **#66** requires a written commitment from the MUA of sufficient sewer and water service capacity. *The applicant requests a waiver, as the site is served by a private septic system and well and no new construction is proposed. The waiver is recommended.*
- **#67** requires results and location of all percolation tests and borings for an on-site sewerage disposal system. *The applicant requests a waiver, as the site is already served by a private septic system and no new construction is proposed. The waiver is recommended.*
- **#75** requires the applicant to submit a Utility Plan. *The applicant has requested a waiver, as no changes to the existing utilities are proposed. The waiver is recommended.*
- **#83** requires existing and proposed curb openings. *The applicant requests a waiver, as no new construction is proposed. The waiver is recommended.*

RE Zone Bulk Standards and “C” Variances

The property is within the RE Rural Environmental Zoning District 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 existing agricultural and residential uses on the site are permitted. A bulk variance is required for the proposed 49,956 square foot residential lot. The zoning standards are provided below.

Section	Required	Proposed lot 1	Proposed lot 1.01	Compliance
96-71D(2) Minimum Lot size	80,000 sf	1,279,766 sq ft	49,956 sq ft	Variance Required
96-71D(3) Front Yard Setback	50 feet	N/A Farmland	58.7 feet	Complies
96-71D(4) Rear Yard Setback	40 feet	N/A Farmland	135 feet	Complies
96-71D.(5) Minimum Side Yard	20 feet/ 50 feet aggregate	N/A Farmland	67.6 feet/ 96.1 feet	Complies
96-71D.(6)(a) Minimum Width at Building line	150 feet	>150 feet	204.41 feet	Complies
96-71D(7) Minimum Lot depth	200 feet	>200 feet	244.39 feet	Complies
96-71D.(9)(a) Minimum Lot Frontage	135 feet	>135 feet	204.41 feet	Complies
96-71D.(10)(a) Maximum Bldg. Ht.	35 feet	*	*	To be determined
96-71D.(11)(a) Maximum Coverage	15%	0%	*	To be determined
96-71D(12) Impervious	20% max	0%	10%	Complies

***Information to be supplied by applicant**

Standard of Proof for “C” Variances

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 variance will substantially impair the intent of the Master Plan or zoning plan and whether there are any potential impacts to the public good.

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

1. **Preserved Farm and Proposed Subdivision.** The applicant proposes a subdivision to separate the existing residential dwelling, yard and accessory structures from the preserved farm. The applicant should provide the easement documentation along with testimony as to the reason for proposing a non-conforming residential lot.
 - a. As part of their testimony in support of the variances, the applicant should indicate the reasons for the proposed subdivision.
 - b. The applicant should affirm that the proposed subdivision is permitted by the Gloucester County Agriculture Development Board in accordance with the farmland preservation easement.
2. **Variances.** The requested variance relates to the size of the proposed residential lot. Additional variances may be required as listed below.
 - a. There is a conflict between the Township's minimum lot size requirement for the zone (80,000 square feet) and the size of the "exception area" (49,956 square feet) separated by the farmland preservation easement. The applicant should indicate whether the residential lot will remain affiliated with the farm or whether the applicant proposes to sell them separately. It is our understanding that this is a severable exception area, which means it is permitted to be separated from the preserved farm.
 - b. The Bulk Table shown on the plan is inconsistent with the actual setback dimensions. It shall be noted that accessory structures over 200 square feet must meet the side and rear yard setback requirements for the zone per §96-80(A)6.
 - c. There are two (2) barns and one (1) shed on the property. According to section 96-80, each residential property ranging from 25,000 square feet to six acres may have a maximum of one detached garage or similar accessory structure not to exceed 900 square feet and one additional accessory structure/shed not to exceed 200 square feet. There are 3 accessory structures where 2 are permitted. A variance is required.
 - d. Variances may be required for maximum building height and maximum building coverage. This information shall be shown on the Minor Subdivision Plan.
3. **Agricultural Buffers.** Section 96-47.1 requires agricultural buffers between active farms and residential uses. The agricultural buffers are intended to protect and buffer parcels adjacent farms to ensure that the residential or commercial use will not impede agricultural

activities, and to protect farming operations from nuisance complaints. The required buffer area is 50 feet along the property lines adjacent to the active farm. Since the "exception area" is only one acre, and since this residential structure has been part of the farm, agricultural buffers were not contemplated. However, since the subdivided lot may be sold separate from the farm, the buffers are required, and a variance is needed.

4. Though the proposal cannot meet the agricultural buffer requirements, the applicant may endeavor to meet the intent of the requirements by providing a deed notice to future buyers of the residential lot as required by the ordinance. The deed notice will ensure that future buyers are aware of the farming activities that may take place as-of-right on the adjacent property.

Any approvals by the Board should be conditioned upon the applicant addressing the above outstanding items. We reserve the option to make additional comments as more information becomes available. If there are any questions or if any additional information is required please contact this office.

Very truly yours,
BACH ASSOCIATES, PC



Steven M. Bach, PE, RA, PP, CME
President



Candace Kanaplue, PP, AICP
Associate

Cc: Dale Taylor, Esq.
Steven M. Bach, PE, RA, PP, CME
Stan Bitgood, PE
Daniel Haynicz, applicant
Robert J. Wiltsee, Esq.
Stephen Datz, PLS

I-Foley-Haynicz Minor Sub.doc



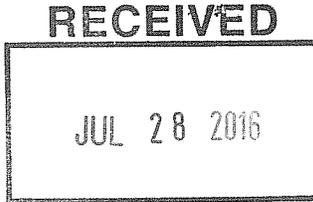
FEDERICI & AKIN, P.A.
CONSULTING ENGINEERS

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

Douglas E. Akin, P.L.S., P.P.
Vice President

Bret T. Yates
Director of Marketing

307 Greentree Road
Sewell, New Jersey 08080
(856) 589-1400; Fax (856) 582-7976



TOWNSHIP OF ELK
PLANNING/ZONING

July 28, 2016
File# 16115

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

**Re: Haynicz, Daniel & Elinor - Minor Subdivision Application SD-16-08
Block 175 Lot 1 145 Haynicz Road
Review No. 1**

Dear Chairwoman White & Members of the Board

We received the following items for review as part of the application for approval of a minor subdivision, with a variance, to sever the existing residential exception area from the remainder of the existing preserved farmland known as Block 175 Lot 1.

Minor Subdivision Plan, by Stephen Datz, P.L.S.	2/29/16
Subdivision Application with checklist	6/30/16
Letter regarding wetlands, septic system, well, and utilities By Stephen Datz, P.L.S.	6/28/16
Gloucester County Planning Board Report of Action	6/14/16
Overview description of Plan	unsigned & undated
List of Waivers	unsigned & undated

Property Location:

The property is located along the east and southern side of Haynicz Road. The adjacent land uses are farms to the north and west, and farms and residential to the east and south. Block 175 Lot 4 is unimproved, Block 175 Lots 2,3,5 and 13 are residential.

The proposed lot was designated a severable exception as part of the farmland preservation plan dated 4/29/14.

The following comments are provided for your consideration:

Completeness: The applicant requested waivers for, or has not submitted, the following required items:

1. Item 19, Confirmation that the tax assessor has approved the lot number.
2. Item 33, Compliance with Affordable Housing.
3. Item 34, Names & widths of abutting streets.
4. Item 36, Copy of protective covenants, easements, and deed restrictions of record, and Title Policy.
5. Item 37, Drafts of proposed protective covenants.
6. Item 38, Photographs.
7. Item 41, Location of wells and septic systems on adjacent lots, where required by the Board.
8. Item 49, Tree locations and sizes.
9. Item 50, Tree clearing and protection plan.
10. Item 55, Contours at 20 foot intervals.
11. Item 57, Topographic information within and adjacent to the tract.
12. Item 59, Soil Borings and a statement of intended importation and disposition of soils.
13. Item 66, Statement from the MUA (New Jersey American Water Co.) of available capacity.
14. Item 67, Soil boring and percolation data for on-site sewerage disposal.
15. Item 75, Utilities Plans.
16. Item 83, Curb opening dimensions & locations.

I have no objection to waiving checklist items 33, 34, 37, 41, 49, 50, 55, 59, 66, 67, and 75.

I have no objection to making items 19, 37, and 83 conditions of approval and pre-requisites to filing deeds or the plan of subdivision.

Items 36 and 38 and should not be waived and should be submitted prior to the application being deemed complete.

Public notice to properties within 200 feet in accordance with the M.L.U.L. will also be required.

Technical Review

1. Bulk Requirements: The site is in the Rural Environmental RE Residential zone. The table of zoning requirements correctly indicates the bulk requirements. However, the proposed values for rear yard and side yard set back are incorrect. These values should

- match the dimensions shown on the plan of 40.0 feet and 25.2 feet respectively.
- A. Agricultural Buffers are required, by Code section 96-47.1, along the rear and sides. Yards and set back dimensions should be measured from the interior buffer line inward. Buffer widths should be 50 feet on the sides and 100 feet at the rear.
- B. The plan and proposed deed shall include the following required notice:
- 1) "Notice: On the date of the creation of this lot, Elk Township permitted and may continue to permit by ordinance, farming activities which some may deem offensive such as, but not limited to, aerial and ground application of pesticides, use of power-driven equipment, such as tractors and irrigation pumps, grazing of livestock, etc."
2. Setback lines are shown on the site plan. No new bulk variances are proposed however, as stated above, the buffers should be shown and the setbacks and yards adjusted accordingly.
- A. The proposed lot will be non-conforming to the minimum lot area. The applicant shall provide testimony as required by the M.L.U.L.
3. Plat/Plan Requirements: The applicant should advise the Board if the subdivision will be filed by deeds or plan of subdivision. Legal descriptions should be submitted for review.
- A. The plan should reference the Farmland Preservation Easement Plan Haynicz Farm II.
- B. The plan shows corners but does not show corner markers or monuments to be set. Corner markers should be required and set, or guaranteed, at the front corners of the proposed lot.
- C. The deed for Lot 1 extends to centerline of Haynicz Road. It may be advisable for the applicant to dedicate the 25 foot strip from centerline to the farmland preserved line to the Township as a Street Right of Way. The dedication strip should run the full frontage of Lot 1.
- D. Addresses and Lot numbers: The plan should show the approved 911 lot addresses as well as the approved block and lot numbers.
4. Parking: This application will not change existing parking capacity or locations.
5. Curbs & Sidewalks: This application does not include curbs or sidewalks. A waiver seems appropriate for construction of these items.
6. Utilities: The existing lot has an individual subsurface septic system.
- A. The plan should show the location of the potable water well that will service the remainder of lot 1.
- 1) Testimony should be provided confirming that no interconnection exists between the two wells.

- 2) Confirmation that the existing well has been tested for residential use should be provided.
7. Lot grading: As no physical improvements are proposed, I have no objection to waiving this.
 - A. The applicant is advised, and it shall be a condition of approval, that the existing lot 1 and the proposed lot receive runoff from Haynicz Road. The existing runoff shall not be obstructed or increased by any improvements on these lots. Low areas within the lots shall be preserved and enlarged, as the Township Engineer may require, to ensure that runoff from the rights of way and/or the lots, is not redirected to other areas.
8. Stormwater Management: No disturbances are proposed, therefore the disturbance and impervious thresholds for stormwater management will not be exceeded.
9. Fences: No new fences or modifications are proposed.
10. Street Paving: The street is not paved.
11. Accessory Uses & Structures: Code section 96-80 allows one accessory garage and one additional structure not exceeding 200 square feet on a residential lot. The plan should be revised to show removal of one of the three accessory buildings.

Recommendations:

1. All underlined items should be addressed prior to or as conditions of approval. Revisions should be submitted with a point by point response letter.
2. All taxes, escrow fees and other fees must be paid to the Township prior to signatures by the Chairman and Secretary.
3. The subdivision must be recorded at the County Clerk's office within 190 days of approval.

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
Candace Kanaplue, P.P. Board Planner
Dale Taylor, Esq. Board Solicitor
Robert J. Wiltsee, Esq., Applicant's Attorney
Stephen Datz, P.L.S., Applicant's Surveyor