

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
APRIL 1, 2024**

Mr. Sullivan called the Regular Meeting of the Planning Board to order at 7:35 P.M.

Adequate notice of the meetings of the Planning Board 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 2024, and January, 2025 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy was filed with the Municipal Clerk and a copy was placed on the bulletin board in the main hallway of the Municipal Building.

Roll Call

Answering present to the roll call were Mr. Sullivan, Mr. Neibert, Mrs. Ewald, Mr. Miller and Mrs. Stillinger.

Mr. Choi, Mr. Shehady, Mr. Duemling, Mr. Kahn, Mr. Nikolopoulos and Mrs. Foran were absent.

Also present was Board Attorney Steve Warner, Board Engineer John Ruschke and Board Planner Frank Banisch.

Approval of Minutes

Mr. Neibert moved to approve the minutes of the February 5, 2024 meeting. Mr. Miller seconded the motion which carried unanimously.

Hearing

PBA-22-009 Mariya Mayovska & Vasyl Dmytryshyn, 5 Mountainview Road, Block:54 Lot: 16.

Mr. Warner announced that this hearing was properly noticed and the Board has jurisdiction to proceed with the hearing. He also noted that there are a number of variances and design waivers to be addressed.

Rosemary Stone-Dougherty, an attorney for the applicant, provided an overview of the application. She said that the application is for a minor subdivision from one to two lots with one fronting on Mountainview Road and another fronting onto Chestnut Road. Mrs. Stone-Dougherty said that a report from the Morris County Planning Board was submitted with the application. She said that the variances will be addressed. She also noted that C2 relief is sought.

The following professionals for the applicant were sworn in to give testimony:

Fred Meola – Engineer & Surveyor

Andrew Podberezniak – Architect
Alex Dougherty – Planner

The Board professionals were also sworn in.

Mr. Meola provided his qualifications and was accepted as an expert. He noted that his testimony will be regarding engineering and surveying.

Mr. Meola presented the subdivision plan, which was entered into the record as exhibit A-1. He noted that the last revision date is March 11, 2024. Mr. Meola gave a description of the existing conditions on the subject property. The footprint of the home would be 1851 square feet, and it would be a two story home. Mr. Meola noted the soil conditions on the property. On the existing home, three feet would be removed from the patio to eliminate a variance. The driveway for the new home will be on Chestnut Road, which was deemed safer access than from Fairmount Ave. Drainage was also discussed.

Mr. Ruschke concurred that based on the testimony, the variance for rear yard setback can be eliminated.

Mr. Meola stated that the plan would be compliant with the regulations of the adjacent R-4 Zone.

Mr. Meola addressed the variances listed in Mr. Ruschke's memorandum, and said that only the variance for the Minimum Rear Yard Setback Distance to Principal Structure (Proposed Lot 16.02, to common lot line with Proposed Lot 16.01) would still be required if the R-4 rather than R-3 zone regulations applied. Mr. Meola addressed the technical review items in Mr. Ruschke's memo. He said that all conditions will be complied with or stipulated. Mr. Meola noted that the sewer connection for the new lot will be on Chestnut Drive.

Mr. Meola addressed the design waivers cited in Mr. Ruschke's memorandum, and said they would all be needed for the present zoning.

Ms. Stillinger asked about a document indicating a spring on the property in 1984. Mr. Meola and Mr. Ruschke both indicated that they are unaware of any spring on the property. Mr. Miller asked if there was any evidence of the spring. Mr. Ruschke stated that he has not observed any evidence, and he noted the soil testing that was performed by the applicant.

Mrs. Ewald asked about the number of trees that are being removed, and how many will be replaced. Mr. Meola said that 7 trees are being removed, and 5 will be replaced. Mrs. Ewald asked about prior tree removal. Mrs. Stone-Dougherty said that there was an incident of tree removal, and that was settled as part of an enforcement action.

The Board took a break at 8:37 PM.

The meeting was resumed at 8:45 PM.

Regarding the question about a spring referenced in a memo dated March 21, 2022, Mr. Meola stated that the spring is shown on a survey of a different property located on Mountainview Road and shown for comparative purposes.

Mrs. Stone-Dougherty stated that the property owner received a notice of violation in 2019 regarding tree removal. 22 trees had been removed from the site. Mr. Meola said that the property owner was fined for the improper tree removal. He noted that the location of the removed trees were found and noted. Mr. Neibert said that there does not appear to have been any tree replacement following that violation. Mr. Warner noted that the number of replacement trees will need to be quantified as a condition of approval.

Mr. Sullivan said that the tree removal violation was on the existing lot, and that if the property is subdivided it would be treated as two lots moving forward which will impact the total number of replacement trees required. Mr. Ruschke said that the tree ordinance considers density. Mrs. Stone-Dougherty proposed replacement of 5 trees per lot in addition to the 9 trees already proposed on the plans. Mr. Warner said that the placement of the trees will be subject to the review of the Township Engineer.

Mr. Miller asked about the intention of the prior tree removal and if it was done to make it easier to subdivide the lot. Mr. Ruschke said he cannot speculate on their intent, and said that it was reported in Municipal Court that there was a miscommunication with the tree removal company about the number of trees to be removed. Mrs. Stone-Dougherty noted that the tree removal company made some admissions on the record in court and paid some fines.

Mr. Warner noted that the proposed lot area for Lot 16.01 is 17,094 square feet rather than the required 25,000 square feet required in the R-3 Zone. Mr. Meola said that the 17,094 square feet went up to 18,015 square feet, which is still less than what is required. Lot 16.02 is also less than what is required.

Mr. Podberezniak provided his qualifications and was accepted as an expert.

Mr. Podberezniak presented the architectural designs for the proposed house on lot 16.02. The designs were entered into the record as Exhibit A-2. Mr. Warner asked about the number of bedrooms and bathrooms. Mr. Podberezniak said that there will be 5 bedrooms and 5.5 bathrooms. He also addressed the height of the proposed house, and said that the pitch of the roof will be adjusted to reduce the height.

Mrs. Stillinger asked about other projects that Mr. Podberezniak has worked on.

Mrs. Ewald asked about how height is measured. Mr. Ruschke said the calculation is an average of the highest high and the lowest low. Mrs. Ewald asked how the proposed house compares in size to other homes on Chestnut. Mr. Podberezniak said that it is slightly smaller than the

existing homes. Mrs. Stone-Dougherty said that the adjacent home is substantially larger than the proposed house.

Mr. Sullivan asked about the basement and if stormwater would become an issue. Mr. Ruschke said that an acceptable lot grading plan has not yet been submitted.

The Board took a recess at 9:20 PM. The meeting was resumed at 9:29 PM.

Alexander Dougherty, a planner representing the applicant, provided his qualifications and was accepted as an expert witness.

Mr. Dougherty discussed the lot sizes in the R-4 zone.

Exhibit A-3 was entered into the record which was a series of documents received pursuant to an OPRA Request and pertaining to the rezoning of several properties on Chestnut Road. Mrs. Dougherty noted that the highlights in the exhibit were added by her for emphasis.

Exhibit A-4 was entered into the record, which was a set of Township Committee minutes from the adoption of the ordinance for the aforementioned rezoning, as well as the meeting's agenda, and the minutes from the ordinance's introduction.

Mr. Dougherty said that there was some commentary in the Township Committee minutes about the ability to develop properties on Chestnut Road without variances. He also opined that the subject property should have been included in the rezoning at that time. Mr. Warner stated that the Governing Body did not change the zoning for the subject lot. Mrs. Stone-Dougherty said that a subsequent request for rezoning was made in 2019, which was rejected in 2022.

Mr. Miller said that there appears to be an assumption that that the lot was left out of the R-4 zone to keep it consistent with the homes on Fairmount Avenue. Mr. Dougherty said that he is not making that assumption. Mr. Warner said that where the Zone boundary is on the tax map, there is a pattern of endcap properties being kept in the R-3 zone. Mr. Banisch commented on a memorandum that had been prepared about the potential of the rezoning, and said that while the memo comments on the potential rezoning, he does not believe that a recommendation should be inferred.

Mrs. Ewald said that she does not remember the zoning change request coming to the Township Committee. Mr. Ruschke said that the administrative decision was made to not bring it to a meeting because there did not appear to be any interest on the part of the Township Committee or the Planning Board to make the zoning change. Mr. Dougherty said that he does not have information as to why the Township Committee did not include Lot 16 in the zone change.

Exhibit A-5 was submitted into the record. It was a set of 7 slides that were maps and photographs of the site. Mr. Dougherty presented each slide. He also addressed the C2 variance,

and said that the proposal would advance purposes A, G, I and M of the Municipal Land Law. Mr. Dougherty said that the property is out of character with both the R-3 and R-4 zones, and further stated that there will not be any significant detriment to the public or the zone from this application.

Mr. Sullivan asked about the speculation why the lot was not rezoned, and if the property should remain in the same zone as those properties facing Fairmount Avenue which would be in character with the other properties on Fairmount. Mr. Dougherty said that the lot does not fit the character of the R-3 Zone.

Mrs. Ewald asked about C-1 variances as mentioned in Mr. Banisch's memo. Mr. Warner said that the applicant's attorney has stipulated that they are not seeking a C-1 variance. Mrs. Stone-Dougherty elaborated on references to C-1 in the submission, and clarified that the variance sought is a C-2 variance. Mr. Banisch commented on the variance criteria. Mr. Warner commented on the positive criteria for a C-2 variance and that the benefits need to substantially outweigh the detriments. Mrs. Ewald said she would like to see Mr. Banisch's analysis in an updated memo.

Mr. Sullivan opened the floor to the public to ask questions of the witnesses.

1. Patricia Foley, 749 Fairmount Avenue, asked if new neighbors have the right to give comments on this application. Mr. Warner described the required notice that needs to be sent out by the applicant to property owners within 200 feet. Mrs. Stone-Dougherty said that she only uses property owner lists that are less than 60 days old. She also noted that sometimes there is a lag between when a property transaction closes and when a deed is filed. Mr. Warner said that although a new property owner may not have been notified, the applicant has met the legal requirements of their obligation for proper and timely notice for the Board to have jurisdiction to hear this application. Mrs. Foley asked when the exhibits submitted this evening will be publicly available. Mr. Warner said that the Township staff can post the exhibits online, and Mrs. Tsimboukis said that the exhibits will be available for review during business hours.
2. Joseph Trojanowski, 749 Fairmount Avenue, asked about the size of the replacement trees. Mr. Ruschke said that if they are street trees, they have to be at least a four-inch caliber, and outside of the front yard they have to be a 2.5-inch caliber. Mr. Trojanowski asked if the witnesses are aware that the replacement trees were never planted. Mrs. Stone-Dougherty said that the applicant would need to answer that question. Mr. Ruschke said that the former administrator was monitoring that matter, and he can check with the Township Prosecutor about the disposition of the matter. Mrs. Stone-Dougherty said that the judgment from Municipal Court will be complied with.

Seeing no further questions from the public, Mr. Sullivan closed the floor.

Mr. Sullivan announced that the hearing will be continued at the May 6th meeting. Mr. Warner stated that further notice is not required. He noted that the hearing will be in the same room in

the Municipal Building, and the applicant will signify in writing that they consent to an extension for the Board to act through the end of May.

Mr. Banisch reiterated that he will provide a written report about the C-2 criteria.

Master Plan Consistency Review – Ordinance 2024-02

Mr. Warner stated that Mr. Banisch prepared a memorandum for the Master Plan Consistency Review.

Mr. Banisch said that the floodplain regulations advance the intents and purposes of the Master Plan, and the ordinance is not inconsistent with the Master Plan.

Mr. Warner noted the legal process by which land use ordinances are referred to the Planning Board for a Master Plan Consistency Review.

Mr. Ruschke noted that the ordinance sets the minimum requirements that the State of New Jersey requires municipalities to set.

Mrs. Ewald moved to determine that Ordinance 2024-02 is not inconsistent with the Master Plan. Mr. Miller seconded the motion.

Roll Call: Mr. Sullivan, Aye; Mr. Neibert, Aye; Mr. Kahn, Absent; Mr. Duemling, Absent; Mrs. Ewald, Aye; Mr. Shehady, Absent; Mr. Choi, Absent; Mr. Miller, Absent; Mr. Nikolopoulos, Absent; Mrs. Stillinger, Aye; Mrs. Foran, Absent.

Mrs. Ewald moved to adjourn at 11:03 PM. Mr. Miller seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary