**MINUTES**
**ZONING BOARD OF ADJUSTMENT**
**TOWNSHIP OF CHATHAM**
**JUNE 16, 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. Borsinger, Mr. Fitt, Mr. McHugh, Mr. Silva and Mr. Sood.

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

Mr. Weston reported that Mr. Weston has resigned.

## Selection of Vice-Chair

Mr. Borsinger volunteered to serve as Vice-Chair. Mr. McHugh seconded the nomination.

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

## Approval of Minutes

Mr. McHugh moved to approve the minutes of the May 19, 2022 meetings. Mr. Fitt seconded the motion which carried unanimously.

## Resolution of Dismissal

**RESOLUTION OF DISMISSAL**
**22-0021**

**WHEREAS**, on December 19, 2018, Frank and Tara Petrucci (the "Applicants"), made an application (BOA-18-115-27) to the Board of Adjustment of the Township of Chatham (the "Board"), to construct an all-season porch, den, and one-car garage to the left, right, and rear of property designated as Block 115, Lot 27, on the Tax Map, more commonly known as 29 Jay Road (the "Property"); and

**WHEREAS**, the application was deemed incomplete on January 23, 2019 and the application was never supplemented such that it could be deemed complete; and

**WHEREAS**, in Sansone Oldsmobile-Cadillac, Inc. v. Shrewsbury Borough Bd. of Adj., 211 N.J. Super. 304 (Law Div. 1986), the court concluded that, when an applicant seeks to withdraw, or a land use board seeks to dismiss, an application pending before a land use board without prejudice, the principles of N.J. Court Rule 4:37-1(b) should be applied, such that the voluntary dismissal without prejudice during the pendency of the application is within the discretion of the Board and the Board may impose such terms and conditions as it deems appropriate; and

**WHEREAS**, the Board finds that Court Rule 1:13-7(a) applies such that the Board shall have the authority to dismiss, without prejudice, the Applicants' pending application; and

**NOW, THEREFORE, BE IT RESOLVED** that the application of Frank and Tara Petrucci, is hereby dismissed, without prejudice, subject to the following condition:

- The Applicants shall post sufficient funds with the Township of Chatham to satisfy any deficiency in the Applicants' escrow account prior to seeking to reinstate the application.

Mt. Fitt moved to adopt the resolution. Mr. Sood seconded the motion.

Ms. Wolfe explained that the applicant has not done anything to have the application be deemed complete, and the resolution will allow the Board to dismiss the application for failure to prosecute.

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

**Hearings**

Calendar BOA -22-010 Dish Wireless, LLC, 401-405 Southern Blvd., Block: 48.16 Lot: 117.27

Ms. Wolfe stated that the hearing notice was reviewed and found sufficient, and the Board has jurisdiction to hear the application.

Richard Schkolnick, an attorney representing the applicant, provided an overview of the application. The application is to replace some existing antennas on the communications tower located at 401-405 Southern Boulevard, which is a Township-owned property. There are also some equipment cabinets proposed. Mr. Schkolnick stated that there are Federal laws that govern colocation of cellular equipment.

Mr. Schkolnick reviewed the conditions set in the review memorandum submitted by Mr. Ruschke. The only condition that the applicant has an issue with is the suggestion that the existing equipment from MetroPCS be removed from the site. Mr. Schkolnick stated that Dish Wireless is unable to remove the other company's equipment.

Peter Smith, an engineer representing the applicant, was sworn in to give testimony. Mr. Smith provided his qualifications and was accepted as an expert. Mr. Banisch was also sworn in.

Mr. Smith presented the construction documents that had previously been submitted to the Board. He also addressed the Federal criteria, and the application is compliant.

Mr. Schkolnick addressed the requirement for Dish Network to roll out a new nationwide network, and existing towers are targeted to expedite the zoning. Mr. Smith noted that some existing antennas will be removed and replaced with Dish Network's antennas. He addressed the size of the antennas.

Mr. Vivona asked if the antennas meet the Township's size requirements. Mr. Schkolnick said that the Township has an old ordinance, and stated that the applicant is exempt from the Township's ordinance once the Federal standards are met. He also said that a variance is not needed when the antennas go on an existing tower.

Mr. Fitt asked if there are any access issues. Mr. Ruschke said that the site is accessible through the DPW Facility.

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

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

A letter will be sent to the Zoning Officer to direct issuance of the permit.

<u>Calendar BOA-22-004 Mr. Michael Gonnella, 60 Linden Lane, Block: 102.08 Lot: 31</u>

Roosevelt Donat, the attorney representing the applicant, provided an overview of the application.

Exhibit B-1 was entered into the record, which was a letter from the applicant's engineer to the Board Engineer certifying that the error has no impact on grading or any aspect of the site as developed.

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

Mr. Banisch and Mr. Ruschke confirmed that they do not have any objections to the application.

Mr. Vivona indicated that the subcontractor accidentally poured the slab in the wrong spot, and the error was not noticed by the Township's inspectors. He also noted that the garage is in a well-screened area.

Mr. Borsinger asked if surveys are required prior to construction. Mr. Ruschke said that the Township does not perform surveying work, and he does not believe a survey was submitted for

a foundation location for the garage. Mr. Vivona said that the inspection was the issue, as design plans had been submitted and permitted. Mr. Ruschke said the problem was found during the final inspection.

Mr. Vivona opened the floor to the public.
Seeing no public comment or questions, Mr. Vivona closed the floor to the public.

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

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

Mr. Vivona indicated that a resolution will be prepared for the July 21st meeting.

Calendar BOA 22-002 Taylored Properties, 75 Ormont Road. Block: 32 Lot: 14

Mr. McHugh was recused on this application.

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

Michael Convery, an attorney representing the applicant, provided an overview of the application.

Ms. Wolfe noted that proper notice was given and the Board has jurisdiction to hear the application.

The applicant's witnesses and the Board professionals were all sworn in to give testimony.

Steve Parker, an engineer representing the applicant, provided his qualifications and was accepted as an expert.

Mr. Parker said that there was an older home on the property that was in disrepair. During construction of a new home, the grading limit was accidentally exceeded. There were also some trees removed that had not been scheduled for removal. The applicant has since submitted an application for tree removal permits and some remedial grading has been performed.

Ms. Wolfe asked if there are any issues complying with the comments in Mr. Ruschke's memo. Mr. Parker stated that the comments have already been addressed. Mr. Ruschke stated that the stormwater is the only issue to be carried forward to the resolution.

Gary Novello, the contractor for the project, explained how the error happened.

Mr. Banisch addressed the stability of the design and asked if Mr. Parker agrees that it would be stable to put the site back together. Mr. Parker agreed that the grading makes the site safer and corrects the improper grading.

Mr. Vivona said it is a nice albeit expensive project. He also said that the neighbors are pleased that there is a new house.

The floor was opened to the public, however there were no questions or comments.

Mr. Fitt moved to approve the application subject to Mr. Ruschke's final inspections and documentation review. Mr. Silva seconded the motion.

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

Mr. Vivona stated that a resolution will be prepared for the July 21st meeting.

Calendar BOA 21-018 Mr. Sebastiano Visentini, 7 Glenmere Drive. Block: 48.01 Lot: 11

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

Rich Cording, the landscape architect representing the applicant, was sworn in to give testimony. Mr. Cording gave his qualifications and was accepted as an expert.

Mr. Vivona asked for elaboration about the proposed drainage. Mr. Cording described the proposed drainage and seepage tanks, and said there will be a reduction in runoff.

Mrs. Visentini described the need for a large driveway. She also described the proposal.

Exhibit A-1 was entered into the record, which was a revised site plan drawing dated June 16, 2022.

Mr. Vivona asked if alternate designs were considered. He also noted that a variance would still be needed if the patio was reduced. Mrs. Visentini said that they endeavored to consolidate while still having some usable lawn in the back yard.

Mr. Banisch stated that Mrs. Visentini did an excellent job describing how the hardship criteria is met.

Mr. Vivona said that some questions were answered at the site visit. He said there were questions which property certain trees were on. Mrs. Visentini said that the survey showed that the trees are on her property however branches have extended over the property line. An agreement has been made to trim the branches back to stop encroaching on the neighbor's property.

Mr. Borsinger addressed impervious coverage. Mr. Ruschke stated that compliance has not yet been demonstrated. Any Board action will be contingent upon compliance with the Township's ordinances. Mr. And Mrs. Visentini acknowledged having read Mr. Ruschke's memo.

Mr. Fitt moved to approve the application. Mr. McHugh seconded the motion. Ms. Wolfe stated that the conditions are compliance with Mr. Ruschke's memo and trimming the trees per agreement with the neighbor.

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

Mr. Vivona said there will be a resolution prepared for July 21st.

Mr. McHugh moved to adjourn at 9:00 PM. Mr. Fitt seconded the motion, and the motion carried unanimously.

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Gregory J. LaConte
Recording Secretary