

July 17, 2008

**Board Of Adjustment**

**Township Of Chatham**

Meeting Called To Order – 7:30 P.M

Open Public Meetings Act Statement read into the record

ROLL CALL:

Mr. Lawrence Dalziel	Mr. Parker Godwin	Mrs. Therese Hough
Mr. Glen Nelson	Mr. Tom Quinn	Mrs. Francine Alcorn
Mr. Karl Schmidt	Alt.#1 Vacant	Alt.#2 Vacant

Also Present:

Kali Tsimboukis, Board Secretary  
Steven Shaw, Board Attorney  
John Ruschke, Board Engineer  
Banish Associates, Board Planner

Minutes of May 22, 2008

Motion to approve the minutes as submitted/amended and was second by Mr. Nelson seconded by Mrs. Hough

**Stephan/Wendy Kuppenheimer,**  
**13**  
**316 Lafayette Ave.**  
**Block: 106 Lot: 13**

**Calendar BOA 07-106-**

A request has been made to carry this application to the September 18<sup>th</sup> meeting.

Mrs. Hough made a motion to grant the extension, which was seconded by Mrs. Alcorn. All in favor Mr. Dalziel, Mr. Nelson, Mr. Quinn, Mrs. Alcorn, Mrs. Hough

**New York Smsa Ltd. Partnership**  
**D/B/A Verizon Wireless – Chatham 2**  
**529 Green Village Road,**  
**Block: 48.21 Lot: 179**

**Calendar Boa 08-48.21-179**

**Richard Snyder, attorney, on behalf of the applicant** – said he had received a phone call from Mr. Shaw between the time of the last meeting and this evenings meeting and as he understood the Board would like the applicant to consider conducting a new balloon test. I reviewed the matter with my client and if the Board feels that this is an appropriate thing that they want the applicant to do they are willing to do that. I just want to indicate what we think would be appropriate protocol to do that. As Mr. Masters may have

indicated, conducting the balloon test is very weather dependent. Any significant wind affectively precludes the effectiveness of this test. What we would presume to do, what we anticipate doing if the Board wanted, to schedule it on a Saturday to facilitate the Board members and the public. Mr. Masters suggested 2 dates... Aug. 9<sup>th</sup> and 16<sup>th</sup>. We will be there very early in the morning and we would probably schedule it for August 9<sup>th</sup>. We would ask that if for some reason the wind conditions are such that the test couldn't be conducted on that day, that there be a number given that he could call in case the test could not go forward. We would then automatically schedule it for the following week.

Mr. Shaw it had also been suggested that they could perhaps fly like plastic streamers.

Mr. Snyder – said he had asked but did not think there was anything that could be put on the balloon.

Mr. Dalziel – let me just explain the nature of the thought behind that. At the last hearing you had shown photographs of the balloon indicating the height of the proposed structure. I think, at least of interest to me and perhaps some of the other board members, in addition to actually physically seeing the height as it is, the thought about the streamers was to actually see the size of the flag. The thought was as the testimony was that the flag was going to be 20 ft, etc, that perhaps the plastic streamers tied to a balloon at various levels with a little breeze might be helpful and give some indication as to the size of the flag.

Mr. Snyder said he would be glad to ask again as to whether that could be done.

Mr. Dalziel – quite frankly for me if the balloon was slightly off, maybe 98-97 ft so we could actually see the size of the flag I think that would be helpful. That was the thought behind it.

Mr. Snyder – I understand and I will ask. I did ask when Steve contacted me the request.

Mr. Shaw – it is my understanding then that what you are proposing is to carry the rest of the hearing to September 18<sup>th</sup> and grant an extension.

Mr. Snyder – that is correct. I have also taken the liberty of reaching out for Dr. Eisenstein for recall testimony of radio frequencies and he has confirmed his availability for the September meeting. He indicates that he usually has the balloon up around 7 am give or take a half hour. We would anticipate calling on the 7<sup>th</sup> to confirm (depending on weather) and would proceed with the understanding that it would be on the ninth of August unless you are otherwise notified.

Mr. Dalziel –I would also suggest that perhaps you take photos just in case some board member was not able to make it.

Mr. Dalziel – Assuming there are streamers that help

Mr. Snyder – again I will ask - he wasn't optimistic about the possibility but I will ask

Mr. Dalziel – frankly that is really the primary reason – I thought it would be helpful. If they can't do that then...

Mr. Snyder – let me ask then... if it's not possible to do that does the Board still want the applicant to do the balloon test?

Mr. Dalziel - I would be surprised if a 4ft. helium balloon could not support plastic streamers.

Mr. Snyder – I think it may be the ability to keep the balloon up in the air. but then I am not an expert so I will ask.

Mr. Dalziel – maybe a larger balloon (6'). It is not about the balloon but about the height.

Mr. Snyder – if that is not possible does the board still want me to float the balloon up? I am willing to do that.

Mrs. Hough – the balloon was not critical... the height of the balloon we could see. The streamer issue would be helpful.

Mr. Dalziel – we strongly encourage you to find a way to float the streamers. Otherwise, if it cannot be done then I would go with the balloon.

Mr. Snyder - it is not a cost factor

Mr. Dalziel – I am sure there is a way but in the event that there is not a way then I don't think there is a reason to have it done. I would strongly encourage you to find a way to do that.

Mr. Dalziel asked for a motion to carry this to the September meeting.

Mrs. Hough moved to carry the application to September, seconded by Mrs. Alcorn. Roll call: Mr. Dalziel, Mr. Nelson, Mr. Quinn (recues), Mrs. Alcorn, Mrs. Hough

**Scott & Lezli Bradley**  
**20 Lisa Drive, Block: 26 Lot: 4**

**Calendar Boa 07-26-4**

Mrs. Hough read the site visit report (6/28/08) into the record

Mr. Bradley - said he was not sure where he should go from here

Mr. Dalziel – asked if there were any comments from the board

The Board members felt everything had been well presented and felt the site visit answered any questions they might have had.

Mr. Shaw referred to the ordinance as it pertains to overhangs without columns. The setback allowed for this type of development.

Mr. Bradley said the columns were for aesthetics. He hoped that the board agreed with him. He did bring the additional 5 copies that were requested which are the same as you have.

Mr. Dalziel - any magic to the number 5 ft.

Mr. Bradley – the magic is the aesthetics.

Mr. Dalziel asked for comments.

The members felt that what was proposed was aesthetically pleasing.

Mr. Bradley asked what the next steps would be to proceed

Mr. Dalziel – first you need the action from this board for approval, then a resolution.

Mr. Shaw thought the consensus was that we could take action on it this evening due to the favorable action. Given the nature of the application and the presentation there was sufficient information available for me to prepare a resolution in advance.

Mr. Dalziel – to conclude the application... any questions/comments from the board/public. None being heard the public portion was closed. Mr. Dalziel then asked for a motion.

Mr. Nelson moved to accept/approve the application as presented, which was seconded by Mrs. Alcorn. Roll call: Mr. Dalziel, Mr. Nelson, Mr. Quinn Mrs. Alcorn, Mrs. Hough

Mr. Shaw – we do have a Resolution prepared which does include a condition relating to the patio.

Mr. Dalziel – asked for a motion

A motion was made by Mrs. Hough, seconded by Mr. Quinn to approve the Resolution as amended. Roll Call: Mr. Dalziel, Mr. Nelson, Mr. Quinn Mrs. Alcorn, Mrs. Hough

**Village Super-Markets, Inc.,**  
**641 Shunpike Road.**  
**Block: 48.23, Lot: 126.04.**

**Calendar Boa 08-48.17-126.04**

A letter submitted to carry this application to the September meeting.

A motion was made by Mrs. Alcorn to grant this extension seconded by Mr. Quinn.

Roll call: Mr. Dalziel, Mr. Nelson, Mr. Quinn Mrs. Alcorn, Mrs. Hough

**Raj & Tejaswini Maganti**  
**42 Mountain Ave.**  
**Block: 39 Lot: 13.01**

**Calendar Boa 08-39-13.01**

Mr. B. Osmun, Attorney  
Mr. William Hollows, Engineer  
Murphy & Hollows Associates

Mr. Osmun, Attorney - This is a situation where variance approval had been previously granted in Oct. 2006 for steep slope disturbance. The variances have been exceeded and we now require further variance for steep slopes. I have Mr. William Hollows of Murphy & Hollows Assoc., Civil Engineers, who will testify to the steep slopes and the drainage.

Mr. Dalziel – asked that the site visit report (6/28/08) be read into the record before testimony was given. Mr. Quinn read the site visit report.

Mr. Hollows was sworn and gave qualifications. He referred to plan (A14) drawn by Mr. Murphy. The area in blue is the area in question. A little to the north is the cul-de-sac. There is a little disturbance above the house, which is now stabilized with lawn. Below the driveway is a larger area where most of the disturbance has taken place. Outlined in pink is the area previously approved (shaded areas are disturbed area). I was out there today and it is all stabilized with lawn. There is a fence line now at the limit of disturbance. Along that line there are some trees planted and also along the driveway there are some trees planted. I did peek over the fence to see if the disturbances had done anything to the slope below and I noted that it just matched up to the grade that is there. It is not like they pushed dirt and left it and put a fence on top. Mr. Murphy prepared a letter and drainage calculations verifying that the drywells installed will handle a 10-year

storm for the impervious area as the driveway is slightly larger than originally planned.

Mr. Osmun asked if the plan had been submitted to Mr. Ruschke and if there was any response.

Mr. Hollows – yes it had gone to Mr. Ruschke and to date there had been no response.

Mr. Dalziel – can you characterize the nature of the disturbance? Its kind of difficult to tell when you walk out there and see the nice lawn...its hard to tell what the disturbance was.

Mr. Hollows - I was there before when original plan was made for original house. I don't know that they have changed the slope substantially on this side, it's a little flatter more so where the drywells are installed. When you get back where the trees are there are a number of trees that remained. It looks like usable side yard now.

Mr. Dalziel – asked if that is why it was done.

Mr. Hollows said he really didn't know.

Mr. Dalziel – the colorization you show does not look like the testimony given by Mr. Maganti at the last hearing. He talked about a place to put excavated material when he was digging his basement. This looks more like spreading soil to create a yard. When he said he needed a space to put the soil from the excavation it doesn't look like he put it there. That generally is a pile of dirt somewhere, which you need to get rid of. We asked him why he didn't truck it off when he had excavated it. I guess poor planning was part of that answer but this certainly doesn't represent what his testimony was.

Mr. Hollows – I didn't hear his original testimony. I know you have a garage under here so you only have a partially excavated basement. Most likely he put the soil down in that area.

Mr. Dalziel – if you are excavating for a construction site would you spread it around like that.

Mr. Hollows - I think what they would have done is put a pile here during construction. Probably taking some off and some got spread to clean up that general area. When you get to the fence it matches the grade at the fence (not an abrupt drop off).

Mr. Dalziel – I have the original approval here and your new plan next to it. I really can't tell where there is a difference. Can you tell me where the difference is?

Mr. Hollows – basically we are just looking for outline of disturbance. We did redo the topography of the site.

Mr. Dalziel – wouldn't your proposed plan show the change in the grade. I would think it would show the nature of the change in the grade (dated 2/15/08)

Mr. Hollows – It is not a proposed plan it's a slope plan, which shows the conditions of the disturbance as of that date.

Mr. Dalziel – So the grade was not changed?

Mr. Hollows - we didn't do topography. We located the limits of the disturbance and the new features like the house, driveway, fence etc.

Mr. Dalziel – so how do I read the shaded area on this plan

Mr. Hollows - the plan shows the limits of what was previously approved (pink)

Mr. Osmun – it is what he was supposed to do. Tom Murphy staked out the difference in the limits.

Mr. Shaw – it does not show the existing elevations created as a result of the deviation. You're just delineating area.

Mr. Hollows – we delineating slope disturbance area. We outlined the area that was disturbed. To clarify he pointed out the line on the plan to follow.

Mr. Dalziel - referring to the plan - the proposed disturbance goes out to the property line (sw) cuts back in and goes all the way up the back of the property and includes portions of the walkway

Mr. Hollows - it kind of split area.

Mr. Dalziel – I am surprised you don't have a plan showing what they built here. The walkway you are saying is in a different location.

Mr. Hollows – we located it. What you see here is what was actually built. It is not an as-built topo. It is just the limits of disturbance.

Mr. Osmun – I have nothing further.

Mr. Quinn - could this be restored to what it was?

Mr. Dalziel – this plan does not show what needs to be done. He didn't do an as-built topo so you can't tell where it is now as to where it was. We need more information. I will let Mr. Hollows answer Mr. Quinn's question.

Mr. Hollows – it's a situation where its disturbed and stabilized. To do it again you will disturb it again and I don't know where your are getting back to. This is minor in this area. This area, the trees are there so it could not have been much there and the trees are not built around. Really this area seems a little flatter. I do recall that these drywells were put in an old driveway that had been located here. I don't know what you gain by trying to put it back.

Mr. Dalziel – so what do we gain by allowing builders to flagrantly violate granted approvals.

Peter Turek, Eng. from Hatch Mott MacDonald's office - I just want to refer to John Ruschke's letter of April 22 where he identifies the additional variance(s) needed. Item 1 – rough calc. max. allowable disturbance was 5196s.f the original variance was 7484 sf. This area of disturbance has been increased to 10286 sf, which is approximately 3000 sf increase in area of disturbance. The question that needs to be addressed is where is that 3000 sf of disturbance... is it highlighted on the plan?

Mr. Hollows - No

Peter Turek – that is the area that I think John referred to as having been built and on June 5<sup>th</sup> there was an inspection which showed the areas as stabilized. There is grass on them now but that doesn't take away from the fact that there has been an expansion of the disturbance. The only other comment that John had was to the drainage calculations which still need modification (should be noted in any resolution).

Mr. Hollows – as of what date.

Peter Turek– I would just say that they should be resolved to the satisfaction of the Twp. Engineer.

Mr. Dalziel – can you clarify the nature of the calculations

Peter Turek– as I understand it there were some changes in the coverage and has increased the runoff. John was concerned about that and would like to have that resolved. They need to make sure that any stormwater facilities they have in place are adequate to handle the increase.

Mr. Hollows – I am not sure what you are referring to but we have additional information in May, which we have had no response to.

Peter Turek– I am sure there is a way to resolve this as long as it can be left where the issue is resolved with John. I would suggest that this be a condition.

Mr. Dalziel – were there additional trees removed from the site other than what is shown on your plan?

Mr. Hollows - I can only speak to what I saw. As far as I can tell below the fence it hadn't been touched. There are 3 large trees maybe 4. Possibly a few small trees were removed. That's why I was saying I can't see how there could have been any substantial change in grade over here just because the trees.....

Mr. Dalziel – what about the north side

Mr. Hollows – we had a couple of trees that came out but honestly it looks like they raked under the trees

Mrs. Hough – If this application had it come before us initially would never had been approved. To come to us now to ask for a retroactive approval - I have a hard time with it.

Mr. Dalziel – before we go there could you address the Environment Commission's letter of June 30<sup>th</sup>

Mrs. Alcorn – do we have a clear understanding of the final grade based on the disturbance – do we know if there is a change in final grade?

Mr. Shaw – we don't know the difference. We have not been provided with the information. They have just shown a line of disturbance.

Mrs. Hough – shouldn't that information be provided.

Mr. Dalziel – I would have thought it would have been on this plan.

Mr. Shaw – we could ask the applicant to provide a revised plan with that information and perhaps address the very specific items raised by the Environmental Commission. Unfortunately, you just received that this evening. I think it's incumbent upon this board to be able to have a record and respond to the issues of the Environmental Commission. We have to have the applicant address their comments.

Mr. Osmun - the letter says that all restorations will be approved by the Twp. Engineer. What she is saying is that the land should be restored to the approved plans. I can ask Mr. Hollows if they can do that. What would be the result of that.

Mr. Hollows – you are re-disturbing something that is already stabilized. It's an unfortunate situation but I don't know what you gain by going back. Again, if it were a situation where they had left it or had a sheer wall of dirt and it was eroding... I don't see that when I go out there. I see a finished lawn area with new landscaping. I understand the Board's dilemma but I don't know what is gained by going backwards when you are at this point.

Mr. Dalziel – were you or Mr. Murphy involved in the construction of this project?

Mr. Hollows - we staked out the house, locate foundation,

Mr. Dalziel – did you do a foundation survey.

Mr. Hollows – yes

Mr. Dalziel – so you were out there at the time the dirt was spread around the area

Mr. Hollows – yes the surveyors from the office may have been their...not Tom Murphy or I. They are strictly surveyors who measured the height of the framing for building height.

Mr. Dalziel – so you don't normally check for the accuracy of the work based on your plans.

Mr. Hollows - It's not typical.

Mrs. Hough – what about the town inspections. When was this discovered? At what point of the process of building the house. Wouldn't excavation of the house required some inspections.

Mr. Dalziel – I don't know where to go with this.

Mr. Shaw read into the record the Environmental Commission Comments where they basically said this was a flagrant violation of the Board of Adjustment approval and the recommendation was that the land should be restored to the approved plans. They also suggested that the Board impose fines. That of course is something we cannot do. I would note however that if the Board of Adjustment were to deny this approval it would be submitted to the Zoning Official and then of course there would be action taken by him.

Mr. Osmun – I believe the applicant has already been fined.

Mr. Dalziel – One of the other things from previous testimony from Mr. Maganti is that there was a silt fence up which had been knocked down and dirt spilled over. Clearly, that is not a spill over. That is not what is shown on the plan. The representations here I would say are inadequate in terms of what really happened in this area.

Mr. Osmun asked if Mr. Maganti wanted to respond to that.

Mr. Maganti said he would.

Mr. Dalziel – my statement I just made... the previous plan shows a highlighted silt fence. Correct me if I am wrong but in previous testimony, you said the silt fence was up, you were excavating the basement, you were putting dirt in this location, the dirt knocked the fence over and spilled beyond the fence. I look at the map that Mr. Hollows has presented and clearly, that is not a spillover condition.

Mr. Maganti – my response to Mr. Ruschke last time saying that there were violations and I had to pay a fine. I was asked if I knew that I was in violation and I said no. I was not aware until we were issued a summons.

Mr. Dalziel – I think you have an issue to take up with your excavator.

Mr. Maganti – I was the general contactor.

Mr. Dalziel – I know and that is what I don't understand. Having been here and received this approval and then claim that you did not know that you were in violation of your own approval. I just don't understand. This map shows something, in my opinion, different than what you testified to. This map appears to me that soil is spread out across this lot to create a lawn. That is what it looks like to me. It's my opinion, not the board's opinion. In my opinion it is not a spill over condition. I don't know how you justify that.

Mr. Maganti – Mr. Ruschke advised me that we had touched the slopes, which we should not have done. If I knew this would have caused me this kind of aggravation, I would have been doubly careful.

Mr. Dalziel – first of all let me just ask if there are any questions/comments from the audience. None heard.

Mrs. Hough – It's a very tough unfortunate situation. I have to say I am not inclined to vote for this application when it never would have been approved the first time. I have not heard anything to justify the variance relief. I think some kind of enforcement action is needed because we cannot let this thing happen and not take corrective action. I think

it is something the Twp. Committee should look at. I think they are the enforcement party.

Mr. Dalziel – with all due respect, I think the statement “I did not know” is not sufficient.

Mr. Maganti - may I just say something. During the inspections not once did anyone indicate or say that I was in violation. I am not trying to say anyone else is to blame because of my own mistakes.

Mr. Dalziel – but the plan clearly demonstrates with a line “limited disturbance”. That generally means no disturbance beyond the line. You can’t get much clearer than that.

Mr. Hollows – I know we are splitting hairs but would it help the board if we did the as-built topography because again I just don’t see where the grade has been change substantially. As Mr. Maganti said, he put down topsoil, he put down sod, so it is disturbance. If you want to look at it have we changed the grade. If we took topography we may find out that it’s not really a large disturbance.

Mr. Shaw – I think that one of the questions is that there really hasn’t been any affirmative proofs to show why

Mr. Osmun – what kind of affirmative proofs could I possibly give you

Mr. Quinn – I need some clarification. I have to tell you one of the things that bother me about this is that it appears that they wanted to level out that land and that is what they did.

Mrs. Alcorn – agreed with Mr. Quinn. Is there a substantial change in grade. At least give me a comparison.

Mr. Dalziel – I tend to agree with Mrs. Hough. When you look at the numbers in relation to allowable disturbance vs. proposed I would not have voted for this application. The degrees of disturbance are much greater than what would be considered reasonable.

Mr. Osmun – then if what you are saying Mr. Chairman is that topography is not going to change your mind then what is the sense of doing it.

Mr. Dalziel – I am just expressing my opinion, I do not speak for the Board.

Mr. Osmun – I understand. Mr. Hollows tells me they have the topography it just has to be put on the plan.

Mr. Dalziel – then maybe he can speak to what it is

Mr. Hollows – I haven’t got it with me. I have to overlay it and see how they compare.

Mr. Banish - If in fact the topography was really not change significantly and that could be demonstrated the Environmental Commission would recommend re-vegetation.

Discussion ensued regarding what could/could not be done or accepted.

Mr. Osmun are you willing to consider additional trees

Mr. Dalziel – perhaps Mr. Maganti can answer this... it appeared when I went by the site (you will notice on the plan the many circles which represent trees) that there weren't that many circles on your lot anymore. There appear to have been more removed.

Mr. Maganti – there were 3 categories of trees. We actually planted more than what we removed.

Mr. Shaw – questioned the lot-grading plan. Your preference would be to return to the next meeting with revised plans showing the topography, plantings, etc.

Mr. Osmun granted extensions needed.

Mr. Dalziel – Extension was given to September 18, 2008

Mr. Shaw wanted to have a brief executive discussion.

A motion was made by Mrs. Hough seconded by Mr. Nelson to close the regular meeting and go forward with the Executive Meeting to discuss pending litigation.

Mr. Dalziel- meeting open to public. Nothing to be heard.

Mr. Nelson made a motion to adjourn the meeting seconded by Mrs. Hough. All in favor.

Meeting was adjourned at 9:00 p.m.

Respectfully submitted

Mary Ann Fasano  
Transcribing Secretary