

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
MAY 20, 2021**

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

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 2021 and January 2022 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. McHugh and Mr. Silva. Mr. Fitt and Mrs. Chang were absent.

Also present were Board Attorney Scott Carlson, Board Planner Frank Banisch, Engineer Kevin Nollstadt in place of Board Engineer John Ruschke.

Resolutions

**RESOLUTION BOA 21-0013
Calendar No. BOA – 20-015**

**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 ERIC YAGODA AND STACEY GOODMAN, 84 MAY DRIVE, CHATHAM
TOWNSHIP**

WHEREAS, Eric Yagoda and Stacey Goodman (hereinafter the “Applicants”) are the owners of certain premises located at 84 May Drive, Chatham Township, New Jersey and designated as Block 102.04, Lot 32 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 30-78.11.a and 30-96.13.a.8 of the LDR, and the revised General Ordinances of the Township of Chatham to permit the construction of an outdoor kitchen, fire pit, two pergolas, an additional stormwater drywell system, six-foot high architectural wall and landscape retaining walls; 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 March 18, 2021 and April 18, 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 March 6, 2021, and their observations made at such site visit have been set forth in the Site Visit Memorandum prepared by Marty McHugh and made a part of the record as Exhibit "A"; 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 an existing single-family residential lot located on May Drive within the R-3 Residential District Zone. The property contains an existing 2.5-story single-family dwelling, walkways, driveway, a boulder wall and a covered porch. The subject application has been submitted for an impervious lot coverage variance associated with the construction of a two-level patio, in-ground pool and spa and cabana in the rear yard. Associated improvements include outdoor kitchen, fire pit, two pergolas, an additional stormwater drywell system, six-foot high architectural wall, and landscape retaining walls in the rear yard. The applicant is requesting an additional variance for the pool cabana to contain the sewer connection and water closet. The plan has been revised to reduce proposed impervious coverage by removal of a proposed driveway expansion and reduction of proposed patio areas.
3. The Applicants request the following variances for the proposed improvements:
 - i. Maximum Allowable Impervious Coverage: 7,250s.f. permitted; 5,146s.f. existing; 7,532s.f. proposed (Section 30-78.11.a).
 - ii. Sewer connection and water closet in pool house in proposed cabana: not permitted (Section 30-96.13.a.8) (variance removed from request at hearing).
4. The Applicants relied on the testimony of Catherine Mueller, P.E., who provided that Applicants seek to make the improvements described above. Recent revisions have been made to reduce the patio area. The revised plans show 282s.f. of impervious surface above that which is permitted. The retaining wall is 4' in height maximum. The wall will aid in slowing the stormwater moving toward the neighbor's property. One tree on the westerly side of the property will be removed.

5. Applicants further relied on the testimony of Marjorie Roller, P.P., professional architect and planner, who provided that the provision of amenities, including the water closet, in the cabana would improve safety by giving swimmers access to necessities without having to travel through the home. In her opinion, the sewer connection and water closet are justified under the C(1) criteria. Furthermore, the impervious coverage variance is *de minimis* and is justified by the water detention measures proposed by Applicants.

NOW, THEREFORE, BE IT RESOLVED, on this 22nd day of April, 2021 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 grant 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 toilet depicted in the cabana shall be removed from the plans. No toilet may be installed in connection with this approval. The variance for a sewer connection and water closet in the cabana was removed from Applicants' request and is not granted as part of this approval.

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 variance relief at its April 22, 2021 public meeting.

Mr. Carlson said that the application was for several amenities for a rear yard pool. The applicant chose to remove the request for a sewer line connection, and the Board approved an impervious coverage variance.

Mr. Borsinger asked if there will be a water supply to the pergolas. Mr. Carlson said that there may be water supplies, which is permitted. The sewer connection is not permitted. Mr. Vivona said that water would have to drain into the ground, and Mr. Weston said that there would not be any sanitary lines.

Mr. Weston moved to adopt Resolution BOA 21-0013. Mr. Borsinger seconded the motion.

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

RESOLUTION BOA 21-0014

Calendar No. BOA 21-0014

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 KEVIN AND KERRY MARCHETTI, 22 DALE DRIVE, CHATHAM TOWNSHIP

WHEREAS, Kevin and Kerry Marchetti (hereinafter the "Applicants") are the owners of certain premises located at 22 Dale Drive, Chatham Township, New Jersey and designated as Block 102.10, Lot 12 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 "30-78.11.a" and "13-1.5" of the LDR, and the revised General Ordinances of the Township of Chatham to permit the construction of a in-ground pool and surrounding deck in the rear yard; 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 April 22, 2021 and May 12, 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 April 10, 2021, and their observations made at such site visit have been set forth in the Site Visit Memorandum prepared by Mr. Marty McHugh and made a part of the record as Exhibit "A"; 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 an existing single-family residential lot located on the north side of Dale Drive within the R-3 Residential District Zone. The property contains an existing 2.5-story single-family dwelling constructed in 2019 under a lot coverage variance associated with construction an in-ground pool and surrounding deck in the rear yard. Associated improvements include a pergola, an additional stormwater drywell system, an architectural wall and landscape plantings in the rear yard. The applicant is requesting an additional variance for a proposed non-conforming setback distance to the pool equipment.
3. The Applicants request the following variances for the proposed improvements:
 - 1) Maximum lot coverage where 6,046 square feet is permitted, and 6,638 square feet is proposed (Section 30-78.112); and,
 - 2) Pool equipment setback where 20 feet is required and 8.5 feet is proposed (Section 13-1.5).
4. The Applicants relied on the testimony of engineer, Catherine A Mueller, P.E. of Page-Mueller Engineering Consultants, P.C., who stated that the Applicants do not object to any of the comments in Mr. John Ruschke's Completeness Review memo dated February 3, 2021.

NOW, THEREFORE, BE IT RESOLVED, on this 20th day of May, 2021 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 grant approval of the requested variances.

BE IT FURTHER RESOLVED that variance relief is subject to the following conditions:

5. 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.
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.

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.
8. Applicants shall comply with the comments set forth in the review memoranda of the Board's engineer and planner.

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 variance relief at its May 12, 2021 public meeting.

Mr. Carlson said that this application is for the installation of a pool and some other amenities. He also said that the application was approved by the Board. Mr. Vivona said that there were variances for setbacks and impervious coverage.

Mr. Weston moved to adopt Resolution BOA 21-0015. Mr. Borsinger seconded the motion.

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

Hearings

Calendar ZBA-20-011 (September 25, 2020) Ivan Levitskyy, 32 Mountainview Road, Block: 51 Lot: 4 Requesting Variances for Front, Rear, & Right Side-Yard Setbacks to Construct a New Single-Family Dwelling

Ivan Levitskyy was sworn in to give testimony. He said that he is looking to build a two-story home approximately 4,500 sq. ft. in size. Mr. I. Levitskyy said that some of the existing home would be incorporated. The project will include some tree removal.

Taras Levitskyy was sworn in to give testimony. Mr. T Levitskyy said that he is Ivan's son, and is also the electrician on the project. Mr. T. Levitskyy said that the front yard setback, 50 feet is required and a variance is requested for 33.3 feet. For the side yard setback 10.6 feet are requested while 15 feet are required. For the rear yard setback. Mr. T. Levitskyy said that 46.8 feet are proposed while the requirement is 50 feet. Mr. Levitskyy also provided the current setbacks. For the front yard portico setback, 40 feet are required and the proposed variance is for 29.3 feet.

Mr. Vivona asked if anyone is currently living in the house. Mr. T. Levitskyy said that the house is unoccupied. Mr. Vivona asked that mark outs be laid down for the site visit.

Mr. Vivona said that the site visit will be on June 5th at 9:00 AM.

He also said that site visits usually take 20-30 minutes, and the public is welcome. The Board will then deliberate on the application at the June 17th meeting.

Mr. Ruschke said that he does not have any special concerns regarding any caution.

Calendar ZBA-21-003 (March 12, 2021) ImageOne Industries, LLC (for M&T Bank), 641 Shunpike Road, Block: 48.23 Lot: 126.04 Requesting Variance for Replacing the Wall Sign with an Illuminated Sign

Steven Azzolini, an attorney for the applicant, said that he represents ImageOne Industries, who is submitting the application on behalf of M&T Bank. He said that the application is for a new façade sign for M&T Bank at the Hickory Square Mall. The proposed replacement sign will be 10 feet by 24 inches and will be internally illuminated. A variance is required for the internal illumination and the vertical height. Mr. Azzolini said that the proposed sign is within the 30 square foot size limit. He also said that the proposal is for an under-canopy sign, which will replace an existing conforming sign. Mr. Azzolini said that at the next meeting after the site visit, he will have a representative from M&T Bank, the sign installer and the professional planner present to give testimony.

Mr. Vivona said that there is probably a variance for the existing under-canopy sign. He asked if any of the other stores have under-canopy stores. Mr. Azzolini said that CVS does, and he will have additional information at the next meeting.

Mr. Vivona asked why the proposed sign cannot conform to the 18-inch height restriction. Mr. Azzolini said that the applicant will be able to answer that at the next meeting.

Mr. Vivona said that the site visit will be on June 5th at 9:30 AM.

Mr. Ruschke said that he anticipates testimony at the next meeting as to why the height variance is necessary and why the internal illumination is necessary. He also said that the application will be scrutinized.

Mr. Vivona said that the Board will then deliberate on the application at the June 17th meeting.

Calendar BOA-21-005 (April 12, 2021) New Cingular Wireless PCS, LLC("AT&T"), 200 Shunpike Road, Block: 84 Lot: 3. Intends to Modify Existing Telecommunications Facility

Christopher J. Quinn, an attorney representing the applicant, presented an overview of the application.

Mr. Vivona said that questions from the public will be allowed after the professionals give testimony at the next meeting.

Mr. Quinn said that the property in question is part of the PSE&G right-of-way. He also said that the telecommunications facility was present prior to PSE&G's monopole project. Mr. Quinn stated that the application proposes an upgrade to the existing facility. He said that there are currently 12 antennas at the site, and they are 135 feet in the air. AT&T's proposal is to replace 6 of the 12 antennas. On the ground level, AT&T proposes to replace 6 RRH units with 9 units.

A variance is requested for the width of the antennas. Mr. Quinn said that the Township's ordinance limits antenna width to 12 inches, and the proposed antennas are slightly wider than 19 inches. Mr. Quinn further stated that the applicant will comply with the conditions set forth in a memorandum prepared by Mr. Ruschke.

Mr. Vivona said that the Board will review additional details. Mr. Quinn addressed the color of the antennas, and said that they will be an off-white to gray color.

Mr. Vivona said that there will be questions if there will be additional noise from the new equipment and if any additional sound proofing will be needed.

David Revette, a civil engineer representing the applicant, was sworn in to give testimony. Mr. Revette provided his qualifications and was accepted as an expert. Mr. Revette presented site plans dated May 17, 2021. Mr. Quinn noted that six of the new antennas will replace existing antennas and three more will be added.

Mr. Ruschke said that the application is very straightforward.

Daniel Penesso, a radio frequency engineer, was sworn in to give testimony. Mr. Penesso provided his qualifications and was accepted as an expert.

Mr. Penesso addressed the megahertz bands being used in the antennas. He also said that the new antennas are larger because of the elements needed to accommodate the frequency bands. Mr. Penesso also said that the equipment is needed to implement newer technology. Mr. Penesso further stated that the equipment will be at 1.2067% of the allowable MPE limit for RF emissions established by the FCC. Mr. Penesso also said that the 100% threshold is never reached because the antennas are placed so high off the ground.

Mr. Borsinger asked about the number of wires a tower can handle. Mr. Penesso said that monopoles do have limits, and there can be multiple carriers on a single tower. Mr. Borsinger asked if the modifications proposed would preclude another carrier on the subject tower. Mr. Penesso said it would be possible if the tower can structurally handle it. He also said that the antennas would not interfere with each other as they would be separated from each other.

Mr. Vivona said that the site visit will be on June 5th, at 10:00 AM., and the hearing will continue at the June 17th meeting.

Mr. Borsinger moved to adjourn at 8:20 PM. Mr. Vivona seconded the motion, and the motion carried unanimously.

Gregory J. LaConte
Recording Secretary