

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
APRIL 9, 2025**

Mr. Vivona called the Regular Meeting of the Zoning Board of Adjustment to order at 7:35 PM.

Adequate Notice of the meetings of the Zoning Board of Adjustment of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2025 and January, 2026 was published in the *Chatham Courier and the Morris County Daily Record*, a copy filed with the Municipal Clerk and a copy placed on the bulletin board in the main hallway of the Municipal Building.

Oath of Office

Manish Somaiya was sworn in as an alternate member of the Zoning Board.

Roll Call

Answering present to the roll call were Mr. Vivona, Mr. Borsinger, Mr. Fitt, Mr. Silva, Mr. Bhatia, Mrs. Chang and Mr. Somaiya.

Mrs. Chang participated via Zoom. Mr. Huke was absent.

Also present were Board Attorney Amanda Wolfe, Board Planner Frank Banisch and Board Engineer John Ruschke.

Approval of Minutes

Mr. Fitt moved to approve the minutes of the March 20, 2025 meeting. Mr. Somaiya seconded the motion which carried unanimously.

Resolutions

Resolution BOA-2025-014 – Calendar BOA-24-011 103 Long View Avenue, Block: 33 Lot: 14

Ms. Wolfe reviewed the resolution and the conditions therein.

Mr. Fitt moved to adopt Resolution BOA-2025-015. Mr. Bhatia seconded the resolution.

Roll Call: Mr. Vivona, Aye; Mr. Borsinger, Aye; Mr. Fitt, Aye; Mr. Huke, Absent; Mr. Bhatia, Aye;.

Mrs. Chang and Mr. Somaiya were ineligible to vote on this resolution.

Hearings

Calendar BOA-24-013 Robert Ortmann III, 355 Green Village Road, Block: 48.17 Lot: 137.

Mrs. Magdziak was present to represent the applicant. She said that all intended testimony was presented at the May 20th meeting. Mrs. Magdziak noted that the application is for a certificate for a preexisting, nonconforming use located in the R-2 Zone. She noted that the property did not qualify for a preexisting nonconforming use variance.

Mr. Vivona read the Site Visit Report into the record.

Mr. Vivona said it would be neighborly of the applicant to address the drainage issues at the site. He also recommended that deliveries be scheduled after 8:00 AM. Mr. Vivona asked if the applicant would object to installing curbing and mitigating the bamboo. Mr. Ortmann stated that he will install curbing and mitigate the bamboo, and that he has already addressed the delivery issue.

Mr. Borsinger asked about restricting the operation to as it is today. Ms. Wolfe said that the first part of the application is to determine what existed previous to 1979, and the second section is to determine if there has been any expansion. If there has not been any expansion, the Board can issue the certificate of nonconformity.

Mr. Ruschke was sworn in. Mr. Ruschke presented a matter that was discovered as part of a zoning violation. He pointed out on aerial photographs that there was an increase in clearing and the number of trucks parked behind a garage. Mr. Ruschke said that the claim that there was no expansion in use needs to be justified. He said that the D variance would be justified, and beyond that he does not have any concerns regarding the use of the property. Mr. Ruschke further noted that there was an encroachment onto municipal property, which has been rectified.

Mr. Banisch said that what the Board is being asked to do requires a finding of the extent of what gets a preexisting nonconforming use approval.

John McDonough, a planner representing the applicant, was sworn in to give testimony. He provided his qualifications and was accepted as a witness.

Mr. McDonough said that Mr. Ruschke is doing the right thing by seeking to establish when the use started and if the use expanded. He said that the turnaround area begins to be seen in aerial photographs starting in 2008.

Exhibit A-2, a planning exhibit, was entered into the record. Mr. McDonough presented the photographs in the exhibit.

Mr. McDonough discussed the history of the use of property for landscaping companies. He cited that the use predated 1979 and the use was never abandoned. Mr. McDonough addressed the sections of the MLUL that need to be met to justify the use of the property. He further stated that the application would not equate with rezoning the property.

Mr. Vivona opened the floor to the public to ask questions of Mr. McDonough.

1. Emily Long, 103 Lindsley Drive in Morristown, asked about raising of the ground. Mr. McDonough said that he did not give testimony on raising the ground, and he is not aware of any intent to raise the ground. Mrs. Long said that Mr. McDonough compared this site to the Farm at Green Village, and she said that there are not residential homes in that area. She asked how there can be assurances that this application will not affect the property she owns at 347 Green Village Road. Mr. McDonough said that some hardscape landscaping can be done to ensure that the use does not expand. Mrs. Long asked about enforceable conditions that will remain with the property.

Mr. Ruschke said that he does not have any exception to the use of the property, however there is evidence to suggest that the use has expanded. He said that any resolution of approval will need to define what use is allowed so that neighbors are protected. Mrs. Magdziak said that the applicant does not intend to expand the use.

Mr. Banisch said that there needs to be clarity what the Board intends to approve.

2. Marty McHugh, Ormont Road, asked what happens if the applicant moves away. Mr. McDonough said that a use variance would remain with the land. Mr. McHugh said that it is a residential area, and he asked about the de facto rezoning of the property if the use continues. Mrs. Magdziak addressed the legal aspect that the variance remains with the property despite changes in ownership. Ms. Wolfe said that future owners would have a right to continue the use as long as the use is not expanded or abandoned.

Mr. Silva asked for a definition of the abandonment of the use. Ms. Wolfe said that there has to be an affirmative act to constitute abandonment of the use. Mr. Banisch said that abandonment only relates to a preexisting nonconforming use, while a variance would remain in effect. Mr. Silva asked if the applicant is asking for a use variance. Mrs. Magdziak said that a certificate of preexisting nonconforming use is requested to acknowledge that the property has been used for a landscaping company since before 1979, and a D(2) use variance is requested to acknowledge the expansion and allow that to continue.

Mrs. Chang asked if there is a way to approve the use for the current property owner, but not have that approval carry forward to future owners. Ms. Wolfe said that the Board can regulate uses but not users. Mrs. Chang asked if there can be a carve out for the current owner, but have reduced use for future owners. Mr. Ruschke said that the Board can specify that only a landscaping business would be approved. Mr. Silva said that the definition of a landscaping business can be broad, and some landscapers do pavers and walkways. Mr. Ortman discussed the services he provides.

3. Kristye Deter, 347 Green Village Road, was sworn in. Ms. Deter asked about the expansion of the business. She said that it used to be a one truck business, and now there are eight trucks. Ms. Deter also asked about the waterfall onto her property, and asked for a date to have execution, and also asked about the mitigation of bamboo. Mrs. Magdziak said that the bamboo will be removed. Mr. Ortman addressed plans to resolve drainage problems, and he needs to see if permits are required. Mr. Ruschke said that approval can have a condition that the drainage be addressed. Ms. Deter asked if they can expect the drainage to be addressed this year. She also commented on the bamboo

damaging a fence, and asked if that can be addressed. Mr. Ortman said that can be looked into once the bamboo is removed. Ms. Deter asked about getting a survey of the paver road and the trees. Mr. Ruschke said that an encroachment would be a civil matter. He also suggested fencing around the commercial area.

4. Glenn Deter, 347 Green Village Road, spoke about the issue of water draining onto his property. He asked for confirmation it will be addressed within a year. Mr. Ruschke said that a failure of the applicant to comply with conditions of approval would result in summonses.
5. Nicole Hagner, 396 River Road, said that she was Mayor when a notice of violation was issued for the subject property, and the notice was issued with the intent of managing the offending issues. Mrs. Hagner said that the current use is the same as what was there in 2013.

Seeing no further comments, Mr. Vivona closed the floor.

Ms. Wolfe reviewed the conditions of approval.

Mr. Banisch asked that there be specification that the property owner be the business operator, and that the business operator not be a tenant.

Mrs. Long asked for clarification that the runoff will be addressed, and if maintenance will be included. Mr. Ruschke said that they will need to maintain what is done.

Mr. Fitt asked that the 6-month deadline have a factor that the Township do their part to move things along, as schedules for Township staff can get busy. Mr. Ruschke said that the applicant will not be punished for delays due to weather or on the Township's part. Mr. Vivona noted that the 6 months will begin when permits are issued.

Mr. Fitt moved to grant the certificate and the D variance. Mr. Somaiya seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Borsinger, Aye; Mr. Fitt, Aye; Mr. Huke, Absent; Mr. Silva, Aye; Mr. Bhatia, Aye; Mr. Somaiya, Aye.

Mrs. Chang was not eligible to vote.

Mr. Vivona said that the resolution will be on the next meeting's agenda.

Calendar BOA 24-007 494 Southern Blvd., LLC, 494 Southern Blvd. Block: 128 Lot: 6.

David Brady, an attorney representing the applicant, provided an overview of the application and noted the hardships on the property.

Mr. Borsinger read the Site Visit Report into the record.

David Fantina, an engineer representing the applicant, was sworn in. He provided his qualifications and was accepted as an expert.

Mr. Fantina presented Exhibit A-1, which showed existing and proposed conditions. He said the proposed lot is similar to an adjacent lot approved by the Board several months ago. Mr. Fantina addressed drainage, and also addressed the front yard setback. He said that due to the wetlands, the house cannot be moved from the proposed location. Mr. Fantina noted that the groundwater is high, which inhibits the installation of recharge elements. Mr. Fantina testified that the applicant will stipulate to the recommendations in Mr. Ruschke's memo.

Mr. Vivona asked about the sidewalk. Mr. Fantina said that the sidewalk will be continued from the adjacent property. Availability of parking for the property was discussed.

Mr. Brady said that the applicant is seeking the approvals and will sell to a developer. He noted that the owner of the LLC passed away and there is an estate now.

Mrs. Chang asked how often the wetlands delineation line would be reevaluated. Mr. Fantina said that it would be reevaluated when someone wants to do more work on the property.

John McDonough, a planner representing the applicant, was sworn in to give testimony. He provided his qualifications and was accepted as a witness.

Mr. McDonough provided a description of the property. He also described the planning aspects of the application. Mr. McDonough described the zoning aspects, and stated that the house will be in compliance. Tree removal was also discussed. Mr. McDonough addressed the negative criteria. He said that there is not any substantial detriment.

Mr. Borsinger asked about the grass area, and wondered if future buyers will understand the nature of a wetlands area. Mr. Brady said that a new owner will need to abide by the rules. He suggested a notice to buyers, plus a clause in the resolution that they will need to comply with DEP regulations.

Mr. Banisch said that the proposal is historic and appropriate use for the property.

Mr. Vivona opened the floor to the public. Seeing no public comment, Mr. Vivona closed the floor.

Ms. Wolfe reviewed the conditions of approval.

Mr. Borsinger moved to approve the application with a D variance. Mr. Somaiya seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Borsinger, Aye; Mr. Fitt, Aye; Mr. Huke, Absent; Mr. Silva, Aye; Mr. Bhatia, Aye; Mr. Somaiya, Aye.

Mrs. Chang was not eligible to vote.

Mr. Vivona said that the resolution will be read into the record at the May 7th meeting.

Calendar BOA 23-007 Revived Residences, LLC, 1 Lake Road, Block: 130 Lot: 13.01

Ms. Wolfe stated that the notice for the hearing was sufficient and the Board had jurisdiction to hear the application.

Rory Kurnos, an attorney representing the applicant,

Mark Gimigliano, an engineer representing the applicant, was sworn in to give testimony. He provided his qualifications and was accepted as an expert witness.

Mr. Gimigliano provided a description of the property and the neighborhood, particularly in relation to wetlands conditions. Mr. Gimigliano said that there will be a need for side yard, front yard and rear yard setbacks. Mr. Gimigliano described the proposed home, and said it will comply with height requirements. The stormwater management was described.

John McDonough, a planner representing the applicant, was sworn in to give testimony. He provided his qualifications and was accepted as a witness.

Mr. McDonough provided an overview of the planning justifications for this application. He noted that there is an aspect of hardship on the property.

Mr. Vivona noted the mark outs that will be wanted for the Site Visit which will be held on May 3rd.

Ms. Wolfe announced that the April 17th meeting will be cancelled.

Mr. Fitt moved to adjourn at 10:00 PM. Mr. Vivona seconded the motion which carried unanimously.

Gregory J. LaConte
Recording Secretary