

David and Stephanie Kelly
37 Rose Terrace
Chatham, NJ 07928
973-768-5860

May 1, 2024

Township of Chatham
Attn: Zoning Board of Adjustment
58 Meyersville Road
Chatham, NJ 07928

To Whom it May Concern,

Our names are David and Stephanie Kelly, and we own the property located at 37 Rose Terrace (Block 92, Lot 8) in the Township of Chatham. Our lot, located in the R-3 zone, currently contains a single-family residence in which we reside. We would like to add a 14' x 18' pergola to our backyard over a proposed 387 square foot patio. To proceed with the plan, we are requesting that the Board grant us one variance. The requested variance is a "C" variance pursuant to § 30-47.3 (b). Specifically, this furthers the general welfare purposes of the Municipal Land Use Law, N.J.S. 40:55D-1 by providing outdoor living space protected from the sun.

The variance we are requesting is for a 252 sq ft open-walled pergola which is contrary to the provision of § 30-96.13 (a) (2) which limits accessory structures to 150 sq ft. The pergola is an attractive and functional living space which is reasonably-sized. The pergola will be built over a proposed patio space. The pergola will have operable louvers allowing us to adjust the amount of sunlight shining on the patio space. When the louvers are fully closed, the pergola will also provide protection from the rain. We are requesting the variance be approved so that we will have a shaded outdoor living space with a reasonable amount of seating as well as a dining table for eating.

We have attached Resolution BOA - 19-78-10 to this letter. The resolution was adopted by the Zoning Board of Adjustment in 2019. We note that this resolution approved a 289 sq ft pavilion at 71 Fairview Avenue. Further, the resolution states in point #6 that "It is not the type of accessory structure

(a shed) [bold added for emphasis] which the 150 square foot limitation addresses.” As we are asking to build a similar but smaller structure than the approved pavilion (that is also not a shed), we wanted to make you aware of this history when reviewing our variance application.

We thank you for your consideration and are looking forward to hopefully presenting our case in front of the Board of Adjustment.

RESOLUTION

Calendar No. BOA – 19-78-10

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF
THE TOWNSHIP OF CHATHAM, IN THE COUNTY OF MORRIS,
STATE OF NEW JERSEY REGARDING THE APPLICATION OF
CHRISTIAN TEMPKE, 71 FAIRVIEW AVENUE,
CHATHAM TOWNSHIP**

WHEREAS, Christian Tempke (hereinafter the “Applicant”) is the owner of certain premises located at 71 Fairview Avenue, Chatham Township, New Jersey and designated as Block 78, Lot 10 on the Tax Map of the Township of Chatham, (hereinafter referred to as the “subject property”), and has applied to the Zoning Board of Adjustment of the Township of Chatham pursuant to the provisions of N.J.S.A. 40:55D-70(c) of the Municipal Land Use Law (MLUL) and Section 30-47.3 of the Land Development Regulations of the Township of Chatham (LDR) for the approval of a variance from the requirements of Section 30-96.13.a.2 of the LDR, and the revised General Ordinances of the Township of Chatham to permit the construction of a rear yard pavilion; and

WHEREAS, the Applicant represented himself before the Board of Adjustment during the hearings on the subject application; and

WHEREAS, the Applicant has served the required Notice of Public Hearing, has filed proof of service in accordance with the pertinent statutes, has given public notice of the application by publication in the official newspaper of the Township of Chatham, and also has provided proof that no real property taxes and sewer charges are due and delinquent, and the matter having been heard by the Board of Adjustment at its regularly scheduled public meetings on August 15, 2019 and September 19, 2019, and

WHEREAS, the Board of Adjustment examined, considered and placed on file with its records all the exhibits submitted by the Applicant and by the Board of Adjustment, has further considered all of the testimony and said exhibits received in evidence at the public hearings for the subject application, and the Members of the Board of Adjustment visited the subject property on September 7, 2019, and their observations made at such site visit have been set forth in the Site Visit Memorandum prepared by Member Paige Labadie and made a part of the record as Exhibit "A-11"; and

WHEREAS, the Board of Adjustment does hereby make the following findings of fact and conclusions:

1. The application is properly before the Board of Adjustment, which has the appropriate and exclusive jurisdiction to conduct hearings on the application for variance relief and to render a decision regarding a variance request in accordance with the MLUL and the LDR. The Borough of Chatham has consented to the Chatham Township Board of Adjustment exercising its jurisdiction over the application which lies within both municipalities

2. The subject property is an existing single-family residential lot located on the southern side of Fairview Avenue within the R-3 Residential District Zone. The property is located in both Chatham Township and Chatham Borough, with the municipal boundary line bisecting the property at an angle. There are steep slopes along the southwest (rear) boundary line (shared with Lafayette School property) and southeast (side) boundary line of the property, which lies lower than the surrounding properties on these sides. The property contains an existing 2-story, single-family dwelling with driveway, walkways, a patio and a rear yard shed. The Applicant is proposing rear yard

improvements including a patio expansion, pavilion with a fireplace, a spa, and walkways. The application has been submitted for a variance associated with the proposed pavilion. The municipal boundary line bisects the proposed pavilion in question; however, the application has been reviewed against the applicable Township ordinances as if the entire pavilion were located in the Township.

3. The Applicants requests the following variance for the proposed improvements:

1) Maximum Lot Coverage Area of Accessory Building (Proposed Pavilion); 150 square feet permitted, 289 square feet proposed (Section 30-96.13.a.2).

4. The Applicant relied on his own testimony and that of his engineer, Brian M. Hoarle, PE. Mr. Tempke indicated that the pavilion was needed to provide an outside living space protected from the sun which would be open on all sides. The interior dimensions were approximately 13' x 13'. A height variance originally requested was eliminated in revised plans modifying the proposed roof design and cupola. The rear yard is very private and heavily screened.

5. Mr. Hoarle testified that the Applicant would comply with all engineering comments. The existing spa would remain and a slight increase of the patio was proposed.

6. It is the finding of the Board of Adjustment that the variance requested satisfies the criteria for "c-2" variance relief since it furthers the general welfare purpose of the MLUL by providing needed outside living space protected from the sun. The pavilion is an attractive and functional living space which is reasonably sized with open walls. It is not the type of accessory structure (a shed) which the 150 square foot

limitation addresses. The pavilion is screened from surrounding properties and there will be no adverse impact on the character of the neighborhood or the Township Zone Plan.

NOW, THEREFORE, BE IT RESOLVED, on this 17th day of October, 2019 that the Zoning Board of Adjustment of the Township of Chatham, under the authority of N.J.S.A. 40:55D-70(c) of the MLUL and Section 30-47.3 of the LDR does hereby grant approval of the requested variances.

BE IT FURTHER RESOLVED that variance relief is subject to the following conditions:

1. The Applicant shall pay any escrow deposits in addition to initial escrow deposit, if required, to offset any Township costs or professional services rendered by the Board's consulting engineer and the Board's legal counsel in connection with this application, including but not limited to services rendered in reviewing the plans and exhibits, inspections, and preparing this resolution of approval.

2. The Applicant shall comply with all Federal, State, Local and County laws and regulations as they may apply and shall construct the improvements in accordance with this application.

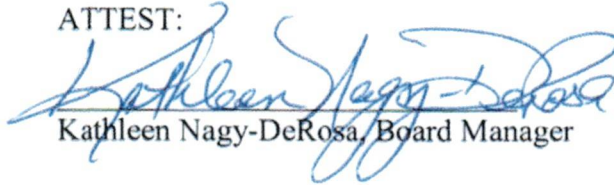
3. Any variance granted herein shall expire unless construction, alteration or uses permitted by the variance shall have commenced within one year from the date of approval, subject to reasonable requests for an extension.

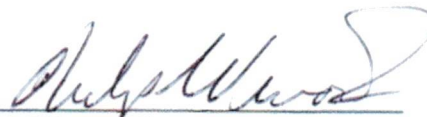
BE IT FURTHER RESOLVED that the granting of the variance relief described herein shall not be construed to obviate compliance with any other requirements of the Land Development Regulations, insofar as such requirements relate to any construction, or to any other requirements established elsewhere than in such ordinance.

This Resolution memorializes the action taken by the Zoning Board of Adjustment approving the variance relief at its September 19, 2019 public meeting.

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM,
COUNTY OF MORRIS,
STATE OF NEW JERSEY

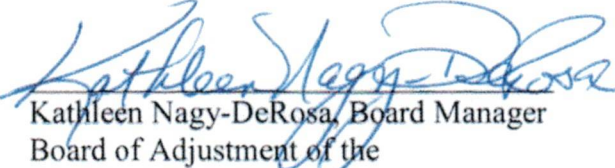
ATTEST:


Kathleen Nagy-DeRosa, Board Manager

By 
Phillip A. Vivona, Jr., Chairman

Dated: 10/17/19

I, Kathleen Nagy-DeRosa, Board Manager of the Zoning Board of Adjustment of the Township of Chatham, County of Morris and State of New Jersey, do hereby certify the foregoing to be a true and complete copy of a Resolution adopted by said Board at a regular public meeting duly held on October 17, 2019 and that copies of this Resolution have been forwarded to the Township Administrator and the Township Zoning Officer.


Kathleen Nagy-DeRosa, Board Manager
Board of Adjustment of the
Township of Chatham