

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
JULY 16, 2026**

Mr. Vivona called the Regular Meeting of the Zoning Board of Adjustment to order at 7:32 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 2026 and January 2027 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.

Roll Call

Answering present to the roll call were Mr. Vivona, Mr. Borsinger, Mr. Huke, Mr. Bhatia, Mrs. Chang, Mr. Neibert and Mrs. Max.

Mr. Bhatia, Mrs. Max and Mrs. Chang participated via Zoom.

Mr. Silva and Mr. Somaiya were absent.

Also present was Board Attorney Amanda Wolfe, Board Planner Frank Banisch and Erica Vigliorolo Moran filling in for Board Engineer John Ruschke.

Minutes

Mr. Neibert moved to approve the minutes of the June 10, 2026 meeting. Mr. Borsinger seconded the motion which carried unanimously.

Hearings

Calendar BOA-26-005 Pellegrino Mariconda, 15 Linden Lane, Block: 96 Lot: 1.

Pellegrino Mariconda, the applicant, and the Board professionals were sworn in to give testimony.

Mr. Vivona explained the Board of Adjustment's hearing process. He also said that the Site Visit will be held on August 1st at 9:00 AM, and asked that the affected area be staked out.

Mr. Mariconda said that they are planning to build a portico over the front door. He said there is an existing patio that they want to cover. The variance requested is for building coverage. Mr. Mariconda said they will be less than 100 square feet over the maximum coverage. He also described the existing stoop.

Mrs. Moran said that the zoning table needs to be tidied up a little.

Mrs. Tsimbouki said that the hearing will be continued at the August 20th meeting.

Calendar BOA 26-009 Tom & Susan Fuller, 769 Shunpike Road, Block: 144 Lot: 20

Susan and Tom Fuller, the applicants, were sworn in to give testimony. Jerry Bruno, the applicant's architect, was also sworn in to give testimony. Mr. Bruno provided his qualifications and was accepted as an expert witness.

Mr. Vivona explained the Board of Adjustment's hearing process. He also said that the Site Visit will be held on August 1st at 9:30 AM, and asked that the affected area be staked out.

Mr. Fuller provided an overview of the application. He said they want to build a one-bedroom accessory living unit on their property to allow their special-needs daughter to live semi-independently.

Ms. Wolfe asked if the property is a certified farm. Mr. Fuller said that the property has a farmland assessment.

Mr. Borsinger said that if the variance is granted, it would normally stay with the property under future owners. Ms. Wolfe asked if the Board would consider a requirement that the occupant of the accessory living space be a member of the family of the owner of the property. The applicant indicated they would agree to that condition. Having the requirement as a deed restriction was discussed.

Mr. Bruno presented the site plan. He said the plan is to build an addition to the barn to allow a staircase to get to the second floor for the accessory living space. Mr. Bruno said that they conform to the setbacks, the building coverage and impervious coverage, as well as the building height. Mr. Bruno said that a study was performed by the applicant, and the proposed project is not within any wetlands or riparian zones. Mr. Bruno presented the existing floor plans for the barn, as well as the proposed floor plans for the project. He also presented the elevations of the proposed project.

Mr. Bruno addressed the septic system for the property and said there is a leaching field.

Mrs. Moran recommended that an environmental statement be provided that the pond's riparian zone is 50 feet and not 150 feet. Mr. Bruno said that he discussed the riparian zone with Mr. Ruschke. Mrs. Moran also said that the existing utilities need to be addressed.

Ms. Wolfe noted that the hearing will continue at the August 20th meeting.

Mr. Bruno asked if the site plans need to be redone for the riparian zones, or if only the confirmation is needed. Mrs. Moran said that it would be good to see where the riparian zone and septic field are on the plans.

Calendar BOA-26-004 James & Melody Cooke, 739 Fairmount Ave. Block: 61 Lot: 4

Angelique Koutsavlis, an attorney representing the applicant, provided an overview of the application.

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

Daniel Cruz, an engineer representing the applicant, provided his qualifications and was accepted as an expert.

Mr. Cruz provided an overview of the requested variances. The first variance is for steep slope disturbance, and he described the proposed disturbance. The second variance is for lot coverage. The third variance is for drainage. Mr. Cruz also addressed the review letter from Mr. Ruschke's office, and said that interpretation from the planner may be needed whether a section of the property is a side yard or a rear yard.

Mr. Vivona asked if the addition to the house will happen now, or if approval is being requested for later construction. Melody Cooke, the applicant, was sworn in to give testimony. She said that they do not plan to do the addition at this time, and want to get approval now to do the addition in the future. Ms. Wolfe said that they would need to request an extension at a later time.

Mr. Cruz presented Exhibit A-1. He said that the patio trench drain is extended along the stairwell. Mr. Cruz also noted the placement of a generator pad. He further addressed the steep slope variance, and said it is mostly by the driveway. Mr. Cruz also elaborated on the stormwater management and use of a drywell. Mr. Cruz discussed the proposed removal of a tree in the right-of-way.

Mr. Neibert asked about native plantings as part of the project. Mrs. Cooke said they will try to use native plantings.

Mr. Borsinger asked about the logic of the rear trench drain's location. Mr. Cruz said that it would maintain positive drainage. He also said that the comments from Mr. Ruschke's office about drainage can be addressed as a condition.

Mrs. Moran said that the soil logs and permeability tests should be performed as part of the design analysis.

Mr. Banisch addressed the setbacks, and said that in a case like this property the Board should consider how well the proposal fits into the neighborhood. Mr. Cruz said that a variance might be triggered if a section of the property is classified as a rear yard. Mr. Vivona recommended that the applicant request the variance due to the ambiguity created by the shape of the property.

Ms. Wolfe asked if the applicant is ok with testing the generator during daylight hours. Mr. Cruz said that they are so willing.

Peter Houghton, a landscape designer representing the applicant, was sworn in to give testimony. Mr. Houghton provided his qualifications and was accepted as an expert.

Mr. Houghton presented the landscape plan for the project. He also addressed the proposed tree removal, and said that the work on the property is likely to damage the tree's root structure. Plantings in the right-of-way were discussed.

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

Ms. Wolfe reviewed the conditions that have been discussed.

Alexander Dougherty, a planner representing the applicant, was sworn in to give testimony. Mr. Dougherty provided his qualifications and was accepted as an expert.

Mr. Dougherty addressed the steep slope variance. He said it could be a C(1) hardship variance or a C(2) variance. Mr. Dougherty addressed the zoning for the site. Mr. Dougherty also commented on the proposed drainage.

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

Ms. Wolfe reviewed the conditions that had been discussed and stipulated.

Mr. Neibert moved to approve the application with the stipulated conditions. Mr. Borsinger seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Borsinger, Aye; Mr. Silva, Absent; Mr. Huke, Aye; Mr. Bhatia, Not Eligible; Mrs. Chang, Not Eligible; Mr. Somaiya, Absent; Mrs. Max, Not Eligible; Mr. Neibert, Aye.

Mr. Vivona said that the memorialization resolution will be considered at the next meeting.

Calendar BOA-26-006 Kevin Vee, 21 Peppermill Road, Block: 48.06 Lot:19.

Brian Conway, a landscape architect and planner representing the applicant, was sworn in to give testimony. Mr. Conway provided his qualifications and was accepted as an expert witness.

Mrs. Max read the Site Visit Report into the record.

Mr. Conway provided an overview of the application and the site conditions. He said that the grading variance can be eliminated from the application.

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

Mr. Vivona asked about the number of stories. Mr. Conway said that there are five neighboring homes with existing conditions matching the proposal. He also said that the addition is compliant, and that the variances are needed for the drainage and the number of stories for the house, as it would meet the definition for three stories.

Mr. Borsinger asked about the height of the structure. Mr. Clawson addressed the height of the structure, which will be compliant.

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

Mr. Clawson Addressed the purpose of the addition. He said that the applicants want to have more room for family to visit, and more habitable space when they entertain friends.

Mr. Clawson presented the site plan and the grading plan. The floor plans were also presented. Mr. Clawson also reviewed the landscape plan with the Board.

Mr. Vivona asked if the house needed a variance when it was built. Mr. Clawson said that they looked into that but were unable to find an answer. Mr. Conway said that he believes the 5 nonconforming houses that are adjacent in this neighborhood likely conformed when they were built.

Mr. Conway gave planning testimony. He testified that the C(1) variance meets the negative criteria. Mr. Conway said that there is not any detriment to the public good, or any impairment to the purpose of the zoning plan or zoning ordinance. Mr. Conway said that the benefits will outweigh the detriments.

Mr. Borsinger asked if a future owner would need a variance to build on top of the proposed addition. Mr. Banisch said that the requested variance allows for minimizing the appearance of a three story building, and this approval would not authorize an addition on top of the proposed addition. Mr. Banisch said that there is nothing about the application that would make anything worse. He also said that approving this application would not eliminate the need for additional variances if anyone wanted to add more to this addition.

Mr. Huke moved to approve the application. Mr. Neibert seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Borsinger, Aye; Mr. Silva; Absent; Mr. Huke, Aye; Mr. Bhatia, Not Eligible; Mrs. Chang, Not Eligible; Mr. Somaiya, Absent; Mrs. Max, Not Eligible; Mr. Neibert, Aye.

Mr. Vivona said that the resolution will be considered at the next meeting.

Ms. Wolfe noted the conditions of approval.

Calendar BOA-26-003 Terrence & Megan Robinson, 36 Rolling Hill Dr., Block: 102.04 Lot: 72.

Ms. Wolfe said that the site visit will be held on August 1st at 10:00 AM.

Mr. Robinson said that the goal of the project is to create a safe, welcoming space for his family, and they are looking to install a pool. He said that a variance is requested for impervious coverage. A second variance is requested for the installation of a pavilion. Mr. Robinson discussed the proposed fencing.

Mr. Vivona asked about the size of the pavilion. Mr. Robinson described the pavilion, and said that it will have a television and high-hat lights. He noted that the pavilion will be 13 feet high, and will not have any exterior lighting.

Mr. Borsinger asked if there was any feedback from neighbors. Mr. Robinson said that any feedback from neighbors has been positive.

Mr. Vivona advised Mr. Robinson to make sure that a proper survey is conducted so that the pool, if approved, is built in the proper location. Mr. Vivona asked about the fencing. Mr. Robinson said that he will be required to install his own fence, however he will make sure his fence matches his neighbor's fence.

Ms. Wolfe asked about the location of the pool equipment. Mr. Robinson described the location where it will be installed. Alex Mann, the project manager, further described the proposed location on the back of the home next to the AC unit.

Mr. Borsinger asked about a proposed water feature wall. Mr. Robinson said that it is a mini-waterfall.

Mrs. Moran said that she does not have any additional comments provided that the applicant is willing to follow the comments in the engineering review memo.

The continuation of the hearing will be at the August 20th meeting, and Ms. Wolfe will have a draft resolution prepared.

Discussion

Monarch Communities, LLC v. Township of Montville

Ms. Wolfe provided background on Monarch Communities, LLC v. Township of Montville, which was recently decided by the New Jersey Supreme Court. She explained how this decision impacts how the Zoning Board would consider a use variance. Ms. Wolfe said that typically planners who testify before this Board have testified regarding both prongs of the negative criteria. She said that for this case to be relevant in an application before the Chatham Township Board of Adjustment, it would most likely be if there were an application for a school or a house of worship. She also reiterated that planners have typically addressed both prongs of the negative criteria anyway.

Mr. Banisch addressed the balancing test. He said that the master plan and zoning plan will need to be clear about the intention of the zone, as well as clarifying what an inherently beneficial use does not belong in a particular zone. Mr. Banisch also agreed with Ms. Wolfe that planners always needed to meet the burden of demonstrating that the proposed use will not substantially impair the intent and purpose of the zoning plan and zoning ordinance, and this decision clarifies that.

Ms. Wolfe addressed the practical implication that if prior discussion of a particular property is buried in minutes, an applicant would need to request specific minutes in an OPRA request as records custodians are not required to perform research.

Mr. Neibert said that the NJ Supreme Court notes that the municipality's master plan, zoning ordinance and prior planning board decisions must be meaningfully considered, and he said he wonders how that will impact Zoning Board decisions. Mr. Neibert said that in some sense, the Zoning Board goes against decisions made by other boards when variances are granted, and he cited accessory structures as an example. He discussed the consideration of the benefit to the community when an application is considered, and commented on the Board's responsibility to consider the objectives of the Master Plan. Ms. Wolfe said that the NJ Supreme Court did not

provide clear guidance when the new standard needs to be applied, and she believes that there will be more litigation to answer that question. Mr. Neibert opined that the current decision empowers the Zoning Board to consider action taken by other Township boards.

Mr. Huke noted that accessory structures have been an issue and the Zoning Board has approved several. Ms. Wolfe said that in the Annual Report, the Zoning Board can make recommendations on ordinance updates.

Mr. Vivona said that this decision could come up in relation to affordable housing, which would not usually come before the Zoning Board.

Mr. Neibert said that there would not be a downside to complying with the Master Plan as much as possible.

Mr. Borsinger moved to adjourn at 10:24 PM. Mr. Vivona seconded the motion which carried unanimously.

Gregory J. LaConte
Recording Secretary