

**MINUTES**

**AUGUST 18, 2005**

**BOARD OF ADJUSTMENT**

**TOWNSHIP OF CHATHAM**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Mr. Dalziel, called the meeting to order at 7:35 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  
Jesse Benton, Member

Timothy Walters, 1<sup>st</sup> Alternate  
Deborah Nelson, 2<sup>nd</sup> Alternate

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

Excused: Parker Godwin, Member  
Peter Pizzi, Member

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**RESOLUTION OF MEMORIALIZATION**

**RICHARD & PAMELA NOONAN**

35 Edgewood Road  
Block 91, Lot 8

**#04-91-8  
Bulk Variances**

The Board of Adjustment memorialized the annexed Resolution for Richard and Pamela Noonan, Application No. 04-91-8, as written, on motion by Mr. Cooney and seconded by Mr. Walters.

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

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Mr. Dalziel announced that the application of the Presbyterian Church, No. 05-102.01-16, is carried to the 9/15/05 meeting with no further notice.

Mr. Dalziel announced that the application of Christian and Joan Mogelvang, No. 04-88-9, has been withdrawn as requested by the applicants in a letter dated 8/11/05.

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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  
Thomas Chauvette, licensed professional architect  
William Hollows, licensed professional engineer  
William Truss, licensed professional engineer

This is a continued hearing.

Proof of service was previously submitted.

Mr. Nicholas Parisi, applicant, was previously sworn.

Mr. Barry Osmun, attorney of the applicant, stated that, at the previous hearing, it was established that the soil conditions on the site were safe and that his client would be willing to install 3 additional dry wells on the property to mitigate the drainage concerns of the neighbors.

Mr. Thomas Chauvette, licensed professional engineer, was sworn. He reviewed his educational and professional credentials and was accepted by the Board as an expert witness. He stated that he had prepared the architectural plans for the site, which had been previously marked into evidence as **EXHIBIT A-34** and were last revised on 7/8/05. He explained that the proposed dwelling would be a one-story ranch-style structure when viewed from the front of the property and that the proposed dwelling would be a two story structure when viewed from the rear of the property. He added that he had modified the foundation by using a cantilever on the lower level of the proposed dwelling to minimize the footprint of the structure as well as the area of soil disturbance.

Mr. Dalziel noted that the Board had received revisions to pages 5, 6, and 7 of the architectural plans which were dated 7/28/05 and were previously marked into evidence as **EXHIBIT A-40**.

Mr. Chauvette stated that he kept the 7 on 12 roof pitch to minimize the height of the proposed dwelling. He noted that the height of the structure would exceed the maximum allowable height of 35 feet when measured 15 feet out from the foundation. He further noted that the height of the structure when facing Susan Drive would be 18-20 feet, depending on the viewpoint. He added that the main level of the proposed dwelling would contain a garage, a dining room, a game room, a kitchen, and a master bedroom suite. He further added that the first floor of the structure would contain 2 bedrooms, a family room, and a study, and that the lower level of the structure would contain a sub-basement. He clarified that there would be two living area levels in the proposed dwelling which would contain approximately 3,800 square feet of floor area total. He stated that the style and size of the proposed structure would be in keeping with other homes in the area, which include a couple of ranch style structures, although the other homes contain two stories. He added that the dwelling would contain a two story deck on the main level and a deck off the family room area.

In response to Mr. Dalziel, Mr. Chauvette stated that access to the crawlspace would be through the interior of the house under the main stairs. He added that his client did not intend to finish that space.

Mr. Osmun stated that his client would be willing to stipulate, as a condition of approval, that only utilities would be installed in the crawlspace area.

In response to Mr. Dalziel, Mr. Chauvette stated that the cantilever was placed 5 feet from the rear foundation because the square footage of the proposed dwelling would not work with a double cantilever, and because his client wanted the dwelling to remain within the plateau area.

In response to Mr. Dalziel, Mr. Chauvette stated that a 7 on 12 roof pitch would be more aesthetically pleasing than a roof with a lower pitch.

In response to Mr. Dalziel, Mr. Chauvette explained that the plans had been changed to coordinate the footing elevations at the rear of the property and the deck piers with the engineer's spot elevations.

In response to Mr. Matthews, Mr. Osmun stated that issues regarding the safety of the structure would be addressed by the structural engineer later in the hearing.

In response to Mr. Matthews, Mr. Chauvette stated that alternative designs that would conform to the setback requirements and accommodate the desired square footage would be shallower and would require a higher level height variance.

In response to Mr. Matthews, Mr. Chauvette stated that there are no other design options with the optimum conditions for his client that would require less of a variance.

In response to Mr. Dalziel, Mr. Chauvette stated that the exposed face dimension of the rear of the house from grade to ridge would measure approximately 34-35 feet.

In response to Mr. Schommer, Mr. Osmun stated that the height of the proposed dwelling would be 47 feet when measured 15 feet out from the highest to the lowest point on the property.

In response to Mr. Schommer, Mr. Chauvette stated that the elevations of the front and side topography depicted on the plans is accurate with the topography of the property.

In response to Mr. Schommer, Mr. Chauvette stated that there would be no egress from the proposed deck to the driveway area.

In response to Mr. Dalziel, Mr. Osmun stated that the proposed retaining wall, which would exceed the maximum allowable height of 6 feet, has been included as part of the variance relief requested.

In response to Mr. Wilson, Mr. Chauvette stated that he believed the design of the house is a 2½ story dwelling and that the lower level is exposed and is therefore considered a second story. He noted that the crawlspace would be located below grade and would have a ceiling height of 5 feet and therefore would not be considered a story. He further noted that there would be no usable attic space in the proposed dwelling.

The meeting was opened to the public for questions.

In response to Mr. Michael Oien, 3 Hillcrest Avenue, Mr. Chauvette stated that the footings would be used to reinforce the foundation wall and that questions regarding the structural design of the dwelling would be addressed by the structural engineer.

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

Mr. William Hollows, licensed professional engineer, was previously sworn. He explained that the proposed retaining wall would be less than 20 feet from the proposed dwelling and less than 5 feet from the property line. He further explained that the retaining wall would taper from 2½ feet in height at the front to 6 feet in height at the rear and would also taper to 10 feet from the property line.

In response to Mr. Dalziel, Mr. Hollows stated that the driveway would curve and the proposed wall would extend out 6 feet at the point where the wall would meet the house, which would support the driveway. He added that the wall that was originally proposed for the back of the property was eliminated when the house was moved forward. He further added that he would note the top and bottom of the wall on the plan. He noted that the door underneath the garage would be located at the 409 elevation.

In response to Mr. Dalziel, Mr. Hollows stated that the foundation of the proposed house would be placed on the plateau to prevent future erosion and to avoid disturbing the slope. He added that a silt fence would be installed to prevent erosion downhill during construction.

Mr. Osmun stated that his client would be open to any suggestions the Board might offer and would be willing to plant trees to offset any erosion concerns.

Mr. Schommer noted that the applicant would need to access the back of his property from the neighboring properties to install the dry wells and the sewer connection.

Mr. Hollows stated that his client would utilize the existing 20 foot wide sanitary sewer easement, which runs across the neighboring properties during construction.

Mr. Schommer questioned if access through the sewer easement would be permitted since it is provided for the purpose of maintaining the sewer line.

Mr. Wilson questioned if any approvals allowing access to the easement had been granted to the Township.

In response to Ms. Hough, Mr. Osmun stated that permission to access the easement from the adjoining properties would be a matter for the property owners to discuss.

Mr. Dalziel stated that the issue of access through the easement would not impact the Board's consideration of the application.

Ms. Hough questioned the impact to the steep slope from the installation of the dry wells, the sewer pipe and the footings for the deck.

Mr. McGroaty stated that any trenched areas would need to be reestablished with a true replacement, which must be noted on the plans.

Mr. Osmun stated that his client would comply with the ordinance.

Mr. McGroaty summarized his report dated 8/18/05, which was marked into evidence as **EXHIBIT A-42**. He stated he believed that the proposed construction would be within the permitted steep slope disturbance areas with the exception of the 25% and over area.

Mr. Osmun concurred with Mr. McGroaty that a variance was required only for exceeding the steep slope disturbance area in the 25% or greater range.

Mr. Schommer noted that the applicant must submit a lot grading plan with additional details indicating that the slope area was properly established prior to construction.

In response to Mr. Dalziel, Mr. Hollows stated that a landscaping plan had not been submitted for the site.

The meeting was opened to the public for questions.

In response to Mr. Oien, Mr. Dalziel stated that any disturbance to the slope for the excavation of the supports is included in the calculations. He added that questions regarding the structural integrity of the proposed dwelling would be deferred to the structural engineer.

A discussion followed concerning stabilization measures for the slope to prevent erosion and spillage. It was determined that any spillage would be captured, which would be noted on the plans, and that measures to mitigate the potential erosion with plantings had not yet been explored. Mr. Osmun suggested that any such measures could be subject to the approval of Mr. Schommer or the Township Engineer.

Mrs. Helen Oien, 3 Hillcrest Avenue, questioned if the aforementioned conservation easement was part of the neighboring property or if it was the Township's responsibility to maintain the area.

Mr. Osmun stated that the owner of the property maintains the easement and that development in the easement is restricted except to place plantings. He added that his client would limit any disturbance to the rear of the property with the exception of the disturbance required for installation of the dry wells and sewer pipe.

In response to Mr. Bill McGuinn, 20 Susan Drive, Mr. Hollows stated that a poured foundation would support the pilings for the proposed cantilever at the rear of the dwelling.

In response to Mr. John Hefele, 115 Ormont Road, Mr. Dalziel stated that the Township does not have the jurisdiction to grant permission for the applicant to access the rear of the property through the easement to install the dry wells.

In response to Mr. McGuinn, Mr. Osmun stated that a 30 foot front yard setback for the subject property had been granted previously, and noted that his client is seeking approval for a 28 foot front yard setback.

Mr. Dalziel noted that he did not know of any specific cases of new construction with a large amount of front yard setback encroachment; however, the Board has granted variances for additions with much closer front yard setbacks.

Mr. William Truss, licensed professional engineer, was sworn. He stated that the proposed reinforced concrete retaining wall at the front of the house would not impact the slope. He further stated that there are no fill issues in that area and that no piles or great beams would be required. He added that the rear cantilever would contain steel beams which would be placed at the middle of the building and would have a bearing capacity of 4,000 PSF. He explained that silt

fencing and hay bales would be installed in the rear yard to prevent erosion during the excavation for the sewer pipe and dry wells and that any soil spillage would be removed by shovel. He added that the sewer pipe area would be planted with a quick-growing grass seed and that the remainder of the slope would be untouched. He further added that stone would be placed under the balconies at the rear of the dwelling and that a yard drain would be placed at the front of corner of the house near the swale. He explained that the required lot grading plan would provide more detailed information. He further explained that a rubber tire backhoe would be used to dig the sewer pipe and the dry well areas. He stated that the soil would be placed on either side of the trench and then backfilled and that the width of the trench would be approximately 2 feet maximum.

In response to Mr. Matthews, Mr. Truss stated that he has extensive experience working on steep slopes in South Nyack, New York and Rockland County and that he had encountered similar conditions at other job sites and had achieved excellent results. He added that stabilizing the proposed dwelling would not be a problem, since the footprint area contains good material and the dwelling would not be constructed on the slope. He stated that, in his opinion, the dwelling would be sufficiently stable and would not slide down the hill.

Mr. Hollows stated that he believed there would be no tree removal down the slope because the excavators could work around the trees; however, there would be more disturbance to the slope than the limits shown on plan.

In response to Mr. Walters, Mr. Truss stated that the possibility of erosion on the property would be the same or better than it is today.

In response to Mr. Schommer, Mr. Truss stated that there was no ground water in the test pits which had been excavated on a 9 foot flat portion on the footprint sides.

In response to Mr. Schommer, Mr. Hollows stated that the drainage system would use the 100 year storm capacity and that a yard drain would be added to mitigate runoff.

The meeting was opened to the public for questions.

In response to Mr. Oien, Mr. Truss stated that there was no fill in the plateau area where the test pits were excavated and that the area is comprised of "virgin material." He added that the tests pits were each 9 feet deep and that there were no cobbles or rock in the pits. He emphasized that, in his opinion, the slope stability would not be an issue.

In response to Mr. McGuinn, Mr. Truss stated that a poured foundation would be installed and that the streets would be cleared of any construction material.

In response to Mr. McGuinn, Mr. Osmun stated that trees would be replaced on the site in accordance with the ordinance.

In response to Mr. Hefele, Mr. Truss stated that the proposed retaining wall would be constructed on the plateau area and that the excavation for the sewer pipe and the dry wells would be performed by a backhoe from the rear to the front of the property.

In response to Mrs. Oien, Mr. Truss reiterated that the plateau area consists of naturally occurring "virgin material."

In response to Mr. Mitchell Friedman, 123 Ormont Road, Mr. Truss stated that there was no foreign matter in the test pits and that the conditions are generally the same in the entire plateau area.

In response to Mr. Hefele, Mr. Truss stated that his determination regarding the property material was based on his own findings and that the test pits were excavated just outside and towards the rear of the footprint of the proposed dwelling.

In response to Mr. Friedman, Mr. Truss stated that he was concerned only with the current the condition of the property and not with any previous fill that may have been placed on the property. He added that the amount of water flowing downhill on the property would be reduced with the proposed plan.

In response to Mr. Oien, Mr. Truss stated that he was not concerned with the geology of the surrounding hillside since it would have no bearing on the foundation of the proposed dwelling.

In response to Mr. McGuinn, Mr. Truss stated that the plateau area contains natural rock pieces and that the shelf of rock on the side of the ridge was not a concern.

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

Mr. Dalziel noted that, at the previous hearing, the applicant had agreed to provide documentation to confirm the removal of the fill, which the Board had not yet received.

Mr. Parisi stated that he believed the Township would have the documentation, possibly in court records.

The meeting was opened to the public for comments.

Mrs. Oien provided an overview of the Susan Drive slope area and the fill history and stated that she has lived on Hillcrest Avenue since 1970.

In response to Mr. Oien, Mr. Wilson stated that a letter summary he wanted to introduce into evidence regarding the instability of the steep slope and the existing fill on the site would be irrelevant since the letter also refers to lots that are not the subject of the current application.

A discussion followed concerning the admissibility of additional materials Mr. Oien possessed concerning Lots 14-21 in the Susan Drive area and the stability of footings and piles. Mr. Wilson contended that the information was already part of the public record and was not specific to the subject property or the current application. Mr. Oien asserted that the materials concerned a blanket approval for the area and would be directly applicable to the subject property. Mr. Wilson agreed to accept only Mr. Oien's letter of objection into evidence, which was marked as **EXHIBIT O-1**.

Mr. Robert Gallop, 54 Susan Drive, stated that, in his opinion, an undeveloped property would be out of character with the surrounding neighborhood and that placing the proposed dwelling closer to the road would be a small price to pay for the benefit of having a house on the subject property.

In response to Mr. Gallop, Mr. Wilson stated that a letter from a neighbor could not be accepted into evidence because they were not in attendance at the meeting and therefore available for cross-examination by the applicant.

Mrs. Oien stated that, if it was determined that the proposed house could be constructed safely, she believed that the height variance should be granted because the proposed design is aesthetically pleasing.

Mr. Hefele stated that he was more concerned about the presence of fill and runoff down the slope than he was about developing the property. He added that he did not believe that the soil would be sufficient to support a foundation and that he would prefer more assurance that the slope is stabilized.

Mr. Dalziel stated that Mr. Schommer had issued a report dated 3/3/05 based on the material submitted, which did not reflect a problem with the stability of the slope.

A discussion followed concerning the stability of the slope and the presence or absence of fill on the property. It was determined that the soil tests indicated that there is no fill present on the property and that the applicant would be required to warranty the proposed dwelling with the State because of the slope issues.

Mr. McGuinn stated that Chatham Township deserves the best quality construction and that he was concerned that the fill on the site would be an issue during construction.

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

Mr. Osmun stated that the bulk and use variances are required because of the topographical conditions on the property which presents an undue hardship to his client because the property could not be reasonably developed without variance relief. He added that he believed the issue of soil erosion measures could be a condition of and Board approval subject to the approval of Mr. Schommer.

In response to Mr. Dalziel, Mr. Truss stated that a calibrated device was pressed into the test pits to determine the bearing capacity of 4,000 PSF.

Mr. Matthews summarized that the applicant had agreed to install three dry wells, arrange for access to the property through the conservation easement, and provide soil erosion measures during and after construction as conditions of approval. He added that the applicant also had stated that only utilities would be located in the crawlspace as a condition of approval.

Mr. Schommer noted that the structural stability of the proposed dwelling would be reviewed by the Construction Office and that soil logs also would be submitted. He added that the plans must be revised to reflect the locations of the sewer and drainage lines and to indicate that the proposed retaining wall would slope from top to bottom. He further added that no landscaping plan would be submitted; however, the trees placed as part of the stability methodology would be identified and shown on the plans as a condition of approval.

Mr. Matthews made a motion to approve the application, with the aforementioned conditions, which was seconded by Ms. Hough.

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

The application concluded at 9:50 P.M.

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**Bd. Of Adj. – August 18, 2005 - pg 12**

The Board returned to public session at 10:07 P.M.

Mr. McGroaty left the meeting at 10:07 P.M.

Mr. Dalziel announced that the application of New Cingular Wireless PCS, No. 05-84-3, is carried to the 9/15/05 hearing with no further notice.

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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

This is a continued hearing.

Proof of service was previously submitted.

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

Mr. Freund stated that they purchased the subject property in 10/04 and would like to add a porch to the existing dwelling.

Mr. Rosen submitted photos depicting the subject property and the surrounding area which were presented and described at the previous hearing and were marked into evidence as **EXHIBIT A-22**. He added that his clients are seeking variance relief for front yard setback, side yard combined setback and height requirements. He explained that the entire existing house is located within the front yard and that the proposed rear porch addition would be located partially in the front yard because of the slope on the property. He explained that the height of the existing structure is 38.75 when viewed from the back of house and that, with the proposed addition the height would increase to 48.25 feet from the back of the house. He further explained that the height of the existing house from the front of the property is 18 feet and that the average height of

the dwelling with the addition would be 33.5 feet. He stated that the proposed addition would measure 16 feet by 11 feet or 175 square feet in area. He further stated that the proposed addition would be relatively small and that half of the addition would be within the building envelope and half would be within the front yard setback. He added that the proposed addition would have no impact on the neighboring properties and that the topography of the property presents a hardship.

Mr. Schommer summarized his report dated 5/24/05 and stated that the applicants had agreed to submit a lot grading plan waiver.

In response to Mr. Dalziel, Mr. Wilson stated that the proposed addition mostly would be obscured from the property on the left, and would be difficult to see from any properties in the area since the adjoining properties do not have open yards.

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

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

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

The application concluded at 10:20 P.M.

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**REINER BAYARD**  
17 Karlin Drive  
Block 17, Lot 81.08

**#04-17-81.08**  
**Bulk Variances**

Present: Reiner Bayard, applicant

This is a continued hearing.

Mr. Reiner Bayard, applicant, was previously sworn. He advised the Board that he had submitted an Affidavit of Proof of Service to the Planning and Zoning Department prior to the hearing.

Mr. Cooney read the Board site visit report dated 8/6/05 which was marked into evidence as **EXHIBIT A-23**.

Mr. Bayard stated that he had submitted revised plans dated 8/3/05 which included measurements for the pool length and width and calculations for the maximum area of disturbance and were marked into evidence as **EXHIBIT A-24**.

In response to Mr. Dalziel, Mr. Bayard stated that the slope disturbance information was located in the lower left corner on Sheet 3 of the plan.

Mr. Dalziel noted that the square footage calculation of the area of disturbance was not included on Sheet 3.

Mr. Schommer noted that the proposed plan exceeds the requirements for both the 20-25% and 25% and over slope disturbance categories.

A discussion followed concerning whether both side yard setback and rear yard setback variance relief was required. It was determined that, since the pool area is a hard surface and there is no rear yard setback requirement from a house for a pool, the pool would be considered a patio type area and the 35 foot rear yard setback requirement would not apply to a patio area. It was further determined that the R-3 zone requires 20 foot side yard and rear yard setbacks for patios and, since the proposed pool would be located 20.2 feet from the rear property line and 11.7 feet from the side yard, only side yard setback variance relief would be required.

In response to Mr. Dalziel, Mr. Bayard stated that he had not considered modifying the terrace and moving the pool closer to the house. He noted that almost every property on his street contains a pool and that latticework fencing would screen the pool.

In response to Mr. Schommer, Mr. Bayard stated that no new trees would be installed on the property and that he would not be installing the proposed tiered boulder walls on the property. He added that boulders would be placed near the stairs, but they would not create any type of wall structure.

Mr. Dalziel clarified that only a side yard setback variance would be required.

Mr. Schommer noted that changing the grade within 5 feet of the property line would require a variance and that the pool equipment must be located away from the property line.

A discussion followed concerning the location of the pool equipment. It was determined that the equipment could be located as indicated on the plan; however it must be completely screened. It

was also determined that the applicant must revise the plan to quantify the slope disturbance and correct the drainage calculations.

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

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

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

The meeting was adjourned at 11:10 P.M.

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Cynthia L. Phillips  
Board of Adjustment Recording Secretary