

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
MAY 20, 2024**

Mr. Neibert 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. Neibert, Mr. Duemling, Mrs. Ewald, Mr. Miller, Mr. Nikolopoulos and Mrs. Stillinger.

Mr. Sullivan, Mr. Choi, Mr. Shehady, Mr. Kahn and Mrs. Foran were absent.

Approval of Minutes

Mrs. Ewald moved to approve the minutes of the May 6, 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 provided an overview of the prior hearing on this application.

Mr. Warner asked Mr. Ruschke to comment on the record regarding a possible outstanding violation regarding tree removal. Mr. Ruschke said that there was a land disturbance on the property which resulted in a summons being issued for violation of a tree permit and a lot grading permit. The matter had gone to Municipal Court, and the property owner was ordered to pay fines and replace trees. Mr. Ruschke discussed the trees that were planted, and said his records show that the violations have been closed out.

Mrs. Tsimboukis confirmed that all Board members who needed to submit certifications that they listened to the recording of the prior hearing have done so. Mr. Warner confirmed that all Board members present are eligible to participate in the hearing.

Mr. Meola presented an updated subdivision plan. He explained updates and corrections that were made to the zoning chart on the plan. Mr. Meola also addressed an easement shown on the plan that is required by Morris County.

Exhibit A-6 was entered into the record which was the original subdivision map. Mr. Meola addressed the zoning conventions at the time the map was created.

Exhibit A-7 was presented, which was a highlighted tax map. Mr. Meola discussed the size of the lots and the house sizes for which he was able to acquire information. Mr. Warner asked if any lots not highlighted were vacant. Mr. Meola said that they all have homes, and Mrs. Stone-Dougherty noted one vacant landlocked lot.

Mr. Meola addressed recent subdivisions in the neighborhood, and the size of homes on those subdivided lots was addressed.

Mr. Meola commented on the subdivision of Lots 2.01 and 2.02, which were in the R3 Zone at the time of the subdivision. The variances required for the subdivision were addressed.

Exhibit A-8 was entered into the record, which was an aerial photograph of the area with the proposed subdivision shown. Mr. Meola noted that the picture was taken after the illegal tree removal.

Mr. Nikolopoulos asked about the side yard setbacks on 16.02. Mr. Meola said that the side yard setback is 15 feet. Since it counts as a front yard, the setback from Fairmount is 50 feet. Mrs. Ewald asked about sidewalks on Fairmount. Mr. Meola said there are not any plans for sidewalks, however the County required the easement in case they ever decided to put one in. Mrs. Ewald asked about having the new construction face Fairmount. Mr. Meola said it would be possible, however he would prefer the driveway face Chestnut. Mr. Nikolopoulos asked if the existing home would be demolished. Mrs. Stone-Dougherty said the owner has made substantial improvements and there are no plans to demolish it.

Mr. Miller asked about the potential of a new home on the existing lot facing Fairmount. Mrs. Stone-Dougherty said that the applicant's planner had testified that such a house would be out of the character of the neighborhood, and there was no intention to convey that there were any such plans. Mr. Ruschke said that a large house theoretically could be placed on the existing lot which would conform to the Township's codes.

Mr. Neibert opened the floor to the public. Seeing no questions from the public, Mr. Neibert closed the floor.

Mrs. Ewald asked if there could be a stipulation regarding the existing dwelling that if there should be renovations that there be requirements. Mr. Warner said that the Planning Board could

not prospectively zone, however the Board could retain jurisdiction for any changes to the building. He said that the applicant has the option of placing a deed restriction on the property.

Yura Mayovska, the son of the applicant, was sworn in to give testimony. Mr. Mayovska described improvements that were made to the home by his parents. He also addressed the tree removal that resulted in violations in 2020.

Exhibit A-9 was entered into the record, which was a photograph of existing conditions on the site.

Mr. Miller asked if the home was purchased with the intention of subdividing the lot.

Mr. Dougherty, the applicant's planner, was recalled to give further testimony. Mr. Dougherty addressed a memo regarding the positive and negative criteria proofs for the variance. He addressed the c(2) criteria. Mr. Dougherty also addressed the subdivision in the context if the lot was zoned as R-4. He further discussed how the subdivision would fit with the character of the neighborhood. Mr. Dougherty said the subdivision would advance the purposes of the Municipal Land Use Law, and provides a better zoning alternative. He also discussed the existing infrastructure. Mr. Dougherty also said that he does not see a substantial detriment from this subdivision.

Mr. Banisch clarified the use of the term open space in Mr. Dougherty's memorandum, and said that it is not used in the same way that Board members might usually think of it. He said that it refers to open space specifically on the subject lot. Mr. Banisch also addressed the maximization of land use potential. Mr. Banisch further addressed the negative criteria.

Mr. Dougherty addressed the zoning for the property. He said that he believes the lot was not rezoned due to its size. There was discussion of the prior rezoning of lots in the immediate area. Mrs. Stone-Dougherty said they were not able to document why the lot was not rezoned in 2016 or 2019. Mr. Dougherty said that another planner had recommended that the lot be rezoned. Mr. Warner asked -Mr. Dougherty if he will reconfirm that he is not arguing that the c(1) undue hardship criteria would support the variances. Mr. Dougherty confirmed that argument has not been made, and a c(1) argument is not being made. Mr. Warner asked Mr. Dougherty to confirm that the c(2) positive criteria require that the proposal has to advance a purpose of the Municipal Land Use Law, and that the benefits need to substantially be greater than the detriments associated with the deviations. Mr. Dougherty confirmed same. Mr. Warner asked if the benefits and detriments are equal, does that mean that the Applicants would not meet the c(2) criteria. Mr. Dougherty agreed. Mr. Warner addressed the second prong of the negative criteria. He asked Mr. Dougherty if it is relevant and material that the Township Committee decided not to

rezone the subject property in 2016 and 2019. Mr. Dougherty agreed that it was relevant and material.

Mr. Warner noted that the Board Planner had suggested previously that lots facing Fairmount were specifically not rezoned by the Township Committee. He asked Mr. Dougherty if he concurs that the difference in lot size requirements between the R-3 and R-4 zones, result in a substantial reduction in lot size and Mr. Dougherty concurred with that characterization. Mr. Warner referenced the portion of Mr. Dougherty's memorandum that opined that the omission for rezoning this lot aimed to prevent the potential development of a three lot subdivision, and he asked Mr. Dougherty if he had any basis for that opinion or was it just speculation and Mr. Dougherty indicated that it was speculation.

Mr. Banisch commented on the zoning considerations that the Board should be thinking about.

Mrs. Ewald asked about the positive criteria and how it substantially outweighs the negative criteria. Mr. Dougherty said that he does not see a negative impact from the subdivision. He also commented on the purposes of the Municipal Land Use Law that are advanced by the subdivision.

Mr. Miller asked if there are any stormwater management issues that are affecting neighboring properties. Mr. Dougherty said that he is not an engineer, and he is unaware of any stormwater management systems on the property. He also said that he did not hear testimony of stormwater affecting the adjacent property.

Mr. Neibert opened the floor for the public to make comments. Seeing none, Mr. Neibert closed the floor.

Mrs. Stone-Dougherty gave summation of the applicant's case. She commented on the zoning of the property, and the differences of the R-3 and R-4 zones. Mrs. Stone-Dougherty also said that a conforming new home could be built on the lot that would be much larger than the existing home, and Board approval would not be needed. Mrs. Stone-Dougherty also commented on the lack of knowledge as to why the Township Committee did not rezone the property. She said that this application will complete the area.

Mr. Warner reviewed the requested variances and design waivers. He noted that the applicant has the burden of proof, and he cited the proof that needs to be met for the requested variances. Mr. Warner also reviewed the conditions of approval that would be required if the application is approved. He further noted that an approval motion would require four affirmative votes of the six members present.

Mr. Nikolopoulos commented on the placement of trees, and wondered where 19 trees would be placed. Mr. Ruschke said they would be placed in the rear yard and along the sides.

Mrs. Ewald noted that there is a void at the subject location. She also said she is still trying to understand how the benefits outweigh the detriments.

Mr. Nikolopoulos commented on how the tree placement will affect the neighboring properties. He also commented on the void at that location.

Mr. Neibert expressed a reluctance to override the zoning decisions made by the Township Committee. He said he leans toward upholding the current zoning.

Mr. Miller said that it appears that the Board is being asked to rezone the property. He also said that a future Board will be asked to subdivide the property. Mr. Miller further stated that a house facing toward Fairmount will be more palatable. Mr. Miller further said that the Planning Board should stand behind the decisions made by the Township Committee.

Mr. Duemling noted that there is a void in the subject lot. He expressed a preference for a new home facing Fairmount.

Mrs. Stillinger commented on the prior rezoning discussions, and said that granting this application would be the overturning of the prior decisions of the Township Committee and Planning Board. She also said that granting this application would be a deviation from what the law says is allowed. Mrs. Stillinger said she agrees with the points made in Mr. Banisch's memo.

Mr. Nikolopoulos expressed concern about setting precedent for overpopulating an area. He also said that he is not comfortable denying the application when the Board does not know why the Township Committee chose not to rezone the property.

Mr. Neibert said that he has faith that the Township Committee did not take it lightly when they chose not to change the zoning. Mr. Duemling said that the variances are big. Mr. Miller also said that the variances are concerning.

Mr. Miller moved to deny the application. Mr. Neibert seconded the motion.

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

Discussion

Potential Conditional Use Ordinance for Block 48.21, Lots 174 and 180

Mr. Warner noted that Mrs. Stillinger has recused herself from this discussion.

Mr. Banisch distributed a memorandum pertaining to a proposal for a Conditional Use Ordinance for the Ferber Farm Property.

Mr. Warner noted that there will not be any formal action on the matter at this meeting. He also said that the Township Committee is the body that would introduce and adopt the ordinance, and the Planning Board would conduct a Master Plan Consistency Review in between introduction and adoption.

Mr. Banisch said that the genesis of this conversation is a question whether the Great Swamp Watershed Association should need to apply for a use variance, or if certain conditions could be developed ahead of time.

Mr. Miller said that he has worked with Sally Rubin from the Great Swamp Watershed Association on this topic. He noted that the Ferber Farm is large enough to impact several residential properties from Memorial Way to Britten Road and along Green Village Road.

Mr. Banisch said that the residents in the neighborhood want to be sure that the neighborhood will not be adversely affected.

Mrs. Ewald moved to adjourn at 10:40 PM. Mr. Miller seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary