

**MINUTES**

**FEBRUARY 17, 2005**

**BOARD OF ADJUSTMENT**

**TOWNSHIP OF CHATHAM**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Mr. Dalziel, called the meeting to order at 7:32 P.M.

He then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Morris County Daily Record and Chatham Courier and by filing a copy with the Municipal Clerk, all in January 2005.

**ROLL CALL**

On a call of the roll the following were present:

Lawrence Dalziel, Chairman  
Therese Hough, Member  
Joseph Cooney, Member  
Parker Godwin, Member

Jesse Benton, 1<sup>st</sup> Alternate  
Timothy Walters, 2<sup>nd</sup> Alternate

Richard Schommer, Jr., Board Engineer  
Lewis Wilson, Board Attorney

Excused:

James Matthews, Vice Chairman  
Peter Pizzi, Member  
Cynthia Phillips, Recording Secretary

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**THOMAS & BEVERLY SALIERNO**

37 Mitchell Avenue  
Block 114, Lot 9

**#04-114-9**

**Bulk Variance**

Present: Thomas Salierno, co-applicant  
Beverly Salierno, co-applicant

This is a continued hearing.

Proof of service was previously submitted.

Mr. Cooney read the Board site visit report dated 2/5/05 into the record.

In response to Mr. Dalziel, Mr. Schommer stated that he had verified that the proposed front yard setback would be 23.6 feet after construction of the portico and questioned if the rear yard setback measurement was 0.1 foot.

Mr. Thomas Salierno, co-applicant, was previously sworn. He stated that he believed the rear yard setback measurement on the survey of the property that they had received when they purchased the lot was incorrect.

Mr. Dalziel stated that the rear yard setback would not be impacted by the proposed application.

Mrs. Beverly Salierno, co-applicant, was previously sworn. In response to Mr. Dalziel, she stated that the existing front yard setback is 28.8 feet and that she believed the proposed front yard setback would be 23.5 feet.

Mr. Cooney stated that, at the previous hearing, the applicants had testified that the proposed extension of the house would be 3 feet and the proposed porch would be 2.2 feet, resulting in a proposed front yard setback of 23.6 feet.

Mr. Wilson clarified that the existing front yard setback is 28.8 feet, the required front yard setback is 25 feet and the proposed front yard setback would be 23.6 feet.

In response to Mr. Schommer, Mr. Salierno stated that there is no overhang over the existing front door.

Mr. Dalziel stated that he believed the proposed front yard setback would be 23.4 feet.

Mr. Schommer concurred with Mr. Dalziel.

Mr. Wilson noted that the rear yard to the existing patio is non-conforming.

In response to Mr. Dalziel, Mrs. Salierno stated that the existing patio is impervious and has been in place approximately 6 years.

Mr. Wilson noted that the patio is described as concrete on the survey.

Mrs. Salierno stated that the patio was actually constructed of pavers.

Mr. Dalziel stated that the applicants must indicate the dimensions of the existing patio on the survey as a condition of approval and also provide details of the proposed construction on a site plan.

In response to Mr. Salierno, Mr. Dalziel stated that the dimensions of the property and the relationship of the proposed construction to the property line must be shown on a site plan as a condition of approval.

The meeting was opened to the public for questions or comments. There being none, the meeting was closed to the public.

Mr. Cooney made a motion to approve the proposed application, with the aforementioned additional conditions of approval, which was seconded by Mr. Benton.

A roll call vote was taken. Those in favor: Mr. Dalziel, Mr. Cooney, Ms. Hough, Mr. Benton, Mr. Walters and Mr. Godwin. Those opposed: None.

The application concluded at 7:52 P.M.

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**JOHN HANNIG**

413 River Road  
Block 63, Lot 24

**#04-63-24**

**Bulk Variances**

Present: John Hannig, applicant

This is a continued hearing.

Proof of service was previously submitted.

Ms. Hough read the Board site visit report dated 2/5/05 into the record.

Mr. Schommer summarized his report and questioned how the subject property relates to the other properties in the area in its proximity to River Road. He added that the revised plans reflect that the side yard setback would be reduced to 17.3 feet and that the zoning chart and table located on the architectural plans must be corrected to reflect that the property is located in the R-2 zone, not the R-3 zone. He questioned how the existing height of the dwelling of 32 feet was determined.

Mr. John Hannig, applicant, was previously sworn. He stated that Page 4 of 5 of the submitted plans sets forth the height of the dwelling.

Mr. Schommer stated that there are no elevations depicted on the plans or the survey so the Board would not know how the height was determined. He added that, although the height would not be impacted by the proposed addition, the Board should still know how the height was determined.

Mr. Wilson stated that he believed a development permit might be required.

Mr. Dalziel stated that the necessity of a development permit would not preclude the Board from acting on the application.

Mr. Wilson noted that obtaining a development permit would be a condition of approval.

Mr. Hannig stated that he had discussed the matter with Mr. Greg Impink and it was determined that a development permit would not be required.

The meeting was opened to the public for questions or comments.

Ms. Susan Zwick, 417 River Road, stated that she owns the property to the west of the subject property, which is the side that would be impacted by the proposed application. She added that both she and her husband support the proposed project.

There being no further questions or comments, the meeting was closed to the public.

Ms. Hough questioned if the Board had agreed on the conditions of approval for the application.

Mr. Dalziel stated that, as mentioned earlier in the hearing, the zoning information must be revised on the plans as a condition of approval.

Mr. Schommer stated that the lot depth should also be corrected or omitted from the plans and that the existing height of the dwelling must be confirmed and reflected in the zoning table.

In response to Mr. Schommer, Mr. Hannig clarified that he would calculate the height of the dwelling in accordance with the Township ordinance requirements.

Mr. Walters questioned what recourse the Board would have should the dwelling height exceed the allowable height for the zone.

Mr. Godwin noted that it would be considered a pre-existing non-conformity and would not require a vote.

Mr. Wilson stated that the proposed construction would not change the location of the foundation and, therefore, would not impact the height of the dwelling.

Mr. Walters made a motion to approve the application, with the above-mentioned conditions, which was seconded by Ms. Hough.

A roll call vote was taken. Those in favor: Mr. Dalziel, Mr. Cooney, Ms. Hough, Mr. Benton, Mr. Walters and Mr. Godwin.

The application concluded at 8:12 P.M.

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**ANTONIO DEMATOS**

1A Lake Road  
Block 130, Lot 15

**#04-130-15**  
**Bulk Variances**

Present: Antonio Dematos, applicant  
Jose Gennaro, licensed professional architect

Proof of service was submitted.

Mr. Dalziel explained the Board's procedure regarding site visits, as well as the meeting process, for the benefit of the newer applicants.

Mr. Antonio Dematos, applicant and Mr. Jose Gennaro, licensed professional architect, were sworn. Mr. Gennaro reviewed his professional credentials and was accepted by the Board as an expert witness.

In response to Mr. Dalziel, Mr. Dematos stated that he had received an engineering report from Mr. Marshall Frost, Consulting Township Engineer, dated 10/29/04.

Mr. Gennaro referred to pages 3 and 4 of **EXHIBIT A-5** which depicts the foundation plan and first floor plan. He stated that the subject property contains a three bedroom two-story dwelling. He explained that his client requires larger bedrooms and additional closet space and, since the dwelling does not contain a basement, he also requires storage space. He stated that they explored different options for expanding the house, and, because of the site restrictions and the zoning requirements, the best solution was to add on to the left side of the property. He further stated that his client is proposing to construct a new two-car garage in that area which would measure 22.4 feet by 26 feet. He added that the proposed first floor would contain a two-car garage, a storage area, a laundry room, a full bathroom, a family room and a study/guest bedroom. He explained that the existing sun room would be rebuilt and renovated. He further explained that the existing study would be reduced in size to accommodate a staircase. He stated that the second floor would contain two bedrooms with walk-in closets above the proposed new two-car garage and that the existing third bedroom would be enlarged with a walk-in closet and full bathroom. He further stated that the existing living room would be converted to a dining room and that the existing kitchen would be shifted to the right side of a house. He added that the existing deck over the sun room would be converted into an eating area. He further added that the existing kitchen and bathrooms would be converted into a great room/living room. He explained that the staircase would be widened to 6 feet in all locations. He explained that a master bedroom, a bathroom, a walk-in closet and a balcony would be added to the attic level.

He added that several windows would be added to the back of the house to enhance the view of Sunset Lake.

In response to Mr. Dalziel, Mr. Gennaro stated that the existing sun room is shown on the survey as an enclosed porch.

In response to Mr. Dalziel, Mr. Gennaro explained that revised plans are dated 11/16/04. He explained that the bottom exterior of the dwelling would be constructed of cultured stone and that the entrance porch would be rebuilt. He added that the exterior of the dwelling would contain clapboard siding and an asphalt shingle roof would be installed.

Mr. Dalziel questioned which drawing reflects the setback lines on the property.

Mr. Gennaro stated that he did not have a drawing which depicted the relationship of the proposed addition/construction to the permitted setbacks. He then explained that his client is seeking variances for insufficient lot depth, where 115 feet is required and 110 feet is existing, for insufficient rear yard setback, where 45 feet is required and 34.6 feet is existing, and for insufficient right side yard setback where 15 feet is required and 14.7 feet is existing.

In response to Ms. Hough, Mr. Gennaro stated that the rear yard measurement varies because the property would be narrower to the back with the proposed addition.

Mr. Dalziel noted that the proposed application would also add area onto the right side of the property so the actual net rear yard setback would be 34.6 feet, which would require a variance for increasing the bulk inside the setback.

Ms. Hough questioned the accuracy of the lot coverage figures submitted with the plans.

Mr. Gennaro stated that he had used the requirements to determine the lot coverage. He explained that the maximum allowable lot coverage is 2,009 square feet, existing is 1,423 square feet and proposed is 2,003 square feet. He added that the proposed addition would replace 580 square feet of existing driveway area.

In response to Mr. Benton, Mr. Gennaro stated that he would also be removing a small portion of driveway area to the left of the proposed addition which is the current back-up space. He added that vehicles would then enter from the side of the house instead of the front.

Mr. Benton stated that the survey must be revised and the driveway areas identified on the plans.

Mr. Dalziel stated that the plans must show the relationship of the existing dwelling and the proposed construction to the allowable setbacks, which would indicate what portion sits within the building envelope and what portion lies within the setback area.

Mr. Gennaro presented and described a series of photographs taken by him on 2/17/05 showing the subject property and the location of the proposed addition which were marked into evidence as **EXHIBIT A-20**.

Ms. Hough questioned if the homeowners association is required to approve any improvements to the property.

In response to Mr. Dalziel, Mr. Dematos stated that he did not know of any requirements or deed restrictions.

Mr. Gennaro stated that he believed the proposed application would present no detriments to the surrounding neighborhood since the property is located at the end of the block. He added that he had done his best to meet the zoning requirements and that he believed the property contains two front yards and two side yards. He added that he would revise the plans to show the setback lines.

In response to Mr. Dalziel, Mr. Dematos stated that his family needed the storage space because his in-laws would be moving into the extra bedroom and that the existing house has three bedrooms and that, after the proposed construction, the house would contain four bedrooms.

Ms. Hough questioned if there were any environmental issues or concerns because of the proximity of the property to the lake and if the master bedroom area proposed for the top floor would be considered a story.

Mr. Schommer outlined the definition of a half-story and a full story, and stated that the applicant must submit calculations to determine the status of the issue.

Mr. Dalziel noted that any revisions required by Mr. Schommer's report must be submitted 10 days prior to the next hearing.

In response to Mr. Gennaro, Mr. Schommer stated that he was not sure if a grading plan would be required since the addition would be over the existing footprint and that he would need to check the ordinance.

Ms. Hough noted that the township website would contain that information.

In response to Mr. Wilson, Mr. Schommer stated that he did not know the status/classification of the property in terms of wetlands.

The meeting was opened to the public for questions or comments.

Mr. Alan Seletsky, 11 Joseph Street, stated that his house is located closest to the subject property and that he believed the wetlands were located on the other side of the lake.

Mr. Schommer questioned if there was a declaration or covenant of deed restrictions on the property.

Mr. Seletsky stated that the original deed restrictions exist but have been ignored because the lake is 10 feet wider than when the original deeds were executed. He added that the subject property is actually located on the corner of Lake Road.

Ms. Marianne Fasano, 10 Lake Road, stated that she believed the proposed addition would be very attractive. She added that the area of Lake Road near the subject property is not maintained and that she did not believe the applicant should be penalized for having a front yard for a road that isn't there.

Mr. Dalziel noted that the Board must adhere to the survey specifications as to whether it was a front yard or side yard setback situation.

Mr. Seletsky stated that occasionally fire trucks would access the road and use the area for pumping exercises, but added that there is no emergency egress for that area.

In response to Mr. Dalziel, Mr. Seletsky stated that the road would be more maneuverable after the proposed construction.

There being no further questions or comments, the meeting was closed to the public.

Mr. Dalziel stated that a site visit would take place on 3/5/05 at 9:00 A.M.

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**CHRISTIAN & JOAN MOGELVANG**

28 Falmouth Road  
Block 88, Lot 9

**#04-88-9**

**Bulk Variance**

Present: Joan Mogelvang, co-applicant  
Michael Cresitello, attorney of the applicant

Proof of service was submitted.

Mr. Dalziel noted that the application would have an objector.

Mr. Michael Cresitello, attorney of the applicant, stated that his client is seeking approval to construct an addition to an existing residence located in the R-4 zone. He further stated that the subject property is an oversized lot with an area of 18,619 square feet, 119 feet of frontage, and 154 feet of depth. He explained that the proposed addition would include the construction of a three-car garage with living space over the garage to include a master bedroom, a master bathroom and a walk-in closet. He further explained that his client is also proposing to convert the existing detached garage into a recreation room, expand the kitchen area and add several covered porches. He added that the subject property meets all the zoning requirements except side yard setback, where 15 feet is required and 10 feet is proposed. He added that the insufficient side yard setback is a pre-existing non-conforming condition which will not be intensified or expanded by the application since the addition is proposed at the left rear of the existing residence. He further added that the maximum allowable building coverage is 2,577 square feet, and his client is proposing 3,520 square feet, which would be an additional 1,003 square feet of coverage, which would also require a variance under the C2 statute. He stated that he is prepared to provide testimony from an architect, an engineer and a planner, which he would defer until the next hearing. He further stated that his client is willing to work with the Board to ensure the application is satisfactory.

Mrs. Joan Mogelvang, co-applicant, was sworn. She stated that she and her husband are the owners of the subject property. She explained that she is a stay-at-home mom with three children and another due on 3/15/05. She stated that her husband is a sales representative for an Italian furniture company and that they have lived at the subject property for 7 years. She further stated that they intend to remain in Chatham and that they want to accommodate their family for now and the future. She explained that they live in an area where the average lot contains 10,000 square feet and their property contains 18,619 square feet. She further explained that the existing dwelling contains three bedrooms and one bathroom upstairs and an 8 foot by 15 foot kitchen, a dining room, a family room, a living room, a guest room/office and a bathroom downstairs. She added that there is also a one-car detached garage on the property. She stated that, with their

expanding family, they need another bedroom, and a master bedroom and bathroom as well as garage space for two cars and to store equipment and patio furniture. She further stated that they propose to expand the kitchen into an eat-in area and that an extra bedroom is needed upstairs because the guest bedroom would be used for her mother-in-law. She noted that the existing dwelling contains a tiny basement, so there is no extra storage space in the house. She explained that they do not want to move because they like the neighborhood and its proximity to schools. She further explained that they will maintain the look of the existing house and that, although tearing down the house was an option, they decided to construct an addition so as to keep the dwelling in character with the surrounding neighborhood.

In response to Mr. Dalziel, Mrs. Mogelvang stated that the family would move out during the construction process.

Mr. Schommer stated that he believed there was the need for an additional variance for grading within 5 feet of the property line and that he was concerned that the back up area would not be sufficient since it extends right to the impervious area. He added that any changes to the plans would impact lot coverage.

In response to Mr. Cresitello, Mr. Schommer stated that a lot grading plan would be a condition of approval and must be submitted prior to construction.

In response to Ms. Hough, Mr. Cresitello stated that the planner and the engineer on the project are the same person.

Ms. Diane Salmons stated that she was representing the objector, Dr. Pinkus, who resides at 1 Plymouth Road.

In response to Mr. Dalziel, Mr. Cresitello stated that they had not yet worked out the issues with respect to Dr. Pinkus' objections. He added that, based on discussions he had with his clients' engineer, he believed that light spillage would not be an issue and that the issue of drainage and the proposed dry wells can be addressed. He further added that the planner would cover the issues related to maximum lot coverage during his testimony.

Ms. Salmons stated that a letter from Dr. Pinkus dated 2/15/05, which was marked into evidence as **EXHIBIT A-17**, outlines his objections.

Mr. Wilson noted that Dr. Pinkus would be welcome at the Board site visit.

Mr. Dalziel stated that the Board site visit would take place on 3/5/05 at 9:30 A.M. He noted that the merits of granting or denying the application must be set and proved within the nature of

the property and that the applicants must demonstrate that, given the nature of the lot, the proposed plan is the most appropriate way to achieve their goals.

The meeting was opened to the public for comments or questions.

Ms. Karen Proscia, 5 Yarmouth Road, stated that there have been several additions in the neighborhood and that she would support the proposed application since the proposed addition would be consistent with the surrounding properties and the existing house would remain intact.

Ms. Karen Swartz, 2 Yarmouth Road, stated that she lives around the corner from the subject property and she believes an addition is preferable since their properties are visible to each other and that she would support the proposed application. She then read a letter from Carol and Bill Bolton, 4 Yarmouth Road, expressing support for the application and the Mogelvangs intention to keep the property consistent with the surrounding neighborhood.

Mr. Wilson stated that the letter presents an evidentiary problem in that the Boltons are not present, so the document would be considered hearsay. He suggested that the Boltons bring the letter with them to the next hearing.

Mr. Dalziel stated that the letter cannot be entered into evidence since the Boltons are not in attendance at the meeting.

There being no further comments or questions, the meeting was closed to the public.

In response to Mr. Walters, Mr. Wilson stated that the additional variances are covered in the notice.

Mr. Dalziel announced that the application of Christian and Joan Mogelvang, No. 04-88-9, was carried to the 3/17/05 meeting with no further notice.

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**JAMES NISSEN & JANET BELOCK**

39 Pine Street  
Block 83, Lot 7

**#04-83-7**

**Bulk Variances**

Present: James Nissen, co-applicant

Janet Belock, co-applicant

Proof of service was submitted.

Mr. James Nissen, co-applicant, and Ms. Janet Belock, co-applicant, were sworn.

Mr. Nissen stated that they are seeking approval to construct an addition on their existing dwelling. He further stated that they have lived at the subject property for 13 years. He explained that the existing dwelling is a five room bungalow containing two bedrooms which was built in the 1920's and is one of the smaller homes in Chatham. He further explained that they are proposing to rebuild the existing front porch, and to add a second story and a half-story for attic storage space. He stated that they would maintain the original character of the house and that they have hired a local architect who is sensitive to those concerns. He explained that the lot is 55 feet wide which presents limitations since the property is narrow and deep. He further explained that they are seeking variance for insufficient front and side yard setbacks, which are pre-existing, non-conforming conditions.

In response to Mr. Dalziel, Mr. Nissen stated that the proposed addition would extend out the back 12 feet and straight up and that the property would comply with the requirements for all other areas. He added that he is unaware of any objections from their neighbors.

Mr. Dalziel stated that the applicant would be increasing the height in the front of the dwelling and that the bulk of the addition is in the front yard.

In response to Mr. Dalziel, Mr. Nissen stated that the porch would be rebuilt in the existing footprint.

Mr. Nissen stated that they need more room for their family and that the proposed plan would increase the amount of bedrooms from two to three. He added that the two large pine trees in front would remain and that the proposed addition would have a minimal impact on landscaping. He stated that he believed the existing garage would not be impacted by the proposed application.

In response to Mr. Dalziel, Mr. Nissen stated that the attic area would be used for storage and that it would be in conformance for height and stories.

Mr. Schommer stated that the applicant must provide evidence, in the form of an addition to the plans that the proposed addition complies with the half story requirements.

Mr. Dalziel noted that the building height must be shown on both the plans and the survey, which must be resubmitted prior to the next hearing.

It was determined that none of the Board members received copies of Sheet 1 of 2 of the plans, which must also be submitted prior to the next hearing.

In response to Mr. Dalziel, Mr. Nissen stated that the rectangular structure located at the rear of the property is a swing set area containing wood chips and mulch.

In response to Mr. Dalziel, Mr. Nissen stated that the shed behind the garage depicted on the old survey had since been removed.

Mr. Nissen stated that he would document the half-story calculations and questioned if it was necessary to provide testimony from professionals in support of the application.

Mr. Schommer stated that the applicant must submit the calculations and it would be up to Board if they wanted to hear professional testimony.

Mr. Dalziel stated that the question of why the addition could not be accomplished within the building envelope must be addressed by the architect.

Ms. Hough agreed that professional testimony would be needed.

Mr. Schommer noted that it would be safer to have a driveway turnaround on the property.

Mr. Nissen stated that Mr. Schommer's point was well taken.

Mr. Schommer stated that the closest point to the side line is the fireplace, which is closer than the 10.9 feet indicated in the variance request.

In response to Mr. Schommer, Mr. Nissen stated that the existing fireplace goes into basement cleanout.

Mr. Dalziel stated that a chimney is allowed to project 3 feet within the side yard and that the existing house is already over 3 feet and the chimney is over that measurement. He stated that the applicant must confirm the dimension from the closest point to the property line.

In response to Mr. Schommer, Mr. Nissen stated that he would clarify the grades on the elevations. He then noted that he had submitted a dry well design but he did not yet know if a

dry well would be needed on the property. He added that the storm water currently drains into the street.

Mr. Dalziel announced that the Board site visit would take place on 3/5/05 at 10:00 A.M. He added that 10 copies of both the revised plans and the survey must be submitted prior to the next hearing.

Ms. Hough made a motion to adjourn the meeting which was seconded by Mr. Walters.

The meeting concluded at 10:12 P.M.

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Cynthia L. Phillips  
Board of Adjustment Recording Secretary