

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT

January 23, 2008

7:30 p.m.

Vice Chairman Walter Voytus called this Reorganization 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 of this Board of Adjustment meeting was given as required by the Open Public Meeting Act.

Members Present: Walter Voytus, Patricia D'Ambrosio, Peter Hoffman\*, Frederick Infante, H.H. Montague, Herb Ramo.

\*arrived at 7:35 p.m.

Members Absent: Helen Kecskemety, Tayfun Selem.

Alan A. Siegel, Esq., attorney for the Board, was present.

Mr. Voytus reviewed tonight's agenda. He informed the Board and the public that tonight is the Board's Reorganization Meeting. The Board will also have time to hear applications and will end with a closed session.

Slate of Officers for 2008

Mr. Hoffman nominated Walter A. Voytus as Chairman of the Zoning Board of Adjustment for the year 2008. Mr. Montague seconded the motion. A roll call vote was taken. 5 – yes 0 – no.

Mrs. D'Ambrosio nominated Peter Hoffman as Vice Chairman of the Board for the year 2008. Mr. Montague seconded the motion. A roll call vote was taken. 5 – yes 0 – no.

Chairman Voytus appointed Mrs. D'Ambrosio as Board Secretary for 2008.

Reorganization Resolutions

Mr. Voytus introduced Resolution #1 designating the dates and times of the Zoning Board of Adjustment meetings for the year 2008 and January 2009. Mr. Voytus asked Board members if the February Board meeting could be changed to February 20<sup>th</sup> instead of February 27<sup>th</sup> as listed on this resolution. He will be out of town on February 27<sup>th</sup>. The Board had no objections to this change. This resolution with this amendment was unanimously approved by the Board.

Mrs. D'Ambrosio introduced Resolution #2 appointing Alan A. Siegel, Esq. as temporary counsel for the Zoning Board of Adjustment for 2008 until the final selection of Board attorney is made. A voice vote was taken. The resolution was unanimously approved.

Mr. Ramo introduced Resolution #3 designating the Chatham Courier and the Morris County Daily Record as the official newspapers for the publishing of legal advertising for the Zoning Board of Adjustment for 2008. A voice vote was taken. The resolution was unanimously approved.

Mr. Infante introduced Resolution #4 designating the Chatham Courier and Independent Press and the Morris County Daily Record as the newspapers to receive notices of the Zoning Board meetings for 2008, and also designating the public place to post meeting notices. A voice vote was taken. The resolution was unanimously approved.

Mr. Voytus introduced a resolution approving a Closed Session at the conclusion of tonight's public meeting. A voice vote was taken. The resolution was unanimously approved.

#### Approval of Minutes

The meeting minutes of December 19, 2007 were approved as submitted.

#### Old/New Business

Mr. Siegel had nothing new to report on the Omnipoint case.

Mr. Montague reported on the Planning Board's activities. The Board has been notified that one of their recent applicants, 221 Main Street, has filed suit. The Planning Board is considering hiring a professional planner to look at the B-4 District in the Borough and what should be permitted.

Mr. Voytus welcomed Herb Ramo, a new member of the Board. Mr. Voytus noted that three members from last year are no longer serving on the Board.

Mr. Voytus briefly reviewed the draft of the Board of Adjustment's Annual Report for 2007.

#### Resolution

Memorialized by resolution the denial of a variance sought by Charles Bischoff, 25 Fuller Ave. to permit construction of a fence on his property. The resolution was approved (4-0).

#### New and Return Applications

Mr. Voytus announced the following applications are scheduled to be heard tonight:

Greenwood – 76 Rowan Road

Behrmann – 9 Red Road

Maluga – 15 University Avenue

McFayden – 14 Pihlman Place

Noah's Bagels, Inc. – 465 Main Street

After some discussion, the following applicants asked if they continue their cases to the February 20, 2008 meeting, when hopefully more Board members would be present and eligible to vote:

Greenwood – 76 Rowan Road  
Behrmann – 9 Red Road  
McFayden – 14 Pihlman Place

Mr. Voytus announced that all of the above applications will continue to the February 20, 2008 at 7:30 p.m.

Maluga – 15 University Ave.

Mr. Ramo recused himself from this hearing because he lived within the 200-ft. radius of this application.

The following were sworn in to testify:

Richard Maluga, applicant  
Ella Maluga, applicant  
Anthony Garofalo, architect for the applicant  
Zygmunt Skora, licensed builder for the applicant

Mr. Voytus reminded Mr. & Mrs. Maluga that with Mr. Ramo recusing himself, there are now only five members left to hear the application. Since the application contains a “D” variance, five affirmative votes are needed for approval. Mr. and Mrs. Maluga indicated that they still wanted to proceed with their application tonight.

Mr. Maluga testified that he is making considerable renovations to his home. He stated that this house has never been renovated. It is a 1950s house.

Mr. & Mrs. Maluga submitted Exhibit A-1, interior and exterior photos of P-Q, their home. Mrs. Maluga took the photos herself.

Mr. Maluga submitted additional exhibits:

Exhibit A-2, a FAR analysis of houses within 200 feet of their home  
Exhibit A-3, two aerial photos of 15 University Ave. taken from Google  
Exhibit A-4, a closer view of the two aerial photos of 15 University Ave.  
Exhibit A-5, photos of the properties within 200 feet which do not conform to FAR regulations.  
Exhibit A-6, photos of commercial buildings near the applicant’s home  
Exhibit A-7, landscaping ideas  
Exhibit A-8, proposed safety improvements (P-Q).

Holding up Exhibit A-1, Mr. Maluga testified that his existing home and lot are under-developed. The current FAR is 17%. The home currently is not very air-tight or energy efficient.

Mr. Maluga noted that he is seeking two front yard variances because he has a corner lot at the intersection of University Avenue and Taft Street. The porch that he and his wife are proposing will wrap around the front of the home from its University Ave. side to its Taft Street side. Mr. Maluga testified that the existing home is non-conforming.

At the Board's suggestion, Mr. Maluga put the plans up on the easel. He confirmed that these plans were the most recent plans that he and his wife have submitted.

Mr. Montague pointed out that the plans were unsigned and undated. He told Mr. Maluga that when plans are signed, it indicates that the plans are accurate.

Mrs. Maluga pointed out that the original plans had been signed and sealed. The Chairman of the Board, at that time, felt the Zoning Officer had missed some variances. After the Malugas' architect had made the suggested adjustments, the architect did not seal them again.

Mr. Montague said someone still had to testify that these plans are accurate. The applicants cannot testify to this accuracy since they themselves did not prepare the plans.

Mrs. Maluga stated that Mr. Skora, who is her father and a licensed contractor, had worked with the architect. Perhaps he could testify that these plans are accurate.

Mr. Siegel suggested that the Board could require that Mr. and Mrs. Maluga, when they appear before the Board next time, provide sign and sealed plans. Normally, the Board does not consider plans that are not signed and sealed; however, these plans made it through the Construction Office and are now before the Board. There may be a reason why the Zoning Office forwarded the plans on to the Board.

Mr. Voytus noted that the proposed plans have setback issues. These plans have no setback dimensions on them.

Mrs. Maluga explained that she and her husband had submitted a survey. On the survey the Zoning Officer had calculated the appropriate setbacks. Mrs. Maluga stated she had a colored photo of the drawings made by the Zoning Officer, Mr. Taylor, in his calculations. In doing the calculating the setbacks, Mr. Taylor had measured the plans in scale and put them on a survey. Mr. Montague felt Mr. Taylor's drawn lines were not accurate, particularly in regard to the front yard setback measurements. He and Mr. Voytus would like to see that particular measurement made clearer.

Mr. Montague confirmed with Mrs. Maluga that she is proposing to remove the front steps and put the front door in a new location. He felt the plans did not clearly picture these changes. He would like to know the real distance of the front yard setback. Mr. Montague also wanted to know the definite location of the new front door. Mr. Voytus felt the steps were not included in the drawings. He recommended the steps be included for the next hearing.

Mr. Montague reminded Mrs. Maluga that she if she made any changes on tonight's plans she will have to write in a revision date on the revised plans.

Mr. Maluga stated that the front of his home is the University Ave. side of the structure. The proposed wrap-around porch will be on the Taft Street side of the house.

Referring to Exhibit A-1, Mr. Maluga pointed out the existing porch which is non-conforming because it is even with the current home. The current front yard is non-conforming. It is 22.1 feet from the street. Thirty feet is required. Mrs. Maluga stated that the non-conforming porch will be demolished. Mr. Maluga testified that the proposed plans will be non-conforming on the University Ave. side, because the front wall of the home on that side will be 20 ft. 2 inches. The Taft Ave. side of the house is 12.6 feet from the street. Mr. Maluga concluded that the house will be non-conforming on both ends. One non-conformity will be eliminated by demolishing the existing porch. The actual house will then be moved back 5 feet. Mr. Montague asked that the steps be marked clearly on the plans. Mr. Maluga said that will be clearly shown at the next meeting.

Mr. Siegel asked how a house could be moved back 5 feet without tearing it down.

Mr. Skora answered that the wall on Taft Street side of the house will remain. However, the University Ave. side, the new wall, will be moved 6 feet back.

Mr. Siegel asked how much of the existing structure will be demolished. 10%?

Mr. Skora believed almost 70% will be demolished. Some foundations walls will be kept.

Mr. Siegel confirmed with Mr. Skora that this project is very close to being a tear-down. Mr. Siegel asked why the applicant can't conform to the zoning ordinance if basically a new house was being constructed. He suggested the applicant's testimony focus on answering this question.

Mr. Garofalo, the architect, believed that the 70% number was not accurate. He felt at this point the applicant is not fully prepared. He suggested that he and the Malugas return to the Board with accurate measurement, percentages signed and dated. The Malugas will also provide existing and proposed conditions. The dimensions and the steps will be provided.

Mr. Siegel reminded the Malugas that if they significantly revise anything on their plans and different variances come up, they will have to re-notice. Mr. Siegel told the Malugas that they should prepare testimony on why their proposed FAR is considerably larger than what the zoning ordinance permits.

The Maluga application will continue to the February 20, 2008 meeting.

Pentony – 8 Carmine Street

The following were sworn in to testify:  
William & Valerie Pentony, applicants  
Jeff Harrigan, architect

Mr. Pentony testified that he and his wife are seeking a side yard setback. They are proposing to put a room over their existing garage. He stated that currently how his house sits on the lot and the new set back requirements for larger lots prohibit them from adding a room. His house is situated on a corner lot on John Street and Carmine Street.

Mr. Pentony stated that he has provided the necessary notifications to all the neighbors about this proposed addition.

Mr. Pentony said that he and his wife have the ability to add just about any addition, considering the size of their lot; however, they did not want to disturb the “park setting” that exists on their corner lot. They have chosen to work with the space above their garage as did many of their neighbors who have rooms above their garages. Mr. Pentony believed what he and his wife are proposing are within the character of the town and the neighborhood. Also, the proposed bedroom will not disturb the basic character of the house.

Mr. Pentony submitted Exhibit A-1, photos of existing homes. He testified that his house is a traditional colonial house in Chatham. He explained the different views of his house as shown in Exhibit A-1. Mr. Pentony explained that he and his wife decided to add on to the front of their house, above the garage, rather than adding on to the back.

Mr. Pentony submitted Exhibit A-2, a Google aerial view of how the applicant’s house sits on the property.

Mr. Pentony testified that he and his wife had considered a number of alternatives for this addition before they arrived at this current proposal. He felt that the current proposal would be the least intrusive on the neighbors.

Mr. Montague brought up the required front yard setback for these plans. He stated that the front property line is noted as being 164 feet wide. He felt that was incorrect. Mr. Montague suggested “the hitch” and two other points in the property be included in the measurements to make the distances accurate. Perhaps 24.6 feet is the maximum. Mr. Montague reminded the applicant to measure at the setback point.

Mr. Pentony testified that the proposed plans have been drawn and signed by Mr. Harrigan.

Mr. Pentony noted that Exhibit A-2 which showed the proposed room above the garage. Mr. Pentony stated that Exhibit A-3 shows the side appearance of the proposed

construction. Exhibit A-1 shows the interior of the proposed room. Mr. Voytus confirmed with Mr. Pentony that the windows of this room will only face the street.

Mr. Siegel asked why these proposed plans did not comply with the ordinance.

Mr. Pentony answered that the addition cannot comply with the ordinance because the house is constructed too close to the side yard as opposed to as to being in the middle lot. Anything he chooses to do would involve the setback issue, unless he puts the addition at the rear of the house.

Mr. Siegel confirmed with Mr. Pentony that Exhibit A-1 shows a 24 ft. 6 in. side yard setback line. Assuming that measurement is correct, Mr. Siegel believed that 85% of what Mr. Pentony is proposing to construct is in the prohibited area. Mr. Pentony agreed with this comment. Mr. Siegel confirmed with Mr. Pentony that if the necessary side yard variance is not approved, he will have to build elsewhere on the lot.

Mr. Siegel asked Mr. Pentony if he could make the proposed construction less intrusive into the side yard and make the bedroom smaller.

Mr. Pentony answered that the current existing height between the floor of the ceiling and the roof line is below the required amount of space that he needs. To make the room comply, the roof line would have to be raised two feet.

Mr. Pentony and Mr. Siegel discussed the size of the proposed bedroom and the possibility of making it smaller. Mr. Pentony wasn't sure this room would be the master bedroom. He felt that if it was constructed any smaller than the proposed dimensions, it would be too small for practical purposes and its appearance would be distorted as viewed from the street. The room would appear "cock-eyed" on top of the garage.

Mr. Voytus asked how many bedrooms the house currently had.

Mr. Pentony answered 4 bedrooms.

Mr. Siegel asked Mr. Pentony if he could testify as to how many houses in the neighborhood have 5 bedrooms.

Mr. Pentony didn't have that information; however, he could testify on how many neighboring homes have rooms over their garages. He definitely knew that the neighboring house direction across the street from his home had five bedrooms.

Mr. Voytus asked why other options, not requiring a variance, weren't considered.

In answering, Mrs. Pentony reported that she took photos of the views from different neighboring houses. If the proposed addition were to be constructed out the back of their house, the neighbors' views would be blocked. Mrs. Pentony felt that if the addition was put on the side, it would be getting too close to the stream. Water problems may result.

Mr. Haggerty said he and the Pentonys have talked with the NJ DEP. Numerous requirements arise if this addition encroaches on that side of the house because of the stream.

Mrs. Pentony repeated her and her husband's statement that putting the proposed bedroom over the garage would be less intrusive to the neighbors.

Mr. Haggerty testified that he and the Pentonys had put a request into the Borough Engineer to get his feedback as to what the DEP implications would be. To the best of Mr. Haggerty's knowledge, no response has been received. Mr. Haggerty testified that it was the applicant's paramount interest to not disrupt the site.

Mr. Haggerty stated that there was no practical or aesthetic way to add something simple on the second floor without involving a big, awkward over-hang out the back. Also, an addition put on the back would create an invasive and disruptive flow to the upstairs.

Mr. Pentony felt that the addition being proposed is the least intrusive way to construct the bedroom that his family needs. He had photos of the other homes in the neighborhood with rooms over their garages.

Mr. Montague asked why the trapezoid behind the house couldn't be used for the addition. This trapezoid, next to the slate patio, is within the setback area.

Mr. Pentony explained that it was important for his family to have the bedrooms all on one floor.

Mr. Montague said that more concrete reasons had to be given to seek relief from this new variance.

Mr. Infante asked Mr. Pentony what was the distance from his house to the next door neighbor's house.

The Board discussed the driveway situation. Mr. Montague pointed out that if that driveway goes right into a garage. That garage seems to be very close to the property line. Mr. Voytus felt that the neighboring house on the corner is non-conforming. Mr. Siegel noted that Exhibit A-3 shows the house under discussion.

At this point in the meeting, Mr. Voytus believed that this particular application will extend beyond 9:30. Mr. Voytus announced that Noah's Bagels, 465 Main Street, will continue to the February 20, 2008 meeting.

Mr. Harrigan said he and the Pentonys had looked at other locations to put the addition. He was willing to show with the submitted exhibits why the other options wouldn't work well.

Mr. Montague suggested testimony proving that the other locations would be a hardship for the Pentonys.

Mr. Pentony said that he had testified earlier that the addition they are currently proposing would be less intrusive on the neighbors.

Mr. Siegel reminded Mr. Pentony that he was not entitled to five bedrooms. He suggested Mr. Pentony consider doing an analysis to prove that 5 bedrooms is consistent with the other homes in the neighborhood.

Mr. Pentony stated that he wanted to do the least amount of construction on his lot. He pointed out that his lot is very large. Unfortunately, his house was built too close to the property line. Also, for safety reasons the proposed bedroom should be on the same floor as the other bedrooms. He said he had photos of other homes in his neighborhood that have rooms over the garage.

Mr. Montague and Mr. Voytus noted that since a setback issue is involved, comparable setbacks in the neighborhood should be researched and testified on.

After further discussion, Mr. and Mrs. Pentony asked the Board to ignore Exhibit A-4.

Mr. Pentony submitted Exhibit A-5, photos showing houses with rooms over garages (in the neighborhood). Mr. and Mrs. Pentony identified the lot numbers of these homes and what additions had been done.

Mrs. Pentony discussed Mr. Montague's suggestion of putting the addition in the trapezoid. She pointed out how close such an addition would be to the neighbor's driveway. Mr. Montague pointed out that putting the addition in the trapezoid wouldn't conflict with the ordinance for setbacks. He asked the Pentonys to give more solid reasons why they couldn't build in the trapezoid section. Mr. Siegel reminded the Pentonys that they had raised the safety factor about having all the bedrooms on the same floor. Perhaps the architect could testify further on this factor.

Mr. Harrigan testified that only the "weakest" designs that he and the applicant came up with were in conformance with the zoning ordinance. Mr. Harrigan stated that he and the Pentonys feel strongly the potential to take advantage of the existing footprint and meet their needs, but not have awkward and invasive bulk added to their house. In Mr. Harrigan's professional opinion, what is currently being proposed is the most architecturally compatible, the most simplest in a technical sense, and the most economical plan.

Mr. Siegel suggested Mr. Harrigan demonstrate on a diagram of why any of the alternate locations for the bedroom wouldn't make sense.

Mr. Infante agreed with this suggestion, and asked that more tangible reasons be given as to why this addition is being proposed to go over the garage.

Mr. Harrigan and the Pentonys asked that the application be continued.

Mr. Voytus reviewed the following information the Board would like at the next hearing:

- 1) Why alternative placements of the proposed bedroom won't be feasible
- 2) Data on the comparable number of bedrooms in the neighboring homes
- 3) Data on the side yard setbacks of the houses in the neighborhood

The Pentony application will continue to the February 20, 2008 meeting.

At 9:55 p.m. the Board took a break.

At 10:05 p.m. the Board went into closed session.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary





