

May 20, 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 Chairperson, Lawrence Dalziel.

Attendance was taken and the following members were present:

Lawrence Dalziel, Chairperson  
James Matthews, Vice-Chairperson  
Joseph Cooney  
Parker Godwin  
Peter Pizzi  
Therese Hough  
Jesse Benton  
Timothy Walters

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: Calendar 03-62-99, Richard and Deborah Hennessey (mem.); Calendar 03-88-2, Sheila Collier (mem.); Calendar 04-62.05-17 John and Carlene Pruitt (mem.); Calendar 04-39-57, Brian and Suzanne Boutilier,**

The open public meetings statement was read by the Chairperson.

The work and regular minutes of March 10 (w), 18(r), April 7(w) and April 22 (r) had not been completely reviewed by the Board.

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

Mr. Wilson said that most of the Board had read the resolution. Some changes were made and noted. Mr. Wilson said that the resolution would be read into the record in its entirety in the future. He read the resolution in title only. Mr. Matthews moved that the resolution be approved. Mr. Pizzi seconded the motion. A vote was taken. All who voted were in favor, and the resolution was approved.

#### **Calendar 03-88-2, Sheila Collier**

Mr. Wilson read the resolution in title only. Mr. Cooney moved that the resolution be accepted. Mr. Pizzi seconded the motion. A vote was taken. All who voted were in favor, and the resolution was approved.

#### **Calendar 04-62.05-17 John and Carlene Pruitt**

Mr. Wilson read the resolution in title only. Changes were made and noted. Mr. Godwin moved that the resolution be accepted. Mr. Matthews seconded the motion. A vote was taken. All who voted were in favor, and the resolution was approved.

#### **Calendar 04-39-57, Brian and Suzanne Boutilier**

A site visit was read by Mr. Cooney and had been previously marked as A-15. Mr. Dalziel said that there were a number of homes on the street similar to the applicants' house. He said there were differing topographic scenarios. Mr. Boutilier (previously sworn) said that in reference to the front yard setback, the house was currently complying, but they would be moving forward to the front yard with a covered porch. He said that the existing gutter line on the existing house was 1 foot back from where the proposed porch would be. He noted that the ordinance allowed 3 feet for overhangs. He said that the existing house extended to that limit of 3 feet. He added that the proposal was only one foot further than where the existing house was currently. He said that it would be a built structure rather than softening an overhang, but felt that it was just the four columns themselves that were in question. He said that the porch itself would only be 12 inches above grade to risers, so he said that in essence the house was at the 51.0 feet extending 4 feet out which would bring them to 47 ft. Mr. Boutilier said that

they did not anticipate covering the front porch, and there were just four columns into the setback.

Mr. Dalziel asked Mr. Boutilier to explain the amount of footage on the survey compared to Mr. Boutilier's statements. Mr. Boutilier answered that the survey was at 51.08 feet. Mr. Dalziel said that he wanted to clarify the statement that the overhang was currently at 3 feet, because it did not appear to be that way on the survey. Mr. Boutilier said that was pointing to the house itself and was in fact at the bottom of the overhang. Mr. Godwin asked if the 51.08 was to the house itself. Mr. Boutilier answered that it was not to the house itself but to the foundation. Mr. Matthews said that if they did not have the pillars, they would not have the floor of the porch, and that they would not need a variance. Mr. Boutilier agreed that was correct. He said that they could do an aggressive cantilever, they could extend it out without the columns, but it would be structurally difficult and not aesthetically pleasing. Mr. Dalziel said that it was his understanding that members of the township were allowed to have a projected overhang over an entranceway, but with the columns included, would not have a right to cross the entire front of the house with the projected overhang. Mr. Boutilier said that was a "fine point" that he had not interpreted. Mr. Wilson said that the projection would be limited to the steps that Mr. Boutilier was trying to protect. Mr. Wilson said that the ordinance was trying to give a protective covering without having a full porch. Mrs. Hough asked if the Boutiliers tried to come up with design so that they meet the front coverage. She added that she understood what the applicant was trying to accomplish, but it could be accomplished without having the entire porch spanning the house.

Mr. Boutilier said that was true, but that the appearance would not be as "comprehensive" as proposed. He said that bringing the roof line down would tie the two volumes of the house together. He added that going down the street the Board could see what looked like a split level home with strong architecture to the right hand side and a two story volume to the left hand side. He said that he had previously submitted photos of the existing house. Mrs. Hough said that she had driven by the house. Mrs. Hough commented that the application seemed to be more for aesthetics reasons versus functional reasons. Mr. Boutilier said that was correct. He said that the functional aspect was that you could get to a certain part of the covered porch in inclement weather with the overhang being tied together. Mr. Dalziel asked Mr. Boutilier if he had already received a building permit for part of the work. Mr. Boutilier said that everything that he had done, had a corresponding building permit. Mr. Dalziel asked what the approved plans showed. Mr. Boutilier said that he had two permits so far. They bought the house in August, and the August plan was to renovate the kitchen, change all the windows on the house, cutting in the windows, closing windows and moving the front door. In October, they received an extension to the building permit to build the family room addition. Mr. Dalziel asked if the drawing submitted included any kind of matriculation. Mr. Boutilier said that it did not. Mr. Matthews commented that he was having a difficult time finding a hardship relating to the property from what was proposed. Mr. Matthews asked if there were more rationalization or points to make in relation to the property. He said that he understood the Boutilier's personal hardship but did not see it as a reason to

grant a variance adding that variances were related to the property not to the people who lived on the property.

Mr. Wilson explained that a hardship related to some physical condition on the property itself or to the structure(s) that are located on the property which would be unique or mostly unique to the property that would create a problem or difficulty in developing the property. Mr. Wilson said that when the applicant filed his application he checked hardship, and Mr. Wilson assumed from the applicant's testimony that the applicant meant that it was more of a personal hardship. He said although the Board was sensitive to personal hardship, the law did not look to it. He added that the applicant might not own the home forever and once granted, the variance would run with the land. Mr. Wilson said that there was a C2 variance: reasons for granting a variance based on the fact that what was proposed would promote some of the purposes of the MLUL, and in so doing, the benefits would outweigh any detriment.

Mr. Boutilier said that he wanted to clarify his hardship. He said that his son's Downs syndrome and his mobility were a profound part of the Boutilier family's lives. He said that the current relocation of the front door and the aligning the roof lines would help facilitate his son's mobility in and out of the home. He said that when they bought the house, he prepared a sketch (not submitted) and that plans were developed due to where they lived on Long Hill Lane. He said that it was hard for the son's bus pick up, and it was also a steep lot. He said there were zoning issues also with extending a roof line on that house, and it was steep to get out to the street itself. He said that a major appeal of his current house was that the front door was literally 16 inches and almost "dead level" out to the street line. Mr. Boutilier said that was very appealing in its elevation and topography to be an appropriate environment for his son to live in. He said that the front door was not originally on the front of the house; it was on the side of the house, and to facilitate a better orientation for his son, there was a hardship with the way the house was built with a front door located on the side. He said they had a hardship of having to realign the roof to provide appropriate cover coming out of the front door. He added that the past winter was very difficult; his own parents fell coming out of the house. He said he was not trying to cloud the issue with his son's needs, but at the same time felt that hardship was applicable to the structure of the house in his opinion.

Mr. Wilson asked to look at a photograph showing the existing house. Mr. Boutilier provided it for him (previously marked). He added that eight doors away from his home on Candace Lane there was a house being built today that was a brick home of approximately 5000 sq. ft., and he did not know the particulars of the application but understood that there were significant zoning issues involved with the house being built at the top of his street.

Mr. Wilson said that the property that Mr. Boutilier was referring to was an oversized lot that could not be developed any further. Mr. Boutilier said that he wished to present in contrast to the implications of what he thought was a minimal amount of impact to the environment that they were well within the building coverage, the site coverage, the side yard setbacks, the rear yard setback, and they had also done significant improvements to

the home. They had re-roofed it, changed all the windows, taken the vinyl siding off; all of which benefited their neighbors in his opinion. He said that there was another home another 8 doors away, and all the neighbors could not believe that the Boutilier home would not be considered to be a viable alternative to the community, particularly with the hardship for the family in contrast to what was being done with the home 8 houses away.

Mrs. Hough said that she agreed with Mr. Boutilier that the proposal was aesthetically “very pleasing” and she thought that the neighborhood would benefit with the aesthetics of the proposed changes to the house, and added that would be one of the purposes of promoting one of the benefits of the MLUL. Mr. Dalziel added that the property in question on Candace Lane was granted because they did have unusual and unique features that would not allow a home to be built without variances. Mr. Dalziel said that Mr. Matthews pointed out that those reasons were clarified on the Boutilier lot. Mr. Boutilier said that the home had issues that went along with it. Mr. Dalziel asked if the application was not approved, would there be another plan for the front of the house.

Mr. Boutilier said that he would cantilever things out, keep the columns as far out as he could to fulfill the zoning allowance, and would go through “structural gymnastics” to provide the proper ability for a covered entry and minimize the hardship for his son to get in and out of the house. He said that he believed it was an economical and appropriate approach without going through great cost. He said originally he did not need a variance. After conversation with the zoning engineer, they realized they needed a variance. He said initially there was some confusion. Mr. Boutilier commented that he could bring the roof line up a little bit, and not go through great cost, and could do it saving 30-40 sq. ft. of building coverage. Mr. Dalziel noted that coverage was not an issue with the application. Mr. Dalziel said that the difference between the left and right side of the overhang was that the left side of the overhang which covered the door was a part of a real need for the applicant to provide shelter and door orientation for their son, and the distinction between the right side which in Mr. Dalziel’s opinion did not play into a need that it was an aesthetic choice. Mr. Matthews said he shared Mr. Dalziel’s concern for the same reasons. Mr. Matthews said that he sympathized with the applicant but it seemed to him that the issues would be covered by putting the overhang over the section of the house that was in front of the door. He added that the rest of what was proposed seemed to be for aesthetic reasons. Mr. Matthews said he needed to hear why they were asking for the aesthetic part.

Mr. Wilson said that the question was whether strict enforcement of the zoning ordinance in this application was preferable rather than something that was a better design alternative that would not only benefit the property but also the neighborhood. Mr. Wilson asked if it made sense to relax the setback requirements in such a way that there would be a better design alternative. He added that a better design alternative serving the application and neighbors would be one of the purposes of the MLUL. He said that the applicant could argue in favor of a variance where it would give the applicant a design alternative that would promote a better visual environment that would not be detrimental to the surrounding property. Mr. Matthews said that he believed that the proposed design was more pleasing than what was suggested could be done if the applicant was turned

down. Mr. Dalziel asked if the Board was prepared to grant the same variance to two or three of the applicant's neighbors, because there were three or four other houses on the street that could ask for the same variance for their property. Mr. Dalziel said that if there was "no other reason than it looked good" then three or four other people could come in, and have no reason to not ask for the same, regardless of whether they had a difficult personal situation or not. Mr. Cooney said that each application should be an individual case. Mrs. Hough commented that perhaps Mr. Boutilier should revise his variance application and take it out of a hardship request. Mr. Wilson said that he could apply for a flexible C variance which would be granting a variance for the strict requirements of the zoning ordinance as to the setback in order to promote a better design alternative which would consequently promote a more desirable visual environment not only for the subject property but also for the surrounding neighborhood. The benefits of doing so would need to outweigh any possible detriments. He said that zoning gave a basis, and there were times when some issue would make more sense than in other cases.

Mr. Boutilier said that he did not see where he could put that on the variance. Mr. Wilson said that he could put it in on the record tonight by including it as one of the reasons for the application as a C2 variance, flexible C. Mr. Boutilier referring to drawing P-1, said that he would take the gutter lines and not extend the roof down as far as it extended currently, he would just extend the roofline down to be within the 50 ft. setback, and then stop at 50 ft. Mr. Cooney asked if that would run into the side of the overhang. Mr. Boutilier answered that it would. Mr. Boutilier said it would probably be easier to extend the roof another foot and bring it to 50 ft. off the front at the same slope. They would continue it for another foot, and then at the front door go to the full four feet extension. Mr. Matthews asked if they would then have a one foot width to walk from the porch by the door to the existing door. Mr. Boutilier answered that was correct. Mr. Benton asked what the face of the porch would then look like. Mrs. Hough asked if they did that, would it be functionally different than today's design. Mr. Boutilier answered that it would not be minimally functionally different but it would make the home look "worse" than it did currently. Mr. Boutilier said that in re-visiting his application, C-2 flexible variance would be more applicable to his application, and that it would be a better representation of what they were looking to achieve. Mr. Matthew said that then the question would be did the proposal presented a better result for the Master Plan than the "jimmy rigging" that the applicant would have to do if they only got the variance for the front of the door. Mrs. Tucker said that revised A-9, a conforming alternative depicted in red was marked into evidence as A-16. Mr. Wilson said that the other part of the proofs with the C2 was that the benefits outweigh the detriments in what might be done in a conforming fashion. Mr. Wilson said that one of the purposes of the MLUL was "to promote a desirable visual environment through creative development techniques." He added that would not apply forever because there were other considerations to take into account such as maintaining the light, air and open space between properties, etc. Mr. Wilson said that coming out to cover the front doorway area and then having an indentation was not as suitable in not only protecting family members but because of the public safety issue as well.

Mrs. Hough asked if the Board were not amenable to extending the roof line under a C2 variance, would there be a way to re-design the entryway over the front door so it wasn't a "shed type" area. Mr. Boutilier answered that the slope of the gable would be complimentary to the house. It would be 4 or 5 on 12 vs. 10 on 12 which was on the house currently. Mr. Dalziel said that he was concerned, putting aside the personal issue, that the only purpose of the application was a variance C2 for aesthetic reasons only; again concerned about other applications coming through. He said that if the only reason for the variance was an aesthetic reason, that would present the Board with a multiple amount of applications coming through. Mr. Pizzi said they had a house with a door not oriented to the front whereas most homes universally had their door at the front of the home. Mr. Matthews and Mrs. Hough said that the front door did currently face the street. Mr. Pizzi said he was aware of that, but a lot of other homes in the area did not and could make the same argument.

Mr. Boutilier said that even though all of the homes looked generically the same that not all of the houses along the south side had their driveways and garages on the front of the house. He said along the side there were six homes, and pointed out other homes that had the same condition as his had. He added that his immediate neighbors had done extensive renovations to their home in the last ten years, and he did not anticipate them adding on. He said that two homes west of him might potentially want to expand, but he could not speak for them. He said that it was not as if there were 12 homes in the area that might want a variance.

Mr. Dalziel said that his concern extended to the township as a whole, and he cited that they had an application before them previously where the applicant had done research on every application approved in the last two or three years, and brought the information in as part of their variance. Mr. Benton asked if they should be more focused on the individual applicant. Mr. Dalziel said that what he would like to hear would be something to distinguish this application from other people in town who would just want to make their home look nicer. Mr. Wilson asked if there was a safety issue with the property. Mr. Wilson also asked if the indentation alternative was a safer alternative. Mr. Matthews commented that what was unsafe was that the applicant would only have a width of a foot to get from Porch A to Porch B, and in icy conditions that might be unsafe. He added that might be a distinguishing factor for their application. Mr. Matthews commented that properties with the indentation that the Boutilier's had was not voluminous in town. He said that most people would probably blow out the indentation to get more living space. Mr. Wilson said that another purpose of the act in the MLUL was to promote health and safety. Mr. Matthews said that the other factor unique about the application was that the applicant could do something, but it would be less attractive. Mr. Boutilier added that transitioning an elevation with his son, Michael who is 15 years old, was such that if his son were going down a flight of steps he would go down "on his rear end" where he would feel safer. He said that it would be significant going from inside to outside with an elevation change. He said that leaving the house was a "two-person" event. He said it would be Michael and his sister assisting him, or his mom or dad. He said that by covering only the front door it did not promote a safe environment with the square footage underneath the cover to do that type of transition. He said that

extending the roofline across would promote safety and be a more appropriate environment. He said that even the building code recognized that people would need 4 to 5 feet in front of a door.

Mr. Dalziel asked how much distance there was from the column to the right of the door to the front. Mr. Boutilier answered 4 feet. Mr. Dalziel asked what the distance was from the back face of the column. Mr. Boutilier answered 3 feet, and said that was one of the determinant factors of how far to go out. Mrs. Hough commented that she did not think it was not just an aesthetic issue; there were neighborhood issues, etc. Mr. Boutilier said that although he presented his application as a hardship, it was really a safety issue, not a hardship issue. Mr. Dalziel asked Mr. Wilson was there a way if the members approved the application that it would be distinguished in some way from other than just the C2. Mr. Wilson answered yes, he believed he could distinguish it, he believed it was a combination of factors. Mr. Dalziel commented that the safety issue for moving the door in his opinion was a personal issue. Mr. Matthews reiterated that the door was already moved, and the distinguishable difference as to what the applicant was proposing was what he could build if he was turned down. Mrs. Hough said she did not think there were any houses in the township that were similar to the Boutilier's house other than their direct neighbors. Mr. Dalziel said that people who change things and then want a variance because they made the choice to change something have been in front of the Board before, and they've been denied.

Mr. Pizzi asked if Mr. Boutilier would agree to include in the resolution, if approved, that the porch would not be enclosed. Mr. Wilson said that could put in a condition that there would not be an enclosure of the porch. Mr. Dalziel commented that in way that wasn't fair because part of the porch was within the ordinance. Mr. Boutilier said that his budget would not accommodate any more improvements after this improvement. Mr. Pizzi asked how much was given up regarding the setback. Mr. Godwin answered it was 2.92 feet. Mr. Pizzi asked if Mr. Boutilier could expand the roof 3 feet if he removed the wall. Mr. Boutilier said they were under construction with the family room, and did not see a need to extend the roof. Mr. Dalziel said that the wall on the right could come out, align with the rest of the house and still be within the building envelope. Mr. Boutilier said they would have to step down because the ceiling height of the porch was not the same ceiling height as the living room.

Jan Slotkin on 11 Yarmouth Rd. stopped by the meeting as a visitor. She mentioned that she had feelings about large pieces of properties particularly woods and forests.

The public portion of the hearing was closed.

Mr. Matthews moved that the application be approved as revised on the record at tonight's meeting in conformance with the application as submitted with a condition that the porch not be enclosed. Mr. Cooney seconded the motion. A vote was taken. There were five affirmative votes and one negative (Mr. Dalziel).

The meeting was adjourned.

The next meeting of the Board of Adjustment will be June 17, 2004.