

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
DECEMBER 15, 2021**

Mr. Vivona called the Special Meeting of the Zoning Board of Adjustment to order at 7:40 PM.

Adequate Notice of this meeting of the Zoning Board of Adjustment of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice was given to *The Chatham Courier* and the *Morris County Daily Record* on December 7, 2021; notice was posted on the front door and the bulletin board in the main hallway of the Municipal Building on December 7, 2021; and notice was filed with the Township Clerk on December 7, 2021.

Roll Call

Answering present to the roll call were Mr. Vivona, Mr. Weston, Mr. Borsinger, Mr. Fitt, Mr. McHugh and Mr. Silva. Mrs. Chang arrived late.

Also present were Board Engineer John Ruschke and Attorney Denis Murphy filling in for Board Attorney Scott Carlson.

Approval of Minutes

Mr. Fitt moved to approve the minutes of the November 17, 2021 meeting. Mr. Silva seconded the motion, which carried unanimously.

Mr. Fitt moved to approve the minutes of the December 17, 2020 meeting. Mr. Weston seconded the motion, which carried unanimously.

Hearings

Calendar BOA-21-015 (October 8, 2021) Mr. & Mrs. Allen, 12 Old Farm Road, Block: 124 Lot: 18. Requesting allowable Building Coverage to permit the construction of a new two-story rear yard addition. (Complete 11/22/21) First Hearing

Mr. Vivona and Mr. Fitt both recused themselves from this application.

Mr. Weston said that there will be greater detail on this application at the next meeting. He also stated that the site visit will be on January 8th at 9:00 AM.

Brian Siegel, the architect for the applicant, was in attendance to present the application.

Bryan Allen provided an overview of the application. He described his family's involvement in the Chatham community. Mr. Allen stated that his employment now involves working at home, and a more private space is needed.

Mr. Allen was sworn in to give testimony. Mr. Siegel was also sworn in and provided his qualifications. Mr. Siegel was accepted as an expert.

Mr. Allen said that the application is for a more enclosed three-season porch area. He said that the addition would be screened by trees, and there would not be an impact to neighboring homes.

Mr. Siegel presented the drawings for the site. He noted that a permeable deck structure is proposed, and there would be drainage underneath. A building coverage variance is requested because the proposed addition exceeds the allowable coverage by 375 square feet. Mr. Siegel described the proposed addition, and also presented side views of the addition.

The Board deferred any questions until after the site visit.

Calendar BOA-21-010 (September 1, 2021) Mr. & Mrs. Spina, 102 Candace Lane, Block: 37 Lot: 24. Requesting front yard setback variance to add an addition to their home for a screened-in porch. (Complete 10/7/21)

Mr. Borsinger read the site visit report into the record.

Amy and Jason Spina were sworn in to give testimony.

Beata Szacillo, an architect representing the applicant, was present to address the application. Mrs. Szacillo addressed the location of the proposed porch, and stated that a variance from the 50-foot front yard setback requirement is requested. She stated that the front of the house is facing the side of the property, and the side of the house is facing the technical front of the property. Mrs. Szacillo further addressed current conditions on the property, and stated that the proposed setback is 22.9 feet. Mrs. Szacillo said that the majority of the frontage is along Mountain Avenue, which is heavily screened, and the proposed addition will not be detrimental to neighboring properties.

Mr. Vivona noted that the lot is limited as to where building can occur.

Mr. Ruschke stated that he did not identify any drainage issues. He noted that if the application is approved, the applicant will not be able to disturb more than what is required for the construction.

Mrs. Szacillo stated that the size of the proposed addition was reduced from what the applicant originally had in mind. She presented the drawings for the first floor plan, and she presented pictures of the house to show where the addition will be built.

Mr. Vivona opened the floor for the public to ask questions. Seeing no questions, Mr. Vivona closed the floor to the public.

Mr. Borsinger noted that another brick patio cannot be built after the addition is built, as the existing patio was non-conforming. Mrs. Szacillo said that another patio will not be built.

Mr. Borsinger moved to approve the application. Mr. McHugh seconded the application.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Aye; Mr. Borsinger, Aye; Mr. Fitt, Aye; Mr. McHugh, Aye; Mr. Silva, Aye; Mrs. Chang Aye.

Mr. Vivona stated that a resolution will be adopted at the January 12th meeting, after which permits can be sought.

Calendar BOA-21-013 (September 13, 2021) Mr. Alex Birdsall, 12 Jay Road, Block: 48.14 Lot: 113.13. Requesting three (3) variances: 1) Building Height 2) Number of Stories, 3) Side Yard Setbacks, to construct a larger second level to an existing garage accessory structure. (Complete 10/18/21)

Mr. Silva read the site visit report into the record.

Mr. Birdsall stated that the application is for the addition of a home office over an existing accessory structure.

Mr. Vivona stated that the biggest concern for an application of this nature is that the office would later be used as an apartment and asked if there would be a bathroom or kitchen in the accessory structure. Mr. Birdsall stated that there are not plans for a bathroom or kitchen.

Mrs. Siegel presented sheet A-1 of the plans. She stated that the garage almost fits within the building envelope, and a variance is requested for the garage height. The footprint of the garage is pre-existing. Mrs. Siegel further described the existing conditions of the garage. Drawings of the proposed home office were also presented, as well as a 3D computer model. Streetscape was also addressed. The distance to the neighboring was also addressed, and the accessory structure will be 70 feet from the northeast home and 90 feet from the southwest home. Mrs. Siegel presented photos of the site taken from Geoffrey Court.

Mrs. Siegel addressed comments in Mr. Ruschke's review letter. She stated that drainage will be handled the same way as it is currently handled. A tree permit will be sought as part of the application's permitting process. The driveway was also discussed.

Mr. Vivona asked about a concern raised by a neighbor regarding the cupola. Mrs. Siegel said there was a suggestion that the variance go to the height of the cupola.

Mr. Ruschke addressed the requirements for accessory structures, and stated that water and electricity are the only utilities that can be added. He also noted that bathrooms are prohibited. Mrs. Siegel stated that electricity will be used for heating and cooling rather than gas. Water will not be extended to the garage, and there is already electricity. A Wi-Fi connection will be used for internet. Engineer Ruschke suggested that the Wi-Fi connection be included in the variance, as it is a communication utility.

Mr. Ruschke asked if a planner will testify. Mrs. Siegel said they did not plan to have a planner testify. Mr. Ruschke said that Mr. Banisch's review letter asked for planning testimony.

regarding the positive and negative criteria. Mrs. Siegel addressed the positive criteria in her capacity as an architect. Mr. Murphy said that there is not planning testimony if it is not given by a licensed planner. Mr. Vivona said that it would be wise for the applicant to have a planner give testimony. Mrs. Birdsall expressed her disagreement with the need for planning testimony. Mr. Vivona cautioned that the process should include due diligence to make sure all the rules are followed. Mr. Ruschke added that the variance has to be justified according to the Municipal Land Use Law rather than personal perspective, and the necessary testimony to accomplish that has not yet been given.

Mrs. Siegel addressed the comments in the review letter from Mr. Banisch.

Mr. Fitt addressed additional screening, and also addressed the nonconformity of the proposed structure. He advised additional landscaping screening for the proposed structure.

Mr. Weston said he is less moved by the impact of the structure, and he finds the proposal attractive compared to the existing structure. He also said that nobody is guaranteed to have an existing view forever.

The hearing will be continued on January 12th.

Mr. Borsinger said he requested a more detailed definition of an accessory structure, and he hopes Mr. Carlson will have one available at the next meeting.

Calendar BOA-21-011(September 7, 2021) Mr. & Mrs. Jordre, 16 Pine Street, Block: 85 Lot:34. Requesting three (3) variances to install a pool. Pool fall within the 10' setback of the house. The placement of the equipment and construct a patio. (Complete 10/19/21)

Michael and Jennifer Jordre were sworn in to give testimony.

Mrs. Jordre provided an overview of the application.

Mr. Weston read the site visit report into the record.

Antoine Hajjar, the engineer and planner representing the applicant, stated that the application is for a C-1 hardship variance. He stated that the lot is short and narrow. He also discussed the proposed pool, shower and pool equipment. The first variance is for the location of the pool equipment. The zoning ordinance requires 11 feet from the property line, and the proposal is for it to be 6 feet from the property line. A variance is also requested for the setback of the lounging area. The third variance sought is for the accessory structure setback.

Mr. Hajjar addressed mitigation of drainage through French drains and existing drywells.

Mr. Vivona asked if the pool equipment would be enclosed, and Mrs. Jordre said she would need to check with her pool professionals. Mr. Vivona warned that critters like to shew on wires for pool equipment.

Mr. Borsinger said that a variance could be eliminated by relocating the pool equipment. Mrs. Jordre said it appeared to make sense to keep the pool equipment near the other mechanicals. Mr. Jordre noted that there is water and electric on that side of the house. It was also noted that there could be a dedicated gas line at that spot.

Mr. Borsinger asked if the Township allows an open shower to drain into a sanitary sewer. Mr. Ruschke said that there would need to be a backflow preventor or trap, and he said he would need to check with the plumbing inspector what permit is needed. Mr. Borsinger warned about infiltration, and asked if there is a code about that.

Mr. Ruschke asked if a variance will be requested for the retaining wall, as it is only 4.5 feet when it should be 5 feet. Mr. Hajjar said that the wall will be shifted for compliance. Mr. Ruschke also inquired about the pergola and its roof. Mr. Hajjar described the louvered roof. Mr. Ruschke stated that because it is designed to have an enclosed roof, it qualifies as an accessory structure.

Mr. Weston asked if a future owner could close the pergola with new walls. Mr. Ruschke said that the application and any approval is a matter of record. The consensus of the Board was to refer to it as a pergola with an auxiliary structure.

Mrs. Jordre conducted a review of the five variances being requested. Mr. Borsinger asked if the rinse area could be relocated to avoid a variance. Mrs. Jordre said she would prefer to do away with the rinse area than to move it. She also stated that she is willing to give up the lounge area to reduce the number of variances. Mr. Weston opined that the project should be done correctly rather than to be overly concerned about the number of variances. Mr. Borsinger opined that attempts should still be made to make adjustments to avoid variances. Mrs. Jordre stated that a lot of thought was put in to maximizing the use of the space while minimizing the impact and need for variances. Mr. Vivona noted that it is a difficult lot.

Mr. Vivona opened the floor for public comment.

1. Brian Whiteman, 15 Lenape Trail, asked if the French drain flowing to the drywell is part of the stormwater management plan. Mr. Hajjar stated that it is. Mr. Whiteman asked about the privacy landscaping. Mr. and Mrs. Jordre stated that the landscaping will be done as soon as possible.

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

Mr. Murphy summarized the five variances. He also stated that the conditions of approval are that the Plumbing Official review the shower drain, that the retaining wall be shifted .1 to eliminate the need for a variance, that the Fire Official approve the location of the fire pit, and that the applicant provide a lot grading plan.

Mr. Borsinger moved to approve the variances as described by Mr. Murphy. Mr. Weston seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Aye; Mr. Borsinger, Aye; Mr. Fitt, Aye; Mr. McHugh, Aye; Mr. Silva, Aye; Mrs. Chang Aye.

Calendar BOA-21-012 (September 12, 2021) Dr. Laura Downey, 134 Chatham Street, Block: 93 Lot: 5.02. Requesting two (2) variances to construct an addition. Rear yard setback and principal building coverage: (Complete 10/26/21) First Hearing

Mr. McHugh read the site visit report into the record.

Remo Caputo, an attorney representing the applicant, provided an overview of the application.

Jonathan Babula, an architect representing the applicant, presented drawings of the proposed addition. He also described the addition. The perspectives drawings were also presented.

Mr. Vivona asked if there is a basement or a slab for the addition. Mr. Babula stated that it is a slab. Mr. Vivona asked about a correction to the pitch. Mr. Babula said that the original drawing was showed the property as flatter, and the drawings were adjusted once the survey was performed.

Dr. Downey explained that it is important for the bedroom to be on the first floor for safety reasons.

Mr. Vivona opened the floor for public questions.

1. Jon Monks, 47 Meadowbrook Road, asked what would prevent a future owner from treating the addition as a new property for rental purposes. Mr. Caputo said it would be illegal without a use variance. Mr. Vivona confirmed that Zoning Board approval would be necessary to convert the addition into a rental apartment. Mr. Murphy said that is not what is being sought in this application.
2. Justin Boyd, 51 Meadowbrook Road, expressed his concern about the 50-foot setback and the proximity of the addition to his property. He said he has been promised that the tree coverage will grow fast, but he does not think it will grow fast enough. Mr. Boyd also said he was promised in the past that water issues would be addressed and he stated they were not.

Mr. Vivona closed the floor to the public.

Paul Anderson, an engineer and professional planner representing the applicant, was sworn in to give testimony. Mr. Anderson provided his qualifications and was accepted as an expert in both fields.

Mr. Anderson presented the stormwater management plan for the property. He also stated that if the application is approved, the drainage to the neighboring properties will be improved. Mr. Anderson also stated that he has not yet received comments from the Board Engineer.

Exhibit A-7 was entered into the record.

Mr. Vivona asked which lots were the reported source cause of flooding on neighboring properties. Mr. Anderson showed them on the tax map. Mr. Vivona said that the surface water seems to be headed to the proposed French drain. Mr. Anderson further described the proposed drainage system. He also addressed how the stormwater management system would be affected if there is overflow from the street.

Mr. Ruschke addressed drainage at the site and said that test pits should be dug. He also said that the plan was put together too quickly. Mr. Anderson said that he believes the correct approach was used in the plan, and the size of pipes can be adjusted. He also stated that the drainage onto neighboring properties will be significantly improved through this application. Mr. Ruschke noted complaints from neighbors, and said that the compliance of prior approvals can be dealt with through this application process. He said the proper functioning of the drywells should be confirmed. Mr. Ruschke further stated that the stormwater plan as designed does not currently meet the Township's code.

Mr. Ruschke stated that he does not understand how the system was designed without any calculations submitted. Mr. Anderson said that additional work will be done to address Mr. Ruschke's concerns. Mr. Caputo suggested that the planning testimony be deferred until after the engineering testimony is complete and asked that the hearing be carried to the next meeting.

The hearing was carried to the January 12th meeting with the understanding it may be further carried to the January 20th meeting.

Mr. Caputo asked Mr. Ruschke to work with Mr. Anderson to address the engineering issues prior to the next hearing.

Mr. McHugh moved to carry the hearing to January 12th. Mr. Fitt seconded the motion, which carried unanimously.

Mr. Fitt moved to adjourn at 11:23 PM. Mr. Borsinger seconded the motion, and the motion carried unanimously.

Gregory J. LaConte
Recording Secretary