

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
MARCH 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. Weston, Mr. Borsinger, Mr. Fitt, Mr. McHugh, Mr. Sylva, Mr. Silva and Mr. Sood.

Mr. Forno was absent.

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

Approval of Minutes

Minutes of the September 17, 2020, February 17, 2022 and March 9, 2022 meetings had been distributed for review. Mr. McHugh stated that he is ineligible to vote on the September 17, 2020 minutes.

Mr. Borsinger moved to approve the minutes of the September 17, 2020 meeting. Mr. Weston seconded the motion, which carried unanimously with an abstention by Mr. McHugh.

Mr. McHugh moved to approve the minutes of the March 9, 2022 meeting. Mr. Fitt seconded the motion, which carried unanimously.

Mr. Fitt moved to approve the minutes of the February 17, 2022 meeting. Mr. Sylva seconded the motion, which carried unanimously.

Adjournment Request

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.

Ms. Wolfe announced that the hearing will be continued on April 21, 2022 without any further notice.

Resolutions

RESOLUTION 22-011 - AMENDED

Calendar No. BOA – 21 - 011

RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF CHATHAM, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY REGARDING THE APPLICATION OF MICHAEL AND JENNIFER JORDRE, 16 PINE STREET, CHATHAM TOWNSHIP

WHEREAS, Michael and Jennifer Jordre (hereinafter the “Applicants”) are the owners of certain premises located at 16 Pine Street, Chatham Township, New Jersey and designated as Block 85, Lot 24 on the Tax Map of the Township of Chatham, (hereinafter referred to as the “subject property”), and have applied to the Zoning Board of Adjustment of the Township of Chatham pursuant to the provisions of N.J.S.A. 40:55D-70(c) of the Municipal Land Use Law (MLUL) and Section 30-47.3 of the Land Development Regulations of the Township of Chatham (LDR) for the approval of variances from the requirements of Sections 30-96.13a.5, 30-96.13a.6, 30-96.13a.7, and 13-1.5 of the LDR, and the revised General Ordinances of the Township of Chatham to permit the construction of a pool and related improvements in the rear yard of an existing single-family dwelling; and

WHEREAS, the Applicants represented themselves before the Board of Adjustment during the hearings on the subject application; and

WHEREAS, the Applicants have served the required Notice of Public Hearing, have filed proof of service in accordance with the pertinent statutes, have given public notice of the application by publication in the official newspaper of the Township of Chatham, and also have provided proof that no real property taxes and sewer charges are due and delinquent, and the matter having been heard by the Board of Adjustment at its regularly scheduled public meetings on September 22, 2021, November 17, 2021, and December 15, 2021, and

WHEREAS, the Board of Adjustment examined, considered and placed on file with its records all the exhibits submitted by the Applicants and by the Board of Adjustment, has further considered all of the testimony and said exhibits received in evidence at the public hearings for the subject application, and the Members of the Board of Adjustment visited the subject property on December 4, 2021, and their observations made at such site visit have been set forth in the Site Visit Memorandum prepared by Jon Weston and made a part of the record; and

WHEREAS, the Board was advised by the Applicants, via email on March 7, 2022, that the Resolution of Approval adopted on January 13, 2022 unintentionally omitted one of the variances for which relief was requested (minimum side-yard setback distance to the proposed wood tile floor); and

WHEREAS, the Board concluded that the Applicants had set forth the requisite proofs for the omitted variance relief such that the Board could have granted the requested variance relief; and

WHEREAS, the Board hereby amends this approval to include the variance relief unintentionally omitted from the Resolution of Approval adopted on January 13, 2022; and

WHEREAS, the Board of Adjustment does hereby make the following findings of fact and conclusions:

1. The application is properly before the Board of Adjustment, which has the appropriate and exclusive jurisdiction to conduct hearings on the application for variance relief and to render a decision regarding a variance request in accordance with the MLUL and the LDR.
2. The subject property is located at 16 Pine Street in the R-3 Zone District. The site includes a 2.5 story single-family dwelling with associated driveway, walkway areas, and a rear deck. The site is primarily cleared with a tree line following the perimeter of the lot. Applicants propose to install a swimming pool with patio area in the rear yard on the northern side and an outdoor kitchen patio

area in the rear along the southern portion of the lot, leaving lawn space in the central portion of the back yard.

3. The Applicants request the following variances for the proposed improvements:
 - 1) Minimum Side Yard Setback Distance to Private Swimming Pool (proposed pool equipment pad); 20 feet required, 5 feet proposed (Section 13.1-5)
 - 2) Minimum Rear Yard Setback Distance to Accessory Structure (proposed patio); 15 feet required, 10.9 feet proposed (Section 30-96.13.a.6)
 - 3) Minimum Setback Distance from Accessory Structure (proposed swimming pool) to any other Structure; 10 feet required, 7 feet proposed to existing dwelling, approximately 3 feet proposed to rear deck/steps (Section 30-96.13.a.7)
 - 4) Minimum Side-yard Setback Distance to Accessory Structure (proposed wood tile floor for outdoor shower); 15 feet required; 11 feet proposed (Section 30-96.13.a.5)
 - 5) Variance was identified at hearing concerning the proposed 9.5-foot wall, which is also determined to be an accessory structure. Variance is required for minimum
4. The Applicants relied on the testimony of Anthony Hajar, Applicant's architect and professional planner, who provided that the lot size is 9,042s.f. where 20,000s.f. is required. Applicants propose a 247s.f pool, a 116s.f. lounge area, a 227s.f. patio with pergola/roof and 9.5' tall wall, and a 24s.f. shower area. A 2' tall retaining wall is proposed. A trench drain in the patio area will be designed to collect stormwater runoff from the pool and patio and send same to a proposed drywell. The lot width is 74.95 feet, where 100 feet is required. Accordingly, Applicants seek a "C(1)" variance due to the fact that the lot is undersized. The subject property is well-screened from neighbors and, accordingly, the variances can be granted with no substantial detriment to the public good or the zone plan.

NOW, THEREFOR^E BE IT RESOLVED, on this 17th day of March, 2022 that the Zoning Board of Adjustment of the Township of Chatham, under the authority of N.J.S.A. 40:55D-70(c) of the MLUL and Section 30-47.3 of the LDR does hereby grants amended approval of the requested variances. **BE IT FURTHER RESOLVED** that variance relief is subject to the following conditions:

1. The Applicants shall pay any escrow deposits in addition to initial escrow deposit, if required, to offset any Township costs or professional services rendered by the Board's consulting engineer and the Board's legal counsel in connection with this application, including but not limited to services rendered in reviewing the plans and exhibits, inspections, and preparing this resolution of approval.
2. 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.
3. 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.
4. The plans shall be revised to depict that no variance is required for location of the retaining wall.
5. A drainage plan of the shower area shall be submitted to the Board engineer and plumbing code official, and Applicants shall comply with their recommendations.
6. The location of the fire pit beneath the pergola shall be reviewed by the fire code official, and Applicants shall comply with any recommendations set forth in connection therewith.
7. Applicants shall submit a lot grading plan to the Board's engineer, and this Application shall be subject to his favorable review of same.

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.

This Resolution memorializes the action taken by the Zoning Board of Adjustment approving the amended variance relief at its March 17, 2022 public meeting.

Mr. Weston moved to adopt the resolution. Mr. Borsinger seconded the motion.

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

22-0017 - Calendar BOA 21-013 Mr. Alex Birdsall, 12 Jay Road, Block: 48.14 Lot: 113.13

**RESOLUTION – 22-0017
BOA-21-013**

WHEREAS, Alex and Laura Birdsall (the “Applicants”) have applied to the Zoning Board of the Township of Chatham (the “Board”), seeking the following variance relief, relating to the (1) construction of a second story loft addition above the existing detached garage, (2) expansion (158 square feet) of the east corner of the driveway, and (3) expansion (163 square feet) of the slate walkway along the southwest side of the garage, located on property designated as Block 48.14, Lot 113.13 on the Tax Map of the Township of Chatham, more commonly known as 12 Jay Road (the “Property”):

1. A bulk variance for an accessory building (detached garage) having a height of 21.5 feet (24.5 feet with cupola), whereas the existing height is 18 feet (22.9 feet with cupola), and the maximum permitted height is 18 feet¹, pursuant to Section 30-96.13.a.3 of the Land Development Regulations of the Township of Chatham (the “Ordinance”);
2. A bulk variance for an accessory building (detached garage) having two (2) stories, whereas no accessory structure shall exceed a height of one (1) story, pursuant to Section 30-96.13.a.3 of the Ordinance; and
3. A bulk variance for a side-yard setback of 14.6 feet to an accessory building (detached garage), whereas the minimum required side-yard setback to an accessory building is 15 feet, pursuant to Section 30-96.13.a.6 of 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 November 17, December 4 (site visit), and December 15, 2021, and February 17, 2022 (carried from 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 Section 30-96.16 of the Ordinance provides: “The height limitations provided for the respective zones **shall not apply** to a. any chimney which extends no more than five feet above the highest point of the roof of the building of which it is a part, b. any steeple, belfry, **cupola**, or flagpole of a church or public building, or c. any radio or television antenna affixed to the chimney or roof of a single-family residence which extends no more than 10 feet above the highest point of the roof.” Emphasis added. Given that the cupola on the structure does not meet the aforementioned requirements, the height of the accessory building should be measured to the top of the cupola.

1. The Property is a 20,000 square foot lot, located in the R-3 Residential Zone, with frontage on Jay Road. It is currently improved with a 1.5 story single-family dwelling with front walkway, rear deck, detached garage, and 120-foot long driveway. The rear yard of the Property is enclosed within an existing board-on-board fence, with a gate across the driveway adjacent to the dwelling.
2. The Applicants propose to construct a second-story loft addition above the existing detached garage, resulting in a proposed floor area of 1,141 square feet. The Applicants also are proposing a 158 square foot expansion of the east corner of the driveway, and a 163 square foot expansion of a slate walkway along the southwest side of the garage.
3. The requested bulk variance relief is governed by N.J.S.A. 40:55D-70(c).
4. The Board Engineers, Samantha Anello, P.E., Daniel Honoshowsky, P.E., and John Ruschke, P.E., as well as the Board Planners, Frank Banisch, P.P., and Joanna Slagle, P.P., were duly sworn according to law.
5. At the November 17, 2021 hearing, Janet Siegel, A.I.A., was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field of architecture. The Applicants were also duly sworn according to law. A site visit was scheduled for December 4, 2021 at 9:30 AM.
6. Mr. Birdsall testified that the proposed addition over the existing detached garage will provide the Applicants with additional usable living space to be used as a home office. Ms. Siegel testified that the Applicants are proposing to raise the existing garage roof by 4 feet, 10 inches, rebuild the roof at the same pitch, and add dormers. She summarized the requested variance relief and opined that said relief could be granted without substantial detriment to the neighborhood. On questioning, Mr. Birdsall testified that the detached garage will not have running water or sanitary facilities, but it will continue to have electricity.
7. At the December 15, 2021 hearing, the Site Visit Report was read into the record.
8. On questioning by the Board, Mr. Birdsall testified that the garage addition will not include a bathroom or kitchen, and he stipulated that the garage would not be used as, or otherwise converted to, an apartment.
9. Referencing the Architectural Plans, Ms. Siegel described the proposal. She testified that the size of the detached garage is a pre-existing condition, but that variance relief is required for the proposed expansion of the garage, the height of the garage, and the location of the garage within the required side-yard setback. She described the proposed interior and exterior of the garage, as well as the views of same from the street. Ms. Siegel addressed the comments set forth in the Review Memorandum prepared by the Board Engineer, Mr. Ruschke, dated October 18, 2021, and she stipulated, on behalf of the Applicants, to complying with the comments and recommendations set forth therein. Mr. Ruschke advised that electricity and water are the only utilities permitted to be added to the garage, and that bathrooms are prohibited.
10. Ms. Siegel addressed the comments set forth in the Review Memorandum prepared by the Board Planner, Mr. Banisch, dated November 15, 2021. The Board suggested that additional landscape screening be provided. On discussion, the Applicants requested that the matter be carried so that they could retain a professional planner to provide the required proofs in support of their request for bulk variance relief.
11. At the February 17, 2022 hearing, Ms. Siegel introduced into evidence the revised plans, dated February 17, 2022. She explained that the Applicants are no longer seeking to expand the driveway or the slate walkway and, as such, the existing lot coverage will not be increased.
12. Richard Keller, P.E., P.P., was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of professional planning. Mr. Keller described the appearance of the existing dwelling and the proposed expanded garage. He

explained that the side-yard setback deviation is the result of the garage being constructed in the wrong location. Mr. Keller testified that an addition to the existing garage constituted a better zoning alternative than an addition to the existing dwelling, because it would not change the character of the dwelling or the view of the dwelling from the streetscape.

13. As to the proposed height, Mr. Keller opined that the excess height is mitigated by the exterior design of the garage, such that it appears to be one-story, and the distance between the right-of-way and the garage. He further opined that a home office is a permitted accessory structure, and he explained that, in this case, the office will not have visitors or outside employees. Mr. Keller confirmed that the garage will not contain any bedrooms or bathrooms, and that it will not be converted into a separate dwelling unit. The Applicants stipulated to same, as a condition of approval.
14. Mr. Keller opined that the Applicants are entitled to the requested bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).
15. No member of the public commented on, or objected to, the Applicants' proposal.

DECISION

16. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicants have satisfied both the positive and the negative criteria for the requested bulk variance relief.

Bulk Variance Relief – Positive Criteria

17. An applicant seeking bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) must demonstrate that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. Here, the Board recognizes that the location and configuration of the existing improvements render it impossible for the Applicants to comply with the side-yard setback requirement, without relocating the entire garage. Additionally, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulation were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested relief, pursuant to N.J.S.A. 40:55D-70(c)(1).
18. 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. Here, the Board recognizes that the proposal will allow the Applicants to create additional space in the detached garage to accommodate working from home without changing the character of the principal dwelling. The Board concurs with Mr. Keller's unrefuted expert testimony that the proposal advances the purposes set forth in N.J.S.A. 40:55D-2, specifically, the purposes in subsections (a) and (i) in that the proposal will promote the general welfare and promote a desirable visual environment. The Board further concurs with Mr. Keller that the benefits of the proposal substantially outweigh the detriment associated therewith, particularly given the aesthetic improvements and the improvements to the functionality of the dwelling, without changing the footprint of the garage or increasing the existing coverage. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested bulk variance relief, pursuant to subsection c(2) of Section 70 of the MLUL.

Bulk Variance Relief – Negative Criteria

19. 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.

20. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not result in substantial detriment to the neighborhood or the general welfare, particularly since the functionality of the dwelling will be improved, thereby updating the housing stock, and the improvements will be largely obstructed from view by the existing dwelling and the distance between the garage and the right-of-way, thereby mitigating the modest detriment to 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.

21. 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 with an accessory building (detached garage) is a permitted use in the R-3 Residential Zone. As such, the Board finds that the Applicants have satisfied both prongs of the negative criteria for the requested subsection c(1) and c(2) variance relief.

22. For the aforementioned reasons, the Board finds that the Applicants have demonstrated both the positive and negative criteria, pursuant to both of the alternative bases under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

WHEREAS, the Board took action on this application at its meeting on February 17, 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 **ALEX AND LAURA BIRDSALL**, for bulk variance relief, as heretofore stated, is granted, subject to the following conditions:

8. 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);
9. 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;
10. The Applicants shall not install a bathroom or kitchen facilities in the detached garage and same shall not be converted to, or otherwise used as, a separate residential living unit;
11. The Applicants shall investigate whether any portion of the project area is impacted by wetlands transition areas regulated by the New Jersey Department of Environmental Protection (“NJDEP”) and, if so, the Applicants shall obtain a Freshwater Wetlands General Permit-By-Certification No. 8 pursuant to N.J.A.C. 7:7A-6.1 and copies of same shall be submitted to the Township Engineering Department;
12. The Applicants shall construct the proposed improvements such that the existing on-site drainage patterns are not altered and same shall be subject to the review and approval of the Township Engineering Department;
13. The Applicants shall obtain a tree removal permit from the Township Construction Office for the removal of the existing mature tree located near the west corner of the garage. The

Applicants shall clarify the nature of the plantings proposed in the east corner of the Property (i.e., size, species, etc.) and same shall be subject to the review and approval of the Township Engineering Department;

14. If the proposed project can be constructed with less than 1,000 square feet of land disturbance, the Board Engineer takes no exception to the issuance of a lot grading plan waiver by the Township Construction Official, pursuant to Section 30-96.20 of the Ordinance;
15. Any exterior lighting shall be downward directed or appropriately shielded so as to mitigate any light spillage onto adjacent properties;
16. 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
17. 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.

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

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

Calendar BOA-21-012 Dr. Laura Downey, 134 Chatham Street, Block: 93 Lot: 5.02.

**RESOLUTION – 22-0018
BOA-21-012**

WHEREAS, Dr. Laura Downey (the “Applicant”) has applied to the Zoning Board of the Township of Chatham (the “Board”), seeking the following variance relief, located on property designated as Block 93, Lot 5.02 on the Tax Map of the Township of Chatham, more commonly known as 134 Chatham Street (the “Property”):

1. A bulk variance for a proposed rear-yard setback of 27.6 feet, whereas the minimum required rear-yard setback in the R-3 Zone is 50 feet, pursuant to Section 30-75.2 of the Land Development Regulations of the Township of Chatham (the “Ordinance”); and
2. A bulk variance for a proposed principal building coverage of 2,707 square feet, whereas the maximum permitted principal building coverage for this Property is 2,242 square feet, pursuant to Section 30-78.11.b of 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 November 17, December 4 (site visit), and

December 15, 2021, and February 17, 2022 (carried from 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 Applicant, 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 an undersized (14,307 square feet existing, 20,000 square feet required) lot, located in the R-3 Residential Zone, with frontage on Chatham Street. It is currently improved with a two-story single-family dwelling with front walkway, rear patio, and macadam driveway. The Property was created as part of a minor subdivision approved by the Planning Board in May of 2015 (Oz Custom Builders, LLC).
2. The Applicant proposes to construct a 1,157 square foot, two-story addition, to the rear of the existing dwelling, that will extend nearly halfway into the required rear-yard setback. The addition includes 807 square feet of additional space on the first floor and 350 square feet of additional space on the second floor.
3. The requested bulk variance relief is governed by N.J.S.A. 40:55D-70(c).
4. The Board Engineers, Samantha Anello, P.E., Daniel Honoshowsky, P.E., and John Ruschke, P.E., as well as the Board Planners, Frank Banisch, P.P., and Joanna Slagle, P.P., were duly sworn according to law.
5. At the November 17, 2021 hearing, Remo Caputo, Esq., entered his appearance on behalf of the Applicant. He explained that the Applicant is seeking approval to provide a semi-independent living condition for her adult child with a medical condition that requires an adequate amount of sunlight.
6. Paul Anderson, P.E., P.P., was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering and professional planning. Referencing the plans submitted with the application materials, Mr. Anderson described the existing and proposed conditions and noted that the Property is undersized.
7. Jonathan Babula, 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. Mr. Babula described the proposed addition and noted that same includes a number of windows to enhance natural light.
8. Dr. Downey, the Applicant, was duly sworn according to law. Dr. Downey explained that her daughter has a medical condition and that the proposed addition will allow her to have more independence, notwithstanding that she will still need assistance.
9. Members of the public questioned the proposed lot coverage and stormwater runoff, as well as the impact the proposal would have on their privacy.
10. A site visit was scheduled for December 4, 2021 at 9:30 AM.
11. At the December 15, 2021 hearing, the Site Visit Report was read into the record.
12. Mr. Babula referenced the plans, drawings and renderings submitted with the application and described the Applicant's proposal. On questioning, Mr. Babula testified that the addition will not have a basement.
13. Members of the public questioned whether the addition could be converted into a separate dwelling unit (no) and whether the proposed landscape buffering and stormwater management facilities are sufficient.
14. Mr. Anderson described the proposed stormwater management plan and explained that if the proposal is approved, the installation of the additional stormwater management facilities will improve the existing drainage conditions. The Board Engineer, Mr. Ruschke, suggested that the Applicant dig test pits and confirm the proper functioning of the existing drywells. He advised that the stormwater management plans would have to be revised so as to comply with the Township Ordinance. The Applicant requested that the matter be carried so as to allow Mr. Anderson to submit additional information.
15. At the February 17, 2022 hearing, Mr. Anderson introduced into evidence revised drainage plans. He testified that the proposal includes four (4) drywells, that will capture all of the roof runoff.

Mr. Anderson explained that the soils on the Property are marginal at best and they do not provide infiltration or recharge. He testified that the stormwater management system can accommodate approximately 2,000 gallons of stormwater runoff. On questioning, Mr. Ruschke advised that he still has some concerns about the drainage system, but he noted that any necessary changes likely would not impact the site layout and, therefore, could be addressed as conditions of approval. The Applicant stipulated, as a condition of approval, to complying with all of the conditions set forth in the Review Memoranda prepared by the Board Engineer and Board Planner.

16. Mr. Caputo reminded the Board that if the application is approved, the existing stormwater runoff conditions will be improved, and he contended that same constitutes a benefit to the community. Mr. Ruschke explained that the soils on the Property do not support recharge and that the proposed system has been designed to accommodate same. He further explained that the Applicant is exceeding the stormwater management requirements.
17. Members of the public questioned the sufficiency of the stormwater management system.
18. Mr. Anderson, in his capacity as the Applicant's professional planner, summarized the requested relief. He opined that the Applicant had demonstrated an entitlement to the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(2). Mr. Anderson opined that the proposal will advance the purpose in subsection (a) of Section 2 of the MLUL, in that the additional stormwater management measures will mitigate the existing stormwater runoff conditions. He further opined that the benefits of granting the requested relief substantially outweigh the detriment associated therewith. As such, Mr. Anderson concluded that the Applicant had satisfied the positive criteria for the requested variance relief. He testified that the Applicant also had satisfied the negative criteria by demonstrating that the requested relief could be granted without substantial detriment to the public good or substantial impairment of the Master Plan and Zoning Ordinance.
19. Members of the public commented that they would prefer that the Applicant plant trees on the taller side of 6 to 8 feet tall at planting, so as to provide a more effective landscape buffer, and the Applicant stipulated to same.
20. On questioning, Mr. Babula explained that the addition will be accessed through the existing staircase and garage, and it will not have separate exterior access. The Applicant stipulated that the addition will not be converted into a separate dwelling unit.

DECISION

21. After reviewing the evidence submitted, the Board, by a vote of 6 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

22. An applicant seeking bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(1), must demonstrate that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. Here, the Board recognizes that the location and configuration of the existing improvements, as well as the undersized nature and shallowness of the Property, make it impossible for the Applicant to construct an addition that complies with the rear-yard setback requirement and building coverage limitation. Additionally, the Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulation were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. As such, the Board finds that the Applicant has satisfied the positive criteria for the requested relief, pursuant to N.J.S.A. 40:55D-70(c)(1).
23. 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. Here, the Board recognizes that the proposal will enhance the functionality of the home for all of the occupants thereof, while significantly improving the existing stormwater management. The Board concurs with

Mr. Anderson's unrefuted expert planning testimony that the proposal advances the purposes set forth in N.J.S.A. 40:55D-2, specifically, the purposes in subsections (a) and (i) in that the proposal will promote the general welfare and promote a desirable visual environment, respectively. The Board further concurs with Mr. Anderson that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the aesthetic improvements, the improvements to the functionality of the Property, and the improvements to the stormwater management. As such, the Board finds that the Applicant has satisfied the positive criteria for the requested subsection c(2) variance relief.

Bulk Variance Relief – Negative Criteria

24. 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.

25. 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 existing stormwater management conditions will be improved, and the improvements will be largely obstructed from view by the existing dwelling, thereby mitigating the modest detriment to the adjacent neighbors.

26. 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. As such, the Board finds that the Applicant has satisfied both prongs of the negative criteria for the requested subsection c(1) and c(2) variance relief.

27. For the aforementioned reasons, the Board finds that the Applicant has demonstrated both the positive and the negative criteria, pursuant to both of the alternative bases for bulk variance relief in N.J.S.A. 40:55D-70(c)(1) and (c)(2).

WHEREAS, the Board took action on this application at its meeting on February 17, 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 **DR. DOWNEY**, for bulk variance relief, as heretofore stated, is granted, subject to the following conditions:

28. 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);
29. 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;
30. The Applicant shall not convert, or otherwise use, the proposed addition as a separate dwelling unit;
31. The Applicant shall install landscape buffering having a minimum height of 8 feet at planting, and shall maintain said landscaping for a period of two (2) years at such level of screening;
32. The exterior of the addition shall be substantially similar in color, materials and architectural style as the balance of the exterior of the dwelling;
33. The Applicant shall demonstrate that the existing and proposed drywells are functioning as designed and evidence of same shall be submitted to the Township Engineering Department;

34. The Applicant shall verify the invert elevation of the existing 18-inch storm drain at the proposed doghouse manhole location in Chatham Street by survey of the next downstream manhole/inlet and calculation of slope. The proposed connecting pipe to the Chatham Street drainage system shall be raised such that the crown of the connecting pipe matches the crown of the existing 18-inch storm drain, at a minimum, to avoid surcharges into the connecting pipe;
35. The Applicant shall clarify the size of the connecting pipe (8-inch diameter in plan view, 15-inch diameter on outlet structure detail) and the top/bottom elevations of the proposed connecting pipe and existing sanitary sewer line at the crossing near the curb line shall be shown on the plan to verify that there is no conflict at this location;
36. Given the depth of the proposed drywell system, a test pit shall be conducted to verify adequate clearance from seasonal high groundwater as required by the New Jersey Department of Environmental Protection ("NJDEP") Stormwater Best Management Practice Manual;
37. USDA/NOAA precipitation data shall be provided in the drainage report for verification of the 24-hour rainfall amounts utilized in the calculations or utilized in the NJDEP's County-specific rainfall amounts (Chapter 6, Table 5-1 of the Best Management Practices Manual);
38. NOAA Region 'D' rainfall distributions shall be utilized in developing the hydrographs in the drainage report in accordance with the NJDEP Best Management Practices Manual;
39. Pre-existing conditions hydrographs shall be developed using 'good' ground cover conditions, for consistency with the previously approved calculations;
40. The proposed outflow pipe from the drywell systems to the doghouse manhole shall be included in the stormwater model/routing calculations;
41. The depth of cover over the drywells appears to be up to approximately 4 feet. The drywell detail shall verify the proposed minimum and maximum cover amounts. The Applicant's engineer shall verify that the drywells are designed for the proposed soil loading;
42. Given the location of the proposed drywell system with respect to the on-site dwelling and dwelling on neighboring Lot 6, consideration shall be given to installing an impermeable liner on the north and west sides of the drywell excavation for protection of foundations;
43. It appears that the drywell storage calculations may have underestimated the volume provided in the design, based on the construction details provided. Storage volume calculations shall be checked and revised as necessary. The plan view of the drywell systems shall be revised to account for the wall thicknesses of the drywells (13' by 13' excavation required for each drywell based on construction details);
44. The required thickness and material for proposed foundation under the doghouse manhole shall be specified on the plan details;
45. The location of the existing drywell system is not consistent with the as-built survey on file from when the dwelling was constructed. The Applicant shall confirm whether the drywell system was relocated to the west side of the dwelling in the interim, as shown on the plot plan;
46. An itemized calculation of all impervious coverage (existing and proposed) shall be provided on the plan for verification of the figures provided on the plan and the drywell system design;
47. Road restoration details shall be added to the plans. A Road Opening Permit application shall be submitted prior to any work within the Township right-of-way. Given that Chatham Street is currently under a moratorium, final resurfacing of the trench area in the roadway shall be completed using infrared paving techniques;
48. The Applicant shall submit a lot grading plan prior to any disturbance of land and same shall be subject to the review and approval of the Township Engineering Department;
49. The Applicant shall revise the architectural elevations to be consistent with the plot plan, which proposes approximately four feet of foundation exposure at the rear corner of the addition, and same shall provide an accurate depiction of the addition;
50. The average grade for determination of building height is not correctly calculated on the plan and shall be revised based on one high and one low elevation for proper record, per the definition of "Height of Structure" under Section 30-6 of the Ordinance;

51. The Applicant shall revise the lot width at street line figure shown on the zoning table on the plot plan;
52. Any exterior lighting shall be downward directed or appropriately shielded so as to mitigate any light spillage onto adjacent properties;
53. The Applicant shall comply with any conditions of approval set forth in prior approvals to the extent same are not inconsistent with the relief granted herein;
54. The Applicant 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
55. 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.

Mr. Borsinger moved to adopt the resolution. Mr. Sood seconded the motion.

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

Calendar BOA 21-017 Mr.& Mrs. Farina, 12 Rolling Hill Drive, Block: 102.02 Lot:26

**RESOLUTION – 22-0019
BOA-21-017**

WHEREAS, John M. and Amanda M. Farina (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 an 89 square foot mudroom to the rear of the existing dwelling, located on property designated as Block 102.02, Lot 26 on the Tax Map of the Township of Chatham, more commonly known as 12 Rolling Hill Drive (the “Property”):

A bulk variance for a proposed principal building coverage of 2,737 square feet, whereas the existing building coverage is 2,648 square feet, and the maximum permitted building coverage in the R-3 Residential Zone for the Property is 2,621 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 January 12, February 5 (site visit), and February 17, 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 20,351 square foot, shallow lot, located in the R-3 Residential Zone, with frontage on Rolling Hill Drive. It is currently improved with a two-story single-family dwelling with front walkway/rear patio areas, a rear above-ground wood deck, and associated improvements.

2. The Applicants propose to construct a one-story, 89 square foot addition (mudroom) to the rear of the existing dwelling.
3. The requested bulk variance relief is governed by N.J.S.A. 40:55D-70(c).
4. The Board Engineers, Samantha Anello, P.E., and John Ruschke, P.E., as well as the Board Planner, Joanna Slagle, P.P., were duly sworn according to law.
5. At the January 12, 2022 hearing, Michael Miller, Esq., of Miller and Miller, entered his appearance on behalf of the Applicants. The Applicants, having been duly sworn according to law provided an overview of the proposal and a site visit was scheduled for February 5, 2022 at 9:30 am.
6. At the February 17, 2022 hearing, the Site Visit Report was read into the record.
7. Mr. Farina, one of the Applicants, explained that they are seeking approval to construct an 89 square foot addition to the rear of the dwelling. He further explained that the addition will allow the Applicants to access their dwelling directly, rather than having to go through the garage. Mr. Farina testified that the Applicants are also proposing to modify the existing stormwater management system as part of the proposal. In response to a question from the Board Engineer, Mr. Farina advised that there will be one or two steps leading to the addition.
8. Robert J. Scialla, R.A., having a business address of 16 Woodland Road, P.O. Box 412, Brookside, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. Scialla confirmed that the Applicants will direct the roof runoff from the addition into the existing roof leaders/drywell system to protect the existing drainage patterns.
9. No member of the public commented on, or objected to, the Applicants' proposal.

DECISION

10. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has satisfied both the positive and the negative criteria for the requested bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2).

Bulk Variance Relief – Positive Criteria

11. 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.
12. 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 the improvements to the stormwater management system. Moreover, the board considers that the proposed 89 square foot addition will be sufficiently screened by the dwelling itself. 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

13. 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.

14. 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. The Board recognizes that the functionality of the dwelling will be improved, thereby updating the housing stock, and the improvements will be largely obstructed from view by the existing dwelling, thereby mitigating the modest detriment to the adjacent neighbors. Moreover, 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.

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

16. For the aforementioned reasons, the Board finds that the Applicants have demonstrated both the positive and negative criteria pursuant to N.J.S.A. 40:55D-70(c)(2).

WHEREAS, the Board took action on this application at its meeting on February 17, 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 **JOHN M. AND AMANDA M. FARINA**, 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 that the roof drainage from the addition shall be tied to the existing roof leader drain piping/drywell system so that existing drainage patterns are not altered;
4. The Applicants shall revise the zoning table to reflect: (1) the proposed principal structure coverage is 2,737 square feet; and (2) the proposed impervious coverage shall be increased to include the area of the proposed addition, which is located within the footprint of an existing wood deck (existing pervious area);
5. Any exterior lighting shall be downward directed or appropriately shielded so as to mitigate any light spillage onto adjacent properties;
6. 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
7. 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.

Mr. Sylva seconded the motion. Mr. McHugh seconded the motion.

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

Hearings

Calendar BOA 21-014 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. McHugh read the Site Visit Report into the record.

Gregory 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 the proposed plans for the project. He also discussed the proposed landscaping screening.

Mr. Ralph provided an overview of the application and presented the current and proposed footprint of the first floor. Mr. Ralph further presented the plan for the second floor, and stated that attempts were made to make the proposed bedroom size reasonable.

Mr. Ralph also addressed the setbacks. He noted that the house will not stand out in the neighborhood due to setback.

Exhibit A-2 was presented, which was a conceptual drawing of a new home on the site. He also indicated that the approval should be contingent on any other agency's approval as required.

Mr. Vivona said he likes that the existing structure is being used and that it is remaining in line with the other houses. He also said the proposal is more in the character of the neighborhood.

Mr. Borsinger asked about the impervious coverage and if the expanded driveway is included in the figures shown. Mr. Ralph said that it does, and there was offsetting by the patio becoming smaller. Mr. Borsinger asked if the applicant will try to drain the stormwater to the road. Mr. Ralph said it will, and the contours will be shown on the grading plan.

Mr. Vivona opined that everything has been covered and it is a good design.

Mr. Weston said that most variances come from modifications to existing structures, and it is often easier to build a completely new house. Mr. Weston gave credit to those architects who are able to adapt existing homes to current regulations.

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

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

Mr. Vivona stated that a memorialization resolution will be considered at the next meeting on April 21, 2022, after which the applicant can apply for the permits.

Mr. Weston moved to adjourn at 8:15 PM. Mr. Borsinger seconded the motion, and the motion carried unanimously.

Gregory J. LaConte
Recording Secretary