

**Town of Chatham  
Meeting Minutes December 29, 2015**

**Zoning Board of Appeals  
FINAL Copy**

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**ZBA Members Present:**

David Everett, Chairman  
Mitchell Khosrova, Deputy Chairman  
Robert Leary  
Adrian Ooms  
JP Henkel  
Kary Jablonka  
**ABSENT:** Jeffrey Lick

**Public Present:** Terry Moag, Cris Schrader of  
Seed Engineering, EJ Ball,  
Karen Kellogg, John Stockli,  
Atty. PS 21

Marilyn Cohen, Planning Board Chair  
Gail Chamberlain, PB Clerk

The meeting was called to order at 7 PM and the Pledge of Allegiance was recited. Chairman Everett asked if everyone reviewed the changes that were made to the ZBA meeting minutes dated 12/1/15. A motion to accept the minutes from the December 1<sup>st</sup> meeting was made by Mr. Leary, seconded by Chairman Everett. All members, except for Mr. Khosrova who abstained, were in favor and the motion carried. Chairman Everett called on John Stockli, Attorney representing Questaterra/PS21 to present his case.

***Questaterra, LLC/PS21 Notice of Violation – Order to Remedy***

Attorney John Stockli explained that he didn't believe the notice of violation was done in accordance with Town zoning law and state law. He stated it was a mistake in the way it was worded and shouldn't be a violation, which is why he is filing an appeal to the ZBA. Chairman Everett asked if the board had any questions. Mr. Henkel asked for clarification and didn't recall how this issue of enforcement was resolved. Chairman Everett stated that the new approvals of protocol for PS 21 will not go into effect until the new project is built. Mr. Stockli didn't believe that decibel limits were violated at this event. Chairman Everett said there are no facts stating this or any evidence that this was a violation of decibel limits under the protocol that is currently in effect. In his opinion he thinks they have to reverse it. Chairman Everett said that this was discussed this at the last round of approvals. The developer's agreement is established for when the new building is completed. Mr. Khosrova said based on that protocol, PS 21 has a phone number of a contact who should be called during an event if there is a violation. In this case, none of the documents presented to the board stated that such person was called. Mr. Khosrova stated that the neighbors didn't call Sam Reilly, Site Manager of PS 21, and the neighbors need to know that the protocol needs to be followed. He believed that the phone number was sent out to the neighbors. Chairman Everett requested that a note be sent to the town attorney and town board requesting that the protocol now that it is finalized, be distributed to the neighbors of PS 21. Mr. Henkel asked that if a note is sent to the Town Board, it needs to recommend contacting some of the neighbors that are living beyond 500 feet of PS 21 explaining that many of the neighbors were not notified of the public hearings because they were not 500 feet within the property. Chairman Everett said that the violation should be rescinded and a motion to do so was made by Mr. Khosrova and seconded by Mr. Ooms. All board members were in favor and the motion carried. Chairman Everett asked the ZBA clerk to notify the town board requesting that they should provide notification to the neighbors about the established protocol for PS 21.

***Application for Area Variance for Terrance Moag to meet the setback requirements for the drain field of a septic system for a new house.***

Chairman Everett stated that for the record Mr. Khosrova recused himself from this application.

Chairman Everett made a motion to open the public hearing. Mr. Jablonka seconded the motion. All board members were in favor and the motion carried. Mr. Moag stated that he wanted to clarify further about the foot print of the home that he is building to make sure, for the record, that the plan he presented is indeed 800 sq. ft. It has a relatively small impact on the overall lot according to him. The living space is 1256 sq. ft., second floor is a loft and is 566 sq. ft. There is storage of 156 sq. ft. The garage is 654 sq. ft. Mr. Schrader pointed out the footprint and the garage on the map. EJ Ball, Mr. Moag's builder for his house, showed the garage on the drawing. He indicated the foundation and garage, which is separate. There is an overhang but it is still within the building envelope. Chairman Everett stated that one map was sent to the board of the plan but the configuration they showed during the meeting doesn't match the original and asked for clarification. Mr. Ball explained the difference between the maps and which map was accurate. Chairman Everett asked if the cantilever is taken into account on the survey and on the septic survey. The reply was yes. Mr. Henkel said the survey just has the foundation footprint. The builder explained the surveyor's map indicates the setbacks, which are a little over two feet. Mr. Schrader explained his drawing is based on Mr. Van Alstyne's survey as well, but Mr. Van Alstyne's survey doesn't have the garage on it. Mr. Jablonka asked if the overhang is considered part of the footprint. Mr. Schrader replied yes. Chairman Everett stated that the board asked for this information to be shown on the maps and that it needs to be included on the plan/map. He explained that the cantilever and garage need to be included on the plan as "proposed" as well as show the dimensions of the setback, so that the board can verify the building falls within the setbacks. Mr. Leary asked where the rail bed was and Mr. Moag indicated where it is on the map. He asked Mr. Moag who owns it. Mr. Moag believes it's a right of way and Chairman Everett stated that Mr. Gruen says he owns it according to his letters to the ZBA. Mr. Moag said there is information making sure it's clear that there isn't a historical impact on his property.

He submitted a rendering of the landscape proposal. The landscape plan shows a row of arborvitaes. Mr. Moag explained that the landscaping proposed is what was planned early on in the planning stages. It also shows a perspective from the neighbors view. The idea is for his house to not be visible at all. It was an "early on" conceptual rendering. Chairman Everett understands that the plan is conceptual but he would like to see where the arborvitaes are going to go and then that can be incorporated as part of the ZBA condition of approval. Mr. Ball spoke that there is quite a bit of natural vegetation. They removed six or eight trees and there is natural vegetation to help keep the house secluded. There are some pines in there, arborvitaes. Mr. Henkel said he had visited the property that day and indicated there are a lot of trees by the septic location. He asked the applicant what trees are being cut and what the plans are to mitigate the view of the septic. Mr. Schrader replied that anything that is on the footprint of the mound system will be removed but that anything outside of it will not be removed.

Mr. Schrader stated that there would be plantings on the mound system which will be covered with top soil. Mr. Ball explained that if one is standing on the neighbor's property, the system won't be seen. The grading that was provided previously is what will be seen. Mr. Henkel asked about the observation tube and if it will be on the neighbor's side. Mr. Schrader replied that it is not on the neighbor's side and will not be seen and showed on the map where it will be situated. Mr. Henkel wanted to know where the observation tube is and wanted to know what it is. Mr. Schrader explained that it is part of the mounds system to monitor what is going on with the system along with the alarm system. It is a pipe parallel to the ground of one inch PVC. Mr. Henkel asked if the pipe can be painted a color and the reply was yes.

There is a 50% expansion area if needed in the future, if one is ever needed. Chairman Everett stated that Mr. Moag would need to come back in the future for a variance if the expansion area is needed. He requested that a plan show where arborvitae will be planted so they have this for the next meeting. Mr. Henkel wants to be sure this includes where the septic is, stating that he doesn't think it will be very visible but would like to see what the applicant is proposing with reference to the lawn.

Mr. Moag stated that Mr. Van Alstyne will be able to provide a drawing with the cantilever and garage on it and on the Seed engineering drawing because he's already provided all the setbacks and the distances between all the different features on the site. Chairman Everett questioned the distances and if there is a need for other variances on Mr. Schrader's plan. He referred to his map. 1.) There will be the mound system that will need to have a variance from the corner of infrastructure to the property line. They will need to identify what the variance is and what the setback is; 2.) The buried sand filter: this is from the corner to this property line and looks less than 50 feet which needs a variance; and 3) the septic tank: It is ten feet away from the home, which is code requirement but the distance says it is four feet. Mr. Schrader said this was incorrect. It is the width of the tank according to Mr. Schrader. The setback is ten feet from the house but not labeled on the map according to Mr. Schrader. Chairman Everett stated they need this information on here. The setback is needed so it complies with the law. The chairman asked about the well on the drawing. Mr. Schrader replied that is not the well they are using, it is from the Vanalstyne survey. The well will be a newly dug well. Chairman Everett stated that they need to confirm that it meets the setback requirements and needs to be marked as proposed well. He stated that these are the three variances that need to be on the plan.

Chairman Everett asked for clarification of where the old foundations are on the map and if there is an archeological issue. There is one on the map that is marked where the septic is going. Mr. Moag explained that it was a "feature" or a rock wall. Chairman Everett requested that these be made clear as it looks like a foundation. He wants to be sure that there are not any foundations relevant to the old railroad. Mr. Schrader asked if the chairman had the copies of the letter he had submitted with his photo logs. Mr. Schrader explained the photos. Chairman Everett stated that there is a buried sand filter next to this "feature" on the map and he needs this identified. Chairman Everett said that if there is a foundation then an archeologist will have to evaluate it. Regarding one of the "rock walls", Mr. Moag said that they are not disturbing anything in that area. Mr. Moag explained that the whole point of the rock wall was to leave it in tact so that it is part of the natural landscaping. Mr. Ball concurred with this statement and he said there are no plans to disturb it. He said he didn't see anything that looked to be a foundation and is a very rocky area. Chairman Everett asked them again to clarify all of this. He said there is some potential historic value due to the Rutland Railroad running through there that we need to be sure doesn't create problems for this project. Mr. Henkel said the way this is drawn on the map the sand filter butts up against this "feature"...it will be disturbed. Mr. Jablonka wanted to know what is archeological significant.

Chairman Everett stated that even though this is a Type 2 action under SEQR, the variance standards require that we evaluate whether this will have an impact on the environment even as this outside of SEQR. Mr. Moag asked if it would be necessary to Hartgen to evaluate it. Chairman Everett referred to Columbia County Health Department letter from August. It says the area tested is buildable and can accommodate a three bedroom home. He questioned the last paragraph where it states a "20 ft. berm on the sides and a 30 ft. berm on the downslope of the system. He is trying to understand what the berms are in correlation with the system. Mr. Moag replied that this was before they decided to switch to the sand filter system. This statement predates the sand filter according to Mr. Schrader.

Mr. Moag and Karen Kellog wanted to know why these issues weren't looked at when this lot was classified as a building lot. Chairman Everett explained that his building project request doesn't comply with the law so Mr. Moag has to go before the ZBA board.

Chairman Everett stated that we received a letter from Mr. Gruen, the neighbor. He asked if Mr. Moag had a chance to review Mr. Gruen's letter. Mr. Moag replied that he addressed some of his concerns in his letter to the board. Chairman Everett asked if the board thought that Mr. Gruen's letter about Mr. Moag's project be evaluated by the town engineer. Mr. Henkel replied that he saw a lot of points that had already been addressed by the board. Siting that Mr. Gruen was not in attendance he would like to ask Mr. Gruen what else he thinks need to be addressed. He said having an engineer review it seemed redundant. Mr. Leary indicated that the board had just received Mr. Gruen's letter that day. There seems to be assumptions and misstatements. Mr. Henkel said the only issue he saw that raised a concern was what will be seen with regard to the visuals of the mound system. The observation tube and bare mound were answered earlier. Mr. Jablonka asked if having the town engineer evaluate this would help the board move through the process. Chairman Everett believes he town engineer should look at it so it's on record. There is a lot of detailed information about the septic.

Mr. Gruen asked about noise in his letter. It was stated that the alarm system shouldn't go off and the pump is in a tank that is buried. Chairman Everett inquired if the alarm could be located inside the house or if it is required to be inside the house. Mr. Schrader will find this out from the CC DOH. Chairman Everett said we need to get some initial information in. He stated that Town law requires the ZBA refer to planning for their advisory opinion in this matter. The ZBA will continue the public hearing until next month. The public will have the opportunity to review the information in this time.

One of Mr. Gruen's questions is about noise. Mr. Schrader replied that there shouldn't be any noise. The pump is submerged underground in a tank. The alarm can be mounted in a variety of areas. Chairman Everett asked if it could be mounted in the house. Mr. Schrader will talk to the health department to see if this is possible. Mr. Henkel asked if there would be an odor.

Mr. Gruen's listed alternatives in his letter. He asked if Mr. Moag could build a smaller home and make the septic system smaller. Mr. Bell explained that this septic system is a much better system. It's a gold standard in comparison. According to Mr. Schrader, the footprint of the mound system is reduced because of the sand filter. Chairman Everett confirmed there aren't other locations on the property because of the stream setback. With reference to the pond in Mr. Gruen's letter, Mr. Moag stated there isn't a pond. The area gets wet and overflows from the stream sometimes. He didn't do anything to change the area where this wet area is. Chairman Everett stated this is not a zoning issue and therefore is irrelevant to this situation. Mr. Khosrova spoke that it is important that we remind the applicants that all documentation be received in the required time before the meeting.

Mr. Leary stated that Mr. Moag's property is in five acre zone. It's RL 2 and not an RL1 as Mr. Gruen stated in his letter, it's a non-confirming lot.

At this time, Chairman Everett asked if any members from the public wished to be heard. He adjourned the hearing until January 28, 2016. He requested that all information requested at this meeting be submitted by the 8<sup>th</sup> of January in order for this to go before the Planning board meeting scheduled for January 12<sup>th</sup>. Planning Board Chairwoman Cohen, who was in attendance, confirmed that this would be enough time for them to review the project.

***Upcoming ZBA Appointment***

Mr. Khosrova asked the ZBA members to support that Mr. Jablonka, who's seat is up for appointment at the end of 2015, is kept on the board because of his knowledge of many things he has done within the town. Mr. Jablonka stated that he has talked with the new supervisor and indicated his desire to remain on the board. Mr. Khosrova said he would draft a resolution to support Mr. Jablonka. A motion was made by Mr. Khosrova to support Mr. Jablonka's re-appointment to the ZBA. Chairman Everett seconded the motion and all members in attendance were in favor. The motion carried. Another motion was made at this time by Mr. Khosrova to keep Chairman Everett as the Chairman of the ZBA. Mr. Leary seconded the motion with all members present in favor. The motion carried. Separate resolutions will be drafted by Mr. Khosrova for approval and sent to the Chatham Town Board.

A motion to adjourn the meeting was made by Mr. Ooms and seconded by Mr. Leary. The meeting adjourned 8:07 PM.

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David Everett, ZBA Chairman

Respectfully submitted,  
Shari Franks, ZBA Clerk