

**MINUTES  
ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF CHATHAM  
APRIL 21, 2022**

Mr. Vivona called the Regular Meeting of the Zoning Board of Adjustment to order at 7:30 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 and Mr. Silva.

Mr. Sood was absent.

Board Attorney Amanda Wolfe was also present.

**Approval of Minutes**

Mr. Fitt moved to approve the minutes of the March 17, 2022 and April 13, 2022 meetings. Mr. Borsinger seconded the motion which carried unanimously.

**Request to be Carried to May 19, 2022**

Mr. Vivona announced that Calendar BOA 21-016 and Calendar BOA 22-002 are being carried to the May 19, 2022 meeting.

**Resolutions**

Calendar BOA 21-014 – 210 Longwood Avenue

**RESOLUTION BOA-22-020**

**WHEREAS**, Laura and Brian Agnew (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 one-story addition to the front of the existing dwelling and a two-story addition to the rear of the existing dwelling located on property designated as Block 78, Lot 15 on the Tax Map of the Township of Chatham, more commonly known as 210 Longwood Avenue (the “Property”):

1. A bulk variance for a proposed front-yard setback of 28.88 feet to the second story addition from Dellwood Avenue, whereas the minimum required front-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 front-yard setback of 30.11 feet to the second story addition from Longwood Avenue, whereas the minimum required front-yard setback in the R-3 Zone is 50 feet, pursuant to Section 30-75.2 of the Ordinance;
3. A bulk variance for a proposed principal building coverage of 2,512 square feet, whereas the maximum permitted principal building coverage for this Property is 2,361 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 February 17, March 5 (site visit), and March 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 an undersized (16,028 square feet existing, 25,000 square feet required) corner lot, located in the R-3 Residential Zone, with frontage on Longwood Avenue and Dellwood Avenue. It is currently improved with a 1.5 story, 2,043 square foot single-family dwelling with front walkway, rear patio, detached garage, and driveway.

2. The Applicants propose to construct multiple additions to the existing dwelling and to remove portions of the existing dwelling to the side and rear, as well as a patio area to the rear. The Applicants further propose the installation of a new front walkway, an expansion of the existing driveway area, and the construction of a new rear patio area.

3. The requested bulk variance relief for the non-conforming front yard setbacks and excess building coverage is governed by N.J.S.A. 40:55D-70(c).

4. The Board Engineer, John Ruschke, P.E., as well as the Board Planner, Frank Banisch, P.P., were duly sworn according to law.

5. At the February 17, 2022 hearing, Brian Agnew, one of the Applicants, having an address of 210 Longwood Avenue, was duly sworn according to law and provided an overview of the proposed improvements. He explained that the existing dwelling only has one bedroom and that same is not sufficient for their family.

6. Gregory Ralph, 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. Ralph introduced into evidence, as **Exhibit A-1**, a compendium of photographs of the Property that he had taken in August of 2021. Referencing same, he explained that the current layout is disjointed and that there is very limited access to the second floor. Mr. Ralph explained that the additions to the dwelling will allow the Applicants to have bedrooms on the second floor and will generally make the Property more functional. He opined that the proposed improvements would not render the dwelling out of character with the existing neighborhood.

7. A site visit was scheduled for March 5, 2022 at 9:00 AM.

8. At the March 17, 2022 hearing, the Site Visit Report was read into the record. Mr. Ralph testified that the dwelling was designed to be consistent with the neighborhood. He explained that the proposal eliminates 150 square feet of existing coverage. Mr. Ralph testified that the existing detached garage will remain, but that the exterior of same will be consistent with

the exterior of the dwelling. He explained that the Applicants propose to modify the pitch of the driveway to improve stormwater management runoff conditions, and stipulated to same as a condition of approval. Mr. Ralph testified that the Applicants propose to install additional landscaping between the properties and stipulated to same.

9. Mr. Ralph testified that the addition would modernize the dwelling by expanding the kitchen and family room, as well as providing sufficient space to accommodate five bedrooms and two bathrooms on the second floor. He testified that the proposal does not exacerbate the existing non-conforming side-yard setback and opined that the proposed front-yard setback deviations are not inconsistent with the neighborhood. On questioning as to whether a more conforming dwelling could be constructed, Mr. Ralph introduced into evidence, as **Exhibit A-2**, an Alternate Layout that included an attached garage. He noted that the current proposal allows the Applicants to reuse the existing structure and foundation, whereas the alternate proposal would require additional disturbance and would be less aesthetically pleasing.

10. On discussion, Mr. Ruschke advised that a lot grading plan would need to be submitted.

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

12.

## **DECISION**

13. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicants have satisfied both the positive and the negative criteria for the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

### **Bulk Variance Relief – Positive Criteria**

14. Applicants 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 location of the Property such that it has frontage on two streets, make it impossible for the Applicants to construct an addition that complies with the front-yard setback requirements and building coverage limitation. 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 has satisfied the positive criteria for the requested relief, pursuant to N.J.S.A. 40:55D-70(c)(1).

15. Applicants 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 dwelling by creating additional living space and a sufficient number of bedrooms for all of the occupants thereof, while significantly improving the appearance of the Property given the proposed additional landscaping, and the existing stormwater runoff conditions given the modifications to the driveway. The Board finds 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 finds 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 Applicants have satisfied the positive criteria for the requested subsection c(2) variance relief.

### **Bulk Variance Relief – Negative Criteria**

16. In order to satisfy the negative criteria for bulk variance relief, applicants 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.

17. 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 existing stormwater management conditions will be improved, as will the appearance of the dwelling and the Property itself, thereby mitigating the modest detriment to the adjacent neighbors. In this regard, the Board notes that no member of the public objected to the Applicants’ proposal.

18. 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(1) and c(2) variance relief.

19. For the aforementioned reasons, the Board finds that the Applicants have 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 March 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 **Laura and Brian Agnew**, 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. The Applicants shall install additional landscape buffering to provide screening along the property lines and shall maintain said landscaping for a period of two (2) years at such level of screening, same to be subject to the review and approval of the Board Planner;
4. The Applicants shall work with the Township Engineer to modify the existing driveway to improve stormwater runoff conditions on the Property and same shall be subject to the Township Engineer's review and approval. The proposed grading for the expanded driveway shall be indicated on the lot grading plan and same shall include a construction detail for the proposed driveway expansion;
5. A minimum downward slope away from the foundation of the dwelling of six inches over ten feet in all proposed lawn areas is required in accordance with applicable building codes, including the area under the proposed rear deck. Grading and spot elevations around the foundation shall be provided to verify compliance with said requirements and same shall be subject to the review and approval of the Township Engineer;
6. Approximate locations of water and sewer connections to the Property shall be shown on the lot grading plan and the plans shall identify whether utility upgrades are proposed;
7. The Applicants shall obtain a Road Opening Permit prior to any disturbance of the Township rights-of-way;
8. The exterior of the addition shall be substantially similar in color, materials and architectural style as the balance of the exterior of the dwelling as well as the detached garage;
9. The Applicants shall submit a lot grading plan in accordance with Section 30-96.20 of the Ordinance and New Jersey Soil Erosion and Sediment Control Standards, prior to any disturbance of land and same shall be subject to the review and approval of the Township Engineering Department;
10. Any exterior lighting shall be downward directed or appropriately shielded so as to mitigate any light spillage onto adjacent properties;
11. 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
12. 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 Resolution 22-020. Mr. Silva seconded the motion.

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

Mr. Vivona noted that the Board still has several vacancies, and invited the current Board members to let him know if they know anyone interested in joining the Board.

Mr. Weston moved to adjourn at 7:34 PM. Mr. Fitt seconded the motion, and the motion carried unanimously.

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Gregory J. LaConte  
Recording Secretary