

Township Of Chatham Board Of Adjustment
February 18, 2010 **Regular Meeting**

Mrs. Hough brought the meeting to order at 7:30 P.M with the reading of the Open Public Meetings

Roll Call:

Mr. Lawrence Dalziel x	Mr. Parker Godwin	Mr. Karl Schmidt
Mr. Glen Nelson	Mrs. Francine Alcorn	Mrs. Kathryn Kenny
Mrs. Therese Hough	Mr. Philip Vivona, Alt.#1	Mr. Joseph Contorno, Alt.#2 x

OATH OF OFFICE:

Mr. Shaw said that Mr. Nelson's Oath of Office had already been taken care of.

MINUTES: December 17, 2009 - Motion to accept the minutes made by Mr. Nelson, seconded by Mrs. Alcorn. Roll Call – Schmidt, Nelson, Alcorn, Kenny, Hough, Vivona, Godwin - in favor.

MEMORIALIZATION

Anthony Piscioti
42 Southern Blvd.,
Block: 68 Lot: 2.03.

Calendar BOA 09-68-2.03

Mr. Shaw gave a brief summary of the Resolution.

Mrs. Hough asked for a motion to approve the Resolution as presented. A motion was made by Mr. Godwin seconded by Mr. Nelson. **Roll Call** – Godwin, Nelson, Schmidt, Alcorn, Hough, Vivona - in favor.

Village Supermarkets
126.04
641 Shunpike Road
Block 48.17 Lot 126.04

Calendar BOA 08-48.17-

Mr. Shaw gave a brief summary on the Resolution for a further probationary term thru February 28, 2011.

Mrs. Hough asked for a motion to approve the Resolution as amended. A motion was made by Mr. Godwin seconded by Mr. Alcorn. **Roll Call** – **Godwin**, Nelson, Schmidt, Alcorn, Hough, Vivona - in favor

Chatham Day School
700 Shunpike Road,
Block 135, Lots 1 & 9.
Steven Schaffer, Attorney

Calendar BOA-09-135-1 & 9

Mr. Schaffer said they had sent letters to the Public. What happened was that the letters that went out to the Residents within 200 feet was correct but the publication in the newspaper contained an error. The Borough of Florham Park appeared to make the notice deficient and therefore we could not proceed tonight. I felt I should come and leave a copy of a letter of apology from the newspaper. My

apologies to the residents that came this evening as well as this Board. As I understand it we have now been moved to the March 18th agenda. I will publish for that if that be the case. Hopefully this can be carried without resending certified letters.

Mr. Shaw – it would be appropriate to have this matter carried to the March 18th meeting with the provision that there will be no further individual property notice but there will be notice in the official newspaper.

Mrs. Hough asked for a motion to be made to carry the application to the next meeting without further individual notice but with notice published in the Official Newspaper. Mr. Nelson made the motion, Mrs. Alcorn seconded. Roll Call: Hough, Godwin, Nelson, Alcorn, Schmidt, Vivona, Kenny

Mr. Shaw wanted to note that for the 18th it is anticipated that you should have a fair amount of time for presentation and you should try to take advantage of as much time as possible. We will also address the overall time periods required for the application so we can try to get a handle on what the hearing issues may be.

Mr. Schaffer – said he had copies of a letter of apologies for the public.

**Michael Rosselli & Glen Kashuba
Chatham Day School
700 Shunpike Road
Block: 135 Lot: 1 & 9.
Chatham Day School**

Calendar BOA 09-135-1 & 9

Mr. Shaw said there was correspondence for the counsel requesting that what is currently an appeal and interpretation be carried until the March 18th without further notices. We have an extension through March 31st. It is anticipated that these issues should roll into the actual application by Chatham Day School but they are still review paperwork. At this point it would be appropriate to have a motion to have this application carried to March 18th meeting without further notice.

Moved by Mrs. Alcorn, seconded by Mr. Nelson - Roll Call: Hough, Godwin, Nelson, Alcorn, Schmidt, Kenny, Mr. Vivona.

**Christopher & Gina Zarro
125 Longwood Avenue
Block 72, Lot 7**

Calendar BOA-09-72-7

Mr. Ed. Collins, Attorney (from Cuyler Burk, P.C)

Mr. Collins said it was his understanding that the Zarro's contact their neighbors to investigate the possibility of purchasing some additional property from the Curcio's.

Mr. Joseph A. Curcio, 80 Highland Ave., sworn - said he was the neighbor to Mr. Zarro. Within the last week or so the Zarro's had spoken with him regarding the purchase of a portion of his property so that they could cure the need for a variance. He advised them that he was not interested in selling any part of their property or adjusting the boundary of the property. Mr. Curcio advised the Board that he had no objections to the proposed additions on the Zarro property. When asked what he thought on this matter he replied that he respected the Board of Adjustment and the purpose that they serve for the Township, however, we do not object to the addition. We would rather see it completed. This house was empty for almost 2 years and we would be happy to see our neighborhood get back to normal.

Mr. Shaw – just for my edification – yours is the property with the bocce court?

Mr. Curcio – the horseshoe court is not used so much anymore and so we are going to take the stakes out and make it a bocce court.

Mr. Donahue, architect was recalled.

Mr. Donahue said at the last meeting you had asked for other design options/considerations. The Zarro's asked that I look at the plan and the site. I broke it down by North side (front). Only allowed a 5 ft expansion which didn't allow for much of anything; South side (rear) East side (to the left as you face front) limited again by the side yard setback and the fireplace – which allowed roughly 6.5 ft of addition on that side at the worst point. The Chimney for the fireplace limits the expansion unless they were to rip the fireplace out; West (right side as you look at house.) where they have the most space to do an addition because of the setback would require an expansion of the lower level with an elevated addition because of grade change. This side of the house is where you pull up the driveway; turn 90 degrees to get into the garage. To put an addition there you would have to have an elevated addition or would have to expand the basement as well. This would reduce the size of the driveway and the turn into the garage difficult if not impossible. Back to the South side (rear) where the proposed addition is – this proposed addition takes advantage of the ground floor as well as the plumbing/vent lines etc. for the master bathroom which is located where the smallest bedroom is which is directly over the kitchen area. This makes it possible to not to have to relocate plumbing. It allows the main living area to be improved by providing a family room adjacent to the living room. It also provides for a master bedroom above. In my opinion this option is the least destructive to the site in turns of visual impact on the adjacent neighbors. I think this probably the most logical design.

Mrs. Hough – if you were to do an expansion to the west side of the house couldn't you put in a front facing garage.

Mr. Donahue – you could but the plan was not to expand the garage, which would incur additional costs, additional footprint etc. They would have to expand a level of the house that they were not looking to expand. They are trying to do a minor addition to the house. The visual impact would be from the side and the rear. The visual impact now is in the rear of the house.

Mrs. Hough – I understand what they were trying to do. What I am saying is there are a lot better ways they could have gone about renovating this house. No doubt about that.

Mrs. Shaw – was there some testimony regarding the type of roof?

Mr. Donahue – the plans showed a hip roof but a gable roof has been built. What it came down to is that the owner, not understanding the plans, didn't realize what they were getting. When the contractor spoke to them about it they thought they would like the look of a gabled roof. This allowed a large window in the bedroom which allowed more light. If they had a hip roof they could not do that.

Mrs. Alcorn - the plan shows 3 windows.

Mr. Donahue – the plan also shows a hip roof.

Mrs. Kenny – when you change a roof line like that do you have to present another plan to the building department. Mr. Donahue – said you would.

Mr. Donahue – the last time we were here you had suggested columns. They are more decorative.

If columns are introduced you are adding more to the ground floor level in the setback area. The owner doesn't have any objection but that introduces another element in the setback.

Mr. Godwin – assuming the columns did go to the edge and to me it seems like it would be interfering with the windows. I think it would be better off with the bracket.

Mr. Hough. – where it shows the side view with the brackets is that 1 ft. 8 inches.

Mr. Donahue– on one corner it is that. The left side elevation it is 2 ft. 8 inches.

Mrs. Alcorn – asked about the paint.

Dr. Zarro – haven't decided yet. White trim around the windows.

Mrs. Kenny – questions re Gable opposed to Hip Roof. I remembered the comment where the roof was switched because this was easier to take down if need be.

Dr. Zarro – the contractor told us, once we found out about the variance, he said if we did it and had to cut the house back two feet that would be possible with a gable but impossible with a hip roof.

Mrs. Kenny – the gable roof is bulkier and adds to the bulk of the house.

Mr. Donahue – the question asked related to visual impact. My comment was visually you have more of a vertical surface with a gable roof as opposed to a hip roof which steps back away. It should be noted again at the point where we are dealing with a setback, which is the Boards concern, it is just a small corner of that is questionable.

Mr. Schmidt - I appreciate your testimony about north, east, west but I am not sure that that addresses the question that we asked which is going south very well may be the best alternative but I think the real question is is there an alternative to what you have drawn and showed on paper here for the addition going south that will either minimize or eliminate entirely the need for a variance.

Mr. Donahue – this is the only design that works achieving the homeowners goals. One cannot design this differently to minimize or obviate the need for a variance.

I think, other than cutting the corner off to meet the setback line and coming up with a strange bedroom... This bedroom is not much larger than the largest bedroom in the house. This is still a modest sized bedroom. Again my comment about the plumbing situation, taking advantage of putting the plumbing in a small bathroom, still allow a passage thru to this other bedroom and having the plumbing directly above the kitchen. I think other than cutting the corner off, really is the best. I did not draw this plan but this is probably the plan I would have prepared as it makes the most sense. I give the architect credit for coming up with a sensible solution.

Mr. Schmidt - can you not run the plumbing without getting a variance. Do you need the variance to run the plumbing?

Mr. Donahue – no you don't need a variance for the plumbing. You take the space for a master bedroom but if you put a master bath there you would have either a gigantic closet and still have a small room on the other side. The idea is that you are taking this whole space above this enclosed porch and turning it into a master bathroom and then taking over the smallest bedroom in the house and turning it into a master bedroom. It happens to fall right above the kitchen.

Mr. Schmidt – I understand that but again I go back to the question... there is no other alternative that you can draw on. My understanding from previous testimony is that if you were to make the room a foot less in terms of width that would obviate the need for a variance. There is nothing else you can draw here that would make a master bedroom without the need for a variance? Is that your testimony?

Mr. Donahue – I think the answer to the question is that I could draw something where I could fit the corner and would create a master bedroom that probably smaller than the existing bedroom. Technically is it a master bedroom, probably for the sake of the name because the master bath you want to connect to the master bedroom and there would be no way to connect the master bathroom to the existing bedroom and still get this bedroom together. To create a bedroom of this size, which about the size of the existing bedroom and have it attached to a master bath I think the only way would be to clip the corner. It would be a strange cut off to the building.

Mr. Schmidt – how much of that corner would have to be cut off.

Mr. Donahue – I believed the testimony from the last meeting was approx. 24.9 sf +/-.

Mr. Zarro - even if we went straight across with the lower lever, the lower level existed non-conforming so I think we would still need approval.

Mr. Godwin – my take is that regrettably as it's done without the proper variances, for whatever reason, given that I believe it is our charge to look at this as a brand new application and nothing being done. I look at it and I look at the small amount of encroachment and I can't imagine that I would deny the application for a variance given all the positives that come out of it. Other than it overshadows the bocce court, which is the only disadvantage I can see here. Other than that I don't think the encroachment is all that great. I think its an opportunity of keeping a unique house within the township with relatively minor changes to it which don't impact very much, virtually zero from the front and a little to the side/back. I don't see any problem with it.

Mrs. Alcorn - I believe that too. There is obviously support in the neighborhood because people want to see the house lived in, not vacant. What is done is done but with all the other circumstances it is a little more doable.

Mr. Schmidt – I have the opposite view. I am disappointed that there wasn't another remedy offered tonight. I think it is not our job to provide a master bedroom vs. a bedroom in a particular location. I do believe that if you look at the house there may have been something else that could have been done. I haven't heard you testify here tonight and say that you had looked at these 3-4 alternatives since our last meeting and that it specifically needs to be in this location or the other bedroom cannot become a master bedroom. That in fact is a process we go through when we consider these things and that is not what we will go through now because it was built. While I am sympathetic that the applicant did not understand the zoning regulations I would venture a guess that we have had approximately 100 permits a year and dozens of variances before us and 150 people seem to understand that. In light of not having any other remedy presented to us and it's essentially an up or down vote. I find myself in a very difficult situation-On the behalf of the other 150 people who did it the right way.

Mrs. Hough asked if there was any other testimony that the applicant wanted to offer. There was none. Mrs. Hough then asked if there were any other questions from the public – there were none. Public portion was closed.

Mrs. Hough asked if she was correct – this is operating under a C2 variance. She was advised that it was.

Mr. Shaw – they also offered it as a C1. They had argued both.

Mrs. Hough asked for comments from the Board.

Mrs. Alcorn – I tend to agree with both of you because I don't agree with the course of events that have led up to this. I think it was unfortunate. I am in conflict about what was and what wasn't known. I do agree as far as benefit to the neighborhood, the house has been vacant for several years and was considered un-saleable because no one really wanted to live in the house in its current condition. I don't think the lot was big enough for a builder or someone else to come and tear it down and put a new house up. A vacant house in the neighborhood really isn't good for anyone. Again I don't believe with how this was done and I think there could have been other alternatives but in the whole scheme of things it is a pretty modest addition and it is very modestly over the setbacks. I think perhaps the benefits outweigh the detriments.

Mrs. Hough – for my part would say that I am more in Mr. Schmidt's corner than anything else. We have had applications similar to this – the scale has been bigger, but the basis of the application is basically the same. To me, I cannot see the justification for a rear addition and meeting a C2 variance requirement. There is no benefit to anybody except the property owner. I can't see how the C2 variance requirements are met. I think the purpose of setback variances are something that have to be maintained. It is for the benefit of the neighboring property owners, that there is no intrusion on them, their space etc. I think if we start considering these variance requests we are going along a bad path. Again I don't see that the applicant has really met the burden to sustain the variance.

Mr. Godwin – the only counter I would say to that is that I believe that there is benefit to more than just the applicant. I think there is a benefit to the town in terms of housing stock and improving a 2 year vacant house that probably without some kind of addition isn't going to move at all. I believe the analysis that the lot is such that no one will tear down and put up something that would sell – its is not likely that what they would be able to construct on the lot would be an in demand new home. In keeping the original flavor of the older home yet improving it with a modern inside is a benefit to the community as a whole rather than having a little blight in the middle of the area.

Mrs. Hough - all I am saying, to me, it's just another chip in the way of the spirit of the ordinance and the zone plan. I think that the proofs have not been met.

Mr. Godwin - As I specifically said, I can't imagine if they had come with this plan to begin with that I would have said no to it or the amount of encroachment. I understand your concern about the slippery slope, I don't like the fact that we have to do it after the fact, I would prefer it would have been done up front. It just seems to me that the only way to make this less would be practically gutting the entire inside of the upstairs of the home in order to reconfigure everything.

Mrs. Hough – my last word on the subject is that it doesn't make any difference to me that it was already built. My point is that had this been a new application – we have had applications with massive requests for rear additions, and again, we could not justify that. To me there is no difference between this and that except in the scope/scale of the project.

Mr. Schmidt – I would add that we have seen consistently the ability or request to build above an existing first floor structure. Without going down a slippery slope of counsels opinions of how hard or easy we are, I would suggest that based on last week, the applicant that came after this applicant had to raise in a certain manner. They go straight up and push into a setback but do not push further into it. I can't recall having an intrusion into a setback on the second floor that was cantilevered further out into the setback.

Mrs. Kenny – I hear everything you are saying and I think this is a tough one. It is tough for me because I am very supportive of modest revisions vs. mc mansions. This is again someone who is

trying to make a modest addition. If it was a 4 bedroom 3 bath it would be different. This is a 3 bedroom 2 bath addition which is not huge. I think it's a minor encroachment and I think if the house was just twisted it would be fine. To me there seems to be plenty of room around the property. I still keep feeling that maybe this would have developed in a different way if it hadn't already been done. The other thing I would say definitely if there were neighbors here saying they did not like and didn't want it that would have a bid effect. But they are not. In fact they have said they want someone in the house. So I have to say I am leaning toward, given the amount of the encroachment and seeing the community where all the houses are not 2-3 million dollar houses, this is something going forward that will be good for families that can't afford the expensive house.

Mrs. Hough – if we are all finished would someone like to make a motion?

Mr. Ruschke - at the last meeting my two comments on the application was first to pursue additional property to purchase. The other comment I had was that an updated survey be provided given that there was some inconsistency between what your original application was vs. what he came in with and telling us what the numbers were. We don't have a final or a property survey showing the actual encroachments. I am concerned that we are voting on something where I am not 100% confident on the numbers. We are talking inches but I am still not comfortable.

Mrs. Hough – the plans that we have are dated August 2009. Have there been changes to the plan since that.

Mr. Ruschke - the planner was actually taking the surveyors file and extracted himself the actual numbers. Frankly in my opinion the planner should not be doing that. Only a land surveyor should be making those presentations. We did provide a survey but it doesn't show any setbacks lines to the structure in the rear. I don't feel confident that the numbers being presented are the actual data.

Mr. Godwin – are you recommending that a new survey be done?

Mr. Ruschke – yes, or a survey that is signed and sealed. References should be made to a site plan. At the prior meeting the planner then questioned other dimensions. My comment was just getting a survey that actually depicts what the setback is.

Mrs. Hough – these plans that we have now (architectural) these are the plans or the proposal.

Mr. Shaw – it seems like there is a condition of approval or prior to action of the board, it is up to the board to decide how they want to proceed, we will need to have revised architectural plans depicting the existing condition and we would need a signed and sealed survey reflecting all setbacks. Bear in mind that the setback lines that are critical for variance relief are obviously to the rear so if there are some discrepancies as to some of the numbers as to existing conditions – the key is accurate measurements. Again it would be up to the board at this juncture either to carry the application with a request that this information be provided or you could consider taking action with the condition that a corrected architectural plans and signed and sealed survey with accurate dimensions be provided as a condition of approval. I would suggest that you would need to have those corrected prior to any action of the Board. We would have to have the exact dimensions to reflect in the resolution.

Mrs. Hough – we either carry it tonight – we can't direct a resolution without the numbers.

Mr. Godwin – I understand, you would not be able to memorize it if the information wasn't given to our attorney and the engineer with enough time prior to the next meeting.

Mrs. Hough – How much of a discrepancy to you think might we be talking about.

Mr. Ruschke – we are talking about 6 inches one way or another. Ultimately these drawings are not signed and if the Board votes favorably then we must amend these drawing before the next meeting. We need signed correct drawings before the resolution can be memorialized. Survey must be accurate as well.

Mrs. Hough – Mr. Collins I want to say that it is really an imposition on this board to have to try to take a vote on an application where we do not have correct plans/surveys. Considering what the application is all about’

Mr. Collins – I think we will take your advice

Mr. Shaw – it’s up to the Board for a decision but in terms of regularity it is always preferential to have the actual plans for what is actually going to be done in front of us when we take action. One of the comments from John was that there were 2 property surveys and we need a copy of a correct sealed survey. To approach the adjoining property owner as to acquisition – clearly one of the comments made at the last hearing was that we should receive a copy of the current survey.

Mrs. Alcorn - I wonder if I could comment. This survey is the current survey. The problem with the survey is that the surveyor never had the one dimension that you are looking for. In his testimony he was testifying to the distance from the porch to the setbacks. The issue with the survey is that one dimension.

Mr. Shaw – the request was that we receive a copy of a current sealed survey. Normally there would be a set of plans with the survey on it.

Mr. Collins – the survey we have here is from June 2009 but they aren’t on those plans.

Mr. Ruschke – there is no rear setback shown.

Mrs. Hough said she was inclined to say that they needed complete plans/surveys before we can make any decisions.

Mr. Godwin – I am going to disagree for 2 reasons. First of all from a plan standpoint we know what they will be so it’s not like its any big surprise. In terms of the survey we are talking inches and nothing is going to happen without the proper survey being done anyway. I am inclined to approve it with the conditions that all the numbers add up and acceptable to the Engineer. It is what it is.

Mr. Schmidt felt that we were making extraordinary allowances. If we were to consider this it wouldn’t be done without both of those being present at the memorilization. The difference is you want it done before. I want the process followed which has not happened since the beginning of this construction. From the beginning of construction our process and our zoning code was not followed. We are not presented with this same application. We are sitting here with something that has not from the first day followed our code ask me again to not follow our normal process. That is my entire issue. That is what we are doing now. We are stepping so far away from what we normally do here and that is all I have requested all along. I don’t disagree with anyone or their comments. It is entirely about the process. That is why we exist. This has not followed the process from day one.

Mr. Nelson – so what you are saying then is if they come back next month with the plans/survey we will approve it.

Mr. Schmidt – I will look at the plans at that point in time.

Mr. Shaw – from what I am hearing there was a request made to have a copy of the current sealed survey prepared for this evening. I think a better course for the board under the circumstances would be that a current survey

Discussion on surveys held.

Mr. Shaw it is the practice of this board to try to make sure that the requested details are provided for a hearing. I am looking at the time period, this was deemed complete on October 5th. I think that under the circumstances it would be better to carry this application for one month to have the drawings/surveys provided as requested. A correct architectural drawings including the roof as you are looking to have approval. Obviously there is not much more. I think the board is potentially being ready to vote once the information is provided. We also request that you write consent for action to the next meeting because we are bumping up on the 120 days. Please confirm that extension in writing to us and we ask that you have the plans/surveys etc. to this Board 10 days prior to the meeting of March 18th.

Mr. & Mrs. Beecher
34 Hilltop Terrace
Block: 68 Lot: 6.

Calendar BOA 09-068-6

Mr. Shaw said we usually just have an overview of what you proposed, then a site inspection which will be followed up at the next scheduled meeting.

Mr. & Mrs. Beecher, sworn

Mr. Beecher said they needed a variance for the front yard setback to construct a covered porch and a second floor addition. We would stay close to the footprint of the existing dwelling. We are putting an addition on the left side.

Mrs. Hough questioned Mr. Ruschke about his comments in his most recent report. Re condition on sheet one of the Architectural drawing be revised and re submitted –

Mr. Shaw noted that the report showed a zoning violation for some retaining walls, etc.

Mr. Beecher – the retaining wall is a landscape wall which is easy to fix by cutting off the end of the railroad tie.

Mr. Shaw – so as part of this application you would eliminate whatever the violation is.

Mr. Beecher agreed.

Mr. Ruschke said it was a minor violation but was had to be noted.

Mrs. Hough – if they are building out over an existing variance condition they need a variance for the entire second floor addition.

Mr. Ruschke – I identify this as two variances. The first is that they are adding a portico and the second one is that they are enlarging the bulk on the second floor.

Mrs. Hough asked for further questions. As there were none she advised that the site inspection would be March 6th at 9 am.

Mr. Shaw noted that this application will be carried until the March 18th meeting.

Motion to adjourn by Mr. Godwin seconded by Mrs. Alcorn– all in favor.

Respectfully submitted

Mary Ann Fasano
Transcribing Secretary