

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT
February 28, 2018 7:30 p.m.

Chairman Michael Cifelli called this Regular Meeting of the Zoning Board of Adjustment to order at 7:30 p.m. in the Council Chambers, Chatham Municipal Building. He stated that adequate notice for this Zoning Board of Adjustment meeting were given as required by the Open Public Meetings Act.

Names	Present	Absent
Michael A. Cifelli, Chrmn.	X	
Helen Kecskemety	X	
Frederick Infante	X	
Douglas Herbert	X	
H.H. Montague		X
Jean-Eudes Haeringer	X	
Patrick Tobia	X	
Alida Kass	X	
William DeRosa	X	
Patrick Dwyer, Esq.	X	

Also present:
Vincent DeNave, Borough Zoning Officer & Engineer
Kendra Lelie, professional planner for the Borough

Old/New Business

Chrmn. Cifelli welcomed Mr. DeRosa, a new member of the Zoning Board, serving as the Second Alternate. He thanked Mr. DeRosa for volunteering his time to serve on the Board.

On other matters, Chrmn. Cifelli noted that the Board has been dealing with the whole issue of the expanded Floor Area Ratio (FAR). Two years ago, the Borough Council had approved this FAR expansion. As a result, the Zoning Board has received a consistent number of applications proposing bulk variances, which had probably been triggered, somewhat, by the new allowable FAR. Chrmn. Cifelli felt the Board needed some type of guidance as to the relationship between the additionally permitted FAR as opposed to the other zoning ordinances that essentially stayed the same.

Chrmn. Cifelli felt that Dr. Blickstein, the Borough’s planner at the time, had a lot to do with the expansion of the FAR. Dr. Blickstein could not be present tonight; however, sent an associate, Kendra Lelie.

Ms. Lelie introduced herself. She is a professional planner with Clarke, Caton & Hintz. Ms. Lelie noted that Dr. Blickstein had given her an update on this issue.

Chrmn. Cifelli asked what was the Borough Council’s thinking when they approved the ordinance to expand the FAR ordinance, but not expand the other bulk variances.

Ms. Lelie pointed out at the end of the year, the Borough Council reviews the Zoning Board of Adjustment's Annual Report which gives the variances that had been granted during the year. The Borough Council had probably noted the volume of FAR variances that had been proposed to the Board. She explained the sliding scale that if an applicant's lot is larger, the allowable FAR goes down in order to reduce the mass of the building. Ms. Lelie noted that the FAR is the mass of the building for the lot. The new FAR regulations would allow residents to keep their applications within the ordinance requirements, but allows them to propose a little bit more over the allowable.

Ms. Lelie stated that it was now her understanding that those potential variance applications are still being submitted to the Board; however, seeking even more than what the revised FAR regulations allow.

Ms. Lelie felt that it had been the Borough Council's goal to reduce the number of applications being submitted to the Board, but in a way so as to not decrease the open space and providing more space for stormwater management. Ms. Lelie suggested that the Board seriously look at the proofs that the applicant is presenting to them. The Board should also consider what are the FARs in the applicant's neighborhood. Are the architect's proposals in character with the neighboring homes?

Chrmn. Cifelli noted that in the past, the allowable building coverage and lot coverages have remained the same, and the FAR have either hovered above these two coverages or below them. However, this increase of allowable FAR has forced an increase for building coverage and lot coverage.

Mr. DeNave pointed out that a number of residents felt they were being penalized for their proposed garages, since the garages were included in the FAR. In some other communities the garages are not included in FAR. He noted that the Borough Council had looked at not including FAR in detached garages; however, the Council did not change the building coverage and lot coverage regulations. The proposed building coverages and lot coverages have increased.

Chrmn. Cifelli noted that the Board has reviewed applications where the proposed bulk is really at the main part of the house.

Mrs. Kass felt that it appears that the Board is encouraging applicants to construct garages at the rear of the property; however, that situation would trigger a variance that wouldn't be required otherwise. The variances needed to be harmonized some.

Summing up, Chrmn. Cifelli stated that each application will be judged on its own merits.

On other matters, Chrmn. Cifelli asked Board members to review a checklist of items that the Board feels are an absolute must for a complete application.

Mrs. Kecskemety stressed that all room dimensions, existing and proposed, must be shown on submitted plans. Unfortunately, this requirement is not always followed.

Mr. DeNave stated that it was his responsibility to make sure the applicants have all the required dimensions. He felt that existing room dimensions and proposed room dimensions should be kept separate, to make the plans clearer to Board members.

Resolution #ZB 2018-01

The minutes of the January 24, 2018 Zoning Board of Adjustment meeting were approved as submitted.

Public Comment

There was none.

Resolutions

Application ZB #16-020

REO Development

94 Washington Avenue

Block 18 Lot 15

Front Yard/Rear Yard Building Coverage/FAR

Attorney Dwyer summarized this application which proposed the demolition of an existing home and constructing a new home. The original application had been revised and downsized. The Board also took into consideration that the rear yard “neighbor” was a parking lot. The Board approved the variance. A roll call vote was taken to approve this resolution confirming the Board’s approval of these variances;

Mr. Haeringer	-	yes
Mr. Infante	-	yes
Mr. Herbert	-	yes
Mrs. Kecskemety	-	yes
Mrs. Kass	-	yes
Mr. Tobia	-	abstained
Chrmn. Cifelli	-	yes

Application ZB #17-31

Greenrose Reso, LLC

243 Hillside Avenue

Block 99, Lot 2.01

Lot Frontage/Lot Width/Lot coverage/Deck Height

Attorney Dwyer summarized this application which involved a flag lot and a fire-damaged home. The Board granted hardship variances for lot frontage and the height of the deck in the rear. The lot width will be reduced. A roll call vote was taken to approve this resolution confirming the Board’s approval of these variances:

Mrs. Kass	-	yes
Mrs. Kecskemety	-	yes
Mr. Herbert	-	yes
Mr. Infante	-	yes

Mr. Haeringer - yes
Mr. Tobia - yes
Chrmn. Cifelli - yes

Returning and New Applications

Chrmn. Cifelli announced the following application were scheduled to be heard tonight, time-permitting:

Application ZB #16-006: 8 Watchung Avenue, LLC – 8 Watchung Avenue
Application ZB #17-32: Tao Zhang – 2 Martin Place
Application ZB #17-033: Horowitz & Fay – 61 Martin Place
Application ZB #17-034: Cullen – 26 Chandler Road
Application ZB #17-36: Mathew – 52 North Summit Avenue

Chrmn. Cifelli announced that the following applications will carry to the March 28, 2018 Zoning Board of Adjustment meeting:

Application ZB #17-38: Goeckel – 35 Maple Street
Application ZB 17-37: Sheldon – 8 Girard Avenue

Application ZB #16-006
8 Watchung Avenue, LLC
8 Watchung Avenue
Block 134, Lot 2
Site Plan Application

Gary Haydu, Esq., attorney for the applicant, gave an introductory statement. He stated that William Weichert, the owner of 8 Watchung Ave., is presented tonight to testify on this application. Two variances are being sought. One variance is seeking parking for the front yard. A “D” variance is being sought for the use variance. Also testifying tonight will be Andrew Clarke, the applicant’s engineer, Paul Ricci, the applicant’s planner, and Jerry Sinagra, the landscape architect.

Attorney Haydu stated that the use of the property, as it currently exists, is for the sale of earth products and construction supplies to contractors and to the public. There is also storage of some heavy machinery on the property to help Mr. Weichert do the work which is required. Also, Mr. Weichert owns an ancillary business, Chatham Main. Some of the equipment for Chatham Main is stored at 8 Watchung Avenue. Attorney Haydu pointed out that some of that equipment is used at times for the benefit of the Borough.

Chrmn. Cifelli informed Attorney Haydu that at this point, he will ask Mr. DeNave, the Borough Engineer and Zoning Officer, to give background information regarding the subject property and what events have led up to tonight’s application.

At Chrmn. Cifelli's request, Mr. DeNave reviewed his position as Borough Engineer and as Zoning Officer, and the responsibilities of these two positions. He stated that he was familiar with the property at 8 Watchung Avenue. Mr. DeNave remained under oath.

Mr. DeNave testified that in 2011, the Borough undertook an over-all investigation of the Commerce Street/Watchung Avenue/River Road area (M-1 and M-2 Districts). There had been concerns that a number of expanded uses were going on in that section of town that were not permitted through Board applications.

Mr. DeNave noted that recently the car storage place at 4 Watchung Avenue had been brought before the Board because they did not have approval to operate that business. 8 Watchung Avenue has been identified as a property that did not have any Zoning approvals at all. Prior to 1990, the property was owned by JCP & L which is why the high-tension wires are on that property. In 1991, JCP & L then sold the property to Mr. Weichert.

Mr. DeNave said, judging from photos at that time, Mr. Weichert began parking construction vehicles on that property, and possibly a top soil pile. Mr. DeNave felt that this particular use morphed into what it is today, which is outlined on a list organized by Attorney Haydu.

Mr. DeNave stated that on September 19, 2014, he sent a Notice of Violation to Mr. Weichert, indicating that the Borough has no record of any Site Plan Approval for the property. The property was inspected by the undersigned (Mr. DeNave) on September 15th. The inspection revealed that the use of the property as a construction yard with accessory parking of construction vehicles, was all in violation of Land Development regulations of the Borough Code. Also in violation was the unauthorized retail sale of stones, soil and mulch on the property.

Mr. DeNave felt that the necessary testimony will be provided and these concerns will be cleared up, however the Borough had no record of any official approvals. Mr. DeNave had felt compelled to cite Mr. Weichert as he did others in that particular district to have these property owners come before the Board to obtain proper approvals for any uses they are doing on their properties.

Mr. DeNave noted that the subject property had been under review by the DEP. Some historic fill had been placed back towards the river in an area that was deemed to be a stream bed. The fill in that area then had to be removed. The fill has since been removed and Mr. Weichert has complied with all of the conditions.

At Chrmn. Cifelli's recommendation, the letter stating the Notice of Violation dated September 19, 2014 was submitted as Exhibit A-1. Two photos were attached to this letter.

Chrmn. Cifelli asked what zone district was 8 Watching Ave. located in.

Mr. DeNave answered the M-1 District.

Chrmn. Cifelli asked what was the purpose of the M-1 District.

Mr. DeNave explained that the M-1 District, in the past, had been primarily zoned for light industrial businesses. He pointed out that the subject project is in the Borough's Gateway District, which has added several new uses. Retail and residential uses are now allowed in the Gateway District.

Chrmn. Cifelli asked Mr. DeNave whether he had concluded as the Zoning Official that the use at 8 Watchung Avenue was not in compliance with the M-1 District.

Mr. DeNave agreed, however he pointed out that more importantly, 8 Watchung Avenue had no Site Plan Approval.

A Board member asked if the sale of dirt was allowed under the Borough's definition of retail.

Ms. Lelie read aloud the Borough's definition of retail trade, which is permitted in this particular zone.

Ms. Lelie was sworn in to testify. She testified that the information she recently gave was the truth.

At Mr. Herbert's request, Ms. Lelie explained the contractor section of the retail trade definition in the Land Development regulations. In this definition, contractors are considered the general public.

Mr. DeRosa asked whether JCP & L had been asked to whether they accepted any uses beneath their easement.

Mr. DeNave answered that he hadn't had any discussions with JCP & L. He noted that JCP & L retains an easement over the property. The easement has some restrictions of what JCP & L permits under its lines.

Attorney Haydu called Andrew Clarke forward.

Andrew Clarke, engineer for the applicant, was sworn in to testify. Mr. Clarke has appeared a number of times before the Board. The Board was very familiar with his educational and professional background.

Mr. Clarke testified that he had prepared the submitted Site Plan for 8 Watchung Avenue. He noted that the zone where the subject property is located in requires a minimum of two-stories for any buildings. The applicant won't be constructing two stories, which may require another variance.

Attorney Dwyer believed a variance had been mentioned in the planner's report concerning the location of the outdoor storage.

Mr. Clarke didn't believe so. A variance had been mentioned concerning customer parking in the front yard.

Mr. Clarke testified that he had conducted some survey work and some DEP actions are incorporated in this survey. He described the shape of the subject property. Mr. Clarke testified a small trailer sits on the property at its western boundary, near the car storage lot. The trailer contains a small office. A few spaces exist near the trailer, along the fence in the front. These spaces are being proposed for the front yard parking. Mr. Clarke described the existing bins, the boulder wall, and landscaping in place. He pointed out the location of stock-piling. A series of block walls serve as a backstop for the stock-pile area.

Mr. Clarke stated that circulation comes through the site's gate. The circulation is able to travel around the stock-pile area. A central feature is an easement retained by JCP & L when they sold the property. Two parallel lines of high tension wires cut through the property. The lines continue and turn towards the transfer station on Summit Ave. on the other side of the river.

Mr. Clarke submitted Exhibit A-2: the survey with red markings done by Mr. Clarke. He pointed out the easement of the JCP & L high tension wires. He also pointed out the conservation easement area which had involved the DEP remediation action as testified on earlier by Mr. DeNave. Large boulders existing all around this remediation area. Signage is in place declaring that there is no disturbance in that area.

Mr. Clarke discussed the easement situation. He noted that typically, for most easements there are restrictions on building permanent structures in those areas. Mr. Clarke pointed out on the subject property, JCP & L wants unfettered access to their facilities on site whenever a replacement or repair is needed.

Attorney Dwyer asked for a copy of the deed for this property to see if the JCP & L easement is mentioned. Mr. Clarke said a copy of the deed could be obtained.

Mr. Clarke described the proposed conditions. He noted the concrete central bins. Mr. Clarke testified that the existing trailer will be removed. A building will be placed farther back on the property, outside the easement area. The building will meet the setback requirements. Vehicles will then be able to stop and pull up alongside the building. A few proposed parking spaces will be in place in this section for people arriving in trucks to interact with employees.

Mr. Clarke testified that the modular block units will help formulize the storage of the soil, which is currently uncontrolled. Screening will be installed along the end. Evergreen screening will be planted in this section. Improvements will be done to the front of the site with landscaping. Mr. Sinagra will be testifying on the landscaping details.

Mr. Heap asked where the construction equipment will be stored. Mr. Clarke pointed out the storage location on the survey where the equipment will be kept.

Mr. Heap asked if the equipment will be grounded.

Mr. Clarke answered that he didn't know the particulars on that situation. Perhaps another witness could address that matter.

Ms. Lelie asked about the section labeled as "stone and dirt" reaching up to the north property line.

Mr. Clarke answered that in his surveying, he found that section to be a combination of gravel and some dirt. Not much grass or vegetation grows there because of the activities that go on in that section.

Ms. Lelie asked if the stone and dirt section will remain. Will anything be stored at that location?

Mr. Clarke answered that section is where the equipment/machinery is usually stored.

Ms. Lelie asked that this particular section be labeled for storage on the site plans. Attorney Dwyer asked if dimensions of this storage area be could be stipulated on the site plans. Mr. Clarke suggested a fence be constructed to physically mark the storage area, and be indicated on the site plans.

Mr. Herbert asked what type of screening is proposed for the front of the property.

Mr. Clarke answered that Mr. Sinagra, the landscape architect for the applicant, will testify on this proposed screening.

Mr. Herbert asked what were the movable storage bins constructed on.

Mr. Clarke testified that these bins are basically concrete blocks which can be stocked and moved. Two units of these bins would measure 6 feet high. These bins would serve to control the soil stockpile area.

Mr. DeRosa asked what was the anticipated height of the stockpile of soil.

Mr. Clarke answered that the height of the soil can change; however, it's usually 12 feet to 15 feet high.

Ms. Lelei reminded Mr. Clarke that the ordinance does not allow for the applicant's materials to go above 6 feet in height. She noted that 6 feet is the proposed height of the proposed storage bin. If the proposal were to have the soil stockpile go above 6 feet, another variance would be needed.

Mr. Clarke agreed that if the soil were to go beyond the 6 feet requirement, a variance would have to be sought.

Ms. Lelei confirmed with Mr. Clarke that nothing is currently being stored on the conservation area of the subject property, and no disturbance is happening on that particular area.

Ms. Lelei asked why the proposed office was situated in this particular location.

Mr. Clarke answered that for circulation reasons, it's better not to have the office in the same location as the existing trailer. Also, the office should be kept on the edge of the bins and away from the easement.

Ms. Lelei asked if a sign package will be put up for new customers visiting the site, giving them directions.

Mr. Clarke didn't believe a sign package was being proposed at this point.

Ms. Lelei asked what was the percentage of storage from the applicant's other business.

Mr. Clarke didn't have an answer on this percentage. Attorney Haydu stated that testimony will be given later in the hearing on this matter.

Ms. Lelei asked if there would be an area for refuse disposal for the site. What does the applicant currently do for garbage disposal?

Mr. Clarke answered that there is a very limited amount of trash produced on the site. He was sure that the garbage in the trailer is bagged and brought to the main office. However, there is no formal trash area on site.

The public had no questions for Mr. Clarke.

Attorney Haydu asked Mr. Clarke the distance from the road at the front entrance back to where the heavy equipment is stored.

Mr. Clarke answered that it was about 400 feet.

Jerry Sinagra, Jr., the landscape architect for the applicant, was sworn in to testify. Mr. Sinagra submitted his professional credentials to the Board. The Board accepted them.

Mr. Sinagra testified that the front of the subject property will be made more attractive. The existing chain-link fence will be removed. A 6-ft. high aluminum fence will be constructed in the same location. The existing grass strips will remain in the county right-of-way. Mr. Sinagra described the evergreens to be planted behind the fencing. Some flowering trees will be planted underneath the powerlines. The new evergreen trees could be trimmed and shaped to stay at a certain height.

Mr. Sinagra testified that 96 pieces of new plant material will be put on the site. Six of these plantings will be canopy trees. Mr. Sinagra described the 23 evergreen trees that were being proposed.

Chrmn. Cifelli asked Mr. Sinagra if these landscape plans had been submitted to JCP & L for their consultation or approval. Will JCP & L allow a 6-ft. fence along the front border, along with the proposed shrubbery?

Mr. Sinagra didn't believe JCP & L had been consulted.

Mr. Haeringer asked if any of the landscape work directly affects the variance being sought.

Mr. Sinagra didn't think so.

Mr. Sinagra reviewed the types of flowers that will be planted on the site. The plantings will be tied into some of the existing landscaping.

Referring to Mr. Sinagra's plans, Mr. Herbert discussed the gate situation with Mr. Sinagra and Mr. Clarke. Mr. Clarke testified that a gate currently exists to provide security at night. In any future arrangements, a gate will always be in place.

Mr. Haeringer asked if there was any business signage proposed.

Mr. Clarke answered that no signage was proposed at this time.

Mr. DeNave asked for the maximum height of the proposed shrubbery.

Mr. Clarke stated that the typical height of a mature cherry tree will be within 25 feet to 30 feet range in height. The green giants can grow to a 12 feet height in range.

Mr. DeNave asked what is the height of the high-tension wires running through the property.

Mr. Clarke answered that he could obtain a measurement; however, he felt that these wires were at least 50 feet high.

Mr. DeNave felt the proposed buffer for the front was a good idea; however, there will be trucks entering and exiting the site. Will the site distances be adequate for these trucks after these proposed shrubs are planted? Also, Mr. DeNave pointed out that JCP & L has been clearing everything under the power-lines at Shepard Kollock Park. Because of this clear-cutting, Mr. DeNave advised Mr. Sinagra to not plant anything that is 15 feet high.

Chrmn. Cifelli reminded the applicant and his witnesses that they are seeking a use of a property that is not allowed in that particular zone. The goal of the proposed landscaping is to ease any unattractiveness of the site. If the proposed landscaping is absent or clear-cutted, Chrmn. Cifelli felt the Board may not consider the argument that the visual impact will be lessened by this landscaping.

Mr. Sinagra testified that the applicant is proposing a skinny strip of plantings perpendicular to the power lines that would encompass maybe 10 feet. The cherry trees were proposed to create an attractive streetscape.

Ms. Lelie asked Mr. Sinagra wouldn't the proposed Norway Spruce grow to 40 or 50 feet?

Mr. Sinagra agreed; however, the Norway Spruce can be kept trimmed.

Ms. Lelie noted that JCP & L has been known to "top" Norway Spruces and other trees. Wouldn't that reduce the spruces' longevity?

Mr. Sinagra explained how he felt a tree could survive so long as it has green biomass. It can photo-synthesis.

Ms. Lelie stated that she herself was a landscape architect. She urged the Board and Mr. Sinagra to take a serious look at this landscaping plan and have JCP & L indicate what maximum height is acceptable to them.

Ms. Lelie asked for a detailed plan for the proposed fence.

Mr. Singara answered that a plan can be provided.

Ms. Lelie asked whether the proposed gate will match the fence. Mr. Clarke answered that the same material will be used for both.

Ms. Lelie asked who had requested the proposed drywell shown on the plans. Mr. Clarke said that the drywell was requested by the applicant and operator of the site. The applicant wanted to manage some of the surface water that collects in between properties.

Ms. Lelie asked how the stormwater flowed on this property. Mr. Clarke answered the water flows towards the river in the back of the property. The property is gently graded towards the rear of the property.

Answering additional questions from Ms. Lelie, Mr. Clarke testified that the property currently does not have any stormwater management. No stormwater management is being proposed. Mr. Clarke didn't believe a stormwater management plan was required for these plans, because a major development is not being proposed. Also, the impervious profile of the site is not being changed.

Ms. Lelie asked if any environmental testing is being done on the water from the subject property as it runs towards the river, to detect any issue. Mr. Clarke answered that he has not undertaken any project like that.

Ms. Lelie asked whether a lighting plan was being done. Mr. Clarke answered that he had informed Dr. Blickstein that there is no site lighting existing or proposed on the site. Currently there is a light pole near the entrance; however, it does not work. Mr. Clarke testified that no operations take place at night on the property, except for emergency situations. In emergency situations, the applicant will bring in a temporary light stand.

Ms. Lelie asked if emergency lighting was installed on the property. Mr. Clarke answered no. Not many people want to steal soil.

Mr. Herbert pointed out that the applicant's business is retail and it has a parking area. Isn't there a Borough requirement for lighting for situations like the applicant's site?

Mr. DeNave explained that the hours of operation for the site has to do with the lighting of the site. If the applicant's business closes down at dark, lighting would not be needed. If the applicant plans on expanding his hours, with customers pulling into the parking area, lighting should be installed as required by the Borough lighting ordinance.

Mr. Clarke testified that he has driven by the applicant's property at night, and the gates are closed. No activity is going on. However, the applicant himself can testify on that matter.

Mrs. Kecskemety pointed out that it becomes dark early in January. Customers may want to pick up materials late afternoon.

Mr. DeNave asked Mr. Clarke if he could upgrade the existing light pole on the property. This upgrade could then illuminate the area between the site parking and the applicant's office.

Mr. Clarke answered that a modern light fixture could be installed to provide illumination. However, the applicant could testify further on the hours of operation.

The colorized version of the landscape plan was marked as Exhibit A-3.

The Board had no further questions for Mr. Sinagra.
The public had no questions for Mr. Sinagra.

At 8:55 p.m. a break was taken in the meeting.

At 9:12 p.m. the meeting resumed.

Chrmn. Cifelli noted that Application ZB #16-006: 8 Watchung Avenue will consume most, if not all of tonight's Board meeting.

Chrmn. Cifelli announced that all remaining applications on the agenda, if correction notifications had been made, will be carried to the March 28, 2018 Zoning Board of Adjustment meeting.

Returning to Application ZB #16-006, Chrmn. Cifelli stated that JCP & L will not permit any elevation in its existing elevation. It's currently not clear to the Board whether the proposed storage will violate JCP & L's desire to have their elevations left alone. Chrmn. Cifelli suggested the applicant's planner could testify on this matter.

Paul Ricci, the applicant's planner, was sworn in to testify.

Regarding Chrmn. Cifelli's comments, Attorney Haydu pointed out that JCP & L is one of the noticed parties for this application. The notice has informed JCP & L of what the applicant is seeking to do. JCP & L is welcome to attend the hearing to give their objections to the proposed plans. Attorney Haydu stated that he will make an affirmative effort to try and obtain approval from JCP & L.

Chrmn. Cifelli reminded Attorney Haydu that the Zoning Board cannot over-ride the JCP & L easement. Mr. DeNave reviewed language in the deed concerning the JCP & L easement. Attorney Haydu felt that JCP & L should review this application in its entirety and then decide if they accept the applicant's proposals.

Mrs. Kecskemety asked why was the Board listening to the application right now, when it's unclear whether JCP & L will approve the proposals for their easement.

Attorney Haydu answered that the applicant was required to submit this application and make it in a timely way.

Mr. DeNave recommended that the Board still listen to the testimony of the application and move forward with it. If the Board hears back that JCP & L is not in favor of the application, it will be shot down. Also, there is no guarantee that the Board will approve the application.

Attorney Dwyer pointed out that legally, easements and restricted covenants are considered private land use tools to be enforced by those who are in the covenant, and not necessarily to be considered by the land use board.

Chrmn. Cifelli concluded that if JCP & L wants to take down the shrubbery that had been proposed, they can do it. The Zoning Board cannot tell JCP & L not to cut it down.

At Attorney Haydu's request, Mr. Ricci, the applicant's planner submitted his professional credentials to the Board. The Board accepted them.

Mr. Ricci distributed hand-outs of aerial photos showing the conditions of the area in question. These hand-outs were submitted as Exhibit A-3.

Mr. Ricci testified that the subject property was irregular in shape. It is bounded by the Passaic River. The site is 3.42 acres in area. Mr. Ricci reviewed the land uses in this particular area, and the neighboring businesses. He testified that he had observed little or no vacancies during his site inspection. Mr. Ricci noted that the applicant's site is situated in the Gateway Overlay District, which allows for additional permitted uses.

Mr. Ricci described Pictures One and Two of the subject property. He reminded the Board that the Master Plan has identified this particular area as the Gateway District. The goal is to beautify this area of town. That is part of the reason why the applicant is looking to make the property more attractive.

Chrmn. Cifelli asked Mr. Ricci if the recycling center in this particular area had some benefit to the public. Mr. Ricci agreed.

Chrmn. Cifelli asked what benefit to the public does the applicant's property have?

Attorney Haydu and Mr. Ricci answered that testimony will be provided in a little while.

Mr. DeRosa asked Mr. Ricci whether he had checked whether JCP & L had approved these neighboring uses, like the recycling center, as well?

Mr. Ricci answered that the recycling center is identified on the JCP & L website and the county website. He also identified the amount of tonnage that is allowed to come onto the site. Mr. Ricci stated that he then assumed that the recycling center was an approved site by JCP & L.

Mr. Ricci continued reviewing the businesses and uses located across the street from the applicant's property. He noted Picture 3 showed the landscaping that will remain. Picture 4 shows the rear of the property where the conservation easement is located. Picture 5 shows the existing recycling center. Picture 6 shows Dreyer's Lumber which uses outdoor storage. Propane is sold adjacent to the right-of-way. Picture 7 shows the adjoining car storage use. Picture 8 shows a similar business on River Road.

Mr. Ricci believed that the application is seeking a D-1 use variance. The applicant is selling stone and earth products in the M-1 District. The applicant has joint use of equipment associated with the movement of soil on site with this use and his business as a contractor.

Mr. Ricci noted that Dr. Blickstein, the Board's planner, identified the applicant's use as an outdoor storage use, which is only permitted as an accessory use.

Mr. Ricci also noted a bulk variance was being sought. Two stories are required for this particular district. The applicant is proposing only one story. The application is also seeking a variance for front yard parking.

Mr. Ricci reviewed the permitted uses for this particular zoning district.

Ms. Lelie asked what will be the use for the applicant's property.

Mr. Ricci testified that the applicant's business is a commercial business that sells stone and earth products in the Borough's M-1 District. The applicant has joint use of equipment for earth-moving on site and off of site.

Mr. Infante asked if this business on Watchung Ave. is an accessory to the applicant's Main Street business.

Mr. Ricci answered that he couldn't speak to the full use of the applicant's contracting business.

Attorney Haydu explained that the equipment that is on site, that is actually stored there, is used for the sale of the earth and stone products. When that equipment is needed for another job being undertaken by the applicant, the applicant will then take a piece of machinery off the yard. The machinery will be returned to the yard on Watchung Ave. after the job is done.

Chrmn. Cifelli asked who is the owner of the machinery.

Attorney Haydu answered that the owner can testify on that matter.

Attorney Dwyer asked if it was possible to have the applicant's planner be the last one to testify. It seems the Board had a number of operational questions at this time.

Attorney Haydu said he had reasons for having Mr. Ricci present his testimony at this time.

Mr. Ricci noted that Dr. Blickstein had characterized the use as an outdoor storage use. He pointed out that outdoor storage is permitted in this particular zoning district, but as an accessory use. Requirements are in place for how outdoor storage is permitted. He felt it was important to review these requirements in order for the Board to decide whether the applicant complies with the ordinance as it relates to outdoor storage.

Mr. Ricci noted that a decorative fence was being proposed. The applicant had indicated to Mr. Ricci that he would not store material beyond 6 feet in height.

After further discussion, Ms. Leili brought up the question of whether the applicant's business is a principal use or an accessory use. Is there any documentation that shows who the applicant sells to?

Mr. Ricci said that the business owner could answer that.

Ms. Leili pointed out that the Board needs actual evidence on whether this is primarily a retail use.

Attorney Haydn said he will ask Mr. Weichert, the applicant, to come forward and clarify the issues raised by the Board.

William P. Weichert, the principal owner of 8 Watchung Avenue, LLC, was sworn in to testify.

Attorney Haydu asked Mr. Weichert what was the nature of the business he was running at the subject property.

Mr. Weichert answered Chatham Stone & Earth Products. His business buys gravel, sells it. Gravel, top soil also is sold on site. This business is an ongoing, daily business. It generates sales to anyone coming in through the gate – a homeowner, landscaper, or contractor.

Chrmn. Cifelli asked when a customer enters the property, how does he know where to go to transact business.

Mr. Weichert testified that currently there is an office trailer with a sign indicating that it is the office.

Chrmn. Cifelli asked whether there was another business associated with the business on this site.

Mr. Weichert testified that he owned Chatham Main Contractors located on Main Street.

Chrmn. Cifelli asked what is the nature of that business.

Mr. Weichert answered excavating, land grading, trucking, etc.

Chrmn Cifelli asked if Chatham Main used the materials from this site at 8 Watchung Avenue.

Mr. Weichert answered yes. He clarified that Chatham Stone & Earth Products at 8 Watchung Avenue does not own any equipment. They rent the equipment, the trucks, and the man power from Mr. Weichert on a daily basis when there is a need. Mr. Weichert testified that he is the owner of Chatham Stone & Earth Products as well as Chatham Main. Mr. Weichert explained that he has two men who run the gravel yard at Chatham Stone & Earth. They contact Mr. Weichert when they need trucks or materials.

Mr. Heap asked how the material was sold.

Mr. Weichert explained the yard and bucket system that is used.

Attorney Dwyer asked how many pieces of equipment was stored at the back of 8 Watchung Avenue.

Mr. Weichert answered that he would have to visit the site and take a count. The count can vary, because often his equipment is sent out to distant locations. All of the equipment is owned by Chatham Main. Mr. Weichert estimated the number of pieces to be 40.

Attorney Dwyer asked how many pieces of equipment are on site on an average day.

Mr. Weichert answered 5 or 6 pieces of equipment on an average day. This equipment goes to the Main Street yard for maintenance.

Chrmn. Cifelli asked for the hours of operation for the 8 Watchung Ave. site.

Mr. Weichert answered 8 a.m. until a half hour or so before sunset. If the Board wanted, he could shut the gates at a specific time.

Ms. Leili asked Mr. Weichert where did he purchase the materials for Chatham Stone & Earth?

Mr. Weichert answered that different stone products come from different quarries. The sand comes from different sand pits.

Ms. Leili asked if the materials, not purchased from other sites, is tested before it is brought to the 8 Watchung Ave. site.

Mr. Weichert answered sometimes it's tested by a soil testing company, Johnson Engineering.

Ms. Leili pointed out the reason for this concern is because the subject site is within a well-head area and no stormwater management is in place.

Ms. Leili asked why was the material tested only on a "sometimes" basis.

Mr. Weichert explained the situations when a builder does the testing of the materials and documentation of the testing gets sent to his company.

Ms. Leili confirmed with Mr. Weichert that there is soil on the subject site that has not been tested.

Ms. Leili asked Mr. Weichert who is his majority customer.

Mr. Weichert answered contractors or landscapers. Once in a while a homeowner.

Chrmn. Cifelli asked if Chatham Main draws materials from 8 Watchung Avenue.

Mr. Weichert answered yes. Sometimes Chatham Main employees can't reach the quarries towards the end of the day, so they obtain gravel from the yard at 8 Watchung Avenue.

Chrmn. Cifelli asked how does Chatham Main pay for this particular transaction.

Mr. Weichert explained that Chatham Main pays Chatham Stone & Earth Products. Chatham Stone & Earth pays Chatham Main for the trucking, machinery, and the labor. He also clarified that all of Chatham Main's dump trucks are parked at their Main Street location.

Mr. Haeringer asked what is the percentage of material sold to retail customers visiting the Watchung Ave. site.

Mr. Weichert answered that 75% of the material sold at 8 Watchung Avenue goes to outside customers. Twenty-five percent of the material is used by Chatham Main. Mr. Weichert further stated that 10% is new business. Part of this 10% could be homeowners. Ninety percent of the business are repeat customers. Mr. Weichert considered his whole operation at 8 Watchung Ave. as retail.

Attorney Haydu pointed out that the Borough ordinances include both contractors and private citizens in the same category (retail).

Ms. Leili asked Mr. Weichert how much his sales is devoted to delivery going out versus people visiting the site, asking that their trucks be filled up.

Mr. Weichert answered that it's 50-50.

Mr. Infante asked if Chatham Main supplied Chatham Earth & Stone with the products that they have on site.

Mr. Weichert explained that Chatham Main trucks the products into 8 Watchung for Chatham Stone & Earth products.

Mr. DeRosa asked Mr. Weichert how far away was his furthest supplier.

Mr. Weichert answered that one of his suppliers travels as far away as Belvidere NJ and brings in river gravel which comes from the Delaware River. Sand can be obtained from the sandpits of Lakewood NJ.

Chrmn. Cifelli asked how the soil built-up had come about in the back of the property at 8 Watchung?

Mr. Weichert stated that previous to his ownership of 8 Watchung Ave., the neighboring car lot property was 5 or 6 feet higher than 8 Watchung Ave. The property was then filled in on the car lot side years ago. The Dreyer Lumber property is higher than 8 Watchung Ave. Mr. Weichert stated that he had put in some soil piles; however, he got into trouble with the DEP. Working with the DEP, Mr. Weichert testified that he had remediated those soil piles that had created that high ground. Mr. Weichert reported that 8 Watchung Ave. has made the last DEP fine payment today.

Chrmn. Cifelli confirmed with Mr. Weichert that the DEP fine wasn't because of any soil erosion to the materials on site. Mr. Weichert testified that a silt fence is maintained a few hundred feet from the river. The silt fence will intercept any run-off. The silt fence is inspected on a monthly basis. If this fence ever needs repair, Chatham Stone & Earth will deal with it.

Answering questions from Mr. Infante and Attorney Dwyer, Mr. Weichert explained how Chatham Stone & Earth came to be at 8 Watchung Avenue and how it's developed into what it is today.

Chrmn. Cifelli pointed out that if the proposed landscaping is planted and no signage will be put in place, how will potential customers be attracted?

Mr. Weichert noted that 8 Watchung Ave. is in the Borough's Gateway section and the current plans were drawn, keeping that in mind.

Ms. Leili discussed with Mr. Weichert the storage of equipment at 8 Watchung Ave. No dump trucks will be kept at that location. The stored equipment on site can be used for emergency situations, particularly town emergencies. Mr. Weichert explained how his equipment helped the

Borough deal with a serious water main emergency near the DPW complex during Superstorm Sandy.

Ms. Leili asked for more clarity on the variances being sought and the equipment situation on this site. The applicant's planner had testified that the second use on the site is for storage for Chatham Main.

Attorney Haydu explained that the equipment stored at 8 Watchung Ave. is used for the day-to-day management of the sale of stone and earth products. However, if that equipment is necessary off site for Chatham Main to do an emergency repair, it gets moved from the 8 Watchung Ave. site to the Chatham Main site on Main Street.

Regarding other regulations that need to be met, Mr. DeNave informed Mr. Weichert that, by ordinance, all his piles at Chatham Stone & Earth cannot go beyond 6 feet in height. Mr. DeNave noted that requirement will be difficult for Mr. Weichert. Attorney Haydu pointed out that a relief variance will probably be needed for that height restriction.

Ms. Leili pointed out that testimony was given that the piles will be kept at 6 feet. That action meets one of the criteria. If the piles are not kept at 6 feet, the criteria isn't met, and then a use variance must be sought.

Attorney Haydu and Mr. Weichert conferred briefly in private.

Attorney Haydu stated Mr. Weichert will keep the piles no higher than 6 feet; therefore, a variance is not needed in this particular situation.

Ms. Leili asked about the storage of equipment for Chatham Main.

Mr. Weichert felt that motorized equipment that moves is what is being referred to.

Ms. Leili then asked how many pieces of equipment and what types of equipment will be on site. What percentage of the site will the equipment take up?

Mr. Ricci recalled that Mr. Clarke had given testimony earlier stating that the equipment was going to be stored behind the last movable storage bin. A fence can be provided to delineate that area.

To provide more clarity on this matter, Attorney Haydu pointed out there are two or three old Chatham Main trucks that currently parked on the Watchung Ave. site; however, they are going to be removed. In the future, there will be no Chatham Main trucks parked on that site. However, there is equipment on the site like road plates, etc. on site. Mr. Weichert offered to count these pieces of equipment. Attorney Haydu explained that those pieces of equipment are on site to help in response to emergencies.

Referring to a Google aerial photo, Ms. Leili stated that it appears to be more than 5 or 6 vehicles on site.

Mr. Weichert stated that that particular equipment hasn't been used for years. He will be cleaning up the site.

Mr. Infante asked whether Chatham Main paid Chatham Stone & Earth any fee to store those vehicles.

Mr. Weichert answered no, because the Chatham Main equipment is used for Chatham Stone & Earth.

Chrmn. Cifelli and Mr. Weichert reviewed the difference between what is considered equipment as opposed to what are trucks.

Chrmn. Cifelli asked Mr. Weichert what were the specific pieces of equipment needed on the Watchung Ave. site.

Mr. Weichert answered a couple of wheel-loaders, a bull-dozer, a roller, an excavator, a back-up dozer.

Chrmn. Cifelli asked how many pieces of equipment/trucks require CDL licenses in order to operate.

Mr. Weichert answered that only a mason dump truck is at the 8 Watchung Ave. site.

Chrmn. Cifelli explained that the size of the equipment on the site impacts the visual perspective of the streetscape.

Mr. Weichert stated that the size of his equipment on the Watchung Ave. site is comparable to the equipment used by the Chatham DPW.

Attorney Dwyer confirmed with Mr. Weichert that this site at 8 Watchung Ave. is the principal headquarters for Chatham Stone & Earth. Attorney Dwyer asked that in addition, this site is being partially for storage of equipment used by Chatham Main.

Mr. Weichert answered that this equipment is used on a daily basis for Chatham Stone & Earth products. The older equipment at the 8 Watchung Ave. site belongs to Chatham Main and can be removed.

Attorney Haydu suggested that Mr. Weichert take photos of the pieces of equipment that belong to Chatham Stone & Earth and that will remain on the site at 8 Watchung Ave. Another set of photos could be taken of the older Chatham Main trucks that aren't operable and ready to be disposed of. These photos will hopefully give the Board a good view of the size of the discussed equipment. It will also give clarity on what equipment will be leaving the site.

Ms. Leili asked Mr. Weichert if there was any refuse material that returns to the 8 Watchung Ave. site from construction sites.

Mr. Weichert answered that in the past refuse material had been returned to the site. Not any more. It's not part of the operation on the site.

The Board discussed with Mr. Weichert the number of employees at Chatham Stone & Earth. Mr. Weichert answered two employees work that site, one of which is full time.

Summing up, Attorney Haydu stated that he would like to recall Mr. Weichert at a future hearing, when all the pictorial evidence of the equipment and trucks have been gathered. A description will be given of what will be staying on site, and what will be leaving.

Ms. Leili asked that a delineation be made of where the remaining equipment will be stored for emergency situations. Attorney Haydu agreed that delineation can be included in the plans. Ms. Leili pointed out that by ordinance, a chain-link fence cannot be used for such a delineation.

With regard to the accessory use issue, Ms. Leili suggested that the applicant submit documentation or evidence of how he is meeting each of the conditions, if in fact, he was meeting them.

Mr. Clarke said he will prepared to argue that matter.

Chrmn. Cifelli asked if there were any questions from the public so far on this application.

There was none.

At this point in the meeting, Chrmn Cifelli announced that all the applications listed on tonight's agenda, not heard tonight and if they were properly noticed, will be carried to the March 28, 2018 Zoning Bd. of Adjustment meeting.

The Board decided to schedule an extra Zoning Board of Adjustment meeting on Thursday, April 19, 2018, 7:30 p.m., in the Council Chambers.

Application ZB #16-006: 8 Watchung Avenue, LLC will carry to this April 19, 2018 meeting. It will be the only application heard at the April 19, 2018 meeting.

At 10:50 p.m. the meeting adjourned.

The next Regular meeting of the Zoning Board of Adjustment will be held on Wednesday, March 28, 2018, 7:30 p.m., Council Chambers, Chatham Borough Hall.

Respectfully submitted:

Elizabeth Holler
Recording Secretary

