

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
FEBRUARY 17, 2022**

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 2022, and January, 2023 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. McHugh, Mr. Sylva, Mr. Silva and Mr. Sood.

Mr. Weston, Mr. Fitt, and Mr. Forno were absent.

Also present were Board Engineer John Ruschke and Board Attorney Amanda Wolfe.

Approval of Minutes

Mr. Borsinger moved to approve the minutes of the January 12, 2022 and February 9, 2022 meetings. Mr. McHugh seconded the motion which carried unanimously.

Resolutions

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

**RESOLUTION 22-0015
TOWNSHIP OF CHATHAM ZONING BOARD OF ADJUSTMENT Calendar BOA-21-015**

WHEREAS, Bryan and Sally Allen (the “Applicants”), have applied to the Zoning Board of the Township of Chatham (the “Board”) seeking the following variance relief, relating to the construction of a two-story addition to the rear of the existing dwelling located on property designated as Block 124, Lot 18 on the Tax Map of the Township of Chatham, more commonly known as 12 Old Farm Road (the “Property”):

A bulk variance for a proposed principal building coverage of 2,963 square feet, whereas the existing building coverage is 2,589 square feet, and the maximum permitted building coverage in the R-3 Residential Zone for the Property is 2,604 square feet, pursuant to Section 30-78.11.b of the Land Development Regulations of the Township of Chatham (the “Ordinance”); and

WHEREAS, public hearings noticed in accordance with the requirements of the Municipal Land Use Law ("MLUL") were held on such application on December 15, 2021 and January 12, 2022, at which times interested citizens were afforded an opportunity to appear and be heard; and.

WHEREAS, the Board, after carefully considering the evidence presented by the Applicants, the reports from consultants and reviewing agencies, and all comments from the public, has made the following factual findings and conclusions:

1. The Property is a 20,069 square foot, shallow lot, located in the R-3 Residential Zone, with frontage on Old Farm Road. The Property has moderate to steep slopes from the rear lot line toward Old Farm Road. It is currently improved with a 2.5 story dwelling with a front porch, rear patio with fire pit, and associated improvements.

2. The Applicants propose to construct a 15.2' by 25.6' two-story addition consisting of 374 square feet, which will provide an enclosed patio area on the first floor and an office, walk-in closet, and balcony on the second floor. The Applicants also propose a new deck that will extend the length of the dwelling on the ground level.

3. The requested bulk variance relief is governed by N.J.S.A. 40:55D-70(c).

4. Board Members Vivona and Fitt recused themselves from hearing the application.

5. The Board Engineer, Samantha Anello, P.E., was duly sworn according to law.

6. At the December 15, 2021 hearing, a site visit was scheduled on January 8, 2021 at 9:00 am and an overview of the proposal was provided by the Applicants and their professionals.

7. Bryan Allen, one of the Applicants, was duly sworn according to law, provided an overview of the proposal and explained that he is now working from home and needs additional quiet space. He further explained that the proposal also includes a three-season porch area on the first floor. Mr. Allen contended that the proposed addition will be adequately screened by the existing landscaping and that it will not have any detrimental impact on the adjacent neighbors.

8. Brian Siegel, R.A., was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. He summarized the Applicants' proposal, noting that they are seeking variance relief for a proposed addition that exceeds the allowable principal building coverage by approximately 359 square feet. Mr. Siegel explained that the deck is permeable and that soil would be underneath the deck so as not to increase the proposed building coverage.

9. At the January 12, 2022 hearing, Board Member McHugh read the Site Visit Report into the record.

10. Brian Siegel, R.A., provided an overview of the Applicants' proposal. He introduced into evidence, as **Exhibit A-1**, a conceptual rendering of the rear of the dwelling depicting the proposed addition, dated January 12, 2022. He explained that the Applicants are seeking approval to construct a 374 square foot addition to the rear of the dwelling. Mr. Siegel explained that the proposal will allow the Applicants to construct an enclosed patio area on the first floor, and an office, walk-in closet and balcony on the second floor.

11. On questioning, Mr. Siegel addressed concerns regarding drainage. He also addressed the natural screening. On questioning as to the swale of the drain inlets and if the positive slope away from the dwelling will lead to the drainage and around the house, Mr. Siegel confirmed that the addition is at a high point, and described the drainage. On questioning as to whether any of the drainage pipes need to be relocated, Mr. Siegel opined that said pipes should not be impacted, however, they will be relocated if same proves to be necessary.

12. The Applicant stipulated, as a condition of approval, to complying with the comments and recommendations set forth in the November 22, 2021 Completeness Review prepared by Mr. Ruschke, the Board Engineer, and the December 2, 2021 Review Memorandum prepared by Mr. Banisch, the Board Planner.

13. No member of the public commented on, or objected to, the Applicants' proposal.

DECISION

14. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, finds that the Applicant has satisfied both the positive and the negative criteria for the requested bulk variance relief.

Bulk Variance Relief – Positive Criteria

15. An applicant seeking bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) must demonstrate that the granting of an application for variance relief would advance the purposes of the MLUL and that the benefits of the granting such relief would substantially outweigh any detriment associated therewith. The focus of a subsection c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

16. Here, the Board finds that the requested bulk variance relief may be granted pursuant to N.J.S.A. 40:55D-70(c)(2). In this regard, the Board recognizes that granting the requested relief will improve the functionality of the dwelling with a minimal impact on the Property itself, particularly given that the proposal will ultimately result in a net decrease in impervious lot coverage, and the proposed improvements will be sufficiently screened by the dwelling itself, and the existing landscaping. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested subsection c(2) variance relief.

Bulk Variance Relief – Negative Criteria

17. In order to satisfy the negative criteria for bulk variance relief, an applicant must demonstrate that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance. The focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. The focus of the “substantial impairment” prong of the negative criteria is on whether the grant of the variance would be inconsistent with the Master Plan.

18. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicant has demonstrated that the proposal will not result in substantial detriment to the neighborhood or the general welfare, particularly since the appearance and functionality of the dwelling will be improved, thereby updating the housing stock. The Board recognizes that the proposal ultimately will reduce the impervious lot coverage, constituting a benefit, rather than a detriment, to the neighborhood. The Board further recognizes that the proposed addition will be sufficiently screened from view from the adjacent neighbors. In this regard, the Board recognizes that no member of the public objected to the proposal, further evidencing that the proposal is not substantially out of character with the subject neighborhood.

19. As to the “substantial impairment” prong of the negative criteria, the Board finds that granting the requested relief certainly does not rise to the level of a rezoning of the Property, particularly since the proposed use as a residential dwelling is a permitted use in the R-3 Residential Zone.

20. As such, the Board finds that the Applicants have satisfied both prongs of the negative criteria for the requested subsection c(2) variance relief.

WHEREAS, the Board took action on this application at its meeting on January 12, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

NOW THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Chatham, that the application of **BRYAN and SALLY ALLEN**, for bulk variance relief, as heretofore stated, is granted, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within thirty (30) days of the adoption of a Resolution, within thirty (30) days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);

2. The terms of the aforementioned approval are to be strictly construed in accordance with the plans and testimony presented to the Board, and same are incorporated into this Resolution by reference;
3. As to stormwater management, the Board Engineer takes no exception to the issuance of a lot grading plan waiver provided the following conditions are satisfied:
 - a. Given that the Property has an existing on-site drainage system, with piping connected to several yard drains, if the proposed addition impacts the existing drainage system, the existing piping shall be relocated as necessary to ensure continued functionality. Roof drainage from the addition shall be constructed such that existing drainage patterns are not altered; and
 - b. Grading in the rear of the proposed addition shall be constructed in a manner that provides positive slope away from the foundation, in accordance with applicable building codes. Given the on-site topography, it appears that a landscape retaining wall in the rear yard may be necessary and, if it is necessary, the design and construction of said retaining wall shall be subject to the review and approval of the Township Construction Official;
4. Any exterior lighting shall be downward directed or appropriately shielded so as to mitigate any light spillage onto adjacent properties;
5. The Applicants 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; and
6. 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.

Ms. Wolfe provided a brief overview of the application. She noted that there were three members who voted in favor of the application and two abstentions.

Mr. McHugh moved to adopt the Resolution. Mr. Borsinger seconded the motion.

Roll Call: Mr. Vivona, Recuse; Mr. Weston, Absent; Mr. Borsinger, Aye; Mr. Fitt, Recued; Mr. McHugh, Aye; Mr. Sylva, Abstain; Mr. Forno, Absent; Mr. Silva, Aye; Mr. Sood, Abstain.

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Hearings

Calendar BOA 21-017 (November 4, 2021) Mr.& Mrs. Farina, 12 Rolling Hill Drive, Block: 102.02 Lot:26. Requesting a variance for the construction of an addition to the mud room off the rear of the residence which causes maximum coverage of the principal residence to be exceeded

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

Mr. Farina, the applicant, addressed the reasons for reconstructing the mud room. He stated that if the application is approved, the new roof drainage system will be tied into the current drainage system so that current drainage patterns are not altered.

Bob Scialla, an architect representing the applicant, was sworn in to give testimony. Board professionals were also sworn in.

Mr. Scialla concurred that the roof leader will be connected to the current drainage system.

Mr. Vivona commented on his observations during the Site Visit. He stated that he sees the benefit to the addition of the exterior door granting direct access to the mud room.

Mr. Ruschke said that he has no further comment on the application.

Mr. Silva moved to approve the application. Mr. Sylva seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Absent; Mr. Borsinger, Aye; Mr. Fitt, Absent; Mr. McHugh, Aye; Mr. Sylva, Aye; Mr. Forno, Absent; Mr. Silva, Aye; Mr. Sood, Aye.

Mr. Vivona stated that a resolution to memorialization will be on the March 17th Agenda.

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.

Richard Keller, a planner representing the applicant, was sworn in to give testimony.

Mrs. Siegel stated that the application has been modified since the Site Visit to eliminate the driveway work and the sidewalk, which results in a zero change to the lot coverage.

Exhibit A-7 was entered into the record.

Mr. Keller provided his qualifications and was accepted as an expert in planning.

Mr. Keller gave background on the site. He presented Exhibit A-9 which included pictures of homes in the neighborhood. Mr. Keller also discussed the need for a home office on the property, and said that there is not any way to create an office within the existing footprint. He presented images of the proposed accessory structure.

Mr. Keller stated that three new variances are requested. He cited two preexisting nonconforming conditions at the site. Mr. Keller noted the utilities that will be present in the home office, and indicated that it is not meant to be dwelling space. He also addressed the requested variances and how the C-1 and C-2 criteria is met. Mr. Keller spoke about the negative criteria and said there is no detriment to the public good.

Mr. Vivona commented on the merits of the application. Mr. Ruschke stated that there are not any engineering issues with the application.

Mr. Slagle asked if there are any concerns about light trespass at night. Mr. Keller said there would be window treatments that would prevent spillover of light. He also said that it is not a “man-cave” and will not likely be used at night.

Mr. Borsinger asked what utilities are allowed in accessory structures. He also asked about ensuring that the accessory structure does not become an apartment. Ms. Wolfe suggested that the applicant stipulate that the home office cannot be converted into an apartment. She also said that a deed restriction could be recorded so that the condition will follow the chain of title.

Mr. Vivona noted that the accessory structure will not have water, sewer or gas service. Mr. Borsinger said he is concerned about future owners making the change without knowing that the conditions were set. Mr. Keller noted that the Township Codebook already prevents a water closet being included. He also said that deed restrictions often scare new buyers.

Mr. Vivona said he thinks the application will work out well.

Mr. Vivona opened the floor to the public to ask questions. Seeing none, Mr. Vivona closed the floor to the public.

Mr. Borsinger moved to approve the application subject to the conditions set forth in the memoranda and on the record. Mr. McHugh seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Absent; Mr. Borsinger, Aye; Mr. Fitt, Absent; Mr. McHugh, Aye; Mr. Sylva, Aye; Mr. Forno, Absent; Mr. Silva, Aye; Mr. Sood, Aye.

Calendar BOA 21-014 (October 4, 2021) Mr. & Mrs. Agnew, 210 Longwood Avenue, Block: 78 Lot: 15. Requesting two (2) variances to construct a rear addition on the first floor which will require a building coverage variance and a new second floor will require a front yard setback

Mr. Vivona stated that the Site Visit will be held on March 5, 2022. On March 17 the Site Visit report will be read into the record and testimony will be given prior to deliberations. Mr. Vivona stated that this meeting will have an overview of the application.

Brian Agnew, the applicant, was sworn in to give testimony. Mr. Agnew introduced his family and provided some family background. He stated that they purchased 210 Longwood Avenue, and the house is too small for the size of their family. Mr. Agnew stated that they would like to add bedrooms to the existing house rather than to build a new house at the site.

Greg Ralph, an architect representing the applicant, was sworn in to give testimony. Mr. Ralph provided his qualifications and was accepted as an expert.

Mr. Ralph presented Exhibit A-1, which was the plans submitted including photographs showing the existing conditions as well as renderings of the proposed addition. He also gave an overview of the proposed addition and why the variances would be required.

Mr. Vivona said that there are several homes that have been remodeled without being torn down. He also noted that it is a relatively flat lot. Mr. Ralph commented on the amount of greenspace on the lot and said that efforts have been made to preserve that space. Mr. Ralph also stated that the variances are for the front yard setback and building coverage. The footprint is only being altered in the rear, and Mr. Ralph said the alteration will be explained when full testimony is given.

Mr. Borsinger asked if there is a garage. Mr. Ralph said that there is an existing detached garage which will be maintained. He also discussed some preexisting nonconforming conditions at the site.

Mr. Vivona reiterated that the Site Visit will be held on March 5th and the hearing will be continued on March 17th.

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. Anderson, the engineer and professional planner representing the applicant, presented the latest plans for the site. He discussed the proposed French drain and drainage design. The plans were entered into the record as Exhibit A-12.

Mr. Anderson said the system includes 4 drywells. Mr. Anderson also discussed the soil conditions at the site, and an infiltration system will not be used because of those conditions. The system will allow for infiltration but will not be dependent on it. Flow from the site will be less than current conditions. Mr. Anderson addressed the review letter received from Mr. Ruschke's office. He noted that the system will be 8 feet deep and will positively drain the site.

Mr. Vivona asked about homes on adjacent lots. Mr. Anderson and Dr. Downey confirmed which homes are new. Mr. Anderson discussed the flow of the water and how it will be mitigated by the French drain.

Mr. Ruschke stated that he does not take exception to the Board proceeding with the application contingent upon the applicant addressing all the comments in the review memo. He also said that if any of the conditions cannot be addressed, the applicant will need to go back before the Zoning Board. Mr. Vivona asked if Mr. Ruschke thinks that the proposed stormwater management system, if incorporating his suggestions, will solve the current issues. Mr. Ruschke said he thinks it will address the stormwater issues. He also stated that he is more comfortable with the overall approach, and details need to be worked out. Resolution compliance will be necessary before permits are issued.

Mr. Vivona said that given Dr. Downey's situation, he wants to see something work. He also said that the neighbors need to be considered.

Mr. Anderson stated that the conditions set forth by Mr. Ruschke are able to be addressed. Mr. Remo asked if conditions on neighbors' properties will be improved. Mr. Anderson stated that will happen. He also said that if the application is not approved, the neighboring properties will continue to experience the current drainage patterns.

Mr. Borsinger asked if the extra drainage is flowing to the storm sewer system, and if there needs to be concern about overuse of that system. Mr. Ruschke stated that all properties have stormwater that eventually flows to that system. He also said that there could be an overflow system at the property line. Mr. Borsinger asked at what point there should be concern about the storm sewer system if more properties start disturbing the permeable coverage. Mr. Ruschke addressed the Township's stringent stormwater regulations. Mr. Borsinger further expressed concern about multiple properties increasing the discharge into the storm sewer system. Mr. Ruschke noted that there are additional calculations needed for the proposed stormwater system.

Mr. Vivona opened the floor to the public for questions of Mr. Anderson's engineering testimony.

1. Jon Monks, 47 Meadowbrook Road, asked if any of the drainage in the plan feeds into the existing drywell in the rear northeast corner of the yard. Mr. Anderson stated that it will all flow to the front yard, and the existing drywells will be removed.

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

Mr. Anderson also gave planning testimony. He stated that two variances are requested. The first is for the rear yard setback. 50 feet are required, and the addition is proposed to be 27.6 feet from the property line. Mr. Anderson described the mitigation of the setback, and said that the negative impact of the variance is minor.

The second variance is for building coverage. The application proposes 2,707 square feet, while only 2,242 square feet are allowed by ordinance. Mr. Anderson noted the efforts to mitigate stormwater runoff which was previously discussed. He stated that the impact of the additional building coverage has been addressed in a significant way, and there should be little impact if any of the additional coverage. Mr. Anderson noted that the proposed drainage system promotes the general welfare of the neighborhood. He stated that the Board can grant the variances because the benefits outweigh the detriments and there is not a substantial detriment to the zone plan ordinance or community.

Mr. Caputo asked if the shape of the lot gives rise to hardship. Mr. Anderson stated that it is an undersized lot, and there may be some hardship oriented variance. He also stated that the C-2 criteria is the main proof for the variances. Mr. Anderson further stated that the drainage improvements will positively impact the neighborhood.

Mr. Vivona opened the floor to the public for questions of Mr. Anderson's planning testimony.

1. Bruce Alder, 49 Meadowbrook Road, asked about the height of the proposed Cyprus trees. Mr. Anderson they will be 6-8 feet at planting and grow approximately two feet

per year. Mr. Alder asked if they could be a bit taller. Mr. Anderson said they can try to have them be closer to 8 feet. Mr. Alder thanked Dr. Downey for considering the neighbors and the drainage issues.

2. Justin Boyd, 51 Meadowbrook Road, expressed his concern about privacy. Mr. Boyd was sworn in to give comments. Mr. Alder was also sworn in. My Boyd discussed the tree plantings and said he understands that younger trees need to be planted. He also asked that the trees planted be as tall as possible.

Seeing no further public questions, the floor was closed.

Mr. McHugh asked where the addition enters into the remainder of the house. Mr. Babula, the architect, said that it is accessible from an existing stairwell toward the basement and also through the existing garage. Access through the stairway is open access.

Mr. Caputo asked the Board to approve the application. He also provided summation.

Mr. Vivona said that as a condition the Board would like there to be an attempt for taller starter trees. He also stated that the conditions set forth by Mr. Ruschke will need to be met.

Mr. McHugh moved to approve the application subject to the conditions. Mr. Sylva seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Absent; Mr. Borsinger, Aye; Mr. Fitt, Absent; Mr. McHugh, Aye; Mr. Sylva, Aye; Mr. Forno, Absent; Mr. Silva, Aye; Mr. Sood, Aye.

Mr. Vivona stated that the memorialization resolution will be considered on March 17th. Building permits can be sought following the resolution and the completion of Mr. Ruschke's review.

Calendar BOA 21-016 (October 26, 2021) Mr.& Mrs. Mendrzycki, 25 Garden Street, Block: 109 Lot: 29. Requesting (4) variances to construct a detached accessory structure.

Due to technical difficulties and the lateness of the hour, Mr. Mendrzycki proposed continuing the hearing at the next meeting. Mr. Vivona stated that the hearing will be first on the agenda. The hearing will be continued on March 17, 2022 with no further notice required.

Mrs. Tsimboukis opened the floor to the public.

1. Jacqueline Fusco asked if the public has any say whether or not the application is heard this evening. Mr. Vivona stated that there has not been any testimony yet, therefore the public has not missed anything substantive.
2. Janet Lima asked if the hearing could continue at this meeting. Mr. Vivona said that it cannot.

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

Mr. Borsinger moved to adjourn at 10:00 PM. Mr. Vivona seconded the motion, and the motion carried unanimously.

Gregory J. LaConte
Recording Secretary