

MINUTES

JULY 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 7:34 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
Joseph Cooney, Member
Therese Hough, Member
Peter Pizzi, Member
Jesse Benton, Member

Deborah Nelson, 2nd Alternate

Francis Banisch, Township Planner
Donald Malehorn, Acting Board Attorney
Lewis Wilson, Board Attorney
Cynthia Phillips, Recording Secretary

Excused:

Parker Godwin, Member
Timothy Walters, 1st Alternate
Richard Schommer, Jr., Board Engineer

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RESOLUTION OF MEMORIALIZATION

ANTONIO DEMATOS

1A Lake Road
Block 130, Lot 15

#04-130-15
Bulk Variances

The Board of Adjustment memorialized the annexed Resolution for Antonio Dematos, Application No. 04-130-15, as amended, on motion by Mr. Cooney and seconded by Pizzi.

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

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RICHARD & PAMELA NOONAN

35 Edgewood Road
Block 91, Lot 8

#04-91-8
Bulk Variances

Present: Pamela Noonan, co-applicant

This is a continued hearing.

Proof of service was previously submitted.

Mrs. Pamela Noonan, co-applicant, was previously sworn.

Mr. Wilson recused himself because of a conflict of interest.

Mr. Cooney read the Board site visit report dated 7/9/05 which was marked into evidence as **EXHIBIT A-22**.

Mr. Dalziel noted that the applicants had submitted revised plans.

Mrs. Noonan stated that there are two changes to the plans. She explained that the calculations in the zoning table located on the plans were updated to reflect the accurate measurements and that

she sketched in a brick patio to indicate that it is a non-permeable area. She added that the patio measurements were included in the revised calculations.

In response to Mr. Dalziel, Mrs. Noonan stated that she is seeking front and rear yard setback variances because the property is a corner lot.

Mr. Dalziel stated that the zoning table must be revised because the second front yard is listed as a side yard and must be placed under the proper category.

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

Mr. Pizzi made a motion to approve the application which was seconded by Ms. Hough.

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

Mr. Dalziel informed the applicant that the Resolution would be memorialized at the 8/18/05 meeting.

The application concluded at 7:50 P.M.

Mr. Malehorn left the meeting at 7:55 P.M.

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NICHOLAS PARISI

27 Susan Drive
Block 20, Lot 19

**#04-20-19
Bulk Variances
Steep Slopes**

Present: Nicholas Parisi, applicant
Barry Osmun, attorney of the applicant
A. Thomas Murphy, licensed professional engineer
William Truss, licensed professional engineer

This is a continued hearing.

Proof of service was previously submitted.

Mr. Benton read the Board site visit report dated 5/7/05 which was marked into evidence as **EXHIBIT A-36**.

Mr. Dalziel noted that building height would be a “d” variance.

Mr. Barry Osmun, attorney of the applicant, stated that, based on comments and discussion with the neighbors after the first meeting and the site visit, his client made some changes to his proposal and submitted revised plans to the Board. He explained that the proposed structure has been moved closer to the roadway and would now be located 28 feet from Susan Drive. He further explained that the relocation of the dwelling eliminates the need for the previously proposed retaining walls, lessens the encroachment into the steep slopes area and reduces the requested height variance. He added that the proposed height of the dwelling when measured 15 feet out from the foundation would be 47 feet. He further added that it would be impossible to construct a dwelling on the property without a height variance and noted that other height variances had been granted on Susan Drive in the past.

Mr. Dalziel stated that Mr. Schommer has not yet submitted a report on the revised plans.

Mr. A. Thomas Murphy, licensed professional engineer, was sworn and accepted by the Board as an expert witness. He stated that the plans were revised on 7/7/05. He explained that the proposed house was moved forward and would now be located 28 feet off the right-of-way on Susan Drive. He further stated that the house has been moved off the plateau and that the proposed deck behind the house would be constructed with tubes. He added that there is no longer a need for a retaining wall and that no wall would be constructed. He then referred to Sheet 4 of the submitted plans and described the depicted cross-section of the house. He added that the depth of the proposed house would be 32 feet, 5 feet of which would be an overhang. He further added that the slope would be disturbed only at the crest and that the overhang would be cantilevered. He noted that only 27 feet of the deck would actually be built on the ground, and that the proposed deck would be located off both the first floor and the ground floor. He explained that the height of the dwelling would be 47 feet because of the slope. He further explained that the height measurement of the proposed dwelling from peak to ground would be 36 feet. He added that a steep slope variance would still be required because there would be some disturbance to the steep slope area to install the dry well and the sanitary sewer connection at the back of the property.

A discussion followed concerning the area of steep slope disturbance. It was determined that the topographical survey had been redone, resulting in a slight discrepancy in the plateau area and a

change in the area of disturbance calculations. It was further determined that the area of disturbance would actually be 3,803 square feet.

Mr. Matthews questioned how much of the total disturbance would be caused by the house and the drainage installation.

Mr. Murphy stated that, of the 3,803 square feet of area of disturbance, approximately 20% would be attributable to the house and the remainder would be for the drainage installation.

Mr. Matthews questioned if the area would be regrouded or if the disturbance would remain after the drainage installation is completed.

Mr. Murphy stated that there would be some filling in for the proposed driveway, so there would be some disturbance in front of the garage.

In response to Mr. Osmun, Mr. Murphy stated that a front yard setback variance is required even though the proposed dwelling would be located 28.3 feet from the right-of-way on Susan Drive because the house would still be 10 feet deficient from being in conformance.

In response to Mr. Dalziel, Mr. Osmun stated that the setbacks of the houses located to the north of the subject property are approximately 35 feet from the right-of-way line.

Ms. Hough questioned if the proposed drainage system would impact the neighboring properties.

Mr. Murphy stated that the driveway and roof are impervious areas, and, given such factors as the landscaping, soil quality and the parameters of the proposed subsurface detention system, he believed that the amount of runoff would be the same as what occurs today on the property.

Mr. Matthews questioned if the amount of runoff on the property could be improved.

Mr. Murphy stated that it would be possible to expand the system to store the volume for a 100 year storm, which would be a slight improvement.

Mr. Matthews stated that the fill that was added to the property and subsequently removed worsened the runoff on the property. He questioned if the water that flows onto the grass could also be collected.

Mr. Murphy stated that a 12 inch diameter yard drain could be installed at the corner of the dwelling which would be tied into an 8 inch underground pipe and could lessen the water running overland.

Mr. Dalziel questioned the relationship of the footprint of the house to the fill.

Mr. Osmun explained that, in 1997-98, his client received a building permit to add fill to the property. He further explained that no steep slope variance was required at that time. He added that he did not know about the existing water conditions on the property; however, the proposed plan would not exacerbate the existing drainage conditions at the site. He further added that his client would be willing to alleviate the water issues as requested by the Board.

In response to Mr. Dalziel, Mr. Murphy stated that the required soil tests had been performed and there was no problem with the soil. He added that a detention system capable of storing 3 inches of rainwater is the engineering standard; however, it would be possible to capture 4 inches of storm water on the subject property with a larger capacity dry well system.

In response to Mr. Dalziel, Mr. Murphy stated that the deck proposed for the back of the house would actually be located on two levels and that the hay bales located on the property are a temporary construction measure for soil erosion.

In response to Mr. Matthews, Mr. Murphy stated that each drainage pit costs approximately \$1,500. He explained that, currently, two pits are proposed, and to increase the capacity of the dry well system would require the installation of an additional pit. He added that each pit would capture approximately 1.5 inches of water for a total of 4.5 inches of runoff captured by the system.

Mr. Osmun noted that the drainage system would be designed in accordance with the Township ordinance and would enhance the storm water management at the site.

In response to Mr. Dalziel, Mr. Murphy stated that any overflow runoff would be piped to an inlet located at the rear corner of the property and then into an existing storm sewer. He added that there would not be any water spilling down the hill and that he did not know the capacity of the storm sewer.

Mr. Banisch questioned the structural stability of the fill area, since a report from Mr. Marshall Frost, former Township Engineer, indicates that the fill materials consisted of black top, concrete and building materials and was allowed to remain.

Mr. Nicholas Parisi, applicant, was previously sworn. He stated that he conferred with Mr. Frost and that the fill was removed from the property.

Mr. Wilson stated that the applicant must provide the necessary documentation so the Board could confirm that the fill had been removed.

Mr. Osmun stated that his client would provide the necessary documentation to the Board. He noted that his client had been issued the required building permits to add the fill and that he could not complete construction because subsequently he had to remove the fill.

In response to Ms. Hough, Mr. Murphy stated that the height of the proposed building would be 36 feet from the foundation, and 47 feet high from 15 feet away.

The meeting was opened to the public for questions.

Mr. Bill McGuinn, 20 Susan Drive, questioned if the rear portion of the foundation must be built substantially deeper since there would not be the need for a retaining wall.

Mr. Murphy confirmed that the foundation would go down deeper than normal.

In response to Mr. McGuinn, Mr. Murphy stated that the foundation depth would be part of the Building Department review process.

Mr. McGuinn questioned how the dirt would be prevented from flowing down the slope behind the house.

Mr. Murphy stated that the slope has maintained the same grade for years and that he did not foresee a problem since the proposed dwelling would be built over the existing ground.

Mr. McGuinn stated that, if the ground would be disturbed to pour the foundation, the slope would also be disturbed.

Mr. Murphy stated that the slope would be left in its natural condition.

Mr. John Hefele, 115 Ormont Road, questioned how the fill would be prevented from running down the slope, given the amount of disturbance to that area.

Mr. Murphy stated that the water that runs down the hill would be tied into an inlet and that there would not be any disturbance beyond the footprint of the house.

In response to Mr. McGuinn, Mr. Dalziel stated that he did not know if any variances ever had been granted for a 44% reduction in the front yard setback.

Mr. Osmun noted that the house had been moved forward at the request of the neighbors.

A discussion followed concerning how the dirt placed against the rear foundation would be prevented from flowing down the slope. Mr. Murphy indicated that ground mulch or something similar would be placed in the area to ensure stability. Mr. Banisch stated that he believed that the rear of the foundation was not an area of major concern.

Mr. Dalziel noted that the house would hang over the foundation and would deflect any rain or wind that would displace the dirt in that area.

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

Mr. William Truss, licensed professional engineer, was sworn and accepted by the Board as an expert witness. He stated that he supervised the excavation of two test pits to test the subsurface conditions at the site and to determine the structural engineering of the cantilever. He further stated that the test pits were dug on either side of the footprint of the proposed house to a depth of 8.5 feet to 9 feet below grade. He explained that there was no fill in that area and that the top soil consisted of sandy gravel which would adequately support a house on the plateau area. He added that, by moving the house forward, there now would be a sub-basement located 5 feet back from the rear of the house. He then referred to Sheet 6 of 7 of the submitted architectural drawings dated 7/8/05 which were marked into evidence as **EXHIBIT A-34**, and explained how the addition of a sub-basement allows for minimal disturbance of the slope. He then described the soil and test pits and explained that the proposed drainage system would adequately handle and improve the runoff on the property.

Mr. Dalziel questioned why the test pits were not excavated within the footprint of the proposed dwelling.

Mr. Truss explained that it is a standard engineering practice not to disturb the area where the foundation would be constructed so as not to impact the bearing capacity of the structure. He added that the soil in the footprint area would be consistent with the test pit areas and that the grade on the adjoining lots is the same as the grade on the subject property. He further added that the soil is more than sufficient for the bearing capacity of the proposed structure and that the soil provides 33 degrees of internal friction.

In response to Mr. Cooney, Mr. Truss stated that the top soil depth is 6-8 inches, which is normal for the area, and that more pervious material would improve the situation.

In response to Ms. Hough, Mr. Truss indicated the location of the yard drain on the plan.

Mr. Murphy stated that it did not make sense to install two drains on the site.

Mr. Dalziel stated that a trench drain would be piped to a dry well.

Mr. Truss stated that the presence of two drains would improve the current sheet flow on the property.

The meeting was opened to the public for questions.

Mr. Hefele questioned if the stability of the soil further down than 8 feet had been determined.

Mr. Truss stated that the bearing capacity of the soil is approximately 4,000 DSM.

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

In response to Ms. Hough, Mr. Parisi stated that the installation of additional drainage measures would be a condition of approval.

In response to Mr. Pizzi, Mr. Truss stated that the tubes would either be installed with a backhoe or a drill.

A discussion followed concerning whether or not another Board site visit would be necessary. Mr. Parisi objected to the need for another site visit since he believed it would be a financial hardship. It was determined that the applicant would stake out the new location of the house and the Board members would view the property at their leisure, without benefit of a quorum, prior to the next hearing.

Mr. Wilson noted that the Board had received a petition in two parts opposing the proposed project. He explained that the Board cannot accept those documents into evidence because the individual parties who signed the petition are not available for cross-examination by the applicant and his attorney.

Mr. Dalziel noted that members of the public would be afforded the opportunity to make statements at the conclusion of the hearing process. He then announced that the application of Nicholas Parisi, No. 04-20-19, is carried to the 8/18/05 hearing with no further notice.

The application concluded at 9:08 P.M.

Mr. Banisch left the meeting at 9:10 P.M.

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

CINDY & KEVIN SULLIVAN

8 Stafford Drive
Block 48.05, Lot 4

#05-48.05-4
Bulk Variance

Present: Cindy Sullivan, co-applicant
Kevin Sullivan, co-applicant
Karen Luongo, licensed professional architect

This is a continued hearing.

Proof of service was previously submitted.

Mrs. Cindy Sullivan, co-applicant, Mr. Kevin Sullivan, co-applicant, and Ms. Karen Luongo, licensed professional architect, were previously sworn.

Mr. Dalziel explained that he had spoken with Ms. Luongo during the break and that, although there is a quorum of the Board this evening, there are not enough members present who were in attendance at the previous hearing or who listened to the tapes of that hearing and are thus eligible to vote on the application. He further explained that Ms. Luongo and her clients have expressed a desire to carry the application to another hearing date so as to ensure a full contingent of eligible members.

Ms. Luongo stated that she was unsure which hearing date, 8/10/05 or 8/18/05, would be the best date for her and her clients. She agreed to grant the Board an extension of time for decision to 8/18/05 and to tentatively schedule the next hearing for 8/10/05.

Mr. Dalziel announced that the application of Cindy & Kevin Sullivan, No. 05-48.05-4, is carried to the 8/10/05 hearing with no further notice.

The application concluded at 9:25 P.M.

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17 Karlin Drive
Block 17, Lot 81.08

Bulk Variances

Present: Reiner Bayard, applicant

Mr. Reiner Bayard, applicant, was sworn. He stated that he would submit a copy of the hearing notice that was sent to the surrounding property owners to the Planning & Zoning Department as soon as possible.

Mr. Dalziel stated that the Board site visit for the application would take place on 8/6/05.

Mr. Bayard stated that he would not be available on that date; however, his wife would be there and would be able to answer any of the Board's questions. He explained that he is seeking approval for front and side yard setback variances to construct an in-ground swimming pool with a stone patio in the back yard of his property. He stated that a 3-4 foot high retaining wall would be required near the house, which would not be as high as the proposed patio, but would require variance relief. He explained that the proposed pool would be located toward the western side of the property because the rear yard is widest in that corner. He further explained that he wanted to maintain a 20 foot rear yard setback distance and construct the pool at a suitable distance from the house. He stated that the house is set back farther on the property because of the cul-de-sac on the street. He further stated that the size of the pool and the patio were designed to afford enough space for swimming lanes. He noted that the proposed patio would be smaller than the existing deck.

Mr. Dalziel clarified that the patio surface around the pool is the subject of the variance.

A discussion followed concerning whether or not a steep slope variance would be required given that there is 2,071 square feet of area on the property greater than the 25% slope and 769 square feet of that area would be disturbed during construction, which is more than the allowable 1%. It was determined that the slope disturbance calculations on the plan were incorrect and would need to be revised and that a steep slope disturbance variance would also be required.

In response to Mr. Dalziel, Mr. Bayard stated that the pool equipment would be placed on a pad which would be screened with latticework.

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In response to Mr. Matthews, Mr. Bayard stated the pool area would measure 630 square feet pool including the sunshelf. He added that the pool would measure 20 feet in length and 17 feet in width, which is a somewhat odd shape.

In response to Mr. Matthews, Mr. Bayard stated that there are approximately 5 other pools in the immediate area which are also about the same size as the proposed pool.

In response to Mr. Dalziel, Mr. Bayard stated that his immediate next door neighbor's house is located between 5-10 feet further forward than his house and that there is a steep slope in the front yard which creates a 25% slope. He added that, as an alternate plan, he could possibly omit the stone patio and instead extend the existing wooden deck to the pool area. He further added that he would also be willing to install seepage pits on either side of the house if requested by the Board.

In response to Mr. Dalziel, Mr. Bayard stated that the house to the west of his property fronts on Fairmount Road and that the site visit would afford the Board an opportunity to better visualize his proposed plan.

Mr. Dalziel stated that the Board site visit would take place on 8/6/05. He then announced that the application of Reiner Bayard, No. 04-17-81.08, is carried to 8/18/05 with no further notice.

The application concluded at 10:00 P.M.

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WILLIAM & JUDY FREUND

25 Buxton Road
Block 62, Lot 98

**#05-62-98
Bulk Variances
Use Variance**

Present: William Freund, co-applicant
Judy Freund, co-applicant
David Rosen, licensed professional architect

Proof of service was submitted.

Mr. William Freund, co-applicant, Mrs. Judy Freund, co-applicant, and Mr. David Rosen, licensed professional architect, were sworn.

Mr. Freund stated that they had moved to the Township in 9/04 after having lived in the same house in Millington for 48 years. He explained that the Millington house contained a porch and that they would like to duplicate that porch at their retirement home in Chatham. He noted that they moved because they wanted to live on one level. He stated that the proposed porch would measure 10 feet by 16 feet and would be built on top of the existing deck. He further stated that

the proposed porch would not be visible to any neighbors, and that they required approval for a height variance because of the sharp drop-off at the back of the house.

Mr. Rose presented and described a display board of photographs of the subject property and the surrounding area. He noted that the photographs would be submitted to the Board in a separate package after the hearing. He explained that his clients are requesting approval for front yard setback, side yard combined and building height variances. He referred to drawing V-2 of the submitted plans and stated that the existing deck was designed for the previous owner, flows around the house and measures 10 feet by 16 feet. He stated that his clients are proposing to create a new sitting room on top of the deck. He added that the peak of the roof of the proposed structure would be situated below the silhouette of the house and would not be visible to the neighboring properties.

In response to Mr. Dalziel, Mr. Rosen stated that the deck was built approximately 2 years ago without the need for a variance. He explained that the entire house sits within the front yard setback, and that the house is located 16 feet from the front property line and 48 feet from the rear property line. He stated that the proposed porch would be fully heated and insulated and would be usable all year round.

In response to Mr. Dalziel, Mr. Rosen stated that there had been some discussion at the time as to whether or not a variance would be required to construct the deck and it was determined that a variance was not needed because it would be part of the principal building.

Mr. Matthews noted that it was not normal for a variance to be required to construct a rear deck inside the front yard setback.

Mr. Rosen stated that the front portion of the proposed porch addition would be located in the front yard setback and that the addition would not be visible from the front of the property. He added that the combined side yard setback is an existing non-conformity where 30% is required and 27% is existing from the closest point on each side. He noted that the property is 142 feet wide.

Mr. Dalziel clarified that variances are required to place the addition within the front yard setback and for building height.

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Mr. Rosen stated that the height of the building is 18.9 feet from the front, which is well below the 35 foot limit, and that the height of the building would be 48.25 feet at the back with the proposed addition because of the steep drop-off at the back of the property. He explained that the proposed addition would not be visible from the front or side and would not impact any neighboring properties and that the addition would be placed within the area of the existing deck. He added that the existing height of the structure from 15 feet out from the foundation is 38.75

feet and that the existing ridge would be increased by 9.5 feet with the proposed addition. He further added that the hardship is due to the topographical conditions on the property and to the location of the existing structure. He stated that the proposed addition is appropriate for the streetscape and would not impair the intent of the ordinance or present any detriments to neighboring properties. He further stated that, with the proposed addition, the average height of the dwelling would be 33.5 feet.

In response to Mr. Dalziel, Mr. Rosen stated that he did not know the drainage impact of the proposed 175 square foot addition and that he had not developed a storm water management plan since there would be no disturbance to the ground.

In response to Mr. Matthews, Mr. Rosen stated that the existing deck would be able to bear the weight of the proposed addition.

In response to Mr. Dalziel, Mr. Rosen reviewed the concerns raised in Mr. Schommer's memo dated 5/24/05. He explained that his clients would submit a lot grading plan or request a waiver from the Building Department. He further explained that his clients are requesting a waiver from submitting the Letter of Interpretation since there are no wetlands on the property. He added that, according to a recent title search, there are no easements on the property and that the topographical information was taken from a USGS map.

Mr. Dalziel announced that the Board site visit would take place on 8/6/05 at 10:00 A.M. He then announced that the application of William & Judy Freund, No. 05-62-98, is carried to 8/18/05 with no further notice.

Mr. Pizzi made a motion to adjourn the meeting which was seconded by Mr. Cooney. All were in favor.

The meeting was adjourned at 10:30 P.M.

Cynthia L. Phillips
Board of Adjustment Recording Secretary