

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
AUGUST 11, 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, Mr. Silva and Mrs. Chang.

Mr. Fitt was absent.

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

Approval of Minutes

Mr. Borsinger moved to approve the minutes of the June 17,2021 and the July 22, 2021 meetings. Mr. Weston seconded the motion.

Resolutions

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

RESOLUTION # BOA-21-0016

Calendar No. ZBA -20-011

**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 IVAN LEVITSKI, 32 MOUNTAINVIEW
ROAD, CHATHAM TOWNSHIP**

WHEREAS, Ivan Levitski (hereinafter the “Applicant”) is the owners of certain premises located at 32 Mountainview Road, Chatham Township, New Jersey and designated as Block 51, Lot 4 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 30-75.2 and 30-

96.26(a) of the LDR, and the revised General Ordinances of the Township of Chatham to permit the demolition of the existing residential home and construction of a new residential home; and

WHEREAS, the Applicants was represented by Gary Hayud, Esq. 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 May 20, 2021, and June 17, 2021.

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 June 5, 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 Mountainview Road within the R-3 Residential District Zone. Applicant proposes the demolition and reconstruction of an existing residential home on-site. The subject application has been submitted for front yard and rear yard set back variances as well as variance relief related to the grading of the Subject Property. The Applicant has revised its plan to no longer include a side yard setback variance.

3. The Applicants request the following variances for the proposed improvements:

- a) Minimum Front Yard Setback Distance to Principal Structure; 50 feet required, 34.7 feet existing, 33.3 feet proposed - Section 30-75.2.
- b) Minimum Rear Yard Setback Distance to Principal Structure (Deck); 50 feet required, 46.8 feet proposed - Section 30-75.2 4.
- c) Grading raises the elevation of the subject property four (4') feet above the existing ground elevation along common lot line with neighboring Block 50, Lot 4; Not Permitted – Section 30-96.26.a.

4. The Applicant relied on the testimony of Jess Symonds, P.E., who provided that the Applicant seeks to make the improvements described above. Mr. Symonds noted that after the site visit Applicant agreed to move the proposed structure to eliminate the side yard setback variance. Mr. Symonds testified as to why the variances were needed and addressed the positive and negative criteria of the variance.

5. The Applicant further relied upon his own testimony regarding his plans for the Subject Property. He testified that he is looking to build a two-story home approximately 4,500 sq. ft. in size. He testified that some of the existing home would be incorporated. The project will include some tree removal and the Applicant and the Board discussed which trees would be preserved and which would be planted, to the satisfaction of the Board.

NOW, THEREFORE, BE IT RESOLVED, on this 11th day of August, 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. Applicant shall provide the drawings depicting which trees are to be preserved, as per the testimony provided, to the Board Engineer and Planner, for their approval.

5. Applicant shall investigate rechargeable tanks for drainage and explore more test pits to determine if a better area for the test pits can be located.

6. Applicant shall comply with the recommendations proposed by the Board professionals in their reports.

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 August 11, 2021 public meeting.

Mr. Carlson provided an overview of the application.

Mr. Weston moved to adopt Resolution BOA-21-0016. Mrs. Chang 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 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

RESOLUTION BOA -21-0017

Calendar No. BOA-21-003

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 IMAGEONE INDUSTRIES, LLC (for M & T BANK), 641 SHUNPIKE ROAD, CHATHAM TOWNSHIP

WHEREAS, ImageOne Industries, LLC (for M&T Bank) (hereinafter the "Applicants") are the owners of certain premises located at 641 Shunpike Road, Chatham Township, New Jersey and designated as Block 48.23, Lot 126.04 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 Section 30-98.4(e) of the LDR, and the revised General Ordinances of the Township of Chatham to permit the construction of a backlit sign; and

WHEREAS, the Applicants were represented by Steven Azzolini, Esq. 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 May 20, 2021 and June 17, 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 June 5, 2021, and their observations made at such site visit have been set forth in the Site Visit Memorandum prepared by Tony Vivona 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:

2. 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 applicant is requesting a variance relief from Section 30-98 of the LDR to construct an under canopy sign and also for the ability to backlit the sign for greater visibility at night. M&T has changed their logo is desires to create a new sign which displays their logo and is more visible to passersby. Applicants have revised their plans to eliminate certain variances including for size.

3. The Applicants request the following variances for the proposed improvements:

1) Applicant is seeking variance relief for size and type of outdoor signage which consists of an under canopy sign and back lit letters (30-98.4e)

4. The Applicants relied on the testimony of Cynthia Orsi, a representative of M&T Bank, testified as to the current difficulty of locating the bank due to the inadequacy of the existing sign.

5. The Applicant further relied on the testimony of Joseph Knots, the sign vendor who will be installing the sign to discuss the sign which will be installed.

6. The Applicant further relied on the testimony of Alex Dougherty, PP, ACIP, its professional planner regarding the variance relief requested for the sign. Mr. Dougherty testified as to why the Applicant satisfies both the positive and negative criteria of the variance relief requested. Applicant sufficiently demonstrated to the Zoning Board of Adjustment that the proposed signage is not inconsistent with signage in the area and that the proposal would cause no substantial detriment to the zone or the zone plan.

NOW, THEREFORE, BE IT RESOLVED, on this 11th day of August, 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:

7. 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.

8. 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.

9. 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.

10. The Applicant will illuminate its sign consistent with the character of its area.

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 June 17, 2021 public meeting.

Mr. Carlson provided an overview of the application.

Mr. Borsinger moved to adopt Resolution BOA -21-0017. Mr. McHugh 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 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

RESOLUTION BOA -21-0018

Calendar No. BOA-21-005

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 NEW CINGULAR WIRELESS PCS, LLC ("AT&T"), 200 SHUNPIKE ROAD, CHATHAM TOWNSHIP

WHEREAS, New Cingular Wireless PCS, LLC (hereinafter the "Applicants") are the owners of certain premises located at 200 Shunpike Road, Chatham Township, New Jersey and designated as Block 84, Lot 3 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 Section 30-99.9(j) of the LDR, and the revised General Ordinances of the Township of Chatham to permit the construction of antennae to exceed the permitted width; and

WHEREAS, the Applicants was represented by Christopher Quinn, Esq. 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 May 20, 2021 and June 17, 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 June 5, 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 as Exhibit "A"; and

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

3. 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 property is located at 200 Shunpike Road, located in the PSE&G right-of-way area south of Chatham High School Cougar Field. The property is within the Township's R-3 Residential District. The site includes the existing wireless communications tower and associated antennas and equipment compound with approvals in 2006 and 2015.

3. The Applicants request the following variances for the proposed improvements:

- a) Maximum Width of Panel Antennas (Six replacement antennas total, Two of Four in Each of Three Sectors); 1 foot allowed, 1.63 feet (19.6 inches) proposed – Section 30- 99.9.j.

4. The Applicant relied on the testimony of David Revette, a civil engineer representing the applicant, was sworn in to give testimony. Mr. Revette presented site plans and described them in detail. Mr. Quinn noted that six of the new antennas will replace existing antennas and three more will be added.

5. The Applicant further relied on the testimony of Daniel Penesso, a radio frequency engineer. Mr. Penesso testified as to 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 testified 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.

6. The Applicant further relied on the testimony of Paul Ricci, AICP, PP. Mr. Ricci testified regarding the positive and negative criteria of the variance relief requested. He stated his opinion that the Applicant satisfies both criteria. The proposal will create no Substantial detriment to the zone or the zone plan.

NOW, THEREFORE, BE IT RESOLVED, on this 11th day of August, 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:

11. 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.

12. 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.

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 June 17, 2021 public meeting.

Mr. Carlson provided an overview of the application.

Mr. Silva moved to adopt Resolution BOA -21-0018. Mr. McHugh 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 Aye.

Hearings

Calendar BOA -21-004 (March 22, 2021) Asma & Imran Haq, 38 Stafford Road, Block: 48.05 Lot: 19 Requesting variance for rear yard setback for a deck on non-conforming corner lot.

Mr. Vivona provided an overview of the Zoning Board hearing process. He also stated that there will be a site visit for the application on September 11, 2021 at 9:00 AM and the hearing will be continued at the September 23, 2021 meeting. Mr. Vivona stated that a vote might be possible at the September 23, 2021 meeting, but there may also be a need for further meetings.

Asma Haq and Imran Haq were sworn in to give testimony.

Mr. Haq stated that the application is for a variance so that their deck can be rebuilt. The current deck is of a triangular shape due to the irregular shape of the lot. Mr. Haq stated that the setback requirements prohibit a sufficiently sized deck, and the current deck is nearing the end of its useful life. The current rear yard setback is 50 feet, and Mr. Haq stated that the relief sought is to have the deck 41.25 feet from the property line which would allow a rectangular deck. He also stated that there is sufficient landscaping so that the deck would not be visible from the street.

The applicant's professionals were sworn in to give testimony by Mr. Vivona. Marvin Clawson, an architect representing the applicant, provided his qualifications and was accepted as an expert. Mike DiGeronimo, a professional planner representing the applicant, provided his qualifications and was accepted as an expert.

Mr. DiGeronimo stated that the lot is a corner lot in the R-3 Zone. The house is a single-family home which conforms to the R-3 standards. Mr. DiGeronimo stated that the only non-conformity is that there is a slightly larger lot area requirement for corner lots, and the subject property is technically undersized. The front door of the house faces Stafford Road. Mr. DiGeronimo noted the irregular shape of the lot with a sharp angle that dictates the rear yard setback.

Mr. Vivona asked if the current deck was constructed as it is so that a variance would not be needed. Mr. Clawson confirmed that is the case,

Mr. DiGeronimo stated that the house was renovated in 2017. He presented an image of the deck and discussed the hardships due to the current shape of the deck. Mr. DiGeronimo showed on the Proposed Site Analysis where the encroaching area would be located.

Mr. Clawson discussed the side and rear elevations, and stated that the original renovation sought to present the best façade for the neighbors. He also stated that the deck was designed to be elegant, understated, simple and matching the architecture of the rest of the home. He also stated that the proposed deck will enhance the homeowner's ability to entertain guests on the deck. Consideration was also given to the decking pattern.

Mr. Vivona stated that the proposed deck appears to be more usable, and stated that there appears to be adequate screening.

Mr. Borsinger asked if there are any ordinances that a basement window cannot be blocked. Ms. Anello stated that there is not an ordinance to prohibit blocking a basement window, however it is a standard practice not to do so. Ms. Anello also confirmed that there were not any drainage issues or steep slopes creating any concern. She stated that the letter dated May 5, 2021 stated that there is no exception to waiving the lot grading due to the size of the improvements. The steep area in the front yard will not be impacted, and will need to be protected during construction. Ms. Anello also stated that trees on the property will be required to be protected.

Mr. Vivona stated that the Site Visit will be on September 11, 2021. He asked that the area of the proposed deck be marked out.

Calendar ZBA-21-002(February 24, 2021) Juniper Assisted Living Residence 1, 500 Southern Blvd, Block: 128 Lot: 3. The Applicant has requested variance for a maximum sign area (common sign for structure containing three or more stores or offices)

Steven Azzolini, an attorney representing the applicant, provided an introduction and overview of the application. He stated that the application is for a variance to replace an existing, free-standing sign. The existing 23 square foot sign is non-conforming, and the proposed sign is 45-square feet. The new sign would be installed in the new location. Mr. Azzolini stated that the Township Engineer has suggested that approval also be sought from the Morris County Planning Board because Southern Boulevard is a county road. Morris County has submitted a letter that

they do not have any objections to the proposed sign. Mr. Azzolini also stated that the existing sign does not appear to have ever been approved, and it did not appear on a 2001 site plan.

Ms. Anello stated that the two variances requested are for the size of the proposed sign and for the existence of the proposed sign. She also stated that it is not known at this time if the existing sign was approved, and the applicant wants to correct any past wrongs.

Mr. Vivona stated that a site visit will be held on September 11th at 9:30 AM. Deliberations will be held on September 23rd.

Calendar BOA- 21-006 – Walter H. Prah & Sarah L. Shore 53 Dellwood Avenue Block 77 Lot 2,02, The Applicants seek to construct an approximate 265 sq. ft. addition to an existing single-family home. The applicants intend to install an endless pool in the addition. A variance for building coverage is required

Steven Azzolini, an attorney representing the applicant, was present to provide an overview of the application.

Walter H. Prah & Sarah L. Shore were sworn in to give testimony.

Mr. Azzolini stated that the subject property is split between Chatham Township and Chatham Borough. He stated that because the main portion of the home, the Chatham Township Zoning Board of Adjustment has jurisdiction. The application is for a small addition to the rear of the home, which will add 265 square feet and an endless pool. The variance requested is for building coverage. Mr. Azzolini stated that the addition will be on the rear of the home, and will not encroach on any setbacks.

Mr. Prah stated that he and Mrs. Shore built the house 6-7 years ago. They are hoping to have year-round access to hydrotherapy. Mr. Prah also stated that hydrotherapy is helpful for Mrs. Shore's medical conditions. He stated that the proposed addition will not be out of step with the neighboring homes. The building coverage ratio is proposed to be exceeded, and Mr. Prah said it is an otherwise small addition. Mr. Prah said that if the addition cannot be done, they may need to move somewhere that they could have the indoor hydrotherapy facility.

Mr. Vivona stated that the site visit will be held on September 11th at 10:00 AM.

Mr. Vivona asked if lot coverage is an issue because part of the property is in Chatham Borough. Mr. Prah said that he believes the whole lot is factored into the lot coverage calculation, not just the Township portion.

Mr. Vivona stated that the hearing will be continued at the September 23, 2021 meeting.

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

Gregory J. LaConte
Recording Secretary