

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT  
October 4, 20187:30 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 Borough Hall. He stated that adequate notice of this Zoning Board of Adjustment meeting was 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 Engineer & Zoning Officer

Kendra Lelie, PP, AICP, ASLA, Professional Planner for the Board

Public Comment

There was none.

Resolutions

Application ZB #18-13

Laura Frey

7 Ellers Drive

Block 33, Lot 42

Attorney Dwyer summarized this application which proposed a two-story addition and a raising of the dormer. The existing house is a cement block house with no basement. The Board granted the proposed variances. A roll call vote was taken to approve this resolution confirming the Board's approval of these variances:

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

Application ZB #18-14  
Bradley & Kirsten Williams  
36 Kings Road  
Block 29, Lot 13

Attorney Dwyer summarized this application which proposed a second-story bump-out on an existing house, which would intensify the right side yard setback. The lot size was significantly smaller than what should be in that zone. The Board granted the variance. A roll call vote was taken to approve this resolution confirming the Board's approval of this variance:

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

Application ZB #18-15  
Rajesh & Kristin Rajappa  
56 North Summit Avenue  
Block 54, Lot 8

Attorney Dwyer summarized this application which proposed improvements and a second story to a single-family residence. The applicant's lot was slightly under sized. The Board felt the proposals were acceptable. A roll call vote was taken to approve this resolution confirming the Board's approval of the variances:

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

Returning and New Applications

Chrmn. Cifelli announced the status of the following applications:

Application ZB #16-006: 8 Watchung Avenue, LLC – 8 Watchung Ave. will be heard tonight

Application ZB #18-01: Hume – 233 Fairmount Ave. will carry to a future meeting.

Application ZB #18-16: 548 Main Street, LLC – 548 Main Street – will carry to a future meeting.

Application ZB # 18-17: Catullo – 49 Fairmount Ave. – will be heard tonight.

Application ZB #18-17

Jeff & Christine Catullo

49 Fairmount Avenue

Block 118, Lot 24

Side Yard/Rear Yard/Building Coverage

This is continued from the September 26, 2018 hearing. Chrmn. Cifelli noted that at the last meeting Mr. and Mrs. Catullo had been asked to submit revised plans.

Jeff and Christine Catullo remained under oath from the previous hearing.

Chrmn. Cifelli recalled at the last hearing some Board members had expressed concerns about how the proposed home would appear, as it faced Fairmount Avenue. They felt the Fairmount Ave. side of the home would not blend well with the rest of Fairmount Avenue, going uphill.

Mrs. Catullo indicated that revisions had been made to the plans to address these concerns. The proposed porch will now continue on to the Fairmount Avenue side of the home. The Fairmount Ave. side of the house will now look like another entrance to the house.

Mr. and Mrs. Catullo submitted the following:

Exhibit A-5: Revised plans

Exhibit A-6: A hand-out including the proposed floor plan

Andrew Clarke, the applicant's engineer, came forward. He remained under oath from the previous hearing.

Mr. Clarke submitted Exhibit A-7: the revised proposed development plan. Copies were distributed to Board members.

Mr. Clarke explained the dimensions of the new revised porch. The revised porch will have 50 sq. ft. of encroachment. Another encroachment into the yard will be 22 sq. ft. belonging to the steps. Mr. Clarke testified that the building coverage increases because of the newly designed porch. The building coverage is 399 sq. ft. over the allowable amount. A lot variance is now needed. With the proposed walkways, the lot coverage is over the allowable by 229 sq. ft.

Chrmn. Cifelli confirmed with Mr. Clarke that the remaining variances are not affected by the recent revisions.

There were no questions or comments from the public for the witnesses. The public had no comments on the application.

Chrmn. Cifelli asked for comments from the Board. Mr. DeRosa said he would accept this application. Mr. Infante noted that the safety conditions will be improved on the property. The proposals will not affect the air, space, and light of this corner lot. Mr. Haeringer approved of the design and will support the application. Mrs. Kass noted that the revised plans have addressed the concerns of the Board. Mr. Herbert pointed out that the applicant was agreeable to increasing his proposals (the porch extension). He also pointed out that changing the location of the driveway will reduce the chance of accidents on Fairmount Avenue. Mrs. Kecskemety felt

the proposals were very attractive. Mr. Tobia commended the applicant for meeting the concerns expressed by the Board. Chrmn. Cifelli felt the proposed frontage and side yards will blend in well with Fairmount Avenue.

Chrmn. Cifelli made a motion to approve Application ZB #18-17 with the applicant to follow any stipulations on stormwater as recommended by the Borough Engineer. Mr. Infante seconded the motion. A roll call vote was taken:

Mr. DeRosa	-	yes
Mr. Tobia	-	yes
Mr. Haeringer	-	yes
Mr. Infante	-	yes
Mrs. Kass	-	yes
Chrmn. Cifelli	-	yes

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

This is continued from the September 28, 2018 meeting.

Attorney Gary Haydu, Esq., noted that this is the Fourth Hearing of this application. He stated that Mr. Paul Ricci, the applicant's planner, was present tonight. Mr. Ricci will testify on his review of the applicant's project. The Board accepted Mr. Ricci's credentials.

Mr. Ricci testified that he had done a planning review and analysis of 8 Watchung Avenue and the operations being conducted on that site.

Chrmn. Cifelli confirmed with Attorney Haydu and Mr. Ricci that at the last hearing the Board had concluded that a use variance was necessary, given the proposed use from the applicant.

Mr. Ricci noted that a D-1 accessory use variance is needed to allow a drive-through component to permit a retail business that sells stone and earth products in the M-1 District. A one-story building is being proposed where two-story buildings are required. A variance is being sought to allow parking in the front yard. A variance is being sought to allow for three soil bins to contain soil higher than 6 feet, with a maximum height of 12 feet.

Mr. Ricci reviewed the uses that were permitted for the M-1 District. He also reviewed what proofs would be needed for this application.

Mr. Ricci reviewed the positive criteria for the application. He testified that an office building with retail sales in a business that sells stone and earth products, which has been characterized as a drive-through operation, is an appropriate use in the M-1 District. Under the Board's interpretation of a drive-through, under no circumstance can this principally permitted retail

trade use be approved without variance relief. Mr. Ricci explained how the applicant suffers somewhat of a hardship that can be distinguished from other permitted uses in the zone.

Mr. Ricci stated that the applicant is seeking the use variance to permit the accessory drive-through component to a retail trade use. In this situation, the loading and unloading of a product, that has been characterized as a drive-through, is no different than operations that are traditionally associated with permitted uses.

Mr. Ricci testified that the proposed use would be much visually and operationally benign than many of the permitted uses. This industrial zone permits outdoor storage on 50% of the property. The zone contemplates more than one principal building, and more than one principal use and mixed use buildings. Mr. Ricci pointed out that the applicant's property is oversized for this particular zoning district. The property has the ability to accommodate the use in question.

Mr. Ricci stated that the proposed landscaping and decorative fencing will hide the use and drive-through component. The property, as a whole, is not reasonably adapted to a conforming permitted use, with the potential ability to locate rental businesses. Mr. Ricci felt the property suffers from an aspect of inutility and a hardship in comparison to the majority of other properties in the zone. This zone allows outdoor storage as an accessory use, as long as it doesn't occupy more than 50% of the lot and is located with proper setbacks and screening.

Mr. Ricci testified that the applicant is proposing to occupy approximately 20% of the site with an outdoor related product. High tension towers divert the subject property. A recycling center operates across the street. The applicant's property is being proposed to be used for similar purposes. While one neighboring property contemplates recycling of leaves, grass, wood products, etc., both uses contemplate the placement of storage of material on a site in a manner where vehicles will be dropping off or picking up products.

Mr. Ricci felt the applicant's property is well suited for the proposed use. He reviewed how this application met several purposes of the Municipal Land Use Law. Mr. Ricci testified that the variances could be granted without a substantial detriment to the public good and zone plan. A similar use, to that of the applicant's business, is currently operating on River Road in the M-3 District. Mr. Ricci testified that the applicant's site will not be promoting traffic in any more excess than what exists in the neighborhood today.

Mr. Ricci pointed out that the loading and unloading of material is typical in this particular area of the zone. He reviewed the business operations on neighboring sites. Mr. Ricci testified that the improvement of the appearance of an industrial area and the applicant's proposals are consistent with both the 2006 and 2013 Master Plans. He pointed out that outdoor storage is prevalent to the M-1 and M-3 Districts. Also, the amount of the applicant's stored materials will be well under the amount permitted in this zone – approximately 20% versus 50%. The applicant will adhere to the Borough's outdoor storage requirements, with the exception of the bins being at 12 feet. Mr. Ricci testified that across the street from the applicant's property, the stock piles of brush are many times higher than 6 feet. Currently lumber is being stored at nearby Dreyer's in piles well over 12 feet.

Mr. Ricci testified that the curb appeal of the applicant's property will be improved. He felt that a site with high tension towers running through it, is not appropriate for boutique development and residential development. Mr. Ricci would not encourage apartments or housing for this particular site. It is an incompatible residential land use site.

Mr. Ricci pointed out that it does not appear that the proposed use of a driveway as a drive-through was specifically excluded from the Borough's zone plan. He felt that the retail sale of mulch and rock can be construed as a permitted use. Contractors or offices with associated outdoor storage is a permitted use. Mr. Ricci stated that granting the proposed variances can be reconciled with the Borough's zone plan. It is not a substantial departure from the Borough's zone plan.

Mr. Ricci testified on how the benefits outweighed the detriments with this application. Among the points of his testimony, Mr. Ricci stated that no building could be located at the minimum front yard setback of 10 feet, since this property is located within a utility easement. There is no opportunity on this site to create a formal building streetscape with the building close to the street edge and subject property. For this reason, the proposed one-story building will not create a substantial impairment to the zone plan.

Mr. Ricci testified that there is proposed parking outside the required front yard setback. Since the building is not proposed at the front yard setback, parking is proposed 10 feet from the roadway. He believed that the location of the parking as proposed, is a better zoning alternative for the site. Patrons will be parking away from the material bins. Plantings and berms will be screening the parking area.

Mr. Ricci asked the Board to consider this application for a use variance.

Attorney Dwyer noted that Mr. Ricci had used the term "hardship" a couple of times in his presentation. Did he (Mr. Ricci) mean that the positive criteria was being met based on a hardship?

Mr. Ricci explained that there are aspects of hardship with utility associated with the condition of the property.

Chrmn. Cifelli asked how the proposed use will benefit the community, as opposed to a recycling center.

Mr. Ricci explained that this particular use will promote the general welfare of the community by its definition, by its suitability.

Mr. Herbert suggested Mr. Ricci give his 3 best points for hardship, and the 3 best points on the positive and negative criteria. He also asked Mr. Ricci to clarify whether this business was considered either retail or commercial.

Mr. Ricci stated that the use itself is a permitted use. It's the accessory drive-through component that is not permitted. He noted that the sale of mulch and stone is anticipated, but that can't be

achieved because of the Board's interpretation of a drive-through. Mr. Ricci felt what was being reconciled is the appropriateness of a drive-through associated with a permitted use in this particular zone. He pointed out that the parking will be screened and buffered. Mr. Ricci believed this application would not produce any negative impact on the neighborhood. There will be no real additional traffic. The business really won't be visible from the street. The applicant's business will fit in with the range of businesses in the immediate area. It would be appropriate in an industrial district.

Mr. DeRosa felt that Mr. Ricci, in his testimony, had pivoted the power-lines as now being a central hardship. Earlier, there was hardly any testimony on the power-line. Did Mr. Ricci consider the power-lines a hardship?

Mr. Ricci answered no; however, a function of inutility exists.

Mr. DeRosa asked how does it serve the public good to have large pieces of metal equipment operating underneath transmission power-lines.

Mr. Ricci believed that would be a matter for the utility company. If these conditions are acceptable to the utility company, he felt there would be no impact. Mr. Ricci noted that he had once worked for a power company.

Chrmn. Cifelli felt that what Mr. Ricci was trying to say was that issue has not been raised in the context of the positive and negative criteria. Mr. Ricci agreed.

Chrmn. Cifelli asked Mr. Ricci what is it about the use of this property that benefits the public.

Mr. Ricci answered that this property is particularly well suited under the law and promotes the general welfare of the community.

Returning to the issue of the powerlines, Attorney Haydu pointed out the submitted plans depicts 150-ft. wide easement for the power-lines. Mr. Weichert and Mr. Clarke had included this in their testimony. Attorney Haydu felt this easement is a hardship. The plan also shows that there is a restricted use because of the Passaic River which runs along the property. Attorney Haydu noted that 36% of the property is subject to a conservation easement. 82.8% of the property is encumbered by the utility easement. These two factors diminish the subject property in a very significant way. Whether or not this meets the definition of a hardship, is a planning question. Attorney Haydu will leave that question to the professional planners.

To answer questions about the conservation easement, Mr. Ricci submitted Exhibit A-9: a site plan of 8 Watchung Exhibit A-9 was put on the easel. He had high-lighted all the areas impacted by the conservation easement and the electrical towers. Chrmn. Cifelli asked Mr. Weichert to come forward to answer a question. Mr. Weichert remained under oath from the previous hearing.

Chrmn. Cifelli asked Mr. Weichert what was permitted in that conservation easement on his property. What wasn't permitted?

Mr. Weichert answered that he lets the conservation easement grow naturally. Nothing will be done in the easement.

Mr. DeNave answered that was subject to the DEP clean-up, Mr. Weichert had been required to move fill into that section. Mr. Weichert now has large boulders placed in that area. No activity will occur in that area. It must be left completely natural.

Mr. Haeringer confirmed with Mr. Weichert that the “finger” of the easement will experience no activities, such as vehicles, on it.

Referring to Exhibit A-9, Mr. Herbert asked Mr. Weichert which bins was he proposing to be 12 feet high.

Mr. Weichert pointed out that the bins would be located where the top soil stockpile would sit, way in the back of the property. Also, to the left, close to Dreyer’s property, a pile would be located, no higher than 12 feet. The landscaping would screen these higher bins. The smaller bins in the front of the property would reach no higher than 6 feet.

Mr. Haeringer asked Mr. Ricci if he had measured the piles of lumber on Dreyer’s property. Mr. Haeringer recalled that Mr. Ricci had testified that the lumber was over 12 feet.

Mr. Ricci answered that he had never actually measured the pile of lumber; however, he had observed piles of lumber possibly close to 20 feet high. He clarified when he had made that statement, he was just trying to show that the applicant will not be creating something that is not consistent with the character of that particular area of the community.

Mr. Infante asked Mr. Ricci if he felt that Chatham Stone & Earth business cannot conduct business but for the drive-through aspect it has.

Mr. Ricci answered yes, based on his (Mr. Infante’s) interpretation of a drive-through.

Mr. Herbert asked Mr. Weichert what would be the material used for the drive-through driveway.

Mr. Weichert answered that presently the driveway is asphalt, with parts of gravel. It will remain that way.

Mr. Weichert explained the process a customer follows after leaving the Chatham Stone & Earth counter. He didn’t know how a customer could successfully obtain his material without following the drive-through interpretation that was discussed at the last hearing. Mr. Weichert asked how would a customer load if he could not drive to the bin, get loaded, received the tarp, and exit the property.

Ms. Lelie asked how did the utility easement restrict available uses.



Mr. Weichert answered that he wasn't allowed to construct buildings or anything else under the power-lines. No permanent structure could go under the power-lines. Also, nothing can go above 15 feet within the utility easement.

Mr. Weichert testified that at the left rear of the property, an area will be fenced in, to store the 12 pieces of equipment for Chatham Stone & Earth. He pointed out that a piece of equipment is not allowed to operate within 15 feet of high tension wires.

Mr. Herbert asked Mr. Clarke if a lighting plan will be submitted. Will the property be lit at night?

Andrew Clarke, the applicant's engineer, came forward. He remained under oath from the previous hearing. He testified that no night time activity is planned on the site. Chatham Stone & Earth closes at sundown. Mr. Clarke noted that some ambient light comes from the roadway.

Mr. Herbert asked if there will be lighting for the customer trailer. Mr. Clarke answered that he didn't anticipate the need for lighting the trailer in the evening, with the business closing up at sundown.

Mr. Herbert asked Mr. Weichert if the front gate will be locked at night.

Mr. Weichert answered that the gate is never locked. The gate has a chain with a lock on it. If JCP & L needs access to that property, they can undo the chain. The gate gives the appearance of being locked to anyone passing by.

Mr. Herbert asked Attorney Haydu if JCP & L had been put on notice of this hearing.

Attorney Haydu answered that the standard people were put on notice. JCP & L had an interest on that particular property and were put on notice.

Ms. Lelie and Mr. Ricci discussed the proposed buffering on the site. Mr. Ricci believed the berm could be done in a decorative manner.

Ms. Lelie asked if any of the species for buffering for the easement had been identified by JCP & L. Mr. Ricci felt that matter had been settled.

After further discussion, Attorney Haydu said he would reach out to JCP & L about this easement issue.

Ms. Lelie felt that any container plantings would not work well in the easement. She pointed out that there was not significant space available to create a sufficient berm.

Ms. Lelie questioned whether a use variance was being sought for an accessory use. She noted that Mr. Ricci had testified that what is currently going on at the site is a permitted use, but for the drive-through, which is considered an accessory. She was under the impression from the

testimony given that if the drive-through aspect was blocked off, there won't even be a use. How is the drive-through not part and parcel of the overall operation?

Mr. Ricci answered that drive-throughs are not accessory uses.

Ms. Lelie asked what is the permitted use here.

Mr. Ricci answered a retail sale of mulch and other products. He clarified further that it was retail trade use.

Ms. Lelie concluded that the applicant was not just asking an accessory use that is not permitted, it is a use that is not permitted. The drive-through is a component of the overall use. Ms. Lelie reminded Mr. Ricci that he had testified earlier that if the drive-through was removed, a use would not exist.

Mr. Ricci disagreed, believing that the drive-through was clearly an accessory component.

Ms. Lelie pointed out that the outdoor storage portion of this use only takes up 20% of the property. Mr. Ricci explained how he came up with the measurement of 18%. He read aloud the section of the LDO stating that the area devoted to outdoor storage shall not exceed 50% of the yard in which it is located.

Ms. Lelie had a different interpretation. She felt that 50% of the yard area in which it is located means that where the storage is located outside, 50% of this particular storage area cannot be used. Ms. Lelie and Mr. Ricci debated over whether this percentage limitation involved the entire property.

Ms. Lelie recalled Mr. Ricci's testimony had claimed the applicant's property was similar to those of neighboring businesses, like Dreyer's Lumber. The interpretation of what a yard is, in this context, is important because it's starting to look like it is the usable space. In this situation, the entire space of the applicant's property is being used for outdoor storage. Mr. Ricci explained that an ordinance like this can be written in an arbitrary manner. Mr. Tobia disagreed with this point. A reasonable explanation is given for the term "yard".

Attorney Haydu suggested that if the Board could define for Mr. Clarke what "a yard" is, in the Board's interpretation, Mr. Clarke can then take that definition and quantify things. Mr. Clarke could calculate the percentage that the applicant is covering, based on the Board's definition.

After further discussion with Mrs. Kass, Mr. Ricci agreed that if the ordinance tells where outdoor storage cannot be situated, by definition, it can say where it can be located.

Mr. Infante pointed out that in this situation, Chatham Stone & Earth does not have the normal building structure around its product, like other retail businesses in town. Chatham Stone & Earth's product is within a confined area; however, is not captured by walls.

Ms. Lelie and Mr. Ricci discussed the yard area involved and what is allowed for storage.

Mr. DeNave stated that, by definition, the DEP indicates that storage cannot be put in their conservation easement. The conservation easement cannot be considered part of the applicant's yard. Mr. DeNave recommended that the conservation easement should be excluded with regards to a definition of a yard, because it is not usable.

Mr. Clarke suggested the area between the required front setback and the conservation easement and the required side yard.

Mr. DeNave believed Mr. Clarke's suggestion is a reasonable definition of yard in this particular context. Mr. DeNave also pointed out that the driving aisles will not be used.

At 9:26 p.m. a break was taken in the meeting.

At 9:40 p.m. the meeting resumed.

Attorney Haydu asked that the applicant and his experts be given some time to get the quantification of the coverage issue determined. Also, an attempt will be made to have the utility company sign off on the plans.

Attorney Haydu explained that the applicant and his experts were trying to give his entranceway some character and screening with his beautification and landscape plan, even though he was not required to do so. The applicant is trying to accommodate the Borough.

Chrmn. Cifelli suggested that Attorney Haydu and the applicant document these efforts to show the Board. Perhaps a conditional approval could be considered.

Ms. Lelie agreed with Attorney Haydu's point that the applicant was not required to propose landscape plantings; however, the applicant's planner has used the aesthetic improvement as mitigation for the use variance. Ms. Lelie informed Chrmn. Cifelli that it would difficult to approve a use variance with the condition that landscape plans may be provided. Ms. Lelie pointed out that it is either mitigation or not.

Attorney Dwyer suggested the Board could ask the applicant to make calculations based on both interpretations of the term "yard".

Mr. Clarke agreed to do a tier with the interpretations discussed tonight.

Mr. Clarke asked if the Board had any other issues that needed addressing.

Chrmn. Cifelli noted that the parking in the front has not yet been addressed. He felt that the bins, landscaping, and coverage could be put into one context. That's up to Attorney Haydu and the applicant.

Application ZB # 16-006: 8 Watchung Avenue, LLC will continue to the October 24, 2018 Zoning Board of Adjustment meeting.

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

The next Zoning Board of Adjustment meeting will be held on Wednesday, October 24, 2018, 7:30 p.m., Upper Level, Chatham Borough Hall.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary

