

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
NOVEMBER 15, 2021**

Mr. Franko called the Regular Meeting of the Planning Board to order at 7:31 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 2021, and January, 2022 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. Franko, Mr. Nelson, Mrs. Ozdemir, Mrs. Abbott, Mr. Choi, Mrs. Ewald, Mr. Hoffmann, Mr. Kahn and Mr. Neibert.

Mr. Coviello was present as an attendee due to audio issues.

Also present were Board Engineer John Ruschke, Planner Joanna Slagle in place of Township Planner Frank Banisch, Attorney Amanda Wolfe in place of Board Attorney Steve Warner.

Approval of Minutes

Approval of the November 8, 2021 meeting were deferred to the next meeting.

Hearings

PBA-21-003 (RECEIVED 5-7-2021) Created from Zoning Board App. ZBA-20--010 Mark & Nicole Lois, 15 Gates Avenue, Block 108, Lot 30

Mrs. Stone-Dougherty addressed the need for Environmental Commission Vice-Chair Cara Feeser to be present at a meeting to be cross examined regarding the memorandum regarding this application that was issued by the Environmental Commission and signed by Mrs. Feeser.

The floor was opened for questioning of Mr. Ricci on his testimony.

1. Robert Ryan, 17 Jay Road, asked if the Environmental Commission is going to be represented at this meeting. Mr. Franko said it is unknown if anyone from the Environmental Commission would be available to attend tonight to give testimony.

Seeing no further questions, Mr. Franko closed the floor to the public.

Mr. Kline, the objector's attorney, asked if the proposed lots could have been designed in such a way that one would be conforming and a second variance would not be necessary. Mr. Ricci, the applicant's planer, said the lots could have been designed that way. He also said he was not the designer of the lots, however it was the intent to have both lots be approximately the same size.

Mr. Kline asked if having one of the proposed lots be conforming in size would allow the project to be in greater conformity to the Township's zoning regulations. Mr. Ricci stated that the lots as proposed are a better zoning alternative.

Mr. Kline asked about Mr. Ricci's testimony regarding lot width versus lot depth. Mr. Ricci stated that in a neighborhood like the subject property, lot width is a more defining characteristic. Mr. Kline asked about the average lot width, and Mr. Ricci indicated he has not performed that calculation. Mr. Ricci also stated that he looked at the number of lots that had a width under 100 feet. He also showed how many lots in the subject neighborhood are undersized. Mr. Kline asked about testimony Mr. Ricci had offered about the Township's requirement of 10,000 square feet within 100 feet of the street as a means to prevent flag lots. Mr. Ricci stated he had read comments in meeting minutes in which the Township Planner had explained that rationale.

Mr. Kline asked about the allowable building coverage. Mr. Ricci said that he would have to perform calculations to answer the questions being asked. Mr. Kline asked about the ability of future homeowners to add on to the proposed houses, and Mr. Ricci confirmed additions would not be allowable. Mr. Ricci also stated that he is unaware of any properties in the subject neighborhood that exceed the building coverage limits. Mr. Ricci also stated that having two smaller homes would be more consistent with the neighborhood than having one larger house. Mr. Kline asked if the proposed homes would result in more building coverage than if there was only one larger house. Mr. Ricci stated that he would need to take time to perform calculations to answer that question. Mr. Kline asked if there is a realistic opportunity for a home addition on the proposed lot 30.02. Mr. Ricci confirmed that there is not.

Mr. Kline asked if any calculations or analysis were performed on residences in the subject neighborhood or the R-4 zone that meet or exceed 19.97% principal building coverage. Mr. Ricci said that information is hard to obtain because surveys would be needed. He also stated that Exhibit 4 was prepared to show the subdivision's building footprints in comparison to other building footprints in the area. Mr. Ricci also stated that he is not aware of any lots in the subject area that exceed the principal building coverage limits. Mr. Ricci also reiterated that the application will result in homes more consistent with the neighborhood than if there was a teardown and rebuild on the current lot.

Mr. Ricci stated that he has visited the neighborhood. Mr. Kline asked about the average lot size of the subject neighborhood. Mr. Ricci stated that the average lot size has not been calculated, and noted that an oversized lot could skew the data. Mr. Ricci described the subject neighborhood and said his comparisons only considered the residential properties. Mr. Kline asked about the proposed finishes for the properties. Mr. Ricci discussed the proposed siding which is allowed for use in historic districts. Mr. Kline asked how many homes in the neighborhood use the same finish, and Mr. Ricci confirmed he does not know.

Mr. Kline read from Section 30-96.11 about required area or space. He asked if the application violates that section of code twice. Mr. Ricci said that the application is before the Planning Board for a variance on lot size. Mr. Kline stated that the application does not request a variance from Section 30-96.11. Mr. Ricci stated that the letters received from the Township did not cite that section of the Code Book as the basis for any required variances. Mr. Kline asked if any other properties in the subject area could be subdivided and conform to the lot size regulations. Mr. Ricci stated that no properties in the subject area could be subdivided and conform.

Mr. Kline asked if section 30-78.5 Lot Size Exceptions was reviewed. He stated that the section allows three exceptions when lot sizes can be smaller than the required size, and asked if any exceptions for the R-4 zone would be in this section. Mr. Ricci stated that he has not reviewed the section and is unable to answer the question. He also stated that he cannot opine on the hypothetical intent of the Governing Body. Mrs. Stone-Dougherty objected to questions regarding legislative intent. Mr. Franko said that the question was asked regarding Mr. Ricci's opinion as a planner and allowed the question. Mr. Ricci said that different communities may regulate land use in different ways as long as it is consistent with the Municipal Land Use Law. He further stated that he cannot opine on an ordinance he has not reviewed. Mrs. Stone-Dougherty stated an objection that the cross examination should focus on the testimony that had been given rather than focusing on other questions. Mr. Franko overruled the objection.

Upon reviewing Section 30-78.5 Mr. Ricci stated that the ordinance refers to cluster developments which is different from what is proposed in the application.

Mr. Ricci confirmed that he read the Township's Master Plan in the preparation of he application. Mr. Kline read a section of the Land Use Plan Element, and stated that Goal 4 calls for preservation of Open Space for passive and active recreation. Mr. Ricci said that Mr. Kline is taking that section out of context and it does not apply to the subject property. Mr. Kline asked if the application is a detriment to the R-4 Zone. Mr. Ricci said it is not a substantial departure because the lot sizes are close to the required size and the lot width and depth requirements are met. Mr. Kline asked if the intent of the Master Plan is to be "close enough." Mr. Ricci said that is not the intent. Mr. Kline quoted a section of the Master Plan about tear downs. Mr. Ricci said that the Master Plan is supportive of having two smaller homes rather than one oversized home. Mr. Kline asked if the application proposed to tear down the existing home, and Mr. Ricci confirms that it does.

Mrs. Stone-Dougherty asked Mr. Ricci to clarify the variances needed. Mr. Ricci said that lots are required to have at least 10,000 square feet of area within 115 feet of the front lot line. He confirmed that the same variance is needed for both of the proposed lots. Mr. Ricci further confirmed that the proposed lots conform in all other aspects of the zoning regulations for the R-4 Zone. Mr. Ricci also indicated that the C-2 variance relief standard applies to this application. He further offered his opinion that the application is a strong application that meets the goals and objectives of the Master Plan and is better conforming with the neighborhood. Mr. Ricci stated that the Master Plan language about tear downs also focuses on the R-3 Zone. He further stated that homes which are more in character with the area represent a better zoning alternative.

Mrs. Stone-Dougherty asked if a representative was present from the Environmental Commission as had been discussed previously. She stated that she will be unable to proceed further if the Environmental Commission Chair or Vice-Chair is not present to be cross examined. Ms. Wolfe stated that the Environmental Commission Chair and Vice-Chair were unable to attend this meeting.

Mrs. Ewald asked about the C-2 variance relief criteria. Mr. Ricci stated that the applicant must show that the application promotes a purpose of the Municipal Land Use Law, and that the variances can be granted without a substantial detriment to the neighboring property owners and without substantial detriment to the Master Plan and zoning regulations.

Mr. Franko opened the floor for questions from the public to be asked of Mr. Ricci.

1. Bob Higgins, 30 King Street in Morristown, formerly of 5 Jay Road, asked if a water study has been conducted for the application. Mr. Higgins commented on drainage in the neighborhood, and asked how the proposed homes would affect water in the neighborhood. Mr. Ricci said that question is out of his scope as a planner.

Seeing no further questions, Mr. Franko closed the floor to the public

A recess was held at 8:56 PM.

The meeting resumed at 9:02 PM

Ms. Wolfe noted that the hearing will likely need to be carried to the December 20th meeting so that the Environmental Commission representative can be cross examined.

Andrew Thomas, a planner representing the objector, was sworn in to give testimony. Mr. Thomas provided his qualifications and was accepted as an expert.

Mr. Thomas stated that he reviewed the application from a planning perspective, and he made a site visit to the neighborhood. Mr. Thomas described the site and stated that for his planning analysis he considered lots facing Gates Avenue and Mitchell Avenue as part of the same R-4 Zone. He opined that lots facing Garden Street and Conger Terrace are in a different neighborhood because they are smaller lots and were constructed at a different time.

Mr. Thomas presented Exhibit O-1 which was an aerial map of the neighborhood. He also discussed the different types of lots in the neighborhood. Mr. Thomas stated that most of the residential lots are 10,000 square feet or greater.

Exhibit O-2 was presented, which showed the calculations performed by Mr. Thomas regarding acreage and square footage of lots in the area. Floor Area Ratio was also calculated. Ms. Wolfe noted that both exhibits were previously submitted to the Planning Board.

Mr. Thomas stated that 94% of the lots in the neighborhood meet or exceed the minimum lot size. He also said the existing houses are typically less than 3,000 square feet per the tax assessment data, and those that are greater than 3,000 square feet are on larger lots. Mr. Thomas opined that the proposed two undersized lots would not be characteristic of the neighborhood.

Mr. Thomas stated that there is a provision in the Township's Code Book to safeguard against reducing lot sizes in subdivisions. He read Section 30-96.11 into the record and opined that the Township is so concerned about undersized lots to have this regulation in effect. Mr. Thomas opined that subdividing the lot would be detrimental to the neighborhood. He cited increases to building coverage and impervious coverage as detriments, and also addressed changes to the aesthetics of the neighborhood. Mr. Thomas also addressed the criteria for a C-2 variance and offered testimony that the application does not meet the criteria. He also stated that what is proposed is out of character for the neighborhood. Mr. Thomas further stated that the application does not advance any of the applicable purposes of the Municipal Land Use Law, does not meet

the positive or negative criteria and the general welfare would not be advanced. Mr. Thomas stated that the Planning Board should not approve the application as presently submitted.

Mr. Kline asked if Mr. Thomas has reviewed any calculations on the maximum coverage that would be allowed if the property remained as one lot. Mr. Thomas stated that he reviewed the impervious coverage and lot coverage calculations. He stated that the Township has a sliding scale on what is allowed and he cited the figures. Mr. Kline asked if the application would result in more impervious coverage and building coverage than would be allowed with a single home. Mr. Thomas said there would be greater impervious coverage.

A recess was taken at 9:33 PM.

The meeting resumed at 9:40 PM.

Mrs. Stone-Dougherty asked if Objector Counsel is planning to have Mr. Thomas available at the December 20th meeting. Mr. Kline confirmed that Mr. Thomas will be available.

Mrs. Stone-Dougherty asked Mr. Thomas about his testimony on Exhibit O-1 and his analysis on the dividing line between the subject neighborhood and other neighborhoods. She also asked if his analysis was based on just Mitchell Avenue and Gates Avenue and not including Conger Terrace and Garden Street. Mr. Thomas confirmed that was the basis of his analysis. Mrs. Stone-Dougherty asked if the averaging in Exhibit O-2 was based on information from the tax assessment and if the property record cards were reviewed. Mr. Thomas stated that he got information online from Morris County. Mrs. Stone-Dougherty asked if historical data is available online or just the most current structure. Mr. Thomas said he did not know. He also stated that some houses have been modified since they were constructed. Mrs. Stone-Dougherty asked if additional available information might change Mr. Thomas's opinion about how the neighborhood should be defined. Mr. Thomas commented on the criteria that differentiates the neighborhood. He also acknowledged that all four streets are in the R-4 Zone and said he did not do averaging for the full zone. Mrs. Stone-Dougherty asked if the subject property is the largest property either in the smaller neighborhood or the full neighborhood. Mr. Thomas confirmed that it is the largest. Mrs. Stone-Dougherty asked if Mr. Thomas testified that people viewing the property from the street would not be able to perceive lot depth or where property lines are. Mr. Thomas said he did not give that testimony. Mrs. Stone-Dougherty asked about lot dimensions and potential house sizes. She also asked if it would be perceivable from the street that the proposed lots are undersized. Mr. Thomas testified that it would be perceivable. Mrs. Stone-Dougherty asked about the calculations in Exhibit O-2. Mr. Thomas said that the purpose is to show the total size of the house. Mrs. Stone-Dougherty asked if it is Mr. Thomas's testimony that a larger single home would be a better fit for the neighborhood. Mr. Thomas said it appears that the proposed homes would be at least 3,500 square feet. He also said that he does not believe there could be a single home over 5,000 square feet. Mrs. Stone-Dougherty asked if Mr. Thomas's testimony is that one monstrous home is a better planning option than two smaller homes. Mr. Kline objected to the question, and Mr. Thomas stated that a monstrous home could be built now.

Mr. Kline asked if there would be three undersized lots in a row if the application is approved. Mr. Thomas stated that there would be. Mr. Kline asked if the public would be able to tell that the lots were undersized, and Mr. Thomas said that they would.

Mr. Kahn asked if more impervious coverage than what presently exists would be permitted if the application is approved. Mr. Thomas stated that more would be allowed. He also stated that 7,695 square feet of impervious coverage would be allowed with two lots compared with the 5,848 square feet of impervious coverage allowed on the lot as it presently exists, which is a difference of 32%. Mr. Kahn asked if there were any corollary studies of water runoff or penetration related to levels of impervious coverage. Mr. Thomas said that is an engineering question.

Mrs. Ewald asked if Mr. Thomas reviewed the stormwater management systems. Mr. Thomas stated that he looked at them on the plan but cannot offer further comment as a planner. Mrs. Ewald asked about the calculations in Exhibit O-2 and if the 2,332 square foot figure is the size of the current home. Mr. Thomas stated that it is the livable portion of the existing home. Mrs. Ewald asked about the 3,560 square feet shown for the proposed homes. Mr. Thomas stated that they are based on the drawings submitted when two floors per home are factored in together. Mrs. Ewald asked about the properties on Garden Street and Conger Terrace not being considered due to when they were built, and asked what Mr. Thomas had said about the end lots on Garden Street. Mr. Thomas stated that Garden Street was built earlier and the lot sizes are smaller. He also stated that Gates Avenue and Mitchell Avenue are loop streets that end at Garden Street.

Mr. Choi said there may be constituents who see all four streets as one community, and it is one zone. He asked what the distribution graph would look like with the additional properties factored in. Mr. Thomas said he would need to perform those calculations. Mr. Choi asked what Mr. Thomas suspects the difference would be.

Mrs. Stone-Dougherty asked about the qualification that only livable space was included in the calculations.

Mr. Franko opened the floor to the public to ask questions.

1. Amy Hauser, 10 Gates Avenue, asked if Mr. Thomas has visited the neighborhood. Mr. Thomas said that he has. Mrs. Hauser asked if there is a distinct difference between the homes on Garden Street and Gates Avenue. Mr. Thomas said there is a difference in the lot sizes and the year of construction. Mrs. Hauser asked about open space and green space. Mr. Thomas stated that there is a difference between Garden Street and Gates Avenue. Mrs. Hauser asked if visual aesthetics are considered in the planning process. Mr. Thomas stated that they are and that the proposed homes would look different. Mrs. Hauser asked if larger homes in the neighborhood looked out of place. Mr. Thomas said that there are several larger homes.
2. Stefanie Stuart, 11 Mitchell Avenue, asked if the maximum allowable front width is 110 feet if there is one lot. Mr. Thomas said that it would be the 150 foot lot width minus the side yard setbacks, which comes to 120 feet. Mrs. Stuart asked if the maximum house size would be approximately 5,000 square feet, and Mr. Thomas said that is correct. Mrs. Stuart asked if it is likely for a house to be built that is only 20 feet deep. Mr. Thomas stated that is not likely, and it is also unlikely that the house would be 120 feet wide. Mrs. Stuart asked if the Mitchell/Gates circle is more consistent than they are with Garden Street and Conger Terrace. Mr. Thomas stated that lot sizes were a consideration. Mrs.

Stuart asked if the properties in the Conger/Garden area were developed earlier. Mr. Thomas stated that is what appears to be the case.

Seeing no further comment, Mr. Franko closed the floor to the public.

Mr. Ruschke commented on statements that were made about subpoenaing the Environmental Commission regarding the report on this application. He stated that he cannot recall seeing one of the reports ever being scrutinized and said that it troubles him that there will be questions about the report. Mr. Ruschke stated that he can back up the statements made in the report, and he is willing to be questioned about the report. Mrs. Stone-Dougherty stated that the applicant has a right to cross examine the author of the report. She also said that the applicant has a right to recall their professionals to address any testimony presented by the Environmental Commission, and the objector's counsel has the same right. Mrs. Stone-Dougherty also asked that advance notice be given if the Environmental Commission representative is unavailable for the December 20th meeting. Mr. Kline stated that he would not object to questioning Mr. Ruschke instead of the Environmental Commission.

The hearing was carried to the December 20, 2021 meeting without additional notice.

The floor was opened for public comment and questions.

1. Jacqueline Fusco, 26 Mitchell Avenue, asked if there is a limit to the number of meetings during which an application can be heard. Mr. Franko said there is no limit.

Seeing no further public comment, Mr. Franko closed the floor to the public.

Mrs. Ozdemir moved to adjourn at 10:37 PM. Mr. Nelson seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary