

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT

May 22, 2019

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 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	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, Jr.		X
Patrick Dwyer, Esq.	X	

Public Comment

There was none.

Resolution #ZB 2019-10

The Zoning Board of Adjustment minutes for March 18, 2019 and March 27, 2019 were approved as amended.

Resolutions

Application ZB #19-03

Neo-Princeton Investment, LLC

27 Center Street

Block 63, Lot 8

Building Coverage

Attorney Dwyer summarized this application which proposed construction of a two-car garage at the rear of the property. The Board felt that the applicant failed to meet its burden of proof and positive criteria. Also, the Board did not believe that the benefits outweighed the detriments and denied the application. The Board denied the application. A roll call vote was taken to approve this resolution confirming the Board's denial of this application:

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

Application ZB #19-05

Ed English

16 Van Doren Avenue

Block 81, Lot 3

Side Yard Building Coverage/Lot Coverage

Attorney Dwyer summarized this application which proposed an addition to fill in the “elbow” of the L-shape of the home. The applicant’s property is very undersized. The Board believed that the benefits of the application, outweighed the detriments, partly because of the improvements to the home. A roll call vote was taken to approve this resolution confirming the Board’s approval of this application:

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

Returning and New Applications

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

Application ZB #17-13: First Student, Inc. – 29 River Road

Application ZB #19-06: Lane – 53 Minton Avenue

Application ZB #19-07: Beebe – 135 Weston Avenue

Application ZB #19-08: Kilm – 20 Ellers Drive

Chrmn. Cifelli explained the order in which the applications will be heard.

Application ZB #19-06

Jill & Mike Lane

53 Minton Avenue

Block 127, Lot 5

Building Coverage/Lot Coverage/

Garage Side Yard

This is continued from the April 24, 2019 hearing.

Mike & Jill Lane, the applicants, were present and remained under oath from the earlier hearing.

Chrmn. Cifelli confirmed with Mr. and Mrs. Lane that at the first hearing, they were proposing a two-car garage. Revised plans have since been submitted. Chrmn. Cifelli asked them to review what changes now have been made to their original plans.

Mr. Lane testified that the proposed garage has been moved over slightly thereby eliminating the originally proposed side yard variance. The size of the garage has been reduced. Only a single door is now being proposed. The building coverage variance is now reduced to an overage of 51

sq. ft. The lot coverage variance has now been reduced to 578 sq. ft. from the originally proposed 598 sq. ft.

Mr. Lane stated that the revised plans included a detailed water run-off solution. He had discussed this run-off situation with the Borough Engineer. There will be a drywell seepage pit will be installed on the property. Mr. Lane noted that he and his wife have created a neighborhood survey and photos to submit as an exhibit.

Chrmn. Cifelli confirmed with Mr. Lane that a side yard variance, on the right side, is no longer needed for the proposed garage. He also confirmed with Mr. Lane that only two variances are now being sought – lot coverage and building coverage.

Mr. and Mrs. Lane testified that the proposed garage will now measure 22 ft. by 20 ft. The structure will be a two-car garage with one door and one bay. Mr. Lane explained that the garage will provide storage for bikes, sports items, patio equipment, etc., as well as shelter for a vehicle.

Mrs. Lane put the neighborhood survey on the easel. She pointed out the color-coding showing what neighboring properties had two-car garages and which had one-car garages. Mrs. Lane testified that 38% of these neighboring properties have two-car garages. Mrs. Lane submitted the following exhibits:

Exhibit A-1: A neighborhood survey

Exhibit A-2: A photo-board showing more pictures of neighborhood garages

Exhibit A-3: A photo-board showing the two-car garages in the neighborhood

Exhibit A-4: More photos of garages on lots in size to the applicant's property

Mrs. Kecskemety stated that when she drives through the applicant's neighborhood and surrounding streets, she noted that there were a great many two-car garages with properties similar in size to the applicant's property.

Mr. Montague and Mrs. Lane discussed the eaves of the proposed garage and their measurements.

Mr. Haeringer asked the Lanes if two cars could still fit in the proposed garage with the recent revisions.

Mr. and Mrs. Lane answered yes, even though it may be a tight squeeze. Mr. Lane explained that any storage will be put on a large shelf inside the garage.

The Board had no further questions for Mr. and Mrs. Lane.
The public had no questions for them.

Mr. and Mrs. Lane submitted their application to the Board for their consideration and vote.

Chrmn. Cifelli asked if the Board had any comments on the application.

Ben Von Doussa, 56 Minton Ave., was sworn in to testify. Mr. Von Doussa stated that the properties are not large on Minton Avenue. Minton Avenue is often used as a cut-through for traffic. Mr. Von Doussa pointed out that deeper driveways are appreciated for the neighborhood children to safely play. Mr. Von Doussa said he supported the application.

Scott Shushansky, 55 Minton Ave., was sworn in to testify. He testified that he lived next door to the right of the applicant. Mr. Shushansky approved of the proposal to move the garage back and creating a larger space, giving a better quality of life to the neighborhood, as well as a safe area for the children to play. Mr. Shushansky supported the application.

Mr. Herbert asked Mr. Shushansky how the proposed garage would impact his property. Mr. Shushansky testified that his property will be improved because the applicant is installing a dry well. Some of the water from his property will probably be seeping into the applicant's drywell. Also, Mr. Shushansky stated that the view from his back patio will improve.

Mr. Haeringer asked Mr. Shushansky how he felt about the look of this large building.

Mr. Shushansky did not believe the garage would be all that large. Currently the closeness of the garage and the applicant's home is not functional, especially if the children are playing, shooting baskets, etc.

There were no further comments from the public.

Chrmn. Cifelli asked for comments from the Board. Mr. Infante felt the addition of a drywell was important. He also approved that the plans will allow for the children to play safely in the back. Mr. Infante will support the application. Mr. Haeringer agreed with Mr. Infante's comments. Mrs. Kass believed that the building coverage variance is de minimis. The relevant concerns for this application have adequately been addressed. She will support the application. Mr. Montague approved of the new location of the garage and the water run-off matter being addressed. Mrs. Kecskemety also approved of the water run-off being handled. Mr. Herbert appreciated the applicants revising their plans to make them more acceptable. The photos presented by the applicant tonight, as well as the neighbors' testimony was very helpful. Mr. Tobia agreed with all of the Board's comments. Chrmn. Cifelli appreciated the reduction the applicant made to the building coverage variance.

Chrmn. Cifelli made a motion to approve Application ZB #19-06: Lane – 53 Minton Avenue. Mr. Infante seconded the motion. A roll call vote was taken:

Mrs. Kecskemety	-	yes
Mrs. Kass	-	not eligible to vote
Mr. Herbert	-	yes
Mr. Infante	-	yes
Mr. Montague	-	yes
Mr. Haeringer	-	yes
Mr. Tobia	-	yes
Chrmn. Cifelli	-	yes

Application ZB #19-06 was approved.

Application ZB #19-07

Scott & Brenda Beebe

135 Weston Avenue

Block 74, Lot 5

Side Yard

The following were sworn in to testify:

Scott & Brenda Beebe, the applicants

Brian Siegel, the architect for the applicants

The Board was very familiar with Mr. Siegel's professional credentials. He has testified before the Board over the years.

Mr. Siegel testified that Mr. and Mrs. Beebe are proposing a small improvement to their home which is 1 ½ stories high. The applicant is seeking to create a better entry focal point for the house. The existing front door is side-facing. Mr. Siegel testified that there is an existing bracketed roof that covers a part of the existing front stoop. That roof area, because it extends more than 2 feet, is counted into the building coverage calculation. It totals 46 sq. ft.

Mr. Siegel stated that the existing house is over the allowable building coverage. Part of this overage is contributed by the 46 sq. ft. He felt that the bracketed roof really is not needed. Mr. Siegel consulted with Mr. DeNave, the Zoning Officer, to see if the bracketed roof could be removed. If so, the applicant would like to construct a square portico with three open sides, to go over the existing masonry stoop. This arrangement would create a focal point to help visitors find the front door of the house.

Mr. Siegel noted that the applicant's property is 100 ft. wide. He testified that a proposed side yard setback of 12.1 feet exists at the outer most extreme edge of the portico, which is triggering the side yard variance. Mr. Siegel stated that both the safety and the aesthetics of the home will improve. The stoop will also be provided with protection.

Mr. Siegel showed the Board two exhibits they had already received. One was a photo showing the existing house. The second was a free-hand perspective rendering, made by Mr. Siegel, superimposing the proposed portico over the existing image of a house.

Mr. Siegel pointed out that porticos exist on the neighboring homes, up and down the applicant's street. Chrmn. Cifelli noted that the Borough Master Plan favors porticos for homes.

Mr. Siegel felt the benefits outweigh the detriments with this application. The portico will provide shelter from the elements.

The application was closed and submitted to the Board for their consideration and vote.

The public had no questions for the witnesses.

The public had no comments on the application.

Chrmn. Cifelli asked for comments from the Board. Chrmn. Cifelli felt that there were no detriments with this application. The proposals will resolve a safety concern and improve the property. Mrs. Kecskemety believed the entrance situation will be much improved. Mr. Herbert commented that the improved entrance will be a benefit to the public, as well as to the applicant's family. Mr. Tobia felt that Mr. Siegel's rendering was very helpful to the Board. Mr. Infante commented that the new portico will improve the aesthetics of the neighborhood. Chrmn. Cifelli added that the application was modest.

Mr. Haeringer made a motion to approve Application ZB #19-07: Beebe – 125 Weston Avenue. Mrs. Kecskemety seconded the motion. A roll call vote was taken:

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

Application ZB #19-07 was approved.

At this point in the meeting, at 8:28 p.m., Robert Brightly, the Board's Consulting Engineer, and Kendra Lelie, the Board's Planner, arrived.

Application ZB #17-13
First Student, Inc.
29 River Road
Block 140, Lot 7.01, 8, 9 & 10
Amendments to Approved Site Plan/
Associated Variances to Park Buses

This is continued from the April 29, 2019 meeting.

Michael J. Oliveira, Esq., attorney for the applicant, came forward. He recalled that at the April 29th hearing the Board had expressed concerns about the revised plans that had been submitted. The applicant had agreed to make some changes to the plans, that the Board had recommended. Attorney Oliveira called Dylan Ryan, the applicant's engineer, to come forward.

Mr. Ryan remained under oath from the previous hearing.

Attorney Oliveira asked Mr. Ryan to review the revised plans made as a result of the April 29th hearing.

Mr. Ryan submitted Exhibit A-4: Amended preliminary final site plan set for the First Student Bus's parking facility, dated May 14, 2019.

Mr. Ryan testified that impervious surfaces have now been added and removed in a few spots on the property. He reviewed the calculations on the plans have been updated to reflect these actions. Mr. Ryan testified that the new parking count eliminates the charter buses. The charter buses are no longer being proposed. They will be replaced with three standard school buses.

Mr. Ryan testified that the combined average illumination of Lots 7.01 and 8 is now compliant with the code requirements for 1-foot candles.

Mr. Ryan testified that the existing asphalt area, on the northern area of the property, will be eliminated. Grass will be replacing the asphalt. Therefore, the impervious coverage of Lot 10 will then be decreased. Mr. Ryan stated that the proposed ADA ramp will not be installed.

Mr. Ryan brought up First Student's entrance from River Road. The entrance will now be widened to just over 27 feet. The striping area width will be changed to 23 feet. At the request of the Fire Marshal, First Student will now shift the buses that park behind the building to be 15 feet from the building. The Fire Marshal had wanted adequate access between the buses and the buildings in case of an emergency. The proposed bus movements will not be affected by this change.

Mr. Ryan testified that a trash enclosure will now be included. On Lots 7.0 and 8, a parking island will be trimmed back. Another island that originally extended into the drive aisle has been eliminated. Mr. Ryan testified, at the Board's request, the height of the fencing will increase and gate along River Road. They will now measure 6 feet high.

Answering Attorney Oliveira's question, Mr. Ryan stated that he had provided the Borough Fire Marshal, Walter Nugent, with a set of the plans. He had also provided Mr. Nugent with a narrative giving him the latest revisions. Mr. Ryan testified that Mr. Nugent had sent an email stating that the site was compliant for emergency access.

Mr. Ryan submitted Exhibit A-5: The email sent by Fire Marshal Walter Nugent to Mr. Ryan regarding his review of First Student's revised plans. Copies of this exhibit were distributed to Board members.

Mr. Herbert asked if the Fire Marshal had ever brought up the issue of Lot 7, of the buses blocking the ability of that driveway to reach the back of the lot.

Mr. Ryan answered yes. He had reviewed that situation with the Fire Marshal. That is one of the reasons that Mr. Nugent had asked that one of the traffic islands be cut back, in order to allow emergency vehicles to enter via Lot 8.

Mr. Herbert pointed out that one of the photos that he (Mr. Ryan) had submitted showed two parked buses blocking access of Lot 8's parking lot, going on to the back. If that is the way the

buses will be parked, Mr. Herbert was very concerned that no emergency vehicles would be able to reach the back of Lot 7.

Mr. Ryan pointed out that one of the improvements being proposed, is the striping all of the parking spaces. The striping will help orient the bus drivers where they should and should not park.

Mr. Ryan referred the Board to the revised landscaping plans. At the request of the Board, First Student has added three additional shade trees in Lot 7.01.

Mr. Ryan testified that lighting on Lot 10 will remain as it exists. The lighting on Lots 7.01 and 8 has completely been re-designed. On the plans, Mr. Ryan pointed out the light pole to be removed. The light fixtures will be changed from a 400-watt design to 250 watts. Two new lights are proposed at the rear of the site. Mr. Ryan stated that these improvements will reduce light transfer to adjacent properties and light up some of the darker sections. Also, the foot candles will now be lowered to meet the code.

Ms. Lelie, the Board's planner, asked Mr. Ryan if he had details of the light fixtures. Mr. Ryan answered that information was on Sheet 7.

Mr. Ryan noted that Sheet 6 showed the elimination of the ADA ramp.

Mr. Ryan stated that the details for the proposed dumpster enclosure are on Sheet 7. The dumpster will be 6 feet high. Mr. Ryan described the vinyl siding for the dumpster. Also included was a grading detail for the parking island on Lot 8.

Mr. Ryan submitted Exhibit A-6: the Summer Parking plan for First Student. He noted the single lane which will be created for emergency vehicles. Mr. Ryan reviewed the revised locations of where the buses will be parked. He stated that the number of buses, from the regular year to summer, does not change. What changes is the lots that these buses are distributed to. However, the number of vans changes during the year. In summer, the number of vans increase to a total of 16.

Chrmn. Cifelli asked if one of the witnesses could answer where these vehicles will be coming from.

Michael Cline, the Sr. Property Projects Manager, came forward. He remained under oath from an earlier hearing. Mr. Cline testified that these other vehicles will be coming from other locations.

Chrmn. Cifelli asked why these vehicles had to be housed in Chatham.

Mr. Cline explained that the larger buses don't fulfil the routes in the summer. The smaller buses are used. There are fewer children on those routes.

Chrmn. Cifelli asked if these buses are used for the Chatham School District.

Mr. Cline answered that these buses are used for summer camps within the area, and limited operations with the school district.

Mr. Infante confirmed with Mr. Cline that these buses, in the summer, were used for other communities, other than Chatham.

Mr. Haeringer asked what summer camp in Chatham does First Student service in the summer.

Mr. Cline indicated that he did not have that information with him tonight.

Mr. Ryan said he had no further testimony.

Mr. Herbert referred Mr. Cline to the buses on Lot 7. He asked if these buses remained there all summer long. Were they ever moved for prep work?

Mr. Cline answered that some of the larger buses are used for summer camps.

Mr. Herbert asked how many of the larger buses were used during the summer months.

Mr. Cline did not have the exact number. He believed approximately 10 of the larger buses. It depends on the needs of the summer camps.

Mr. Infante asked why First Student did not locate their buses in the communities who actually used them. Why are they kept in Chatham?

Mr. Cline answered that First Student owns this particular property and it's their main base.

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

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

Attorney Oliveira and Mr. Cline returned to the applicant table.

Mr. Cline testified that regarding the summer camps, First Student operates 15 to 20 vehicles, 9 buses, 10 vans, a day, Monday through Friday for Scouts, Recreation programs, and camps. This summer service runs approximately 8 weeks, usually starting the last week in June.

Attorney Oliveira called Matthew Seckler, the applicant's planner, forward. Mr. Seckler remained under oath from the previous hearing.

Mr. Seckler testified that he has reviewed the revised plans. He would like to give his comments on these plans.

Mr. Seckler brought up the Seeka standards that are used to evaluate inherently beneficial uses. He reviewed the reduced number of buses and vans now proposed for the First Student site. Mr.

Seckler testified that the applicant is enhancing and following good planning practices. The addition of street trees is being proposed for the frontage of the property. Decorative fencing and landscaping are now being proposed. Installation of a sidewalk is planned. The parking spaces on Lot 9 are being eliminated. The possibility of having a vehicle cut-through on Lot 9 has been eliminated. Mr. Seckler noted that improvements were made to the lighting plan. Mr. Seckler believed that the email from the Fire Marshal, regarding emergency access, is key.

Mr. Seckler testified that this particular use is well suited for this site. He discussed what he felt was the beneficial use that First Student provided.

Chrmn. Cifelli confirmed with Mr. Seckler that the bus operation for Lots 7.01 and 8, already has been approved by variance. Chrmn. Cifelli did not feel the number of buses does not need to be increased to benefit the community. Mr. Seckler felt the Borough would have interest in promoting competition and allowing for an expansion of a service that serves an inherently beneficial use. He quoted two legal cases concerning bus services that he felt would prove his beneficial use argument. Mrs. Kass and Chrmn. Cifelli believed that the Board would have to actually review these particular cases.

Mrs. Kass noted that First Student is planning to make the site more attractive with landscaping and better lighting, but the Board also has to consider the separate issue of the property holding 52 buses with circulation/traffic issues.

Mr. Seckler pointed out that the Board can observe how First Student currently operates today – it's unmarked parking spaces, circulation, etc. The applicant is proposing ways to improve this use.

Mr. Infante questioned how this increase of buses would be for the betterment of Chatham. How would this increase be inherently beneficial to the Borough? How many of these buses are used by Chatham facilities? How many are used by out of town facilities?

Mr. Seckler answered that he did not have these particular numbers. However, the case law that he has presented to the Board, regarding bus services serving a regional area, not just a town, have met with the courts' approval as being a beneficial use.

Mr. Infante and Attorney Dwyer briefly discussed these cases. Mr. Infante asked if these other bus companies had made an effort to look outside their particular municipality. Attorney Dwyer said that was never mentioned.

Chrmn. Cifelli felt that First Student has never been a good neighbor. First Student had permission from the Borough for six buses on this site. There has been a larger number of buses on the site over the years. First Student has not made any effort to clean up the site, especially the frontage. Chrmn. Cifelli pointed out that the applicant is proposing is well in excess of what is permitted by the town. He noted that the applicant has not made any proposals to minimize the impact of the number of vehicles. In fact, in the summer, First Student is proposing to increase their vehicles on their site. Chrmn. Cifelli felt that First Student, instead of decreasing

the negative impact, they have increased this impact. This number of buses on the site, without a variance, has been going on for some time. Also, the site does not present a good appearance.

Chrmn. Cifelli stated he understood that Lot 9 has been eliminated from the plans, however, there is a potential that the three neighboring properties will be storing massive amounts of vehicles. It would be like having three parking lots in a row on River Road which will negatively impact the zone, which encourages the mixed use of residential and commercial.

Mr. Seckler pointed out that there is a fence between Lots 8 and 9. A proposed utility curb will be installed between Lots 10 and 9. He felt there was no way a bus could enter Lot 9 from River Road to reach the back of Lot 9. Mr. Seckler believed that the applicant would be extinguishing his license if Lot 9 was used in this way. Attorney Oliveira confirmed this fact with Attorney Dwyer.

Attorney Oliveira informed the Board that his client (Mr. Cline) hears the concerns raised about the summer schedule. Mr. Cline has offered to move 12 of the buses off site during the summer, in return for the 12 vans.

Mr. Haeringer asked what if someone else wins a contract with the Chatham School District, what will First Student do with the schools and vans.

Mr. Seckler said he was not the witness to answer that question; however, he knew that bidding for public school transportation is encouraged.

Mr. Haeringer asked what if another bus company gets the contract next year.

Mr. Seckler said he was not the witness to answer that question.

Chrmn. Cifelli re-phrased the question from a planning perspective. If First Student no longer has a contract with the Borough of Chatham to provide services for its school district, is their use of the property still inherently beneficial?

Mr. Seckler stated that there is the fact that beneficial uses do not end at a municipal boundary.

Mr. Infante noted that the applicant has made many promises. But back in 1992, the applicant sought a variance for 6 buses. Since that time this bus situation has significantly grown without a variance. Also, the parking of charter buses have occurred, which is not inherently beneficial. The use of Lot 10 has been unilaterally used by the applicant without any variances. The Board has to consider all of these violations, as they consider this application.

Attorney Oliveira stated that First Student was not the applicant in 1992 when the original approvals were granted. First Student purchased the company that was the recipient of that variance. It seemed to Attorney Oliveira that due diligence was not done with regard to the purchase of the land. First Student may have been under the misassumption that they could park buses at this site because there was "a variance". Attorney Oliveira believed that when First

Students became aware of issues by way of the Zoning Official's letter, they began the application process.

Attorney Oliveira felt that First Student originally proposed as much as it could for its application. After listening to the Board's concern, First Student then offered to eliminate the charter buses because they are too large. First Student has made sure there is an adequate fire lane to reach the back of the property. Mr. Cline has now proposed to eliminate 12 of the buses during the summer months.

Mr. Infante questioned why First Student continued to operate on the site, without the necessary variance, even after they had received the Notice of Violation.

Attorney Oliveira explained that it would not have been easy for First Student to cease operations. If a company has contracts with municipalities to deliver students, bus parking has to exist somewhere. The River Road location may not have been the best solution, but Attorney Oliveira felt it may have been the only alternative to serve Chatham and the other municipalities.

Mr. Haeringer pointed out that First Student did not conduct due diligence before buying the property to see what could be allowed. Now First Student is asking the Board to validate an action that First Student should have done some time ago.

Attorney Oliveira stressed that First Student is aware that a mistake has been made and is trying to address that mistake. First Student is trying to address this mistake and address the concerns raised by the Board.

Mr. Infante pointed out that most applicants, like the one earlier in the evening, seek permission from the Borough first before they propose something beyond what is allowable. They don't commit the violation and then come before the Board for approval. That's a serious concern for the Board.

Mr. Herbert invited Mr. Cline to come forward and assure the Board that assurance that any stipulations given by the Board will be followed by the applicant.

Mr. Cline noted that he was not with First Student when it purchased the property from the previous owner. He felt that if First Student had known about the non-compliance to the variance, his department at First Student would have addressed that situation immediately. Mr. Cline assured the Board that whatever approvals are given to First Student for this site, according to what has been submitted, will be followed.

Mrs. Kass referred Mr. Cline to the Zoning Official's letter of August 25, 2014, the Notice of Violation to First Student. Mr. DeNave had informed the First Student Manager that there are currently 89 buses on the site. Mrs. Kass noted that the current proposal is less than 89 buses. If First Student has the capacity to reduce the number of parked buses throughout the year to 50-something, why was not that done in 2014?

Mr. Cline answered that First Student's contract has changed significantly due to school districts re-arranging routes. Routes change on a yearly basis. At this time, First Student is "dead set" with that particular quantity of buses on that site.

Mrs. Kass brought up that that when the contract changes again, the requirement for 89 buses may change.

Mr. Cline stated that First Student did not anticipate that in their future contract. Another contract is coming up in three years.

Attorney Oliveira confirmed with Mr. Cline that First Student will comply with the number of vehicles as stipulated, if the application was approved.

Mr. Herbert asked Mr. Cline if he was in charge of the First Student site on River Road.

Mr. Cline answered no. He testified that he is a representative of the real estate department for First Student.

Mr. Herbert asked how could the Board make sure that the person in charge of the site will follow any variances that may or may not be approved.

Chrmn. Cifelli indicated that would not be possible. The only way that could be done is by code compliance. Unfortunately, the Borough budget does not have someone to count the buses every day.

Mr. Herbert pointed out that the issue right now is the lack of trust that the Board has with this situation.

Chrmn. Cifelli noted that the applicant will probably testify in all sincerity that the site will be code compliant. However, in reality, compliancy is always up to the code official.

After further discussion, Attorney Dwyer noted that the Board had some evidence of non-compliance prior to this hearing. However, a certain level of trust needs to be felt by the Board to believe that there will be compliance in the future. Attorney Dwyer asked Mr. Cline if there would be some systematic method by which First Student undertakes compliance with any approvals they may obtain.

Mr. Cline answered that these approvals would be mandated to First Student's Operation Team. A policy would be written that this Team would have to abide by, to follow the approved plan.

Attorney Dwyer asked if this would be a general policy.

Mr. Cline answered that this would be the first case that he has ever dealt with in this magnitude. He's been with First Student for over ten years.

Mr. Montague felt this matter could be handled by Mr. DeNave, the Zoning Official. He could check on the site every year for compliance and take action if they are not.

Mrs. Kass asked Mr. Cline if First Student had any other sites that are not in compliance with the zoning regulations of their various sites.

Mr. Cline answered no, not that he is aware of.

Chrmn. Cifelli asked if any of those sites had obtained variances.

Mr. Cline answered that First Student had several properties throughout the United States that had needed variances.

Attorney Oliveira asked if there had been an enforcement issue with any of these other First Student sites.

Mr. Cline answered no, not that he was aware of.

Chrmn. Cifelli then concluded that First Student did not have an existing policy as far as compliance with whatever variances, regulations, would be applicable to their properties.

Mrs. Kass pointed out that the fact that the property was purchased with 89 buses parked on the site without anyone checking to see if that situation was compliant with the zoning regulations, suggests that there was not much of a compliance program in place.

Mr. Cline agreed that the due diligence was not done at that time.

Attorney Oliveira stated that it was unfortunate that compliance with the 1992 resolution didn't occur for whatever reason, but that's past history. The applicant is here tonight with an application for 2019. Attorney Oliveira said he could not speak for Mr. Cline or any future owner for First Student. He asked the Board, instead, to focus on the application that is being presented tonight.

At this point in the meeting, Chrmn. Cifelli advised waiting applicant Mr. and Mrs. Kilm, 20 Ellers Drive, that due to the late hour, their application will probably not be heard tonight.

Application ZB #19-08: Kilm – 20 Ellers Drive – will be carried to the June 26, 2019 Zoning Board of Adjustment meeting.

Returning to the First Student application, Attorney Oliveira informed Chrmn. Cifelli that he has just consulted with Mr. Cline. They do not know what further measures they can give to create confidence in First Student. Perhaps a time limit could be included in the variance approval. Maybe an annual certification of compliance could be required of First Student.

Mr. Montague asked if the applicant could supply a name of the First Student employee that the Board could contact at any time.

Mr. Cline answered that it would be him, representing First Student.

Mr. Herbert asked if a definition could be given by First Student of what they consider to be “summer”.

Mr. Cline answered that summer would be from June 1st to September 15th.

If the Board wanted, Mr. Cline said he would meet with First Student’s operation team to better define these dates. Mr. Herbert felt that the specific dates be given on the resolution, so the Zoning Official knows which season he is inspecting for at the site.

Chrmn. Cifelli suggested, as well as the Zoning Officer Vince DeNave to have access on the property, a third party be allowed on the property to make monthly random inspections to ensure that over-crowding of vehicles is not happening. Chrmn. Cifelli noted that the narrative from the engineer is still needed. Attorney Oliveira will also be submitting to the Board, a legal memorandum, on the cases he is been referring to during the hearing.

Mr. Brightly, the Board’s Consulting Engineer, brought up the applicant’s lighting plan, specifically a detail on how a certain flood light was aimed.

Mr. Ryan clarified that this flood-light will be a downward facing fixture.

Mr. Brightly recommended a new fixture that does not go above the horizontal. The light source should not be visible.

Ms. Lelie referred to the applicant’s landscaping plan. She recommended that all the shade trees be of all the same variety. Ms. Lelie approved of the willow trees that had been shown on the plans.

Ms. Lelie asked if the applicant will be turning off the property lights at 10:00 p.m. The ordinance requires this specific time for non-security areas.

Mr. Cline asked if First Student could turn off their lights at 10:00 p.m., but have some lights on for a late bus returning to the site.

Ms. Lelie answered that would make sense; however, that request is up to the Board.

On another matter, Chrmn. Cifelli noted that testimony had been given that the traffic impact will not have a negative impact. However, Chrmn. Cifelli would like to know what the impact will be versus what is currently permitted as to what is being requested. If a negative impact exists, the Board could explore what conditions, if any, would minimize the impact.

There were no questions from the public. No members of the public were present at this point.

Application ZB #17-13: First Student, Inc. – 29 River Road will continue to the June 26, 2019 Zoning Board meeting.

At 10:28 p.m. the meeting adjourned.

The next Regular Meeting of the Zoning Board of Adjustment will be held on Wednesday, June 26, 2019, 7:30 p.m., in the Council Chambers, Chatham Borough Hall.

Respectfully submitted:

Elizabeth Holler
Recording Secretary