

MINUTES

APRIL 21, 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
James Matthews, Vice Chairman
Therese Hough, Member
Joseph Cooney, Member
Peter Pizzi, Member
Parker Godwin, Member
Jesse Benton, Member

Timothy Walters, 1st Alternate
Deborah Nelson, 2nd Alternate

Richard Schommer, Jr., Board Engineer (arrived late)
Lewis Wilson, Board Attorney
Cynthia Phillips, Recording Secretary

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ANNOUNCEMENT

Mr. Dalziel announced that the Resolution of memorialization for Mr. Antonio Dematos, No. 04-130-15, would be postponed until the 5/11/05 meeting in order to verify the exact location of the sewer easement on the property.

Mr. Dalziel announced that the applications of Christian and Joan Mogelvang, No. 04-88-9, Mr. and Mrs. Noonan, No. 04-91-8, and Glenn and Laura Callen, No. 04-79-8, would be rescheduled to 5/19/05 or another date yet to be determined with no further notice. He stated that members of the public could check either the Township website or the Building Department for additional information.

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RESOLUTION OF MEMORIALIZATION
JAMES NISSEN & JANET BELOCK

39 Pine Street
Block 83, Lot 7

#04-83-7
Bulk Variances

The Board of Adjustment memorialized the annexed Resolution for James Nissen and Janet Belock, Application No. 04-83-7, as amended, on motion by Mr. Cooney and seconded by Mr. Walters.

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

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PETER COVIELLO
21 Spring Street
Block 102.11, Lot 15

#04-102.11-15
Bulk Variances

Present: Peter Coviello, applicant
James DeMarzo, attorney of the applicant

Proof of service was submitted.

Mr. Peter Coviello, applicant, was sworn.

Mr. James DeMarzo, attorney of the applicant, stated that Mr. Frank McTamney, Zoning Officer, issued a building permit to construct a 500 square foot detached garage on the subject property to his client in 12/03. He further stated that, after arranging for the required inspections, his client was advised that there was a problem with the permit and a stop work order was issued. He added that Mr. McTamney sent his client a letter dated 3/15/04 informing him that he would need to apply to the Board of Adjustment for a decision in the matter. He explained that this letter, as well as a zoning denial letter dated 5/24/04, is part of the materials marked into evidence as **EXHIBIT A-5**. He stated that a 1990 appellate decision in the Borough of Lavallette found that an erroneously issued building permit cannot be revoked unless there is proof of fraud. He further stated that his client intends to present the necessary proofs and to request the Board to reverse the stop work order issued by Mr. McTamney. He added that there is an existing foundation in the rear corner of the property which was the subject of a valid 1952 permit and it would be feasible to construct the proposed garage in that location. He further added that, if that foundation were used, the structure would be located 3 feet from the property line, which is not as desirable as the proposed location. He explained that his client relied on the issuance of the permit as an indication that there were no detriments to the proposed construction.

Mr. Wilson stated that, as he had discussed with Mr. DeMarzo, the applicant has no vested rights to the location or the foundation of the old garage since it was clearly a case of abandonment.

Mr. DeMarzo stated that a misinterpretation by the zoning officer was the basis of a similar case in Madison, in which the applicant was entitled to reimbursements from the town. He added that the Board must hear testimony that his client made a good faith effort to adhere to the ordinance requirements. He further added that there is no driveway indicated on the plan.

Mr. Dalziel stated that the ordinance makes it clear that a driveway is required.

Mr. DeMarzo stated that, if a driveway were installed on the property, the paving would be in excess of 150 feet driveway and added that his client is seeking a waiver from the driveway requirement. He added that the proposal complies with the ordinance in every way, with the exception of the driveway.

Mr. Wilson questioned if the addition of the driveway would result in a coverage issue.

Mr. Walters noted that the driveway does not necessarily need to be constructed of blacktop.

Mr. Matthews questioned why the proposed structure would be considered a garage.

Mr. Wilson stated that a side issue as to whether the permit was issued erroneously was whether or not the proposed structure was in accordance with the ordinance.

In response to Mr. Pizzi, Mr. DeMarzo stated that there are cases where a structure was deemed deficient after a review; however, it was more an issue of proving that there was substantial compliance with the ordinance on the part of the applicant. He added that his client is seeking to achieve a fair resolution in the matter.

The following exhibits were marked into evidence:

- A-25 Stop Work Order dated 2/27/04
- A-26 Zoning Denial Letter from Frank McTamney dated 5/24/04
- A-27 Denial Letter from Frank McTamney dated 5/24/04
- A-28 Permit and inspection forms
- A-29 Display board of photographs of the subject property taken by the applicant on 4/16/05
- A-30 Sheet A-1 of the submitted plans depicting floors and foundation dated 12/2/03
- A-31 Survey and Tax Map
- A-32 Sheet A-2 of the submitted plans depicting a lowered roof level dated 12/2/03

Mr. Peter Coviello, applicant, was sworn. He stated that he and his wife purchased the subject property in 1994 and they have made no modifications to the property since that time. He added that he initially discussed building an accessory structure for storage at the rear of his property with Mr. McTamney in 9/03. He explained that Mr. McTamney suggested he build a garage, which could be 20 feet by 25 feet in size, instead of a shed, which could be a maximum of 10 feet by 15 feet in size. He further explained that it would be virtually impossible to construct a driveway on the property in that location because of the amount of trees in that area. He added that he does not need a driveway because he already has a driveway that leads to his existing garage. He further added that he contracted with a local architect to design a carriage house and he applied for the permit in 12/03. He stated that he began construction in 1/04 and arranged for a footing inspection. He further stated that when Mr. Greg Impink, Construction Official, visited the site for the inspection in 2/04, he realized the error and issued the stop work order. He then explained that the plans submitted to the Board are identical to the plans submitted to Mr. McTamney except that the roof had been lowered from 17.75 feet to 17.25 feet, as depicted in **EXHIBIT A-32**. He added that the proposed structure would be Colonial in style, which is similar to the existing house on the property, and would contain electricity. He further added that he would be willing to change the door styles. He explained that the structure complies with all

the requirements of the ordinance except the driveway. He further explained that 500 square feet is the maximum allowable size for the structure, and that, if the building were measured by the foundation, not the roof, it complies with that requirement. He added that the doors would face to the right, and with a setback of 23.5 feet, it would be difficult getting a car in and out of that space.

Mr. Schommer concurred that the grade in that area could not be raised for use as a garage and that the space would be very tight. He added that the location of the proposed garage complies with the lot area, lot width, height, impervious coverage and front yard, rear yard and side yard setback requirements.

Mr. Coviello presented and described a display board of photographs of the subject property which had previously been marked into evidence as **EXHIBIT A-29**. He explained that the proposed garage would be used for toy storage and that he would fence in the back of the property. He added that the existing 35 foot blue spruce tree would remain on the property. He explained that he is a landscape contractor in Madison and that he does not work out of his house. He further explained that there is a complete cinderblock foundation at the back of his property and that the revised survey submitted as **EXHIBIT A-31** shows the possible location of the driveway. He added that, placing a driveway in that location would require the removal of a 150 year old oak tree, which he did not want to take down. He further added that **EXHIBIT A-30** is the same plan he originally submitted to the Construction Department and that he subsequently redesigned the roof pitch at Mr. Marshall Frost's request. He explained that he believed that granting a reversal of the stop work order or a variance for the project would not have a negative impact on the surrounding neighborhood. He added that he would buffer the proposed structure and that there would not be as much equipment left on the lawn area of the property. He further added that he had acted in good faith when he applied for the permit and that he had relied on the Zoning Officer's approval.

Mr. Dalziel questioned if Mr. McTamney was aware of the positioning of the garage.

Mr. Coviello stated that he showed Mr. McTamney a copy of his survey and the location of the garage prior to hiring an architect.

Mr. DeMarzo stated that he had seen garages with driveways located 150-300 feet from the roadway and that he believed such a driveway on the subject property would be excessively long. He explained that his client preferred lawn area and has no intent to pave the area leading to the proposed structure. He added that, if his client had intended to construct a driveway leading to the proposed structure, he would not have built the structure on the right side of the property and the proposed structure would have been placed closer to the front of the property. He further added that case law would weigh in his client's favor, should he be penalized.

Mr. Dalziel expressed concern about the intent of the proposed structure relative to its size and that he believed that the proposed structure would be larger than 500 square feet and would measure 35 feet by 20 feet.

Mr. DeMarzo stated that the proposed structure would measure 25 feet by 20 feet on each side.

Mr. Dalziel stated that he believed the structure would cover more than 500 square feet and that the additional 200 square feet would be in excess of the maximum allowable building coverage.

Mr. DeMarzo stated that the inside of the structure, not the outside, would cover 500 square feet and that the additional size outside the structure is due to the roof overhang. He added that it would be possible to cantilever the structure, although the overhang would be more aesthetically pleasing.

Mr. Matthews questioned if a variance would be necessary if the structure would be larger than what was approved by the Construction Department.

Mr. DeMarzo stated that the Construction Department had the same plans when they approved the permit.

In response to Mr. Pizzi, Mr. Dalziel stated that the maximum allowable size of an accessory structure is 150 square feet and that the maximum allowable size of a garage is 500 square feet.

In response to Mr. Pizzi, Mr. Coviello stated that Mr. McTamney had walked the subject property prior to 9/10/03. He added that his first meeting with Mr. McTamney about the project had taken place at Town Hall, and then Mr. McTamney visited the site. He further added that he submitted the drawings after Mr. McTamney's site visit.

Mr. Pizzi questioned if it would be practical to use the proposed structure as a garage.

Mr. Coviello stated that the structure would be too close to the right hand side of the property to use as a garage.

Mr. Dalziel noted that potential new owners of the property could pave the driveway area and that any variance granted by the Board would remain with the property.

Mr. DeMarzo stated that his client would be willing to impose a condition of approval that the driveway would not be paved.

Mr. Pizzi questioned if the application would be for an accessory structure instead of a garage if the driveway were removed.

Mr. Godwin stated that the structure is designed as a garage and questioned where the doors for the structure would be located.

Mr. DeMarzo stated that the doors would be located on the side of the structure.

In response to Mr. Wilson, Mr. DeMarzo stated that his client applied for relief for a garage; however, he was not averse to changing the request to an accessory structure.

Mr. Wilson noted that the proposed structure was actually a large accessory structure which was being called a garage.

Mr. DeMarzo stated that his client is seeking reasonable relief from the Board.

In response to Mr. Matthews, Mr. Coviello stated that the proposed structure would not contain footings or columns and that it could conform to garage size, although doing so would change the look of the structure.

Mr. Matthews noted that just the front of the structure would change.

Mr. Coviello stated that he would be willing to remove the overhangs.

In response to Mr. Schommer, Mr. Coviello stated that he intended to use the building for storage.

Mr. Schommer noted that the applicant must be clear on whether his request is for a garage or an accessory structure as there are limitations for each type of building.

Mr. Coviello noted that a religious organization maintains a parking lot behind his property and that the proposed columns and piers are strictly for aesthetic purposes.

In response to Mr. Wilson, Mr. Coviello stated that he did not intend to use the structure for storing motor vehicles.

In response to Mr. Dalziel, Mr. Coviello stated that he would not be able to get a vehicle to the structure without removing several trees.

The meeting was opened to the public for questions.

Ms. Joan Burns, 25 Spring Street, questioned the accuracy of the property survey.

Mr. Dalziel informed Ms. Burns that the accuracy of the survey was an issue for the title company.

Ms. Burns questioned what assurances she would have that the usage of the structure would not change.

Mr. DeMarzo stated that his client would stipulate that the structure would never contain any habitable space.

Mr. Dalziel announced that the Board site visit would take place on 5/7/05 at 9:00 A.M. and that the hearing of the application would continue at the next meeting on 5/19/05.

The application concluded at 9:12 P.M.

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The meeting returned to public session at 9:22 P.M.

NICHOLAS PARISI

27 Susan Drive
Block 20, Lot 19

#04-20-19

**Bulk Variances
Steep Slopes**

Present: Barry Osmun, attorney of the applicant
William Hollows, licensed professional engineer

Proof of service was submitted.

Mr. Barry Osmun, attorney of the applicant, stated that Mrs. Kali Tsimboukis, Board Secretary, had informed him that he would have approximately 20 minutes of time this evening, so he had brought only one witness. He explained that his client's application is the fourth or fifth application for the Susan Drive area that the Board has heard. He further explained that the topography of the property contains a plateau with a rapid drop-off of approximately 25 feet and

that there is no way to develop the property without variances. He stated that his client is seeking relief for front yard setback, where 50 feet is required and 35.2 feet is proposed. He further stated that the property was originally subdivided in 1964, at which time front yard variances were granted. He added that his client is also proposing to install a retaining wall closer to the property and line less than 20 feet from the proposed dwelling. He further added that the proposed construction would disturb the steep slopes on the property. He explained that his client is also requesting a height variance because the proposed dwelling will be 20 feet high from the front and 50 feet high from the back. He further explained that the height variance is a use variance, which would require 5 affirmative votes, and that the other variances mentioned are bulk variances. He stated that his client is seeking relief under the "C1" hardship criteria because of the obvious physical features and limitations of the property. He summarized that his client is seeking relief for front yard setback, steep slopes disturbance, placement of the retaining wall, as well as "special reasons" for the height of the proposed dwelling. He added that no structure could be built on the property without a variance.

Mr. Wilson noted that, in 1964, a variance was granted for a 30 foot front yard setback and a subsequent front yard setback variance for 35 feet was granted in 1985.

Mr. Schommer noted that an additional variance would be required if the height of the proposed retaining wall is greater than 6 feet.

Mr. Osmun stated that he would renounce for that variance if necessary.

Mr. Wilson stated that he believed any and all variances were covered in the original notice.

Mr. William Hollows, licensed professional engineer, was sworn and accepted by the Board as an expert witness. He stated that he had prepared the plot plan for grading and the proposed house as depicted on Sheets 1, 2, 3 which were submitted to the Board as part of the application materials. He then presented and described a colored rendering of Sheet 2 of the plans dated 1/3/05 which was marked into evidence as **EXHIBIT A-28**. He stated that the subject property is located on the southerly side of Susan Drive between Marion Road and the curve on Susan Drive. He further stated that the sewer and drainage would be to the rear of the property. He added that the subject property is located in the R-3 zone and that his client is proposing to construct a 3,000 square foot house which would appear to be one story from Susan Drive and 2-3 stories from the rear of the property. He further added that Susan Drive is an improved road, and that the proposed plan would utilize 21,341 square feet of lot area, including the driveway and a front entry garage which would be located 45 feet from the curb line. He explained that the dashed line on the plan represents the existing grade on the property.

Mr. Osmun stated that the subject property meets the zone requirements for minimum lot area, lot width, rear yard setback, side yard setback, combined side yard setback, lot depth, building coverage and impervious coverage.

Mr. Hollows stated that the proposed retaining wall would be 20 feet off the front of the property and 10 feet off the rear of the property. He added that the proposed dry well would be located down slope and that the roof leaders would be collected and discharged into the dry well. He further added that the sewer would connect at the rear of the proposed house and that there would be limited disturbance to the wooded area on the property. He then outlined the steep slope disturbances which were depicted on **EXHIBIT A-28**.

Mr. Osmun noted that a house could not be constructed on the subject property without disturbing the steep slopes.

Mr. Hollows noted that the proposed wall located behind the proposed house would be a terraced wall.

In response to Mr. Dalziel, Mr. Hollows stated that construction equipment would enter the site along the existing sewer easement where the topography is somewhat flatter and that it was possible that the dry well would need to be accessed through neighboring properties.

Mr. Matthews questioned if the proposed retaining wall would be for aesthetic or safety purposes.

Mr. Hollows stated that the purpose of the retaining wall was to provide a 10 foot flat area on the property.

Mr. Matthews questioned why the proposed retaining wall could not conform.

Mr. Hollows stated that, if the retaining wall were to conform, it would be placed on the higher slope and would not be terraced. He further stated that the Board would have a better idea of the reasons for the retaining wall placement after the site visit.

In response to Mr. Godwin, Mr. Hollows stated that the 24 inch oak tree and 8 inch maple tree located forward of the back retaining wall would be saved and that he would like to save the wooded area located down slope.

In response to Mr. Schommer, Mr. Hollows stated that the proposed retaining walls would be constructed of interlocking block or Allen block and that the maximum height of the retaining

walls would be 8 feet. He added that he would stake out the house and the retaining walls for the site visit.

The meeting was opened to the public for questions.

In response to Mr. Alex Biliris, 109 Ormont Road, Mr. Hollows stated that the proposed retaining walls would not connect and would be located at the rear of the property and at the end of the house on each side. He added that the purpose of the retaining wall was to create a flat area on the property and that the east to west slopes on the property would be maintained.

In response to Mr. Dalziel, Mr. Hollows stated that he did not have any significant wall types in mind.

In response to Mr. John Hefele, 115 Ormont Road, Mr. Hollows stated that he was not qualified to answer questions regarding the stability of the proposed dwelling. He added that he would clarify the height of the retaining walls for the next meeting. He further added that the proposed dry well would capture all the water that the driveway and the house were included in the impervious coverage calculations.

In response to Mr. Michael Friedman, 123 Ormont Road, Mr. Hollows stated that he was not qualified to answer specific questions about the design of the house.

Mr. Michael Oiem, 3 Hillcrest Road, questioned if other design alternatives had been developed which placed the proposed house at a lower elevation.

Mr. Osmun stated that the architect for the project would testify at the next hearing.

In response to Mr. Oiem, Mr. Hollows stated that he was not familiar with the fill issues on the property and that he would provide more details about the slopes on the property at the next hearing.

In response to Mr. Bill McGuinn, 20 Susan Drive, Mr. Hollows stated that there is a storm water pipe easement on the property and that the overflow drainage to that pipe is legal. He added that the proposed dry well would be designed to contain 3 inches of rainfall.

In response to Mr. David White, 119 Ormont Road, Mr. Hollows agreed that neighbors to the rear of the subject property would look up at 50 feet of house and that questions regarding the use of explosives during construction must be referred to the structural expert at the next hearing.

In response to Mr. McGuinn, Mr. Hollows stated that questions regarding soil density testing must be referred to the structural expert as well.

In response to Mr. Oiem, Mr. Hollows stated that he would provide a cross-section of the slopes for the next hearing.

Mr. Osmun stated that structural questions would need to wait until the testimony of the structural expert at the next hearing.

Mrs. Dorothea Stillinger, Chairperson of the Chatham Environmental Commission, questioned if Mr. Hollows knew the depth to bedrock on the site.

Mr. Hollows stated that he did not know the depth to bedrock; however, they had performed an 11 foot dry well test to evaluate the soil and did not hit any bedrock at that time.

In response to Mrs. Stillinger, Mr. Hollows stated that he did not perform any stability tests and that he did not know if any wells were located downstream from the subject property.

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

Mr. Dalziel announced that the Board site visit would take place on 5/7/05 at 9:45 A.M. and that the public was welcome to attend. He then announced that the application would be carried to a hearing date yet to be determined. Mr. Osmun verbally agreed to an extension of time for decision until 6/30/05 and stated that he would confirm that agreement with a letter.

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

The meeting was adjourned at 10:12 P.M.

Cynthia L. Phillips
Board of Adjustment Recording Secretary