

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
SEPTEMBER 19, 2024**

Mr. Vivona called the Regular Meeting of the Zoning Board of Adjustment to order at 7:39 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 2024, and January, 2025 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. Silva, Mr. Huke and Mr. O'Brien.

Mr. Fitt and Mr. Sood were absent.

Also present were Board Planner Frank Banisch, Board Attorney Amanda C. Wolfe, and Engineer Samantha Anello filling in for Board Engineer John Ruschke.

Minutes

Mr. O'Brien moved to approve the minutes of the July 18, 2024 meeting. Mr. Borsinger seconded the motion which carried unanimously.

Resolution

BOA-2024-020 Board Counsel

**RESOLUTION BOA-2024-020
RESOLUTION AUTHORIZING THE AWARD OF A FAIR AND OPEN CONTRACT
FOR ZONING BOARD OF ADJUSTMENT CONSULTING LEGAL SERVICES WITH
AMANDA C. WOLFE, ESQ. OF DEMPSEY, DEMPSEY & SHEENAN. FOR 2024**

WHEREAS, the Zoning Board of Adjustment of the Township of Chatham has a need to acquire the legal services for the Chatham Township Zoning Board of Adjustment as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and,

WHEREAS, the Chief Financial Officer has determined and certified in writing that the value of the contract will exceed \$17,500; and,

WHEREAS, the anticipated term of this contract is three months, and

WHEREAS, Dempsey, Dempsey & Sheenan has completed and submitted a Business Entity Disclosure Certification which certifies that Dempsey, Dempsey & Sheenan has not made

any reportable contributions to a political or candidate committee in the Township of Chatham in the previous one year, and that the contract will prohibit the Dempsey, Dempsey & Sheenan, from making any reportable contributions through the term of the contract; and

WHEREAS, the Chief Financial Officer has determined that sufficient funds are or will be available upon adoption of the budget for year 2024; and

NOW THEREFORE, BE IT RESOLVED that the Township of Chatham hereby appoints Amanda C. Wolfe of Dempsey, Dempsey & Sheenan, as Zoning Board Attorney and authorizes the Mayor and Clerk to enter a contract with Amanda C. Wolfe, with Dempsey & Dempsey and Sheenan as described herein; and,

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution; and

BE IT FURTHER RESOLVED that this contract is awarded without formal competitive bidding as a “Professional Service” in accordance with 40A: 11-5 (1) (a) of the Local Public Contracts Law because the services required are those of a recognized profession for which bid specifications are not appropriate or required; and

BE IT FURTHER RESOLVED that a copy of this resolution as well as the Contract shall be placed on file with the Clerk of the Township of Chatham.

BE IT FURTHER RESOLVED that notice of this resolution shall be printed as provided by law in the Chatham Courier.

Mr. O’Brien moved to adopt Resolution BOA-2024-020. Mr. Borsinger seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Borsinger, Aye; Mr. Fitt, Absent; Mr. Silva, Aye; Mr. Sood, Absent, Mr. Huke, Aye; Mr. O’Brien, Aye.

Hearings

Calendar BOA 24-004 Mr. & Mrs. Kelly, 37 Rose Terrace, Block: 92 Lot: 8.

David Kelly, the applicant, was sworn in to give testimony.

Mr. Vivona provided an overview of the Zoning Board’s process.

Mr. Kelly said that he plans to have a pergola constructed in his backyard which will increase the size of the rear patio. He said that an outdoor kitchen with a built-in grill will also be constructed. The variance requested is for the size of the pergola. Mr. Kelly said that the proposed size is 252 square feet. He said that there is ample size for a pergola that large, and they want adequate space for a dining table or a couch.

Mr. Vivona asked about neighbors on the rear of the property. Mr. Kelly said that the neighboring property on the rear of the property is one of the Township’s pump stations.

Mr. Borsinger asked if there are any restrictions on outdoor kitchens. Ms. Anello said that there are not any restrictions from a zoning perspective, however any applicable building codes would need to be met. Mr. Kelly said that it is just a grill and a pull-out garbage can. Ms. Anello said

that part of the need for the variance is that the pergola will fall under the definition of an accessory structure.

Mr. Kelly said that a line in a prior resolution regarding a 150 square foot limit was intended for sheds. Mr. Vivona said he is surprised that the pergola is being treated as an accessory structure. Ms. Anello addressed the definition of a structure and explained how the pergola meets that definition.

Mr. Vivona opened the floor to the public.

1. Christine Pagano, 40 Edgewood Road, said that her backyard is on the other side of the Township's pump station from where Mr. Kelly's property is located. Mrs. Pagano was sworn in to give testimony. Mrs. Pagano said that she is opposed to the proposed pergola. She said that when she bought her house, she said the appeal was the wooded, private feel and they could not see any other homes. In 2021, the developer of 37 Rose Terrace cut down the trees on that property and illegally cut down trees on Township property. Some new trees were subsequently planted, and they have not grown very much since then. Mrs. Pagano said they can see outdoor spotlights and hear outdoor speakers from 37 Rose Terrace. She is concerned that an outdoor dining area would further affect the privacy, peace and enjoyment of her property, and is also concerned that it would affect her property value.

Seeing no further public comment, the floor was closed to the public.

Mr. Vivona asked if Mr. Kelly bought the house or had it built. Mr. Kelly said that he bought the house, and had heard about prior issues with the developer. He did not have an ownership in the property when the developer had violations. Mr. Kelly further stated that he believes the plan will involve some additional vegetative screening, and he disagreed with Mrs. Pagano's characterization that the trees planted on Township property have not grown much.

Mr. Vivona said that part of the purpose of the Site Visit will be to consider impact on neighbors, and he said that there may be a need for more screening.

Mr. Banisch suggested that the size limitation might contemplate an interpretation on the Board's part the difference between a walled-in structure and an open structure with a roof.

Mr. Vivona said that the Site Visit will be on October 5th at 9:00 AM. Mr. Kelly said that he will not be present for the Site Visit, but will try to have his architect present.

Calendar BOA 24-001 Saverio Allocca, 498 Southern Blvd., Block: 128 Lot: 5

David Fantina, the applicant's engineer, and Thomas Bijak, the applicant's architect, as well as the Board professionals, were sworn in to give testimony. Mr. Fantina and Mr. Bijak provided their qualifications and were accepted as experts in their respective fields.

Mr. Vivona noted that the Site Visit will be on October 5th.

Mr. Bijak provided an overview of the application. He presented a photo board of the site as well as renderings of the proposed building.

Mr. Borsinger asked about the zoning for the property. Ms. Wolfe said that the applicant needs a use variance. She also said that they do not need site plan approval.

Mr. Fantina said that the property is not zoned for residential use. He also cited several existing non-conformities on the lot, and said that some of them will be brought closer to conformity. Mr. Fantina said that there is not much that can be done with the subject property, and it is impacted by wetlands. He further addressed parking on the property, and said that the proposal is to pave an area in the rear of the house for four spots.

The zoning for the property was discussed. Mr. Banisch read the allowable uses in the zone. He also said that the property can remain a pre-existing nonconforming use. Mr. Banisch further asked why the applicant believes that a two-family home is the right use for this property. Mr. Fantina said that the property could support a two-family dwelling.

The impervious surfaces on the property were discussed. Tree removal was also discussed.

Ms. Anello addressed a comment in the review memo about the property being within the Great Swamp Watershed.

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

Mr. Vivona said that the Site Visit will be on October 5th at 9:30 AM.

Mr. Huke moved to adjourn at 8:30 PM. Mr. Vivona seconded the motion which carried unanimously.

Gregory J. LaConte
Recording Secretary