

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT

March 22, 2017

7:30 p.m.

Chairman Michael A. 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 notices for this Zoning Board of Adjustment meeting were given as required by the Open Public Meetings Act.

Names	Present	Absent
Chrmn. Michael Cifelli	X	
Helen Kecskemety		X
Frederick Infante	X	
Douglas Herbert		X
H.H. Montague	X	
Jean-Eudes Haeringer	X	
Patrick Tobia – 1 st Alternate	X	
Alida Kass	X	
Patrick Dwyer, Esq.	X	

Resolution #ZB 2017-08

The minutes of the February 22, 2017 Zoning Bd. of Adjustment meeting were approved as amended.

Old/New Business

Mr. Montague reported that there are people who have expressed an interest in constructing homes on the steep slopes of the Borough.

Public Comment

There was none.

Resolutions

Application ZB #16-023

Hugo & Carolyn Hilgendorff

113 Lafayette Avenue

Building/Lot Coverage

Attorney Dwyer summarized this application which was seeking an expansion to an existing Colonial style home built in the 1930s. After listening to the testimony, the Board felt the benefits of these proposals would outweigh the detriments and approved the application. A roll call vote was taken, confirming the Board’s approval of the Building and Lot Coverage variances:

- Mr. Tobia - yes
- Mr. Infante - yes
- Mr. Montague - yes
- Chrmn. Cifelli - yes

New and Returned Applications

Chrmn. Cifelli announced the following applications will be heard tonight, time permitting:

Application ZB #14-29: 4 Watchung Avenue, LLC

Application ZB #17-01: Francesco – 31 Broadview Terrace

Application ZB #17-02: Evans & Morris – 43 Rowan Road

Application ZB #17-03: Glenbrook Properties, LLC – 66 North Hillside Ave.

Application ZB #17-04: Kotarba – 113 Weston Avenue

Application ZB #17-07: Kelley – 61 Highland Avenue

Application ZB #14-29

4 Watchung Avenue, LLC

4 Watchung Avenue

Appeal of Zoning Official Decision/Site Plan Approval

Block 134, Lot 1

This is continued from the February 22, 2017 Zoning Board of Adjustment meeting.

A court stenographer was present to record this hearing.

Roger Podvey, Esq., the applicant's attorney, came forward.

Chrmn. Cifelli confirmed with Attorney Podvey that tonight he will be giving his closing argument for this application and submitting it for the Board's deliberation.

Attorney Podvey noted that the applicant's exhibits were Exhibit A-1 through Exhibit A-16. He reviewed all the hearing dates held for this application.

Attorney Podvey pointed out that no one has appeared in opposition to this application. Douglas Motors has been in business since 1965, using two locations. They have been storing new cars at 4 Watchung Avenue, undisputed, since 1992. Douglas Motors has been leasing the lot from 2002. Now they are the owner of the lot. Attorney Podvey referred the Board to the Exhibit A-7, the aerial photo, which shows vehicles being stored on this lot for over 40 years.

Attorney Podvey noted that the Borough has found a Zoning Bd. of Adjustment resolution dated 1971, which the applicant believed resulted from Mr. Schmitt's application in 1971 to permit the storage of new cars on this lot. The resolution was not signed. Attorney Podvey reviewed some of the language in this 1971 resolution.

Attorney Podvey stated that in 2013 the Borough made a Land Use Amendment to its Master Plan. This amendment creates the Gateway section of the Borough. He pointed out that the Gateway section is currently industrial. The Borough now wants to change it. Attorney Podvey felt that the Borough has violated his client's property rights. Attorney Podvey referred the Board to the 2016 Master Plan section creating the Gateway section.

Attorney Podvey referred the Board to Exhibit A-4, the first notice, dated June 10, 2013, from Vincent DeNave, the Borough Zoning Officer. This document was a Property Maintenance Violation Notice. In this notice, Mr. DeNave informed 4 Watchung LLC that he would like to meet with them about the property maintenance issues on their property.

Attorney Podvey then moved on to April 2, 2014, after the Master Plan was adopted. He argued that Mr. DeNave received direction from the Borough Council to find properties in the Industrial Districts, that are in violation. One of those properties was 4 Watchung Avenue. Attorney Podvey read loud the April 2, 2014 letter addressed to his client. The letter informed his client that his property is not zoned for the outside parking of vehicles. The letter also stated that a previous owner had been denied the storage of vehicles by the Zoning Bd. of Adjustment.

Attorney Podvey pointed out that Mr. DeNave stated that there had never been a denial. In 1971, there were two properties, within this district, that had been permitted to have outdoor new car vehicle storage.

Attorney Podvey noted that at the December 2016 Zoning Bd. hearing, a number of newspaper articles had been submitted, which reported that the Rillo and Carlone property, in the same district, had gone through a process where the Zoning Board had approved outdoor parking of new cars. The governing body had also approved this proposal.

Attorney Podvey stated that the original submission was for the storage of 400 cars, which is what his client currently has on the property, since 2002. His client's planner, Mr. Lanzafama had met with Dr. Blickstein, the Board's planner, and Mr. Brightly, the Board's engineer. The proposed number of cars for storage was then reduced from 400 to 282.

Attorney Podvey brought up a 1956 Borough ordinance that had been in effect in 1971. He read aloud the section of this ordinance entitled "Additional Use Regulations", Section 601. At the December 2016 hearing, Mr. DeNave had read into the record, Section 704, similar uses. Mr. DeNave did not read aloud the beginning of Section 704 that stated that the permitted uses in this district may be added or expanded to include another similar use at the option of the Board of Adjustment in one of the following ways: by amending an ordinance.

Attorney Podvey referred the Board to Article A8 of the 1956 Borough ordinance, which discusses the storage of secondhand lumber, other building materials, or of second hand motor vehicles in a yard approved by the Board of Adjustment. He read loud Section 701. He felt that this ordinance essentially indicated that only Board of Adjustment approval for the storage of new cars had been given. Approval from the governing body is not needed.

Chrmn. Cifelli asked then why did the other two properties receive approval from the Borough Council.

Attorney Podvey answered that he did not know.

Mrs. Kass asked whether there was any knowledge of whether the governing body had discussed this car storage application and had not approved it.

Attorney Podvey answered that after he had read the governing body minutes from 1971. Other than the Rillo-Carlone matter, he had found no discussion on car storage.

It was Attorney Podvey's interpretation of the ordinance, that motor vehicle storage was allowed so long as it was properly fenced or enclosed as approved by the Zoning Bd. of Adjustment. Motor vehicle storage and construction materials need not be in a building.

Mrs. Kass confirmed with Attorney Podvey that he is relying his opinion on the unsigned, undated document. Mrs. Kass noted that it's not known, whether the Zoning Board had approved this storage of cars (in 1971).

Attorney Podvey pointed out that there has been a storage of cars on that lot since the 1970s, with an intensity before and after his client owned it.

Mrs. Kass felt that the Zoning Board of Adjustment did not necessarily approve it. Attorney Podvey disagreed. He felt that the Zoning Board had approved this car storage.

Attorney Podvey stated, essentially, under any set of circumstances, his client had the right to store 125 cars on this lot. He believed a case has been proven for the storage of 282 cars with the proposed landscaping. He pointed out the condition of the lot. It is contaminated. Attorney Podvey explained that his client does not control the remediation of this property.

Attorney Podvey said he understood that the Borough would like to see a condo or residential building on this site. However, he felt that a better way is through redevelopment or rehabilitation, not by producing a Master Plan and an overlay zone and going after the property owners who don't comply. Four Watchung Avenue is the first one he felt was being attacked.

Attorney Podvey indicated his application is now closed. He is submitting it to the Board for their deliberation.

Board discussion began. Chrmn. Cifelli noted that this application started two years ago. On one hand, this application presumes to be an expansion of pre-existing nonconforming use. On the other hand, if it is not a pre-existing non-conforming use, then it is an application for a new use variance. He explained the legal difference between these two applications.

Chrmn. Cifelli stated that the application initially purports to be one that expands a pre-existing non-conforming use. He made the following points:

- 1) An unsigned resolution from 1971, was discovered, purporting to approve an application from the prior owner, Mr. Schmitt, to allow him access to and to store a number of new vehicles
- 2) The only evidence the applicant has to back up the theory that this application was actually signed, was a newspaper article that it may have been signed by the Zoning

Board. At that time, the Zoning Bd. could only recommend approval of variances to the Borough Council.

- 3) News articles had been submitted that two similar and neighboring properties requesting the same variances as those sought by the Schmitt property, received both Zoning Bd. approval and Borough Council approval.
- 4) There is still zero evidence that the Schmitt application went before the Borough Council, or was approved by the Borough Council

Chrmn. Cifelli believed, therefore, that the Board should not make anything of it. There is no collateral source of information for the Board to draw any inference on that fact. There is nothing to indicate that the Borough acted on that resolution one way or another. Chrmn. Cifelli believed that the applicant has not proven that there is a permitted pre-existing nonconforming use.

Chrmn. Cifelli believed that this was an application for a new use variance. What is being proposed is so different from what the Master Plan wants for that area of the Borough. Chrmn. Cifelli did not believe a “public interest” was being proposed for this lot. This interest is specific to the applicant.

Chrmn. Cifelli noted that only the front portion of the property is contaminated. He felt that there was nothing to say that this particular property cannot be built in conformity with what the zoning ordinances requires and what the 2016 Master Plan requires.

Chrmn. Cifelli questioned why did the current owner of 4 Watchung Ave., when purchasing the property, made no inquiries as to whether the use was permitted by the Borough. He instead had taken the representation from someone who wanted to sell him the property. The owner had an obligation to do due diligence at the time.

Chrmn. Cifelli believed that the detriments far outweigh the benefits as desired by the Master Plan. Regarding Attorney Podvey’s closing remarks, Chrmn. Cifelli did not believe the Borough was “going after” anyone with its 2016 Master Plan.

Mr. Infante was concerned that when the Board grants a variance, the approved variance stays with the property in perpetuity. He felt in this situation, the Master Plan is in opposition. The Master Plan is what the Borough residents want.

Mr. Haeringer agreed with Chrmn. Cifelli’s points. Mr. Haeringer also pointed out that this particular property is not dead. It has a great deal of potential.

Mrs. Kass stated the fact that the use continued is itself evidence that it must have been appropriate under the law, or something would have happened. Counter to that point, are two other applications in that section of town, which were approved by both the Zoning Board and the Borough Council. Mrs. Kass did not believe 4 Watchung Ave. has met the burden of proof to establish that there is a pre-existing nonconforming use. The unsuitability of this use has grown over time.

Mr. Montague believed that the owner of the property has the right to request the M-1 Zone's allowance for off-street parking as an accessory use. Mr. Montague has not seen anyone else showing up at the hearings, asking for this particular property. He will vote in favor of the application.

Mr. Tobia agreed with Chrmn. Cifelli's points. Mr. Tobia complimented Attorney Podvey on his expert presentation; however, Mr. Tobia did not believe the necessary facts were there to justify, under the law, an approval.

Chrmn. Cifelli also thanked Atty. Podvey for the professional manner in which he presented such a difficult application.

Attorney Dwyer recommended holding two separate votes. The first vote would be whether or not to grant the Appeal of the Zoning Official's Decision on the Notice Violation. If the Appeal is defeated, another vote should be taken on whether to approve the requested variance.

Mr. Tobia certified that he had been in attendance for every hearing except for the August 24, 2016 hearing. However, he has read the transcript of the hearing and will sign certification papers stating as such.

Chrmn. Cifelli stated the first vote will be the approving of the Appeal of the Zoning Official's Decision regarding his Notice of Violation for 4 Watchung Avenue, and confirming that there existed a pre-existing nonconforming use on the property:

Mrs. Kass	-	no
Mr. Tobia	-	no
Mr. Haeringer	-	no
Mr. Montague	-	no
Mr. Infante	-	no
Chrmn. Cifelli	-	no

Chrmn. Cifelli noted that the Appeal has been denied. Accordingly, the request is now for a new use variance for 4 Watchung Avenue.

Mr. Montague made a motion to approve the new B-1 Use Variance for 4 Watchung Avenue, LLC. To store 282 cars on their property. Mr. Tobia seconded the motion. A roll call vote was taken:

Mrs. Kass	-	no
Mr. Tobia	-	no
Mr. Haeringer	-	no
Mr. Montague	-	yes
Mr. Infante	-	no
Chrmn. Cifelli	-	no

At 9:00 p.m. a break was taken in the meeting.

At 9:15 p.m. the meeting resumed.

At this point in the meeting, Chrmn. Cifelli gave an update on what applications may not be heard tonight.

Application ZB #17-01
Linda & Ronald Francesco
31 Broadview Terrace
Side Yard/Building Coverage
Block 97, Lot 18

The following were sworn in to testify:

Linda & Ronald Francesco, the applicants

Timothy Klesse, the architect for the applicants

Mr. Francesco gave an introductory statement for his application. He stated that he and his wife have lived in this house since 2001. At the time of purchase, the house was a three bedroom cape cod home with two bedrooms. He testified that he and his wife have done multiple additions since they moved in. The house currently has four bedrooms. Mr. Francesco is proposing a mudroom and an expansion to the existing family room. He believed the house was built in the 1950s.

At Chrmn. Cifelli's request, Mr. Francesco stated that the proposed mudroom will be constructed over an existing blue stone patio on the property. The family room expansion is proposed for the back left hand side of the home. Currently there is no hallway or foyer when entering the home. Entering the home, people have no place to take off their coats, boots, etc.

Mr. Klesse testified that the applicant's home is in the R-1 District. He stated that the applicant's lot is undersized by about 3,000 sq. ft.

Mr. Klesse submitted Exhibit A-1: A set of photographs of the applicant's home.

Mr. Klesse reviewed the architectural details that the applicant had added over the last 20 years. The applicant is proposing to extend the gutter line of the roof to create a small portico to the right of the existing garage. A linear driveway will be created. He pointed out where the proposed mudroom will be located.

Mr. Klesse noted that the existing family room, on the left side, is a former bedroom. The proposal is to make this room into an 18-ft. wide family room. The new family room will have 97 sq. ft. of additional space. The front area will have a 3 feet by 3 feet portico. This proposal triggers the side yard setback.

Mr. Klesse described the proposed addition at the left-hand side of the house, at the rear. He explained that the house is not 100% perpendicular to the lot line. He felt that both the left side and right side allowable calculations should be 12.15 feet.

Attorney Dwyer confirmed with Mr. Klesse that the front of the proposed mudroom, on the right side, constitutes the right side of the setback. Mr. Klesse clarified that there would be a roof over the door. Mr. Klesse pointed out an existing stairway will be removed. A fireplace will be added to the family room.

Mr. Klesse testified that the proposed plans are under on FAR by 280 sq. ft. The proposals are under on lot coverage by 87 sq. ft. However, a building coverage variance is needed for an additional 246 sq. ft. Mr. Klesse testified that the total building height is 26 ½ feet. Thirty-five feet is allowed. The family roof addition is only 14 feet high, and cannot be seen from the street. Mr. Klesse believed that the property being under on lot width has generated the problems for these proposals. The placement of the house on the lot has created a problem also. Mr. Klesse testified that the smallest additions as possible are being proposed.

Chrmn. Cifelli asked what would be the square footage of the addition to the family room. Mr. Klesse answered 140 sq. ft. The proposed mudroom will measure 97 sq. ft. The portico is 9 sq. ft.

Chrmn. Cifelli asked if Mr. Klesse had any evidence to show how these proposals would fit in with the neighborhood.

Mr. Klesse didn't have a streetscape.

Chrmn. Cifelli asked Mr. and Mrs. Francesco how their home, with the proposals would compare with the rest of the neighborhood.

Mr. Francesco stated that there is a Cape Cod house to the right of his home. This cape is smaller than his home. The house to the left is a Colonial, smaller than his house, but taller than his. Mr. Francesco testified that the proposed family room will not bulk-up the backyard. His property, in the rear, goes deep.

The Board and Mr. Francesco discussed the right side yard situation. Mr. Francesco stated that he and the neighbor on that side have planted all new shrubs as a buffer.

Mr. Montague questioned the length of the proposed mudroom (22 feet). Chrmn. Cifelli explained the wall space that mudrooms need to have for functionality and storage. At Mr. Montague's request, Mr. Klesse agreed to submit amended plans to show the dimensions to the outside of the wall. He reviewed the proposed buffers that the applicant planned to install.

There were no questions or comments from the public for the witnesses. Mr. Klesse closed the application and submitted it to the Board.

Chrmn. Cifelli asked for comments from the Board. Mr. Tobia felt the design was well thought-out and would add more functionality to the house. Mr. Montague had concerns about the proposed side yard setback, but will support it. Mrs. Kass believed that the building coverage variance was de minimis. Mr. Infante noted that the applicant's property has less than the

required frontage to work with. Therefore, the width is much smaller than required. He will support the application. Mr. Haeringer pointed out that the proposed extension, at the rear, will not be seen from the street. He felt the proposals will be good for the community. Chrmn. Cifelli believed the proposal at the rear will not be detrimental. The roofline of the front of the house will now be completed, improving the symmetry. He felt that the proposed removal of an existing walkway will lessen the encroachment to the neighbor's property.

Mrs. Kass made a motion to approve Application ZB #17-01: Francesco – 31 Broadview Terrace. Mr. Infante seconded the motion. A roll call vote was taken:

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

Application ZB #17-02

Linda Evans & Scott Morris

43 Rowan Road

Side Yard/Building Coverage/Floor Area Ratio

Block 55, Lot 4

Linda Evans, the applicant, was sworn in to testify. She clarified that she lived at 46 Rowan Road, Chatham. However, she also owns 43 Rowan Road.

Chrmn. Cifelli asked Ms. Evans if her architect was present tonight.

Ms. Evans answered that her architect could not make tonight's meeting.

Chrmn. Cifelli informed Ms. Evans that the Floor Area Ratio regulations (FAR) have recently been loosened up by the Borough Council. He noted that Ms. Evans is seeking 365 sq. ft. of FAR beyond what is allowable. Chrmn. Cifelli advised Ms. Evans that the Board typically, for FAR variances, prefers testimony from an architect. Mrs. Kass added that sufficient evidence must be given in order for a variance(s) to be approved. An approval can be legally challenged. Testimony from an expert, such as an architect or professional planner, holds more weight, in a legal sense, than a layman's opinion.

Ms. Evans indicated she would like to, at least, get the application started. She is employed as an interior designer.

Ms. Evans brought up the front yard setback of this property, which is on the Weston Avenue side of the property. She stated that particular part of Weston Avenue is actually an easement to a foot-bridge. Because of this easement, Ms. Evans asked that the Board not consider that section of the property not as a front yard secondary setback.

Mr. Montague recommended that a survey be submitted that recorded this easement. He also asked if the street next to the easement was a regular street or a paper street.

Ms. Evans answered a paper street.

Chrmn. Cifelli asked Ms. Evans to give a brief history of the house, what exists now, and what she is hoping to achieve with the proposed variances.

Ms. Evans testified that the existing house was built in 1930. The house currently sits at a 16 ½ feet setback from the paper street.

Mr. Haeringer confirmed with Ms. Evans that she plans to tear down the existing home and build a new house.

Ms. Evans stated that a two-car garage is being proposed for the new house. It would be located under the proposed second floor. Four bedrooms are being proposed for the house. A bedroom and bath are being proposed on the first floor. This room will initially be a study, but may eventually turn into a bedroom for a family member.

A Board member asked Ms. Evans if she is currently living in the existing house.

Ms. Evans answered no. She lives across the street.

Mr. Montague questioned what appeared to be a third story.

Ms. Evans explained that to avoid window wells, she would like to bring the proposed house out of the ground 4 feet.

Mr. Montague recommended that Ms. Evans prove mathematically that a third story won't be created.

Mr. Haeringer questioned whether Ms. Evans wanted the Board to approve a concept plan in this situation.

Ms. Evans said she was hoping the Board would approve the variances so that she could put together the architectural documents to construct the house.

Mr. Montague requested that the dimensions be provided.

Attorney Dwyer brought up the lot size, referring to Mr. DeNave's denial sheet. Attorney Dwyer questioned why a new home like this would need all this variance relief.

Chrmn. Cifelli noted that based on what is being provided tonight, it's very difficult for the Board to conclude on whether the proposals are necessary. With FAR variances, it would help to have FAR calculations for the neighboring houses, and how many of these homes may be over

the allowable FAR. A building coverage analysis on the neighboring homes would also be helpful to the Board.

Chrmn. Cifelli pointed out that an architect could give valid reasons as to the proposed location for the garage.

Mr. Montague reiterated that elevations, with accurate dimensions, must be submitted with the drawings, showing exactly what is being proposed. He suggested a correction to the proposed deck. The deck shouldn't be seen from the street.

Mr. Haeringer reminded Ms. Evans that testimony should be given on how her proposed house will benefit the community. Mrs. Kass explained that an architect will know how to explain why certain arrangements in the house are needed, and why certain dimensions are necessary.

Application ZB #17-02: Evans & Scott, 43 Rowan Road will continue to the April 26, 2017 Zoning Board of Adjustment meeting.

Chrmn. Cifelli announced the remaining applications on tonight's agenda will be carried to the April 26, 2017 Zoning Board of Adjustment meeting.

At 10:33 the meeting adjourned.

The next Zoning Board of Adjustment meeting will be held on Wednesday, April 26, 2017, 7:30 p.m., Council Chambers, Chatham Municipal Building.

Respectfully submitted:

Elizabeth Holler
Recording Secretary