

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
FEBRUARY 28, 2022**

Mr. Sullivan called the Regular Meeting of the Planning Board to order at 7:32 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 2022, and January, 2023 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.

Answering present to the roll call were Mr. Sullivan, Mr. Choi, Mrs. Ozdemir, Mr. Duemling, Mr. Miller and Mr. Neibert.

Mrs. Felice, Mr. Hamilton, Mr. Hoffmann and Mr. Kahn were absent.

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

Approval of Minutes

Mr. Miller moved to approve the minutes of the February 7, 2022 meeting. Mr. Choi seconded the motion which carried unanimously. Mr. Duemling abstained.

Hearings

PBA-21-003 (Received 5-7-2021) Created from Zoning Board App. ZBA-20--010 (September 23, 2020) Mark & Nicole Lois, 15 Gates Avenue, Block: 108 Lot: 30 Requesting variance for subdividing one large lot into (2) smaller, nonconforming lots less than 10,000 sf

Mr. Warner stated that this hearing was carried without further notice from the February 7, 2022 meeting. He also stated that the applicant's counsel has submitted in writing a time-to-act extension through March 1, 2022.

Mr. Warner said that objector's counsel submitted a letter dated January 4, 2022 requesting certain Board members to recuse themselves from this hearing. Applicant's counsel submitted a response on February 4, 2022 agreeing with some of the recusals and objecting to others. Mr. Warner said that he provided privileged legal advice to the Board members, and there are five members of the Board present who are qualified to vote on the application. Mr. Warner noted that Mayor Felice, Township Administrator Hoffmann and Deputy Mayor Hamilton have all recused themselves from this hearing. All Class IV members are eligible to participate in the hearing, and have all certified that they have listened to recordings of hearings at which they were either absent or not yet a member of the Planning Board. The Board members individually

certified under penalty of perjury on the record at this meeting that they have listened to said recordings.

Mr. Warner gave a summary of the proceedings thus far on this application. He stated that the objector counsel's second and final witness will be Mr. Huke, followed by rebuttal evidence from the applicant. Mr. Warner said that following public comment on the application, the objector and applicant will have the opportunity to offer a summation.

Mr. Kline gave a preservation of objection to the Class IV members who he believes should have been disqualified from participating in this hearing. He also asked that the objection letter be added to the record as Exhibit O-8.

Bradley Huke was sworn in to give testimony. Mr. Huke said that when he bought his house, he was told that zoning regulations prohibit the building of a second house on the adjacent lot. He expressed the reasons why he enjoys living in Chatham Township, and said he is considering moving from the Township due to the proposed subdivision.

Mr. Huke presented Exhibit O-3, O-4, O-5 and O-6, all of which were photographs of ponding of water on the subject property. Exhibit O-7 was also presented, which showed the stormwater grates in the street which were blocked by leaves.

Mr. Huke said that the Planning Board has no obligation to approve the application, as under the C-2 criteria the applicant has to prove that the application furthers the goals of the Municipal Land Use Law and the benefits substantially outweigh the detriments to the neighborhood. Mr. Huke stated that the application would be a detriment to the neighborhood. Mr. Huke also warned about the precedent that will be set by this application, especially regarding stormwater systems. He commented on the impact that the subdivision will have on the neighborhood. Mr. Huke further addressed the proposed lot coverage, which is an increase of 51%. He stated that the houses proposed to be built will be oversized for the proposed subdivided lots. Mr. Huke stated that the applicant has testified that the neighborhood will be protected from the building of a McMansion. Mr. Huke discussed the potential dimensions of a McMansion. He also discussed the amount of sunlight at the site visit, which will be blocked out by the proposed houses. Mr. Huke discussed the proposed stormwater management system, and said it might not work. He expressed concern about the potential impact on his property if the stormwater management system fails or is not properly maintained. Mr. Huke discussed the impact of major storms in the Township and noted that 100 year storms have become more frequent. He asked the Board to deny the application, and asked that those Board members who should be disqualified from voting abstain.

Mr. Kline asked when there was last ponding on the property. Mr. Huke said that there was ponding yesterday from melting snow.

Mrs. Stone-Dougherty asked Mr. Huke if it was his testimony and understanding that the application does not propose the planting of any new trees. Mr. Huke said that is his understanding. Mrs. Stone-Dougherty indicated that the application included a tree plan that proposes the planting of 16 additional trees.

Mrs. Stone-Dougherty asked Mr. Huke how he defines his neighborhood. Mr. Huke said that he defines the neighborhood as Gates Avenue and Mitchell Avenue. Mrs. Stone-Dougherty said that Mr. Huke presented pictures of ponding at the subject property, and asked if the ponding is where an inlet is proposed. Mr. Huke said he is unable to comment on that. Mrs. Stone-Dougherty asked if Mr. Huke understands that the application does not request any variances for Floor-Area Ratio. Mr. Huke said he understands that, and he discussed Floor-Area Ratio as a reference so people can understand the visual impact of the proposed homes.

Mrs. Stone-Dougherty said Mr. Huke presented concerns about light, air and view. She asked if Mr. Huke's opinion would be changed if the applicant proposed one house 15 feet from the property line. Mr. Huke said he would not object to anything that does not require a variance.

Mr. Kline confirmed that he does not have any redirect.

Mr. Ruschke asked for clarification about the location of the ponding in the photos presented. Mr. Huke said that there is water flow toward his property. He also said that the trees in the photos were transplanted from elsewhere on the property by Mr. Lois. Mr. Ruschke commented on the slope of the properties and said it is away from Mr. Huke's house. Mr. Huke stated that the water sits there and is drained into the ground. Mr. Ruschke said that topography submitted by the applicant shows this as a low laying area that is proposed to be corrected by a swale.

Mr. Sullivan opened the floor for the public to ask questions of Mr. Huke.

1. Stewart Carr, 3 Crestwood Drive, asked Mr. Huke if he would prefer one larger home built to the maximum of what is allowed or two attractive smaller homes. Mr. Huke said he would prefer a single home.
2. Richard Daingerfield, 31 Gates Avenue, asked if the water problem in the neighborhood is new. Mr. Huke said it has been a problem forever.

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

Mr. Sullivan asked Mr. Ruschke about the Environmental Commission Report and if all the issues in the report have been addressed. Mr. Ruschke said the applicant's response is that they will work with the professionals to incorporate the additional non-structurals into the project. He also noted that there are infiltration problems in the area due to poor soils. Mr. Ruschke discussed how drainage concerns were addressed. He also said he reviewed the maintenance plan and addressed when it should be finalized.

Mr. Warner asked if the applicant would stipulate as a condition of approval to have the Maintenance Plan approved by Mr. Ruschke's office prior to the issuance of a CO, and if necessary, to have the plan modified. Mrs. Stone-Dougherty indicated that the applicant will so stipulate as a condition of approval. She also stated that the applicant has already stipulated that the applicant has already stipulated that the system will be at the max of 40%. Mr. Ruschke stated that not a lot of maintenance is needed after grass has grown.

Mr. Ruschke also commented on the size of the lots in the R-4 Zone.

Mrs. Stone-Dougherty said she reserves the right to summary and to object to the objector's counsel's disqualification stance regarding some Board members.

Mr. Choi asked if the proposed stormwater attenuation system is appropriately designed for the conditions known to be present on the site. Mr. Ruschke said that there are not proper soil conditions for groundwater infiltration. He also said that groundwater quantity is the next factor to be mitigated, which is addressed in the application and the concept is approvable with the sorting out of some additional details. Stormwater quality is also required by ordinance to be addressed, and the applicant proposes depressed sumps to address sedimentation before water enters the detention system. Mr. Choi asked if any stress testing or failure scenarios are considered. Mr. Ruschke said that stormwater designs are based on events such as two-year, ten-year and 100-year hypothetical storms. He also noted that storms do not always play out according to hypothetical scenarios, however not every scenario can be predicted when making a design that conforms to regulations. Mr. Ruschke also stated that the design for this application is not complicated, and proper maintenance will be required. He further addressed lot grading that will be performed as part of the stormwater design. Mr. Choi asked if there is a better design for the system. Mr. Ruschke stated that the fundamental design is all that can be done on this site due to the groundwater conditions.

Mrs. Ozdemir asked if there are similar storm management systems in the Township. Mr. Ruschke said that there are, and it is not a complex system.

Mr. Miller asked if drainage on the property will be better or worse with one house rather than two. Mr. Ruschke said that the applicant will need to meet code either way and the number of houses should not make a difference. Mr. Miller asked if the stormwater management will be improved after the two homes are developed. Mr. Ruschke stated that the stormwater management will remain the same if nothing is done, and described how the stormwater management is improved through development.

Mr. Duemling asked about drainage onto 15 Gates Avenue from public properties in the neighborhood. Mr. Ruschke said that water does flow toward Gates Avenue from all sides.

Mr. Sullivan opened the floor to public comment.

1. Joseph McShane, 11 Gates Avenue, asked Mr. Ruschke about a recent application on Chatham Street. Mr. Ruschke discussed the drywell system that was installed due to the poor soil conditions.
2. Jacqueline Fusco, 26 Mitchell Avenue, was sworn in to give testimony, expressed her objection to this application, and stated that there are not any hardships. She also said that it does not promote the public good. Mrs. Fusco also opined that the increase in tax revenue will be offset by increased costs to the School District. She also said that the subdivision will result in overcrowding and addressed stormwater management.

3. Aileen O'Donovan, 9 Gates Avenue, was sworn in to give testimony and expressed her objection to the application.
4. Chris Johnson, 24 Jay Road, was sworn in to give testimony, expressed his objection to the application, and addressed tree removal.
5. Susan Hallderson, 27 Mitchell Avenue, was sworn in to give testimony, expressed her objection to the application and said that the only benefit of the application is a financial benefit to the applicant.
6. Richard Daingerfield, 31 Gates Avenue, was sworn in to give testimony and expressed his objection to the application. He noted that there are water issues on the property and said that some remediation measures have not worked in the past. Mr. Daingerfield said that squeezing another house is not in keeping with the neighborhood.
7. Amy Huaser, 10 Gates Avenue, was sworn in to give testimony, expressed her objection to the application and advocated for having one home rather than two on the lot.
8. Mike Slattery, 24 Gates Avenue, was sworn in to give testimony and expressed his objection to the application.
9. Janet Lima, 12 Mitchell Avenue, was sworn in to give testimony, expressed her objection to the application. She noted the delays in the hearing schedule and alleged that the delays were due to the election cycle. She also challenged the eligibility of new members to vote on the application. Mrs. Lima also expressed her objection to overdevelopment, and noted that the applicant ran for office on a platform of opposition to overdevelopment. She also addressed drainage issues.
10. Stefanie Stuart, 11 Mitchell Avenue, was sworn in to give testimony, expressed her objection to the application and said the only benefit is to the property owner. She also discussed the potential negative impacts of the development.
11. Joe McManus, 9 Gates Avenue, was sworn in to give testimony and expressed his objection to the granting of variances for 15 Gates Avenue. He noted that the proposed lots do not conform to the R4 zoning regulations, and there has not been any evidence of economic hardship. Mr. McManus also stated that the subdivision does not benefit the neighborhood. He cited the 12 Williams Road application as a precedent for the rejection of this application.
12. Beverly Salierno, 37 Mitchell Avenue, was sworn in to give testimony, expressed her objection to the application and expressed concerns about stormwater management. She also said the new homes will not fit into the character of the neighborhood.
13. Kathy Abbott, 40 Wynwood Road, was sworn in to give testimony. She stated that the applicant asked two Class IV members of the Planning Board to recuse from the hearing

for the same conflict of interest that Mr. Sullivan, Mr. Duemling and Mr. Miller have. Mrs. Abbott gave the reasons why she had recused from the application when she was still on the Planning Board.

14. Peggy Daigerfield, 31 Gates Avenue, was sworn in to give testimony and expressed her objection to the application. Mrs. Daingerfield said she supports the testimony given by previous objectors. She also noted that many of the objectors have lived in the neighborhood for over 20 years and she hopes the Planning Board will listen to the neighbors.
15. Edwin Lima, 12 Mitchell Avenue, was sworn in to give testimony and expressed his objection to the application. He noted that he agrees with the other objectors. Mr. Lima also commented on prior stormwater management systems that have failed in the neighborhood.
16. Brian Hauser, 10 Gates Avenue, was sworn in to give testimony and expressed his objection to the application. He asked what the contingency plans are if the stormwater management system fails. Mr. Hauser also stated that the current zoning laws were adopted for a reason. He also stated that the application offers no benefit to the neighborhood, and the only benefit is a financial benefit to the applicant. Mr. Hauser asked the Board to vote to protect the neighborhood.
17. Susan Huke, 19 Gates Avenue, was sworn in to give testimony and expressed her objection to the application. Mrs. Huke stated that zoning laws should be enforced. She stated that there is no proof that the application furthers the goals of the Municipal Land Use Law or that the benefits of the application outweigh the detriments. Mrs. Huke also commented on the buildability of the subject property. She also said that the application is only a benefit to the applicant and does not enhance the neighborhood. Mrs. Huke also noted that Mr. Lois intentionally stalled the hearing until he was elected to the Township Committee and could influence appointments to the Planning Board. For sake of the integrity of the hearing, Mrs. Huke said that Mr. Sullivan, Mr. Duemling and Mr. Miller need to abstain from voting.
18. Megan Schaaf, 22 Garden Street, was sworn in to give testimony and expressed her objection to the application. She stated that the proposed homes will be out of character in the neighborhood and will only benefit the applicant. Mrs. Schaaf noted the unity in the neighborhood opposing the application.
19. Virginia McShane, 11 Gates Avenue, was sworn in to give testimony and expressed her objection to the application. She said that the application does not meet the criteria for the variance. Mrs. McShane also commented on the detriments that the application will have on her property. She asked the Board to be objective regarding the application and to vote against it.
20. Meredith Mintz, 14 Gates Avenue, was sworn in to give testimony and expressed her objection to the application.

21. Stewart Carr, 3 Crestwood Drive, was sworn in to give testimony. He stated that he agrees with the speakers who have opposed this subdivision request. Mr. Carr said that Mr. Sullivan and Mr. Miller are serving in a quasi-judicial role, and he is comfortable that they would recuse from voting on this application if they thought they could not be unbiased.
22. Joseph McShane, 11 Gates Avenue, was sworn in to give testimony and expressed his objection to the application. He also addressed his concerns regarding the proposed stormwater drainage system and said it increases the likelihood of flooding in the neighborhood.
23. Frank Delaney, 13 Jay Road, expressed his objection to the application.

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

Mr. Sullivan noted the time and inquired about continuing the meeting or carrying the hearing to March 7th. Mr. Warner said that they Board may continue, and it is at the discretion of the Chair and the Board to continue. Mr. Kline and Mrs. Stone-Dougherty gave estimates of how long their summations would take. Mrs. Stone-Dougherty also noted that she is unavailable on March 7th. The Board members supported continuing.

Mr. Kline gave his summation. He thanked the new Board members for listening to all the recordings so that they could be eligible for this hearing. Mr. Kline also addressed the proposed stormwater management, and pointed out that it will be unknown if the systems will fail until it is too late. He further noted that there will be two unproven systems rather than one. Mr. Kline further noted that the lots will be undersized, which will result in three adjacent undersized lots. He further noted that at the Site Visit, the property was still wet from rainfall that occurred a week earlier. Mr. Kline stated that there are not any benefits from this application that justify the variances. He also quoted the Township's Land Use Plan's warning regarding the tear-down trend.

Mrs. Stone-Dougherty thanked the Board for their time and energy listening to this application. She addressed the number of neighbors who have not vocalized objections to the application. She also addressed the variances, and stated that the proposed lots will fit in with the neighborhood. Mrs. Stone-Dougherty said that 8 lots within 200 feet of the subject property are undersized. She further stated that the extent to which the proposed lots are undersized is de minimis. Mrs. Stone-Dougherty also addressed the proposed stormwater management system and said that the plan is very well thought out. She also noted Mr. Ruschke's thorough review of the stormwater management design. Mrs. Stone-Dougherty further noted the planner's testimony regarding the ways in which the application satisfies the positive criteria for the variances.

Mr. Sullivan asked Mr. Ruschke to comment on the stormwater management system and if the design is untested. Mr. Ruschke said that there is some miscommunication based on a comment

in a review letter. He also stated that underground detention of stormwater is very common, just not necessarily common in residential areas.

Mr. Sullivan noted the concerns neighbors have about stormwater. He asked if Mr. Banisch has any advice regarding the variances. Mr. Banisch stated that the Board's balancing test is if they believe that the purposes of the Municipal Land Use Law were properly cited because they are being advanced, and if there are benefits to this application that outweigh the detriments. Mr. Banisch said that the benefits appear to be related to stormwater management, and the record indicates that there would be benefits whether the application were for one house or two.

Mr. Warner stated it is his understanding that the application is for a minor subdivision and the variances are for lot area, minimum lot area within depth of measurement, and a technical variance for a bulk variance.

Mr. Choi addressed the balance of positive and negative criteria. He said the non-conforming lot is the most significant variance requested in this application. Mr. Choi further stated that the positive criteria needs to materially outweigh the negative criteria.

Mr. Sullivan said he appreciates not wanting to have two cookie cutter houses next to each other. He also said that if the application is approved, Mr. Ruschke will hold them to the design as approved.

Mr. Miller said he appreciates the neighbors' concerns. He said he visited the neighborhood, and found that the existing home looks out of place. He also noted that the ways in which stormwater is managed have improved over time.

Mr. Choi asked there has been discussion of a theoretical McMansion that could take the place of this proposed development, and asked if the Board should consider that hypothetical development. Mr. Warner said that the Board should consider the merits of the application as presented and how the criteria are satisfied. He also said that the applicant's professionals presented testimony that the application presents a better zoning alternative than an "as-of-right" application.

Mrs. Ozdemir said that the applicant is proposing an unprecedented, untested, high-maintenance storm management system which consist of eight inlets and five septic tanks to serve as storm detention tanks, which she said is extremely dense for the size of property. Mrs. Ozdemir also said that granting the subdivision and variances will increase the Township's population and will not be in the best interest of the neighborhood. The application will also reduce open space. Mrs. Ozdemir also said granting the application will set a bad precedent.

Mr. Sullivan said that the application comes down to a planning decision. He also commented on lot size in the R-4 zone, and the size of lots in that zone has been discussed for a long time.

Mr. Miller said that the Township has seen a lot of change with large houses being built on lots. He also commented on the redevelopment of Rolling Hill when newly constructed large homes were juxtaposed against older, smaller homes. Mr. Miller also said that the application should be

judged on its merit and not on the name of the applicant. He further stated that to question the integrity of any Board member is short sighted.

Mr. Duemling said that a larger home would be inconsistent with the neighborhood. He also acknowledged the neighbors' concerns about stormwater.

Mr. Sullivan said that he has never known ratables to be a determining factor when an application is decided. He also acknowledged the emotions people feel for the Township, and said that the Board has to consider the positive and negative criteria.

Mr. Miller moved to grant the application with all the stipulated conditions. Mr. Duemling seconded the motion.

Roll Call: Mr. Sullivan, Aye; Mr. Choi, Nay; Mrs. Ozdemir, Nay; Mr. Duemling, Aye; Mrs. Felice, Recused; Mr. Hoffmann, Recused; Mr. Kahn, Absent; Mr. Hamilton, Recused; Mr. Miller, Aye; Mr. Neibert, Recused.

Mr. Sullivan announced that the next meeting will be held on March 21st at 7:30 PM at the Municipal Building.

Mr. Miller moved to adjourn at 11:25 PM. Mr. Duemling seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary