

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
APRIL 1, 2019**

Mr. Thomas Franko called the regular meeting of the Planning Board to order at 7:30 P.M.

Adequate notice of the meetings of the Planning Board of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2019, and January, 2020 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy filed with the Municipal Clerk and a copy placed on the bulletin board in the main hallway of the Municipal Building.

Answering present to the roll call were Mr. Franko, Mrs. Swartz, Mr. Hoffmann, Mr. Kelly, Mr. Nelson, Mrs. Ozdemir, Mr. Coviello and Mr. Tarasca. Mr. Sheth arrived a few minutes late.

Also present were Board Engineer John Ruschke, Township Planner Frank Banisch and Attorney Amanda Wolfe filling in for Board Attorney Steve Warner.

Mr. Travisano and Ms. Hagner were absent.

Mr. Tarasca moved to excuse the absent members. Mr. Nelson seconded the motion, which carried unanimously.

Resolution

RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, APPOINTING KATHLEEN NAGY- DEROSA AS MANAGER FOR THE PLANNING BOARD

WHEREAS, the Planning Board of the Township of Chatham, County of Morris, State of New Jersey, desires to appoint Kathleen Nagy-DeRosa as Manager for the Board for the period commencing March 1, 2019 and ending December 31, 2019.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Chatham, County of Morris, State of New Jersey, as follows:

1. Kathleen Nagy-DeRosa is hereby appointed as Manager for the Planning Board of the Township of Chatham, County of Morris, State of New Jersey, for the period commencing March 1, 2019 and terminating December 31, 2019.
2. The compensation to be paid to Kathleen Nagy-DeRosa for services rendered to the Board shall be in accordance with the salary Ordinance of the Township of Chatham; and
3. This Resolution shall take effect upon adoption; and
4. A certified copy of the Resolution shall be forwarded by the Secretary of the Board to the Township Committee.

Mr. Franko said that the resolution is to appoint Kathleen Nagy-DeRosa as Planning Board Manager. He noted that Kali Tsimboukis has been serving as Interim Board Manager.

Mr. Nelson moved to adopt the resolution. Mr. Kelly seconded the motion.

Roll Call: Mr. Travisano, Absent; Mr. Franko, Aye; Mrs. Swartz, Aye; Ms. Hagner, Absent; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mrs. Ozdemir, Aye; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Aye.

Approval of Minutes

Mr. Tarasca moved to approve the minutes of the February 25, 2019 meeting. Mr. Nelson seconded the motion, which carried unanimously.

Hearings

PB: 18-75-1.04 Edward & Sherry Guy, 12 Williams Road, Block 75, Lot 1.04 Requesting Minor Subdivision

For the benefit of the members of the public present, Mr. Franko cited the procedural sequence that the hearing will follow at this meeting.

Michael Miller, the attorney for the applicant, gave a brief overview of the application and the standards which need to be met. Mr. Miller said that he has one witness, a planner, present to give testimony.

Ms. Wolfe said that the applicant's counsel sent out notice to property owners within 200 feet regarding this evening's hearing.

Joe Burgis, the planner for the applicant, was sworn in to give testimony. Mr. Burgis provided his qualifications, and was accepted as an expert witness.

Mr. Burgis presented his review of the application. He said that he reviewed the Township's Master Plan, the Township's zoning ordinances and the application. Mr. Burgis also said he reviewed the tax maps for measurements. He gave a description of the subject property as it presently exists. Mr. Burgis also gave a description of the proposed subdivided lots.

Exhibit A-4 was entered into the record, which shows a total lot area in comparison to the other R-4 lots. Exhibit A-5 was also entered, which identifies the lot areas of the R-4 lots. Mr. Burgis noted that the R-4 zone requires lots to have a minimum of 10,000 square feet within 115 feet of the street.

Mr. Burgis said that there are 42 lots in the R-4 zone in the area where the subject property is located, and 23 lots are smaller than the proposed lots. Mr. Burgis said that he did not include the neighboring R-3 zone properties because they are in a different zone. He also said that 29 lots in the R-4 zone do not conform with the size requirement of having at least 10,000 square feet within 115 feet of the street. Mr. Burgis said that it is his conclusion that the proposed lots fit within the character of the neighborhood, as 70% of the lots do not comply with the zoning requirements.

Mr. Burgis said that the Master Plan says that the minimum lot size in an R-4 zone should be 10,000 square feet, however it does not say that the 10,000 has to be established within 115 of the street. He also said that the application seeks two variances for lot size less than 10,000 square feet within 115 feet of the street, and at the same time an existing variance for side yard setback would be eliminated.

Mr. Burgis also addressed the statutory standards for positive and negative criteria. He said that the C-2 positive criteria is affirmed in this application because the proposed lots fit within the established pattern of developed in the R-4 zone. Mr. Burgis noted that the lot presently is an anomaly in the R-4 zone. He also said that the regulatory control seeks to prevent flag lot development or other irregularly shapes lots. Mr. Burgis also said that it is his analysis that the application does not present any substantial detriment to the public good.

Mr. Miller asked what kind of house could be built if the lot is not subdivided. Mr. Burgis said that a 6100 square foot house could be built, which would be an anomaly in that zone.

Mr. Nelson said that Mr. Burgis has alternated between referring to the neighborhood and referring to the R-4 zone, and asked how Mr. Burgis is differentiating the two. He also said that looking only at the R-4 zone does not consider the whole neighborhood. Mr. Burgis said that the Board should only consider the zone in which the property is located, as the R-3 zoning regulations should not be applied to an R-4 lot. Mr. Nelson said that the application will change the neighborhood. Mr. Burgis said that the proposed lots fit in with the established development pattern.

Mr. Tarasca asked about the size of the two smaller houses. Mr. Burgis said that that the proposal is for two 3500 square foot houses. Mr. Tarasca said that he would prefer to see one house at 6100 square feet than two houses at 3500 square feet each. He also raised a concern about the potential impact on the School District if families move into the proposed homes. He also asked about the average square footage of the homes in the zone. Mr. Burgis said that they range from 1500 to 2000 square feet. Mr. Tarasca said that the proposed houses will be too big and will change the character of the neighborhood. Mr. Burgis said that the proposed houses will conform to the land use regulations that have been established by the governing body.

Mrs. Ozdemir asked what hardship is being claimed for the variance. Mr. Burgis said that the applicant is not claiming a hardship, and it is a C-2 variance being sought.

Mrs. Swartz addressed streetscape, and said that some of the neighboring lots have a more notable depth of lot than width of lot. She said that there is currently a consistent streetscape. Mr. Burgis said that arbitrary standards cannot be applied when an applicant is trying to subdivide a property, and it is the statutory burden that must be met. He also said that Mrs. Swartz is suggesting that a different width standard should be applied in contrast to the other properties in the R-4 zone. He said that the proposed properties would conform to the width requirements for the R-4 Zone.

Ms. Wolfe asked how Mr. Burgis is defining the neighborhood. Mr. Burgis said that he is only considering the R-4 zone. Ms. Wolfe asked if Mr. Burgis will concede that the application is not asking for a C-1 variance. Mr. Burgis said that the applicant is seeking a C-2 variance.

The floor was opened for the public to ask questions of Mr. Burgis.

1. Attorney Rose Stone-Dougherty, representing Michael Henne of 3 Whitman Drive, asked Mr. Burgis about the analysis performed, and if the average age of the neighboring homes was considered. Mr. Burgis said that the neighborhood was developed about 1950. Mrs. Stone-Dougherty also asked about the analysis of average home size. She also asked if Mr. Burgis is familiar with how the Guy's property reached its current size. Mrs. Stone-Dougherty said that Mr. Burgis testified that the applicant was considering moving the front setback 10 feet further back, and asked why they were considering this option. Mr. Burgis said that there was a concern raised at the prior hearing about the visual impact, and the additional setback would be to address that concern. Mrs. Stone-Dougherty further asked if a rear yard setback variance would be needed, and Mr. Burgis said that the applicant is not seeking such a variance. Mrs. Stone-Dougherty asked if it is a good planning practice to seek two variances in order to eliminate only one. Mr. Burgis said that the rationale is that the proposed subdivision will fit in with the neighborhood. He also said that it would only be appropriate to consider the R-4 zone, not the adjoining R-3 zone. Mr. Burgis also reiterated that most of the lots in the R-4 zone do not comply with the lot size regulations.
2. Rich Terranova, 19 Williams Road, said that Mr. Burgis testified that there would not be any environmental impact, and asked if Mr. Burgis has seen the site plan. Mr. Burgis said that he has, and there are not any environmentally sensitive features. Mr. Terranova said that 19 trees are proposed for removal, which would be a significant impact. Mr. Terranova also asked if Mr. Burgis had visited the site, and if it was raining when he made the visit. Mr. Terranova also asked about the calculation for the variance. Mr. Burgis referred to the Township's ordinance, and said that both lots would meet the lot width requirements. He also said that regulations discourage the creation of irregularly shaped lots.
3. Barbara Carr, 3 Crestwood Drive, said that she does not think that Mr. Burgis knows what the neighborhood is about, and asked if he is aware of the former paper street.
4. Jeff Burke, 21 Williams Road, asked when the most recent zoning ordinance was adopted for the subject area. Mr. Burke asked if the neighborhood was built in the 1940's and 1950's, is it taken into account that the area may have grown, resulting in updated zoning regulations to prohibit subdivisions. Mr. Burgis said that the property is in the R-4 zone, and the governing body had legislated what was deemed appropriate lot sizes. He also said that if there had been a concern about the subject property being redeveloped, it could have been rezoned into a different zone.

Mrs. Stone-Dougherty called William Page, a planner, land surveyor and engineer, as an expert witness for the opposition. Mr. Page was sworn in to give testimony, and provided his qualifications. Mrs. Stone-Dougherty said that Mr. Page's testimony would be as a planner, and he was accepted as an expert witness.

Mrs. Stone-Dougherty asked if Mr. Page agrees with Mr. Burgis's definition of the neighborhood. Mr. Page testified that the concept of the neighborhood should take into consideration all properties within 200 feet of the subject property, and the community as a whole.

Exhibit 0-4 was entered into the record, showing a 200 foot buffer from the subject property. Mr. Page addressed the size of the properties within that buffer. He also said that if Lawrence Lane had been constructed rather than vacated, the subject property would not be large enough for a subdivision to be considered.

Exhibit O-5 was entered into the record, titled "Housing Density Lot Size Map."

Mr. Page indicated that the current configuration of the subject property is consistent with the former paper street, and some of the lots on Whitman Drive would be smaller if the street had been developed. Mrs. Stone-Dougherty asked how many lots are significantly undersized compared to the applicant's lot. Mr. Page said that the subject property is a transition lot from the R-4 zone to the R-3 zone, and it is more consistent with some of the lots on Crestwood. Mr. Page also opined that a larger house on the property would be more in keeping with the neighborhood. Mrs. Stone-Dougherty asked how the project fits in with the R-4 zone. Mr. Page said that the smaller lots would not fit in with the neighborhood, as the subject property is in a transition zone. He also said that an application cannot be approved due to the potential financial benefit for a property owner. Mr. Page further testified that the application would be a detriment to the public good, and he noted that several neighbors are present at the meeting to oppose the application. He further commented on the potential aesthetic issue that would be created by tree removal. Mr. Page further cited case law regarding the issuance of variances.

A ten minute recess was taken.

Mr. Miller asked Mr. Page which lots within 200 feet of the subject property conform to the current zoning regulations. Mr. Page said that based on the dimensions on the tax map, some of the lots conform, and he identified those lots. Mr. Miller showed on his planner's exhibit which showed those lots that do not conform. Mr. Miller also asked where in the Municipal Land Use Law the term "transition lot" is defined. Mr. Page said that he did not have his code book with him at this meeting. Mr. Miller asked if a deed restriction could have been sought by the Township to have this lot not be subdivided. Mr. Page said that the Township could have. Mr. Miller asked if the lot could have been rezoned as R-3, and Mr. Page said that such a circumstance would be spot zoning. Mr. Miller asked about the setback differences between the two zones. He also asked if Mr. Page thinks that the Board should vote against the application because the public opposes it. Mr. Page said that the public opposition suggests that the application is a detriment to the public good.

Mrs. Swartz asked if there is a way of dedicating a private driveway in the area where Lawrence Lane used to be so as to orient the subdivided property a different way. Mr. Page said that it would not be likely as the land has already been dedicated. Mrs. Swartz asked about having the houses orient toward Lawrence Lane with a private driveway. Mr. Page said that it would have to be a Board discussion. He also noted that Mr. Burgis had pointed out that the law discourages flag lots.

Mr. Ruschke said that developers usually build to the maximum house size, and asked why Mr. Page testified he thought a 4500 square foot house would be built. Mr. Page said that a 4000 to 5000 square foot house would be more consistent with the R-3 zone. Mr. Ruschke said that builders will not care what fits in the neighborhood. He also said that a tear down will likely result in a 75 foot wide house being built.

Mrs. Stone-Dougherty recalled her client, Michael Henne of 3 Whitman Drive. Mr. Henne said that the applicant's suggestion to move the proposed houses back would negatively impact him, as his property has a backyard patio. He also said that his neighborhood does not have big fences. Mr. Henne also commented on his concerns regarding tree removal. He further commented on the character of the existing houses in the neighborhood. Mr. Henne also commented on traffic patterns in the neighborhood, especially morning traffic. Mr. Henne asked the Board to consider the testimony of his planner and the comments to be made by his neighbors.

Mr. Miller called Sherry Guy to give testimony. Mrs. Guy was sworn in. Mrs. Guy presented photographs taken by her son showing the view of neighboring properties from the roof of her house. The photos were entered into the record as Exhibit A-6. Exhibits A-7 and A-8 were also entered into the record, which were also pictures of the subject property. Mrs. Guy said that A-8 shows the trees that shield Mr. Henne's patio from her property.

Mr. Miller called Mr. Henne to give further testimony. Mr. Henne said that he can see the Guy's house from his patio, and he assumes that his patio is viewable from their house. He also said that a builder could remove the trees that currently provide privacy screening. Mr. Miller said that the plans do not currently show the trees being removed.

Mrs. Stone-Dougherty asked Mr. Henne to point out the applicant's house in the photos in Exhibit O-1. Mr. Henne said that picture 16 shows the Guy's house from the vantage point of his patio. He also pointed out the tree also shown in Exhibit A-8.

Mr. Miller asked about the perspective from which Mr. Henne's pictures were taken. Ms. Wolfe said that the Board can consider the pictures as presented, and the Board does not need to discuss how photographs should be taken.

Mr. Miller recalled Mr. Burgis. He asked if Mr. Burgis agrees with Mr. Page's testimony that the neighborhood should be defined as the 200' buffer zone. Mr. Burgis said that the 200' buffer zone is only for notification purposes, and is not meant to define the neighborhood. Mr. Miller also asked about the definition of a transition lot. Mr. Burgis said that the Municipal Land Use Law does not have such a definition. Mr. Miller asked about the 200' radius, and how many lots do not comply with zoning regulations. Mr. Burgis said that 10 of the 18 lots do not conform to the lot area regulations. Mr. Burgis also said that he does not agree with Mr. Page's conclusions. He also said that public input is important with land use applications, however it is not appropriate to take a headcount of public support or disapproval of an application. Mr. Burgis further said that the Municipal Land use Law prohibits addressing zoning regulations by referendum, as people would often oppose such zoning as affordable housing or halfway houses. Mrs. Stone-Dougherty noted that the application is for a minor subdivision. She asked Mr. Burgis if he agrees that the Board should consider more than just those properties located within 200' of the subject property. Mr. Burgis said that focusing only on those properties within 200' would not tell the full story of the neighborhood. He said that his focus was on those properties within the R-4 zone.

Mr. Ruschke said that there has been a lot of testimony about trees, and the Township only regulates trees of a 12 inch diameter and larger. He said that there only seems to be four protected trees, and he said that approximately four or five replacement trees will be needed.

Mr. Ruschke said that the applicant has stated that they will comply with stormwater regulations. He also noted that the property is in a transition area, and he anticipates that a builder would build to the maximum size. Mr. Ruschke also said that since variances are being requested, the Board could work with the applicant to make sure that the houses are not identical if the lot is subdivided.

Mr. Banisch said that the Board can impose reasonable conditions. He also noted that the application does not deal with steep slopes or wetlands. Mr. Banisch also said that the neighborhood character should not be trifled with, however the Board cannot apply R-3 standards to an R-4 property.

Mr. Franko opened the floor to public comment.

1. Matt Reindel, 1 Whitman Drive, was sworn in to give testimony. Mr. Reindel said that the public benefits have to be considered in order to approve an application, and he has not heard any positive benefits for this application. He also said that the application would negatively change the neighborhood. Mr. Reindel also commented on the concerns shared by his neighbors.
2. Peter Flynn, 18 Williams Road, said that he does not want more traffic in the neighborhood, and said that Williams Road is a narrow street. He also said that there is not any benefit to the application, and it presents a safety concern.
3. Mark Kapsky, 8 Whitman Drive, was sworn in to give testimony. He said that the subdivision would change the neighborhood.
4. Barbara Carr, 3 Crestwood Drive, said that she and her neighbors are invested in the neighborhood, and would not be at the meeting or supporting the Henne's in hiring an attorney if they did not see the value.
5. Bill Crawford, 1 Crestwood Drive, was sworn in to give testimony. He said that taking advantage of a vacated paper street is not in the best interest of the neighborhood. He said that approving this application would set a precedent that could lead to further development. Mr. Crawford also said that a planner would be able to get a better sense of the neighborhood by walking around it rather than driving through.
6. Rich Terranova, 19 Williams Road, said that his neighborhood serves as a cut-through for those avoiding high school traffic. He also said that the plan as presented in the application does not work well for the neighborhood. Mr. Terranova commented on the potential for stormwater issues. He also said that the Guys have indicated that they do not plan to still live in the neighborhood.
7. Sherry Guy, 12 Williams Road, said that it is sad to have the neighborhood react negatively to the application. She also said that she and her husband did seek other options. Mrs. Guy also said that she is surprised that neighbors have opined that they would prefer one large house to two smaller homes.

Mr. Franko asked if the Board wanted to continue the hearing or ask for a continuance to the next meeting on April 15th. Consensus was to ask for a continuance. Mrs. Stone-Dougherty

asked if the continuance will just be for closing arguments. Mr. Franko said that it would be for closing arguments and Board deliberation.

8. Jeff Burke, 21 Williams Road, was sworn in to give testimony. He said that he is opposed to the subdivision, and he would rather see on larger house. Mr. Burke also asked how many of the non-conforming lots in the neighborhood received variances.
9. Chad Gassert, 2 Crestwood Drive, was sworn in to give testimony. He asked the Board to consider the views of the neighborhood.
10. Edilson Cattaruzzi, 11 Williams Road, was sworn in to give testimony. He said that he would not have bought his house if there were two smaller houses across the street. Mr. Cattaruzzi also said that he is keeping his house as close as possible to the original design.

Mr. Franko said that closing arguments will be made at the April 15th meeting. Ms. Wolfe said that no new testimony will be given at that meeting.

Mr. Kelly moved to adjourn at 10:33 PM. Mr. Nelson seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary