

MINUTES

AUGUST 10, 2005

BOARD OF ADJUSTMENT

TOWNSHIP OF CHATHAM

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Acting Chairman, Mr. Pizzi, called the meeting to order at 7:30 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:

Joseph Cooney, Member
Peter Pizzi, Member
Therese Hough, Member
Parker Godwin, Member
Jesse Benton, Member

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

Richard Schommer, Jr., Board Engineer
Lewis Wilson, Board Attorney
Cynthia Phillips, Recording Secretary

Excused:

Lawrence Dalziel, Chairman
James Matthews, Vice Chairman

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APPROVAL OF MINUTES

Mr. Benton made a motion to approve the May 19, 2005 meeting minutes, as written, which was seconded by Mr. Cooney. All were in favor. Mrs. Nelson abstained because she did not attend that meeting.

Mr. Godwin made a motion to approve the June 8, 2005 meeting minutes, as written, which was seconded by Mr. Walters. All were in favor.

Mr. Godwin made a motion to approve the June 16, 2005 meeting minutes, as written, which was seconded by Ms. Hough. All were in favor. Mrs. Nelson and Ms. Hough abstained because they did not attend that meeting.

Mr. Walters made a motion to approve the July 13, 2005 meeting minutes, as written, which was seconded by Ms. Hough. All were in favor.

Mr. Godwin made a motion to approve the July 21, 2005 meeting minutes, as written, which was seconded by Mr. Cooney. All were in favor. Mr. Godwin and Mr. Walters abstained because they did not attend that meeting.

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RESOLUTION OF MEMORIALIZATION

LAURIE & CHRISTOPHER SAUL

6 Aberdeen Road
Block 117, Lot 17

#04-117-17
Bulk Variances

The Board of Adjustment memorialized the annexed Resolution for Christopher and Laurie Saul, Application No. 04-117-17, as amended, on motion by Ms. Hough and seconded by Mr. Cooney.

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

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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. Benton read the Board site visit reported dated 8/10/5 which was marked into evidence as **EXHIBIT A-24**.

Ms. Luongo presented and described an updated site data chart which was marked into evidence as **EXHIBIT A-25**. She then presented and described a revision to the site plan showing a change to the driveway which was marked into evidence as **EXHIBIT A-26**. She explained that there had been a change in the calculation for the lot area of the subject property from 19,265 square feet to 20,031 square feet, which increased the maximum allowable building coverage calculation from 2,559.4 square feet to 2600.2 square feet. She explained that the existing building coverage is 2,795.38 square feet and that her clients are proposing an increase to 3,906 square feet of building coverage with the proposed addition. She noted that the height of the building is actually 21.55 feet, not 23 feet as originally indicated on the plans.

Mr. Pizzi clarified that the maximum building coverage calculation is slightly diminished; although the proposed building with the addition would still be approximately 6.5% over that maximum.

Ms. Luongo clarified that her clients are requesting an increase in building coverage of 6.5% over what *currently exists* on the property. She explained that the existing house is a pre-existing, non-conforming condition, which is already in excess of the maximum allowable building coverage for the property. She added that, as requested at the previous hearing, she had calculated how much of the proposed building would contain porch and portico areas. She further added that the existing porch contains 151 square feet, that the proposed side portico area would contain 50 square feet and that the proposed rear portico area would contain 47 square feet. She explained

that the coverage for the porch and portico areas would amount to 1.25% of the 6.5% additional building coverage being requested. She then referred to **EXHIBIT A-26** and explained that the driveway would now be located 7 feet off the property line to allow more room for maneuvering. She added that there would be 24 feet of back-up space, and that the K-turn area would measure 5 feet by 12 feet which she believed would be sufficient. She further added that the ranch architectural style ranch places all the living areas on one floor which results in more building coverage. She explained that, under the Township zoning guidelines, if the existing dwelling were demolished, a 5,200 square foot two-story house would be allowed and would be in conformance. She further explained that the proposed plan conforms to all the setback and lot coverage requirements. She noted that her clients do not need the space afforded by a two-story house, and that the dwelling would remain a three bedroom house even with the proposed addition. She added that her clients had considered constructing a detached garage, which would remove the garage space from the building coverage calculation and would provide the same amount of space with a lesser variance request. She explained that the adjacent property to the rear of the subject property is bisected by a drainage easement which would preclude her clients from developing the rear of the lot as an extension to the residence.

Mr. Pizzi noted that, in his opinion, an undeveloped portion of the subject property does not constitute a hardship.

Ms. Luongo clarified that the actual hardship is presented by the architectural style of the dwelling, not the uniqueness of the lot.

In response to Mr. Pizzi, Ms. Luongo stated that she did not believe there is any restriction that would prevent a subsequent owner of the property from demolishing the ranch dwelling and constructing a two-story Colonial. She noted that the stipulation that the structure remain a ranch could be included as a condition of approval.

Mr. Pizzi questioned if the applicants would be willing to stipulate, as a condition of approval, that any dwelling constructed on the property would contain only one-story.

Ms. Luongo noted that such a restriction would run with the land regardless of ownership.

Mr. Pizzi noted that such a restriction would also be included on the deed to the property.

Ms. Luongo questioned if such a restriction could prevent someone from purchasing the property, demolishing the existing structure and building conforming two-story Colonial.

Mr. Wilson stated that the language in the restriction could be tailored to include such a stipulation.

Mr. Schommer noted that any expansion of the existing non-conforming structure, including a second-story addition, would require a variance.

Mr. Wilson noted that a second story addition would not change the building coverage on the lot.

Mr. Schommer noted that a variance would be required because a second story addition would be an expansion of the non-conformity.

Mr. Wilson agreed that a Board appearance would be required to add a second story to the dwelling.

In response to Ms. Luongo, Mr. Wilson stated that the second story prohibition could be included as a condition of approval if such a stipulation was acceptable to her clients.

Mr. Pizzi questioned how the style of the dwelling creates a hardship since the property is a relatively flat lot.

Ms. Luongo noted that the style of the dwelling refers to architecture as well as location and that, in her opinion, the architectural style of the dwelling was a valid consideration since her clients are asking for a significant variance.

Mr. Schommer noted that the applicants could also present proofs relating to the C2 variance criteria and explain how the benefits of granting the application would outweigh the detriments. He added that there would be less massing with a one story structure and that, in his opinion, the proposed plan is better than a conforming plan. He further added that he did not believe that the architectural style of the dwelling presented a hardship.

In response to Mr. Schommer, Ms. Luongo clarified that her clients are requesting a 6.5% increase in building coverage over what is allowed under the ordinance, *not* over what exists today on the property. She explained that her clients are requesting an increase from 2,602 square feet of building coverage to 3,906 square feet of building coverage. She further explained that 1.25% of that increase is for porch and portico areas. She clarified that the existing building coverage on the property is 13% and that her clients are requesting an increase to 19.5% building coverage.

In response to Mr. Pizzi, Mr. Schommer stated that the proposed building coverage would be approximately 50% over what is allowed under the ordinance and that the existing structure is non-conforming and in excess of the maximum allowable building coverage.

In response to Mr. Pizzi, Mr. Schommer outlined the positive and negative criteria as outline in the Township ordinance.

Mr. Godwin noted that a three bedroom house also would be more affordable in the future.

Ms. Luongo noted that the design alternatives her clients had considered were not as advantageous.

In response to Mr. Benton, Ms. Luongo stated that attached, not detached, garages are the predominant condition in the neighborhood. She noted that the Township ordinance would allow a detached garage to be constructed on the property.

Mr. Sullivan noted that there are no detached garages in the immediate area.

Mr. Schommer clarified that a 500 square foot detached garage would be allowed under the ordinance.

Ms. Luongo noted that the structure would be conforming except for building coverage.

Mr. Pizzi clarified that only a one-story dwelling would be allowed on the property if the requested relief is granted.

In response to Mr. Sullivan, Ms. Luongo explained that, if the requested relief was granted, the property would remain non-conforming and there could not be any expansion to a second story without a variance.

Mr. Godwin noted that the deed restriction would not prevent future owners from demolishing the existing dwelling.

Mr. Sullivan clarified that any future owners of the property could either expand the non-conformity through the variance route or build a structure that is in conformance.

Ms. Luongo stated that it would be beneficial to the Township to maintain a variety of houses in the area and that additions give older houses new life.

Ms. Hough stated that she believed the applicants could work within the ordinance requirements to achieve their goals and explained that she found the proposed increase in building coverage troublesome.

Ms. Luongo stated that she had reviewed design alternatives with her clients and that they believed the proposed plan was the best solution because they do not require a two-story structure.

Mr. Walters clarified that the Board could vote on the application as submitted, without the proposed condition of approval restricting the modification of the existing dwelling unless it is in conformance.

A discussion followed concerning the feasibility of enforcing such a condition if it is imposed only through a Resolution. It was determined that a deed restriction would be more feasible because the restriction would quote the Resolution and the deed would be filed with the County.

Ms. Luongo noted that the deed restriction would remove many of the building options for any future owners.

Mr. Pizzi noted that the deed restriction could impact the marketability of the property.

Mr. Schommer stated that the Board would not need the applicant's consent to impose a condition.

Mr. Wilson stated that the applicants must be aware of the implications of a deed restriction.

Mr. Pizzi suggested that the Board take a brief recess so the applicant could discuss their options.

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The Board returned to public session at 8:30 P.M.

Mr. Sullivan stated that he was concerned about the deed restriction and its impact on the resale value of his property. He further stated that he would prefer a condition of approval in a Resolution over a deed restriction.

Ms. Hough questioned how the detached garage would impact the building coverage calculations.

Ms. Luongo stated that the 3,400 square feet maximum building coverage calculation would decrease and that the lot coverage would increase because of the driveway if the detached garage were included in the proposed plan. She further stated that the lot coverage on the property would increase from 1,179 square feet to 1,749 square feet, which would make the lot coverage non-conforming and would trigger another variance.

Mr. Godwin clarified that, if the detached garage were added to the plan, the current garage would be used for living space and would therefore eliminate the need for additional building coverage.

Ms. Luongo stated that the addition of a detached garage would reduce the magnitude of the building coverage variance by 500 square feet less variance and that the lot coverage could be reduced so as to be in conformance.

Mr. Godwin noted that the existing structure exceeds the allowable lot coverage on the property.

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

Mr. Benton stated that he believed the design alternatives would be to either build up to a second story or construct a detached garage on the property. He added that he did not believe that a higher structure would be more desirable, and that a detached garage is out of character for the neighborhood. He further added that, in his opinion, the proposed plan would provide the least amount of detriment to the community and the surrounding properties.

Mr. Wilson clarified that adding a second story to the structure would expand the existing non-conformity and would therefore require a variance.

Mr. Cooney stated that he believed the proposed increase in building coverage is excessive.

Mr. Walters made a motion to approve the application, as submitted, without any restrictions, which was seconded by Mr. Cooney.

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

Mr. Wilson noted that the motion did not carry and was therefore considered a denial.

A discussion followed concerning the feasibility of imposing the aforementioned deed restriction as a condition of approval. It was determined that, although the applicants believed a deed

restriction would adversely impact the potential resale of their property, such a restriction would be more binding and enforceable and must be added to the Resolution as a condition of approval.

Mr. Godwin made a motion to grant the application with the condition that any expansion to the structure would require a further variance application would be placed as a deed restriction which was seconded by Mr. Benton.

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

Mr. Wilson noted that the motion did not carry and therefore the application was denied.

The application concluded at 8:55 P.M.

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GLENN & LAURA CALLEN

78 Fairview Avenue
Block 79, Lot 8

**#04-79-8
Bulk Variances**

Present: Laura Callen, co-applicant
Glenn Callen, co-applicant
Robert Adler, licensed professional architect

This is a continued hearing.

Proof of service was previously submitted.

Mrs. Laura Callen, co-applicant, was previously sworn. Mr. Glenn Callen, co-applicant, and Mr. Robert Adler, licensed professional architect, were sworn.

Mr. Walters read the Board site visit report dated 8/10/05 which was marked into evidence as **EXHIBIT A-29**.

Mr. Adler presented and described the revised plans dated 8/1/05 which were marked into evidence as **EXHIBIT A-30**.

Mr. Pizzi noted that Mr. Schommer's report had been marked in to evidence earlier as **EXHIBIT A-28**.

Mr. Adler explained that the numbers on the zoning schedule had been changed and that the proposed maximum building coverage is actually 2,995 square feet because a portion of the existing roof would be replaced with a trellis.

In response to Ms. Hough, Mr. Adler stated that the existing covered porch on the rear of the house would not be covered and that had not been accounted for in the calculations.

In response to Mr. Pizzi, Mr. Adler indicated the open trellis area on Sheet 3 of **EXHIBIT A-30** and confirmed that the dimensions of the proposed trellis on the prior set of plans had been miscalculated. He added that the area would be 354 square feet less than had previously been indicated on the plans.

Mr. Adler stated that he had created the architectural design for the original house and that, since that time, the size of the family unit had changed resulting in a need to enclose the porch and soften up that side of the house. He further stated that, in his opinion, the proposed addition would be invisible to the surrounding properties and would not negatively impact the neighborhood. He added that the proposed addition would present a de minimus increase in square footage increase and that there would be no obvious difference to the dwelling.

Mr. Pizzi questioned what about the property would create a hardship.

Mr. Adler stated that there would not be any negative impact to the neighborhood with the addition of the screened porch and that it would enhance the façade of the dwelling. He added that the existing porch area is an open slotted wood deck with no roof.

In response to Ms. Hough, Mr. Adler stated that the non-conforming height of the building is a pre-existing condition.

Mr. Pizzi questioned if the height ordinance was in effect when the dwelling was originally constructed.

Mr. Adler stated that he believed the height ordinance changed shortly after the dwelling was constructed and that the dwelling does not appear to be 40 feet high when viewed from the street. He added that the height of the dwelling was measured from 15 feet outside the footprint of the house, far away from the roof of the structure.

Mr. Godwin noted that the requirement that the height of a structure must be measured at a distance of 15 feet from the lowest point of the structure was the ordinance change that had taken place after the building was constructed.

Mr. Schommer clarified that the increase in building coverage would be 209 square feet and that the structure would be 220 square feet over the allowable building coverage. He further clarified that the existing building coverage is 2,775 square feet and that the proposed building coverage would be 2,995 square feet. He added that there would be no change in the height of the dwelling since the proposed plan is for a one story addition.

In response to Mr. Schommer, Mr. Callen stated that the original dry well was replaced with a new 1,500 gallon dry well because the size was not sufficient and would cause water to collect in their yard during heavy storms. He further stated that the dry well captures the existing roof drains on the property.

In response to Mr. Schommer, Mr. Callen stated that he would be willing to tie in the roof of the addition to the dry well.

In response to Mr. Pizzi, Mr. Adler stated that the benefits of the proposed plan would outweigh the detriments because the proposed addition would soften the appearance of the building façade, would enable his clients to make better use of their property, and would afford protection against insects.

Mr. Pizzi stated that, although the applicants have reduced the proposed building coverage, the original structure was built at the maximum building envelope only 8 years ago, which he found somewhat troublesome.

Mr. Adler stated that the original structure would have been sufficient if the family dynamics had not changed significantly.

Mr. Pizzi stated that variance relief is an issue of property, not people.

Ms. Hough questioned what unique characteristics are presented by the property which would preclude the surrounding neighbors from also requesting variances for screened porches.

Mrs. Callen noted that other homes in the neighborhood contain screened porches.

Mr. Adler stated that there would be no demolition of the existing building and that the roof area of the existing dwelling would be diminished. He further stated that the proposed addition would afford his clients and their family protection from insects and that the addition would be as

unobtrusive as possible. He explained that the proposed addition would result in a 220 square foot difference between the existing deck and the proposed screened porch.

Mr. Pizzi clarified that the proposed porch would measure 22 feet by 17 feet, and that the existing porch measures 8 feet by 27 feet.

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

Mr. John Strangfeld, 74 Fairview Avenue, stated that he had no objection to the proposed plan, and that he believed the addition would enhance the property. He added that he has a screened porch on his property and that he believed his neighbors should be able to enjoy the same privilege.

In response to Mr. Godwin, Mr. Adler stated that the proposed addition would be placed on pilings similar to those used in the existing porch.

In response to Mr. Benton, Mr. Adler stated that the existing garage is 18 feet high and that the actual height of the dwelling is 35 feet from base to ridge.

Mr. Benton made a motion to approve the application, as proposed, which was seconded by Mr. Walters.

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

The application concluded at 9:30 P.M.

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NOTICE OF APPEAL

ROBERT BURCH

2 Sycamore Drive
Block 38, Lot 41

Present: Robert Burch, applicant

Mr. Robert Burch, applicant, was sworn.

Mr. Pizzi clarified that Mr. Burch is before the Board to appeal an action taken by the Township Zoning Officer.

Mr. Burch explained that he is seeking to enforce zoning ordinance No. 30-96.22 “Outdoor Lighting” and to appeal the decision of the Zoning Officer in that matter. He further explained that he is the owner of Lot 41 and that Robert Czarny is the owner of Lot 42.01, who he believes is in violation of the aforementioned ordinance.

Ms. Hough questioned if Mr. Czarny received a copy of the appeal.

Mr. Burch stated that he had provided a copy of the appeal materials to Mrs. Kali Tsimboukis, Board Secretary, to the Township Zoning Officer and to the Board. He further stated that he did not provide a copy to Mr. Czarny because he did not believe he was required to do so.

Mr. Wilson questioned if Mr. Czarny must receive notice of the appeal from the Township.

A discussion followed concerning the appropriate procedure for noticing an appeal of this nature to the public and to the owner of the property under discussion. It was determined that, although the Board could not find any stipulation in the Township ordinance that notice must be served in such a case, the consensus was that Mr. Czarny must be advised of the appeal as an element of due process.

Mrs. Nelson noted that the letter from Mrs. Tsimboukis dated 7/6/05 which advised Mr. Burch of the date of the appeal did not contain any indication that it was copied to Mr. Czarny.

Mr. Pizzi acknowledged that the Board did not hear many appeals, so the process was not as smooth as that of a traditional Board application hearing. He apologized for the inconvenience to Mr. Burch and agreed to ask Mr. Dalziel to place his case first on the agenda for the 9/15/05 meeting.

In response to Mr. Burch, Mr. Pizzi stated that the Board does not have the jurisdiction to approve the temporary fencing he installed on his property as a light barrier.

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

The meeting was adjourned at 9:50 P.M.

Cynthia L. Phillips
Board of Adjustment Recording Secretary