

**THESE MINUTES REPLACE JANUARY 15, 2004 MINUTES PREVIOUSLY  
SUBMITTED, PLEASE REVIEW**

January 15, 2004

The regular meeting of the Board of Adjustment of the Township of Chatham, County of Morris, and State of New Jersey commenced at 7:30 p.m., 58 Meyersville Road, Chatham Township. The meeting was called to order by Vice-Chairperson, Lawrence Dalziel.

Attendance was taken and the following members were present:

Lawrence Dalziel, Chairperson  
James Matthews, Vice Chairperson  
Joseph Cooney  
Peter Pizzi  
Sean Havey  
Parker Godwin

There were no members absent

Also in attendance:

Lewis Wilson, Esq., Board Attorney  
Mary Jo Tucker, Recording Secretary

**The agenda for the evening was as follows: BOA Reorganization; Calendar 03-7-1,  
Scott De Pace; Calendar 03-62-99, Richard and Deborah Hennessy**

The open public meetings statement was read by the vice-Chairperson.

Mr. Matthews was appointed temporary chairman for the Board.

Mr. Matthews asked if there was a nomination for chairman. Mr. Pizzi nominated Mr. Dalziel. Mr. Havey seconded the motion. A vote was taken; all were in favor and Mr. Dalziel was elected chairman of the Board of Adjustment.

Mr. Matthews asked if there was a nomination for vice-chairman. Mr. Godwin nominated Mr. Matthews. Mr. Pizzi seconded the motion. A vote was taken; all were in favor and Mr. Matthews was elected vice-chairman.

The following resolutions were tabled pending completed information provided by the Township.

Consulting Engineer  
Board Counsel  
Planning Consultant  
Board Secretary  
Recording Secretary

The following resolutions were voted on and unanimously accepted by the Board:

Official newspaper: Chatham Courier  
Newspapers and fixing charges.  
Meeting Dates

The December 18, 2003 meeting minutes were approved by the Board with changes noted.

Mr. Godwin and Mr. Havey were sworn in as regular members of the Board of Adjustment by Mr. Wilson

#### **Calendar 03-7-1, Scott De Pace**

Mr. De Pace submitted a new zoning table marked A-22; and revised plans and survey were marked into evidence as A-23.

Mr. Dalziel read the site visit report and it was marked A-24.

In A-23, Mr. De Pace moved the new proposed structure 3 feet away from Valley View abutting the existing chimney. Mr. Pizzi asked what the chimney situation was. Mr. De Pace answered that the previous footprint had the family room 3 feet north on the plan, and since the largest part of the variance was the garage, he moved the entire proposed area out 3 feet and pointed out an area that would be flush with the existing structure.

Mr. De Pace continued to say that that the request for the variance was due to the growth of his family, their lack of rooms and the steepness of the driveway. He said that he measured the actual distance to the road and the measurements were different from what was on the survey and that calculations that he came up with would not need any variances. He added that Valley View was a dead end street and he could not foresee it being widened. Mr. Dalziel said that he did not understand Mr. De Pace's statement that he would not need variances. Mr. De Pace answered that the actual distance that he measured to the road was a lot different than the line that the surveyor drew up. He gave the example that from the 40 ft. 2 inch line which was the back of the garage, he measured 48 feet to the actual road. Mr. Wilson explained that it had to be measured to the right of way and visually it was different.

Mr. Dalziel said that the numbers that were given on new submissions did not match the numbers on the previous sheet in a number of areas. Mr. De Pace said that "apparently only one" person in the Township office knew how to come up with the figure, and he was unable to get in touch with him. Mr. Dalziel said that the previous plan had two stories proposed, now two and a half stories were proposed on A-22. Mr. Dalziel asked if his architect would be able to help him. Mr. De Pace answered that the architect's comment was that every town was different, but admitted that he probably could have answered whether the stories were two and a half or not. He added that he believed it was two. Mr. Dalziel said that the height was changed from 26 feet to 31.5 feet. Mr. De Pace said that the difference was the addition of the slope of the land. Mr. Dalziel asked if that was different than what was proposed. Mr. De Pace said after he had submitted the plans, Mr. Frost had said that he needed an elevation of the land. Mr. Dalziel asked if Mr. De Pace had received Mr. Frost's memo dated January 13 regarding the application. Mr. De Pace answered that he had not. Mr. Dalziel gave Mr. De Pace a copy.

Mr. Wilson referring to Mr. Frost's memo said that assuming that the applicant or the applicant's architect knew the exact area of the lot, both coverages should be calculated which Based on 30-70.11 which was maximum impervious coverage and the maximum principal structure coverage. Mr. Dalziel said that the lot area was shown on the survey. Mr. De Pace said that it was 22,087 sq. feet. Mr. Wilson said that it was plus or minus. He explained that if their area was between 10,000 sq. ft. and 40,000 sq. ft., the maximum impervious coverage would be equal to 4,000 sq. ft. plus 20 percent of the lot area greater than 10,000 sq. ft. He said that in the case of the maximum principal structure coverage that the area for lots greater than 10,000 sq. ft. would be equal to 2,000 sq. ft. plus 6 percent of the lot area greater than 10,000 sq. ft. which would give the maximum amount allowed for the ordinance. Mr. Dalziel said that the coverage information should be included in the application.

Mr. Wilson said that Mr. Frost raised some concerns about the location of the driveway where the two roads converged for planning reasons, drainage and safety. He expressed a preference for it to be further away than where the two streets intersected. Mr. De Pace said if Mr. Frost saw what was actually there rather than depend on what was on the survey, the De Paces were at least 20 feet from the corner. Mr. Wilson said that although it looked that way visually, the Township had a right to improve the road to have a bend

as showed on the survey. Mr. Dalziel said they may have some grade issues. Mr. De Pace said that the driveway they had now had a 20 ft. drop. Mr. Dalziel said that there were several issues with bringing the driveway out to what was proposed—one would be the grading issue, another the safety issue (there's no turnaround) of backing out into an intersection. Mr. De Pace said they would put in a turnaround. Mr. Dalziel said there was also a drainage issue as to how the property sloped in that area adding that the driveway would be in a sloping surface. Mr. De Pace said he would build up the entrance. Mr. Dalziel asked Mr. De Pace to reiterate the reasons for the variance.

Mr. De Pace said that the reason for the garage being where it was that it needed to be closer to the road. It would mean less ground coverage and would be more aesthetically pleasing to the neighbors and would achieve a more level grade. A minor issue was the morning sun being blocked. He said that Valley View Road was above the grade of most garages so as far as it being seen from the road more than half of the garage could not be seen due to the elevation. He said again that Valley View was a dead end street, there was very little traffic, and there were not many homes on it. He said that it was suggested by Mr. Dalziel that the garage be put on the other side of the house, but he thought that all the problems mentioned would still remain including a long driveway not pleasing to the neighbors. Mrs. De Pace also said that it would block the morning sun. Mr. De Pace said regarding the family room variance three feet towards Mountainside Dr., bedroom, master bath and closet upstairs, that the intention of the process was to have a master bedroom with bathroom, and if the 3 feet were chopped off they would have a small bedroom. Mr. Dalziel commented that proposed was 20' by 20'. Mr. De Pace said that it was 20' by 20' but it included the jog out. He continued that the family room on the first floor was not just that room; the kitchen was very small and the kitchen table would then be part of the family room. He said that his neighbors were 40 ft. or less to Mountainside Dr. He said that until they had a variance with finite numbers they were not quite sure exactly whether they wanted a Cape Cod style in the front or a Colonial. Mr. Matthews asked if the room sizes would change. Mr. De Pace said that in the front they would. Mr. Dalziel said that the Board did not normally act on one or the other. Mr. De Pace said that he preferred the Colonial design that was submitted this evening. Mrs. De Pace added that they were having a baby in May; she loved Chatham, their neighbors. She added that they have looked into everything, but there was nothing in their price range. She said that this was the best option for them, and she felt it was important for their family to have a larger kitchen and family room.

Mr. Pizzi asked how moving the driveway to the other side of the house blocked the morning sun. Mr. De Pace said that if the garage was built where the existing driveway was, that was where the morning sun and the afternoon sun occurred. Mr. Pizzi asked about the other side of the house as far as putting in a driveway. Mr. De Pace said they would be 15 to 20 feet slope down the driveway. Mr. Dalziel asked if he would be removing his existing garage. Mr. De Pace answered yes. Mr. Dalziel asked if the one story addition would be removed. Mr. De Pace answered yes. Mr. Dalziel said that in terms of configuring the house on that end of the property there was nothing driving the shape of the addition in relation to what was currently existing. Mr. De Pace said that one of the main concerns was that the kitchen table should be open to the kitchen and the

family room and that was moved, the opening would be closed up. Mr. Dalziel said there was nothing about the existing construction that was driving the house towards the street. Mrs. De Pace said that they were thinking in terms of cost and speed. Mr. De Pace said that they needed a variance in the other area as well. Mr. Dalziel commented that they may need less of a variance. Mr. Dalziel asked that the De Paces keep in mind that the variance that they were asking for was 50 percent of what was required. He said that initially the drawings submitted made it appear as though the addition was going in that direction because that appeared to be the only side they could go to. Mr. De Pace said that the foundation was already there and that it would be utilized. Mr. Dalziel said that it appeared that there was nothing about the garage and first story link that was driving the addition towards Valley View. He said that's where the 27.6 ft. variance request (versus 50 ft. required) was coming in. He said that if it were to somehow be re-evaluated such that the family room and the garage would be incorporated more where the driveway was that the variance may be more in the 6 to 8 foot range than 25 plus 6 foot range. Mr. De Pace said that it would be a huge expense and that that a height variance would come into play. Mr. Dalziel again mentioned the safety hazard of the driveway (proposed). Mr. De Pace said he knew the street and that it was a dead end street with six or seven homes, and that he would not be backing out onto Mountainside Drive. Mr. Pizzi asked what the amount of area was between the driveway and the garage and the one story connecting. Mr. De Pace answered that it was currently shrubbery. Mr. Pizzi asked if the addition was put there further away from Valley View would it be a more efficient use of the envelope available. Mr. De Pace said there would probably be a height variance. Mr. Dalziel said that in his opinion if the existing garage and the first story were gone; there should be a way to approach it diminishing the variances requested. Mr. Matthews added that the driveway would still have the safety issues. Mr. Godwin added that there would be more room then to insert a turnaround. Mr. De Pace said that in order to do what was being suggested the chimney would need to be torn down. He added that the open space by the proposed "kitchen table" would be eliminated if they used that design. Mr. Dalziel said that it was not the board's position to design the home, but there were other ways to approach the plan that would minimize or reduce the variance(s). Mr. De Pace asked if it helped that a home was built across the street, 40 feet (16 Mountainside Dr.) from the street as a brand new home.

Mr. Robert Ripp, 16 Mountainside Drive, Chatham Twp, (sworn in) said that he purchased the house after it was built. He said that the zoning map was a certified copy and that he would submit it. It was marked as A-25. He said that his home was not part of a subdivision and that it was an existing home on an existing lot. He said that variances probably were needed before it was built looking at the map. Mrs. De Pace said that they had tried hard to work everything out. She said that her father was an engineer and that he helped the De Paces come up with the plan. She added that she believed it made a lot of sense, and that she wanted to "stay in the house forever."

Mr. De Pace asked if it would help if they included in the variance that the garage would only be one story and that they would also plant trees. Mr. Dalziel said that everyone would like to settle in one place, but life and things change, and the Board needed to respect each piece of property brought in front of them. Mr. Pizzi said that it would be

more convincing if the De Paces spoke with their architect and looked again at the floor plan and other alternatives. He said that it seemed that the proposed jutted out in one direction not perhaps utilizing existing space. He added that if they either found a different way or could adequately explain why they could not, it might help their application. Mr. Matthews agreed. Mr. De Pace asked if the fact that neighbors did not object and actually supported the application helped. Mr. Dalziel said that it meant something but that the Board as represented had other concerns also. He said that there needed to be an examination by the applicant of the issues that were brought to him. Mr. Havey said that in Mr. Frost's memo he pointed out that there were a lot of vacant properties along Long View Ave. that would increase the traffic in the area. Mr. De Pace said that he would not be backing up into the street on Valley View. Mr. Dalziel said that he drove by the De Pace property that afternoon to get another look at the application, and looked at the way the grading worked and the angle of the curve rising to go on Valley View and had concerns. Mr. De Pace asked Mr. Dalziel if he agreed that the current situation was not three to four times as bad. Mr. Dalziel said that the grade of the drive was steeper but the nature of the entrance to the roadway was less complex than proposed.

Mr. De Pace reiterated that Mountainside Drive was a dangerous road. Mr. Godwin stated that Mountainside Drive was a much more difficult roadway for driveway entrance and exit. Mr. De Pace commented that the Board was able to park on Valley View for the site visit but would not have been able to safely park on Mountainside.

Mr. Pizzi asked what the timing of the construction was. Mr. De Pace explained that they were in a holding pattern, and that once they had the Board's approval they could have the blueprints finalized. He added that they started the process 7 months ago. Mr. Matthews said that next month the applicant should come back with either changes or an explanation of why the changes could not occur. Mr. De Pace said he did not see any other way the plans could be changed. He asked if they took a vote tonight and were denied what would happen. Mr. Wilson said that would have to re-submit a significantly different application and re-start the whole process. Mr. Wilson asked the De Paces to contact Mr. Frost and find out what his concerns were. Mr. De Pace asked why Mr. Frost's memo just came out two days before the meeting. Mr. Pizzi said that he had a valid point but still did not address the configuration of the house issue. Mr. Dalziel said that Mr. Frost was saying that if this was approved then a stipulation that he would recommend would be a requirement of a submission of a lot drainage plan to the town along with construction plans so that they could be reviewed. Mr. Wilson said that it was a difficult site and that the Board respected the De Pace's efforts in trying to get it to work.

Mr. Ripp stated that he met the De Paces when he first moved into the neighborhood seven years ago. He added that the home was previously rented to transients and was not really a home. He said that all the work done on the De Pace property had been done by Mr. De Pace. He recommended that the Board consider the Valley View driveway due to the extensive traffic on Mountainside. He added that no one had a better view of the De Pace property than the Rippes, and he completely supported them. He added that he

respected the Board's working with the De Paces. He asked the Board to balance the process versus the needs of the De Pace case and the real impact that the application would present. The Board decided to hold a second site visit on Jan. 31. An extension was granted until the next meeting.

**A five minute break was taken at this time.**

### **Calendar 03-62-99, Richard and Deborah Hennessy**

Mr. and Mrs. Hennessy, and Ms. Karen Luongo (architect) were sworn in by the chairperson. Ms. Luongo said that the project was a two bedroom house on Buxton Road, the eastern side at the top of the ridge. She said that the house had fallen into disrepair and had essentially been vacant for years. She said that Mr. and Mrs. Hennessy had purchased it recently and it needed maintenance repair and was suffering from substandard conditions. She said that they were proposing to take the roof off over the living room part of the house and construct a new roof, enclose the existing upper porch and a smaller area in the front. She said that they were looking at variances for a front yard setback as well as height, which were pre-existing conditions. Mr. Dalziel asked if the Hennessys were currently living in the house. Mr. Hennessy answered that they were.

Ms. Luongo entered two exhibits, both photo exhibits. The first exhibit consisted of six photos showing the existing conditions and it was marked A-16. The second exhibit was a three page exhibit showing neighborhood conditions, photos and tax map marked as A-17. Ms. Luongo was accepted as an expert witness by the Board. She said that the house was a two bedroom ranch house in disrepair both maintenance-wise and structurally. She said that many conditions were undersized and no longer met the current building codes. The house was placed close to the street and had an existing non-conforming front yard setback of 15 feet where 50 feet was required in the R-2 zone. In addition the existing height was 38.2 feet which exceeded the maximum allowed by the ordinance. She said that they were proposing to increase the height to 44.75 ft. She said that the change occurred only at the center of the house where a gable was being changed. The other two sides of the house would essentially remain the same. Ms. Luongo said that there was an existing open porch on the house that they were proposing to enclose. She added that it was an unusual condition because the foundation at the basement actually ran under the porch. It was open on the first floor and was enclosed on the second floor.

Ms. Luongo said that there were currently two living rooms in the house but only two bedrooms. There was one living room on the lower level that came out on grade in the back. She said that they were proposing to relocate the stair to what is now a porch and enclose it which would allow additional bedrooms in the house. She said that they were proposing to add a small addition at the front to allow clear access to open the door before the stair run would begin. She said that there would be a modern open portico at the front which extended four feet in front of it. She pointed to the right of the plan to a small area which was 6 by 4 that they were proposing to enclose to allow a more efficient kitchen adding that existing was quite small and inadequate. She said that the site held

many hardships—it was on the ridge of the property which sloped dramatically at the rear of the house. She said that the site condition contributed to the structural deterioration that occurred. She said that the neighborhood around the property had seen significant upgrades including renovations and re-construction. She said that the hardship relative to the height was that the existing house measured 38.2 feet, but that the street view was 17 feet. She added that the rear of the property was very heavily wooded and sloped precipitously. She said that the ridge of the roof was well below the lowest level of the Hennessy's property so there would be no impact visually on any adjacent neighbors. She said that looking at the submitted photos even in this time of year the house was virtually obscure.

Ms. Luongo showed homes that had undergone new construction to the Board referring to the exhibit. She said that homes in the neighborhood's front yard setbacks coming up on Buxton from Southern Blvd. on the same side of the street were all pretty much at the same setback; all placed on the ridge. She said that they were all consistent with or closer closer to the right of way line than what the Hennessy's were asking for. Mr. Matthews asked how old the house was. Mr. Hennessy answered that it was built approximately in 1950. Ms. Luongo said that the proposed condition asking for would be 24 feet viewed from the street. The proposed height would be consistent with the surrounding neighborhood and was in fact lower than some of the construction around it. She said that a new roof was required; the existing roof was substandard, and the framing was undersized according to the building code. Mr. Dalziel asked what the code issues were other than the roof.

Ms. Luongo answered that the deck in the back showed columns that had to be replaced, the footings were inadequate, the columns undersized and all had to be remediated before the applicant closed on the property. She added that many of the structural points of the building were inadequate. She said that applicants had serious maintenance issues and were unfortunate enough to have a fire occur the day they moved in. She said relative to the front yard setback, the house met all of the bulk requirements. She said that on the site plans the Board would see that the side yard variances were significantly greater than what was required, the same for the rear yard setback. She said that the house was as close to the street as possible to allow for the only construction allowed on the house. She said that the design of the proposed was focused on using and reusing the existing footprint, because new opportunities were prohibited. She added that 25 Buxton Road had a corner garage setback of 10.5 feet, which was closer than the applicant's existing condition of 15 feet. She said that visually the pavement line was an additional 8 to 10 feet in front of the property line. Mr. Dalziel asked if that would be the same case for 25 Buxton. Ms. Luongo said that it was not the same because the garage at the location of the closest setback and the house was actually skewed to the roadway, and that they had a different condition.

Ms. Luongo said that the benefits significantly outweighed the detriments. The property had been vacant for three years before the Hennessy's purchase. It had not been maintained. It was not an asset to the neighborhood in its appearance, the continued vacancy increased the neighborhood problems for safety issues with neighborhood lots

and children, and having a vacant house on a hill. There had been several brand new houses constructed and many additions noting three that had been constructed. The house was becoming an eyesore for the neighborhood and all would benefit from the improvements. She added that they would be taking a structure that had deteriorated and would bring it up to standard using the most stringent and current codes.

Mr. Dalziel asked if Ms. Luongo was aware that the amount of the height variance would put the applicant in a D variance situation. Ms. Luongo said she was not aware. Mr. Wilson said that the applicant exceeded by 10 percent the maximum amount. Mr. Wilson said that at least 5 out of 6 votes would have to be had, and that there would be an enhanced burden of proof citing special reasons.

Ms. Luongo said that special reasons were the uniqueness of the property and the placement of the house on the property. She said that much of the property was undeveloped and the placement of the house spoke to its uniqueness. There were no opportunities to expand in any of the other directions. Mr. Dalziel said that the height was not an expansion issue but an aesthetic issue. Ms. Luongo said that at the site visit the Board would get a better idea of the height issue. She said that there were structural and architectural advantages to having a steeper roof including jetting water and snow better, as well as providing a better aesthetic rather than a flatter pitch. She added that there was some ability to drop the pitch a foot below, but it would not yield as attractive a result.

Mr. Dalziel noted on some of the photos that the house did not look significantly down from the street but that the Board would see it at the site visit. He said that it was a D variance and that special reasons had to support the height variance. Mr. Wilson added that one of the reasons regarding a height variance was not only aesthetics, and visual impact but also a safety standpoint. The reason for the 15 foot from the foundation measurement was also for firefighting reasons.

Ms. Luongo said that the condition already existed on the street as far as height and showed from her exhibit examples. Mr. Dalziel commented that there had been other applications that sought to obtain a height variance and they had specific design issues related to firefighting efforts. Ms. Luongo said that proposed provided one large room accessible from the front of the house, so should there be a fire, with the exception of one bedroom that would be accessible from the driveway platform, everything else could be readily accessible. Mr. Pizzi asked what the height was with the exception of the gable. Ms. Luongo answered 38.2 feet. Mr. Pizzi commented that was a small width of the roof. Mr. Matthews asked if all of the volume was the top of the great room. Ms. Luongo answered yes. Ms. Luongo said that the one advantage that the property had was a very commanding view, and they would like to show that advantage. Mr. Godwin asked about the loft above the great room. Ms. Luongo said that it was a small loft with full headroom approximately 8 or 9 feet wide. Ms. Luongo said that the area above the 38.2 was a triangle that added space 14 feet wide. Mr. Pizzi commented that in a way it mitigated what the applicant was seeking but also made it more difficult to show special reasons.

Mr. Dalziel asked Ms. Luongo what special reasons the volume served to the home other than aesthetic. Ms. Luongo said that in addition to special reasons, advancement of benefits could outweigh the detriments. She said that she believed that benefits that proved aesthetic were harmonious and appropriate and consistent with the neighborhood could outweigh any detriments, and would be a better solution than a home with a flatter pitch that would be more conforming with the 38 feet. She added that the advantages to the neighborhood would outweigh any negative impact. She said that at this time of year the house was virtually invisible. The other issue was the fire issue, but she reiterated that it was accessible.

Mr. Pizzi asked about the nearest rear yard neighbor. Ms. Luongo said that the nearest neighbor was Lot 93, she tried to get a photo and it was impossible because the homes were so far apart. She said that the applicants' rear yard setback was 136 feet and the estimation was that they were at least another 50 or 60 feet further on River Road. Mr. Havey said that according to the tax survey the property showed a frame barn. Mr. Hennessy said that was still there. Mr. Havey asked if the shed on the western part of the property would remain. Mr. Hennessy answered that it would. Mr. Dalziel suggested that the applicant consider reconfiguring the proposed entranceway; he was not convinced that the foyer needed to be pulled out, and thought the architectural effect could be achieved without pulling out the foyer that far. Ms. Luongo said she would look at it, but she said that the foyer was allowed for room for the stairway. She said that the portico was there to provide protection from the weather and from an aesthetic stance to take the new gable and step it down to scale it. She added that the foyer would have to be recentered to hold the door back, but she would look at it. Mr. Matthews asked Mr. Wilson what the requirements were for a portico. Mr. Wilson said that projections citing MLUL 30-96.14 "projections into required yards notwithstanding any other provision of the section, the following may project into any front side or rear yard: uncovered steps leading to the first floor or basement, chimneys and portions of a building including but not limited to eaves, bay windows, balconies, overhangs and coverings over steps provided that no such portion of the building shall project more than three feet into any required side or rear". Mr. Wilson said that the applicant was already in the required front yard to begin with. Mr. Dalziel said that given the proximity of the house to the road, the applicant should evaluate the situation. Ms. Luongo asked if they were to pull the wall back and leave the portico would that be more acceptable. Mr. Dalziel said that he believed they could achieve the aesthetic look without having to go that close to the road.

Mr. Matthews announced that he would not be at the next meeting. Mr. Dalziel asked that the applicant review the requirements for the D variance before the next meeting.

The meeting was adjourned.

The next meeting of the Board of Adjustment will be held Feb. 12, 2004.