

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
JUNE 17, 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. Fitt, Mr. McHugh, Mr. Silva and Mrs. Chang.

Also present were Board Planner Frank Banisch, Board Engineer John Ruschke and Attorney Matthew Gilson in place of Board Attorney Scott Carlson.

Approval of Minutes

Mr. Borsinger moved to approve the minutes of the May 12, 2021 and the May 20, 2021 meetings. Mr. Fitt seconded the motion.

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

Mr. Gary Haydu, an attorney representing the applicant, summarized the application. He said that Mr. Levitskyy is both the owner and the builder. Mr. Haydu said that the property is in the R-3 Zone, and application is for the demolition and reconstruction of a home on site, and there are three variances requested. A variance for lot size is requested, as the home is on a pre-existing nonconforming lot of 15,625 sq. ft. when 20,000 sq. ft. is required. A front yard setback variance is also requested, and Mr. Haydu said that 50 feet is required and 33.3 is proposed. Mr. Haydu noted that the existing home is 34.7 feet from the front property line. Mr. Haydu said that a side yard setback variance is not needed. A rear yard setback variance is requested as 50 feet are required and only 46.8 feet are proposed. The proposed grading raises the elevation of the subject property by 4 feet above the existing ground elevation along the existing lot line with a neighboring property, and this requires relief from the Board.

Jess Symonds, an engineer representing the applicant, was sworn in by Mr. Vivona to give testimony. Mr. Symonds provided his qualifications and was accepted as an expert witness.

Mr. Symonds said that he has prepared a plan for the subject property. The plan proposes the demolition of the existing home and the construction of a new home. A present non-conformity with the side yard setback will be rectified with the new home. The lot is an undersized lot, which creates the need for front yard and rear yard setback variances. Mr. Symonds noted that the current home is nonconforming with the front yard and rear yard setbacks.

Mr. Vivona asked that the site visit report be read into the record. Mr. McHugh read into the record the site visit report.

Mr. Haydu asked Mr. Symonds if any alternatives were considered that would eliminate the need for the front yard and rear yard setbacks. Mr. Symonds said those variances would be difficult to eliminate. Mr. Haydu asked if the proposed front yard setback is consistent with other homes on the street. Mr. Symonds said that it is set back 5 to 6 feet further than the house on the right.

Mrs. Chang noted swampy conditions in the rear yard, and asked if the swampy conditions were considered in connection with the proposed raising of a retaining wall. Mr. Symonds stated that stormwater retention will be installed for the new dwelling, and he described the stormwater retention system. Mrs. Chang asked about water that would collect behind the retaining wall. Mr. Symonds said that stormwater flow would be reduced on the site. Mr. Ruschke said the peak flows are being reduced rather than the volume. Mr. Symonds also stated that perc tests were performed and the results were marginal. Mr. Ruschke said that stormwater mitigation is an issue for the site, and similar issues were encountered across the street. He also said that detention is proposed rather than a traditional drywell, which will not mitigate volume. Mr. Symonds said that the detention tank was chosen due to the high water table, and peak flows will be addressed. Mr. Ruschke said that the ordinance is being met, however the Board can consider that the applicant has additional variances. He also said that perhaps the applicant should focus less on meeting the minimum standards of the ordinance and focus more in having a greater rate of water infiltration into the ground.

Mr. McHugh asked about the concern about tree removal and how it impacts stormwater management. Mr. Symonds said that the lot is not wooded, and several trees are damaged. He also said that replacement trees are being considered, which will improve the site. Mr. Symonds further said that only so much can be done to force water into the ground. He further noted that there are not wetlands on the site despite the high water table. Regarding the soil logs, Mr. Symonds said that one was 40 inches deep and the other was 96 inches deep. Mr. Ruschke suggested digging deeper test pits to see if there are better soil conditions at a deeper point.

Mrs. Chang asked about the grade of the property and if the high water table is in the rear of the property. Mr. Symonds said that the contour of the water table usually follows the grade.

Mr. Ruschke asked if there will be a sump pump, and if so, where would it discharge. Mr. Symonds said that any sump pump would discharge at the lowest point of the lot. Mr. Ruschke

said that the Township does not want the sump pump to be a nuisance, and it cannot discharge into the sanitary sewer system. He also noted that there are not storm drains in the vicinity.

Mr. Vivona asked about the retaining walls. Mr. Symonds said that the proposed retaining walls are along the driveway and the rear of the lot, and none of them are higher than four feet. There are not any variances requested for the retaining walls. Mr. Symonds also commented on the grade of the property, and it is not being changed within 6 feet of the property line.

Mr. Borsinger asked about the height of the proposed house. Mr. Symonds said that he cannot testify regarding the height of the structure other than to say it will be adjusted to be 34.87 feet. Mr. Borsinger said that the proposed height is a few inches away from requiring an additional variance.

Mr. Levitskyy said the house will be a two-story single-family home. He also addressed the height of the proposed house.

Mr. Vivona said that Dot Stilling from the Environmental Commission raised concerns about tree removal. Mr. Vivona asked about tree replacement. Mr. Levitskyy confirmed that two trees will be planted in place of each one that is removed. Mr. Ruschke said that the replacement trees should be two-inch caliper trees in the side yard and rear yard, and four-inch caliper trees to replace any from the front yard.

Mr. Vivona asked if the majority of the trees will be outside of the retaining wall, and if the retaining will help the property have a usable rear yard. Mr. Levitskyy confirmed that was the case.

Mr. Silva asked about the front variance and if it accounts for the front window being a bay window. Mr. Vivona said that the portico triggers the variance request, and the window does not project as far as the portico.

Mrs. Stilling commented that several of the large trees can be saved and they absorb a lot of water. She urged the applicant to save at least four of the larger trees. Mrs. Chang asked if any of the large trees for which Mrs. Stilling is advocating is an invasive species. Mrs. Stilling opined that should not matter in this instance.

Mr. Vivona said that the main architectural concern is the height.

Mr. Banisch said that there has not been any clear discussion about saving specific trees, and he said there should be consideration regarding the likelihood of the survival of a tree if it is to be specified for preservation. Mr. Haydu asked if the trees that could be saved could be marked. Mr. Levitskyy said that he would do so.

Mr. Vivona reviewed the conditions of approval discussed at the meeting.

Mr. Borsinger moved to accept the variances with the conditions stated by the Township Engineer. Mr. Fitt seconded the motion.

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

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 representing the applicant, provided a summary of the application. Mr. Azzolini said that the application is on behalf of M&T Bank and is for a sign at the Hickory Square Mall.

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

Cynthia Orsi, a representative of M&T Bank, was sworn in by Mr. Vivona to give testimony. She also provided her qualifications.

Mrs. Orsi said that M&T Bank acquired the Hudson City Savings Bank in November 2015, and the branches were converted to M&T Bank branches in February 2016. Following the rebranding, customers had difficulty finding the Chatham branch due to the current signage.

Joe Knotts of ImageOne Industries was sworn in by Mr. Vivona to give testimony. Mr. Knotts described the sign that is being removed for the installation of the new aluminum sign. He also described the illumination of the sign. Mr. Knotts said that the under-canopy sign will not be illuminated.

Mr. Vivona said that the CVS sign is larger than what the applicant has proposed. He also said that some of the signs at the shopping center are backlit. Mr. Vivona asked if the overhead lights will be removed. Mr. Azzolini said there are not presently plans to remove the lights. Mr. Vivona commented on the backlit sign, and asked if the lighting will be on a timer. Mr. Azzolini said that the current signage is usually on until at least 10:00 PM, and said that M&T will be consistent with the other businesses at the shopping center.

Alex Dougherty, a Professional Planner representing the applicant, was sworn in by Mr. Vivona to give testimony. Mr. Dougherty provided his qualifications and was accepted as an expert witness.

Mr. Dougherty confirmed that he had an opportunity to review the plan, the details of the sign and the other signs in the area. Mr. Dougherty also provided slides to give context for the application. He also presented a rendering of the proposed sign, as well as pictures of the existing illuminated signs at the shopping center. The slide presentation was entered into the record as Exhibit A-1. Mr. Dougherty said that two variances are requested. He discussed the request for relief to have an illuminated sign, and said that illuminated signs provide wayfinding. Mr. Dougherty noted that the illuminated sign does not have any impact on neighboring residential areas.

Mr. Borsinger asked what color the lights would be, and how many lumens the lights would be. Mr. Knotts said that the lights will be LED lights, and he did not have the lumens information available. He noted that the illumination will not be brighter than the other signs in the shopping center.

Mrs. Chang said that an adjacent sign had light leak, and she asked if the M&T signage will be installed to prevent light leak. Mr. Knotts described how the light will be installed, and stated that there will not be any light leak.

Mr. Weston said that the other stores still have the overhead lights on top of the backlit signs, and asked if there is a reason to do so. Mr. Knotts said it is a matter of customer preference.

Mr. Vivona noted that the Chatham Mall invested a lot of money to update the façade and bring in anchor stores. He said that the Chatham Mall worked with the Zoning Board regarding signage. Mr. Vivona also said that at the Hickory Square Plaza, customers often have to know where the stores are in order to find them. He also said that the M&T sign will fit in better while providing ample coverage for the applicant.

Mr. Banisch said that it is easy to see the ShopRite and Hallmark signs from the road and within the parking lot, however it is hard to read the current M&T Bank sign. Mr. Banisch said that he does not see any reason not to approve the variance application.

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

Mr. Vivona asked that the signs be on and off at similar times as the other signs at the shopping center.

Mr. Weston moved to approve the application as described. Mrs. Chang seconded the motion.

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

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

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

Mr. Chris Quinn, an attorney representing the applicant, provided a summary of the application. He said that the application for a variance is required because the Township's ordinance requires that antennas be now larger than 12 inches in width. Mr. Quinn also said that AT&T has 12 existing antennas at the site which are in compliance, and the proposal is to replace 6 of the 12 antennas with 19.6-inch wide antennas. Mr. Quinn also noted that the current antennas are on an electric transmission tower.

David Revette, an engineer representing the applicant, was still under oath from a prior meeting to give testimony. Mr. Revette presented revised engineering drawings for the application. He presented the existing conditions and the proposed conditions. Mr. Revette also confirmed that the applicant will comply with the comments in the review letter from Mr. Ruschke dated May 7, 2021.

Mr. Vivona asked if the new antennas will be the same color as the existing antennas. Mr. Revette confirmed that they will be the same color. Mr. Vivona also asked if the additional antennas will be replaced at some point. Mr. Revette said that with the advances in technology, it may at some point become necessary for the remaining antennas to be replaced. Mr. Vivona asked if there will be any colocation antennas. Mr. Revette said that there will not be any colocation, and only the AT&T antennas will be there.

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

Daniel Penesso, an EMF/RF Compliance Engineer representing the applicant, was still under oath to give additional testimony. Mr. Penesso said that two antennas on each sector will be replaced. The larger antennas have additional elements within, and are capable of handling all of the frequency bands used by AT&T. Mr. Penesso also discussed the quadplexer that allows AT&T to input multiple frequencies into the antenna.

Mr. Vivona asked about the length of the project. Mr. Penesso said that construction should not take long, and would need to be coordinated with PSE&G. Mr. Vivona said that neighbors often worry about sound, however there will not be any additional noise from the new antennas.

Paul Ricci, a Professional Planner representing the applicant, was sworn in by Mr. Vivona to give testimony. Mr. Ricci provided his qualifications and was accepted as an expert witness.

Mr. Ricci stated that he reviewed the site plan, the professional reports, the site visit report, the Township's Master Plan, and the Township's zoning ordinances. He said that the variance requested is for the width of the antennas. Mr. Ricci said that he reviewed Mr. Banisch's memorandum dated May 11, 2021 which summarizes the criteria for use variance relief. The applicant is required to demonstrate that there will not be any problems associated with not meeting the conditional use requirements. Mr. Ricci said that with all variances the applicant must demonstrate that there will not be a substantial detriment to the public good or the intent and purpose of the zone plan. Mr. Ricci also addressed the benefits of cell service. Mr. Ricci said that it is important to recognize the environs of the area, and he said that the cellular facility is within the PSE&G high-tension tower right-of-way. Mr. Ricci also addressed the visual impact of the new antennas, and said that it will not have a notable visual impact. Regarding the negative criteria, Mr. Ricci said that the use remains passive. He also said that the site is well-suited to the use.

Mr. Banisch said that Mr. Ricci did a great job of demonstrating that the proposed antennas are not something that passersby would notice, and the applicant is paying attention that the project

will not be a problem for the neighborhood. Mr. Banisch said that he supports Mr. Ricci's testimony.

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

Dr. Eisenstein said he reviewed the application, and nothing will change regarding the propagation. He also said he agrees with Mr. Penesso that everything is in compliance.

Mr. Penesso said that the proposed antennas are up to the current standard, and he does not know if future antennas will differ in size.

Mr. Quinn said that the applicant stipulates to the repair of the fencing at the site as a condition of approval.

Mr. Weston moved to approve the application with the condition that the fence be repaired and maintained. Mr. Fitt seconded the motion.

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

Mr. Vivona said that the memorialization resolution will be presented next month. He also said that the July and August meetings will still be held via Zoom with a return to in-person meetings in September.

Mr. Fitt moved to adjourn at 9:45 PM. Mr. Vivona seconded the motion, and the motion carried unanimously.

Gregory J. LaConte
Recording Secretary