

**MINUTES  
PLANNING BOARD  
TOWNSHIP OF CHATHAM  
APRIL 15, 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, Ms. Hagner, Mr. Hoffmann, Mr. Kelly, Mr. Nelson and Mrs. Ozdemir.

Also present were Board Engineer John Ruschke and Board Attorney Steve Warner.

Mr. Travisano, Mr. Sheth, Mr. Coviello and Mr. Tarasca and were absent.

**Approval of Minutes**

Mr. Kelly moved to approve the minutes of the April 1, 2019 meeting. Mrs. Swartz seconded the motion, which carried unanimously with abstentions by those absent.

Mr. Franko noted that the Southern Boulevard Urban Renewal, LLC and the Sterling/Sun at Chatham, LLC hearings have been postponed. Mr. Warner said that the Sterling/Sun matter will be heard at the May 20<sup>th</sup> meeting.

**Hearings**

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

Mr. Franko noted that the testimony portion of this hearing concluded at the last meeting, and this evening's hearing will begin with closing arguments.

Mr. Warner noted that the seven members present are eligible to vote on the application, having either attended all hearings or having listened to the recordings of any meeting from which they were absent. He also cited the section of the Municipal Land Use Law that governs the process by which a Planning Board member can be eligible to vote on an application when they had been absent from a meeting when the application was heard or not yet a member of the Board.

Attorney Rosemary Stone-Dougherty, representing Michael Henne of 3 Whitman Drive, presented a closing argument in opposition to the application.

Mrs. Stone-Dougherty noted that a variance is a departure from existing zoning regulations, and this application seeks two variances for the proposed lot sizes. She also provided history of how the current lot reached its current size through the vacation of Lawrence Lane in 1979. Mrs.

Stone-Dougherty said that had the road been built, it would have served as a buffer between the R-3 and R-4 zones, but in the absence of the road the subject property becomes a transition lot. She said that applications require notice of property owners within 200 feet regardless of zoning changes, and to ignore neighboring properties in a different zone would not be a proper planning analysis. Mrs. Stone-Dougherty said that the applicant testified that they were pleased with the size of their property, and are trying to maximize the profit of the sale of their property after having spoken with someone who would buy the property if it was subdivided. Citing case law from 1988, Mrs. Stone-Dougherty also said that her client's planner testified that a C-2 variance cannot be granted to merely advance the purposes of the property owner, but the variance should benefit the community and present a better zoning alternative for the property. She also noted the presence of several neighbors attending this meeting. Mrs. Stone-Dougherty further addressed the statistics presented by the applicant's planner regarding the non-conforming lots, and said that the number of lots that are non-conforming are not statistically significant. She also said that the application looks better on paper, and visiting the neighborhood will help people see that the subdivision would not be fitting with the character of the neighborhood. Mrs. Stone-Dougherty also addressed the concern of her client that the proposed houses could be pushed closer to his property, as well as concerns about tree removal and stormwater management. Mrs. Stone-Dougherty further said that her client's planner pointed out several problems with the application.

Attorney Michael Miller, representing applicants Ed and Sherry Guy, gave his closing argument. Mr. Miller said that the applicants are seeking to demolish the existing home and subdivide their property into two single-family lots. The application seeks two variances for minimum lot area within maximum depth of measurement. The R-4 zone requires 10,000 square feet. Mr. Miller said that proposed lot 1.04 would have 8,805 square feet of area, and lot 1.08 would have 9,033 square feet. Mr. Miller also noted that the existing house was built in 1949, and he opined that it is inevitable that someone buying the lot in the future will demolish the house and build a new one. Mr. Miller further said that two modest homes would better fit the neighborhood than one larger home. He further discussed the goals of the Master Plan. Mr. Miller further said that the proposed lots are similar in size and dimension to the other lots in the R-4 zone, and they meet the goals of the Master Plan. He also said that if the application is not approved, then a much larger house could be built on the existing lot. Mr. Miller said that both the Township Engineer and the Township Planner testified that the proposed subdivision is consistent with the R-4 zone. Mr. Miller also addressed the percentage of lots in the R-4 zone that are non-compliant with the lot size requirements, and said that installation of drywells will improve stormwater retention to contemporary standards. He also said that the testimony of his planner was that the regulations seek to avoid irregularly shaped lots, and the Master Plan does not discuss requiring an area 10,000 square feet within a depth of measurement of 115 square feet. Mr. Miller also said that the requirement was not created to avoid flag lots, not to prevent subdivisions. He also said that Mr. Burgis had testified that the application does not have any substantial impairment to the intent of the Master Plan, and the application reaffirms the conventional rectangular design of the neighborhood. It also precludes the development of a house that would be uncharacteristic of the R-4 zone. Mr. Miller further noted that there are not any environmentally sensitive areas on the property, and the subdivision would remove a pre-existing non-conforming side yard setback. Mr. Miller also addressed testimony that was made about streetscape concerns, and said that the applicant was willing to have the proposed house moved back. He noted that moving the building envelope back would save some trees that would otherwise need to be removed, and would not result in any additional variances. Mr. Miller also addressed Mr. Henne's concerns about privacy, and noted that privacy trees are not proposed for removal. He further said that

there is no such thing as a “transition lot,” and the application should only be judged by the R-4 standards. Mr. Miller also asked the Board to not consider the emotional arguments of the neighbors, and make a decision based on the law.

Mr. Warner gave a reminder that the application is for a minor subdivision from one lot to two lots, and two variances for minimum lot area within the maximum depth of a lot. Mr. Warner also asked for the Board to clarify any stipulations if the Board opts to vote to approve the application. He also noted that it would take a simple majority of the members present of the Board to approve the application.

Ms. Hagner asked if there is information or documentation available indicating why the Township had vacated Lawrence Lane in 1979. Mr. Warner said that the applicant had the burden of proof on the merits of the application, and the Board needs to base its decision on the evidence already presented. Ms. Hagner also asked about the proposed setback. Mr. Warner said that there are concept houses on the plans, and the applicant may be willing to stipulate to having the houses set back further than the standard setback.

Mr. Nelson opined that Lawrence Lane was vacated because it was unnecessary once Crestwood Drive was developed.

Mr. Hoffmann asked about the positive improvements that need to be demonstrated. Mr. Warner said that for a C-2 variance to be granted, the proposal must advance one or more of the purposes of the Municipal Land Use Law, and the planning and zoning benefits must substantially outweigh the detriments. To satisfy the negative criteria, the proposal must not result in substantial detriment to the public good or substantial impairment to the zoning plan or Master Plan.

Mr. Kelly said that he walked the neighborhood again, and he can see the neighbors’ perspective about the open space on the subject property. He also said that he was struck by the conflicting planning testimony as to whether one big house or two smaller houses would be a better fit for the neighborhood. Mr. Kelly also said that he understood Mr. Banisch’s testimony to be that two smaller houses would be a better fit. He also said that the Board has an opportunity to approve the subdivision and impose conditions, and noted that a significantly larger house could be built without variances as a matter of right. Mr. Kelly said that he would support the approval of the subdivision provided that the conditions discussed be imposed. He also noted that the application states that the trees removed would be replaced at a 1:1 basis. Mr. Warner asked if the tree removal and landscape screening conditions would include the reasonable discretion of the Township Planner and Township Engineer. Mr. Kelly asked if a condition could be imposed that the developer be required to include privacy screening without the installation of a fence. Mr. Warner cited the conditions under which such a condition could be imposed.

Ms. Hagner said that it is hard to visualize the two lots, and she struggles with allowing one larger house. She also said that the application makes sense on paper, but the appearance when visiting the neighborhood is different.

Mrs. Swartz said that there have been issues lately with the enforcement of land use regulations, and there have been accusations that there has been overbuilding and the Township has been granting too many variances. She also addressed streetscape concerns, and said that the application would create an inconsistency in the streetscape.

Mr. Franko said that he was not swayed by the objector's planner, however he also does not think that a persuasive case was made for granting the variances.

Mrs. Swartz moved to deny the application. Mr. Nelson seconded the motion.

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

The motion to deny the application carried by a vote of 5 to 2.

### **Discussion**

#### **Planning Board Bylaws**

Ms. Hagner moved to approve the draft bylaws as presented. Mrs. Swartz seconded the motion.

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

The motion to approve the bylaws carried by a vote of 7 to 0.

Mr. Warner asked if a resolution was ever adopted by the Planning Board to designate the Township Engineer as the authorized designee to deem applications complete. He said that he will check the Township Code to see if there is an ordinance making the designation.

Mr. Nelson moved to adjourn at 8:35 PM. Ms. Hagner seconded the motion, which carried unanimously.

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Gregory J. LaConte  
Planning Board Recording Secretary