

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT

August 22, 2022

7:30 p.m.

Chairman Michael Cifelli called this Special Meeting of the Chatham Borough Zoning Board of Adjustment to order at 7:30 p.m. This was an in-person meeting. Chrnm. Cifelli stated that adequate notice for this special Board of Adjustment meeting was given as required by the Open Public Meetings Act.

Names	Present	Absent
Michael Cifelli, Chrnm.	X	
Frederick Infante	X – present by Zoom	
Jean-Eudes Haeringer	X	
Joseph Treloar	X	
David Degidio	X	
Peter Hoffman	X	
Curt Dawson		X
Patrick Dwyer, Esq.	X	

Our thanks to Borough Administrator Steve Williams for serving as Zoom host for tonight’s meeting.

Also present:

Kendra Lelie, P.P., AICP, ASLA, Professional Planner for the Board

Robert Brightly, P.E. Engineer for the Board

Public Comment

A member of the public asked if a resident could give comments or questions by way of Zoom tonight. Mr. Williams answered unfortunately no, this is an in-person meeting for the public. Chrnm. Cifelli explained that tonight’s meeting, for the public, is set up for viewing only. With Chrnm. Cifelli’s permission, Board Attorney Dwyer gave his email to any members of the public who had questions tonight.

Returning and New Applications

Application ZB 20-012

Chatham Holdings, LLC

34 River Road

Block: 135, Lots: 4, 6 & 7

Preliminary & Final Site Plan with Variances

This is a continuation from the First Hearing held at a Special Board of Adjustment Meeting on July 21, 2022.

Stephen Geffner, Esq., attorney for the applicant, came forward. Attorney Geffner reviewed with Chrnm. Cifelli the number of Board members who would be eligible to vote on tonight’s application. Mr. Treloar vouched that he had watched the recording of the July 21st hearing. Mr. Degidio vouched that he had read the court reporter’s transcript of the hearing. Therefore, they are eligible to vote on the application tonight.

Attorney Geffner asked Jamie Giurintano, the applicant's engineer, to come forward. Mr. Giurintano remained under oath from the previous hearing.

Mr. Giurintano submitted the following exhibits:

Exhibit A-7: Morris County Planning Board's Letter of No Interest

Exhibit A-8: Colored photos showing the scale & the heights of the proposed light fixtures

Exhibit A-9: Layout & dimensioning plan showing the revised number of parking stalls

He distributed copies of these exhibits to all the Board members.

Using Exhibit A-9, Mr. Giurintano explained how the parking variance will now be reduced by two parking spaces. Also, the applicant will now install a 6 ft. high PVC fence to provide screening, starting at the corner of the neighboring garage and run all the way up to the restaurant.

Mr. Giurintano noted that the Board's engineer had requested that the dimensions of the parking stall be included in the plans. Mr. Giurintano testified that the parking stalls to be installed will measure 9 feet wide by 16 feet long, with a 2 foot long over-hang.

The public had no questions for Mr. Giurintano.

Mr. Infante noted that testimony had been given at the first hearing that the restaurant owners will have an off-site parking location for their employees. Can someone describe this property? Is it vacant?

Attorney Geffner stated that the applicant's planner will testify on that matter.

John McDonough, the professional planner for the applicant, was sworn in to testify. Mr. McDonough submitted his professional credentials to the Board. The Board accepted them.

Mr. McDonough testified that he and his associates have prepared a standard planning analysis, reviewed existing conditions, reviewed pertinent zoning ordinances that would regulate the site, and his research done on the necessary variances that are needed.

Mr. McDonough submitted Exhibit A-10: a five part exhibit showing the applicant's property, the documented site condition, and surrounding land use contents.

Mr. McDonough testified that the applicant's property, containing three lots, has an unusual U-shape. This U-shape is the triggering factor for some of the variances.

Mr. McDonough testified that the applicant's property area measures slightly larger than a half-acre. Referring to page 2 of Exhibit A-10, Mr. McDonough described the current physical conditions of the property. He testified that the applicant is proposing to upgrade his currently developed property. Mr. McDonough described page 4 which gave a sense of the surrounding

land use context. A future 245-unit development is being constructed on a neighboring lot. River Road will become a walkable and inviting area, mimicking Chatham's current downtown. Mr. McDonough described the final photo, giving a "top down" view of how the property lines relate to the neighboring physical structures.

Mr. McDonough testified that the applicant is proposing to re-construct and completely modernize The River Grille. The present restaurant will be demolished. A new restaurant will be constructed in an entirely new location on the site. The new restaurant will contain 224 dining seats, plus 52 bar seats on three levels. There will be an open air patio dining area on the top level. There will be 39 parking spaces on site. There will also be an off-site parking lot to handle a shuttle system.

Mr. McDonough testified that the site is in the M-3 Industrial District. Eating and drinking establishments are permitted in this district.

Mr. McDonough noted that the applicant is seeking a Conditional Use variance for the outdoor patio area which is going to be situated within 6 feet of a drive aisle. Vertical separation will be created between the drive aisle and the dining area. He discussed the relief needed for the building height. Mr. McDonough testified that the mass and scale of the building itself are in substantial conformance with the bulk requirements of the Borough ordinance.

Legally, Mr. McDonough testified that the D-3 relief being sought will satisfy the statutory criteria under the Coventry Square case and the TSI case. Chrmn. Cifelli explained to the public that the applicant is proposing seating for outdoor dining within 6 feet of a drive-aisle. A variance is needed for that situation. Mr. McDonough explained that a barrier wall will be inserted between the dining area and the drive aisle. A railing may also be installed for safety reasons.

Chrmn. Cifelli confirmed with Mr. McDonough that the application's 3 properties, creating the "U" shape, will be merged. Mr. McDonough pointed out that these are three separate tax lots. One tax parcel is a future goal of the applicant's.

Mr. McDonough testified that this proposed project will promote the public good, as a local business will now be modernized and made more attractive. He reminded Board members that food businesses always have to refresh themselves in the public eye. The proposed upgrades to this business are necessary and important. Mr. McDonough reviewed the Borough Zoning goals that will be met with this application.

Mr. McDonough discussed the Conditional Use Relief being sought to allow for an outdoor patio dining within 6 feet of a drive aisle. He also mentioned the D-6 variance, asking for height relief to allow the proposed building to be 39.4 feet high. Whereas 35 feet is the cap height for that Borough zone. Mr. McDonough felt that the additional height will not produce any negative shadows. A peaked roof would produce less of an intrusion on the light and air.

Referring to Exhibit A-10, Mr. McDonough pointed out the 5 or 6 story building under construction next door which will mitigate the additional height being proposed for the restaurant.

Regarding the “C” variance, Mr. McDonough testified that the impact from this variance relief would be minimal. Regarding the proposed lot coverage, Mr. McDonough testified that the proposed coverage would be an improvement over the current lot coverage. Mr. McDonough stated that the side yard variance will be for the interior of the lot. He explained how this additional lot coverage will help make the property and building more functional. Mr. McDonough stated that the front yard setback variance would allow the patio over-hang to extend into the front yard. The over-hang would provide weather protection which is a planning benefit. Mr. McDonough brought up the rear yard setback variance which is needed for the restaurant’s trash disposal area. He reported this area will be adjacent to the NJ Transit train tracks. The train tracks will be the only property impacted by the trash area. This proposed location will move the trash area farther away from the street, thus improving the visual impact.

Mr. McDonough discussed the variance needed for the proposed off-street parking. The proposed supply of parking spaces will meet the actual demand. The lesser number of proposed parking spaces will meet the Master Plan’s intent that a walkable area should exist. The off-site parking situation was discussed.

Ms. Lelie confirmed with Attorney Geffner and Mr. McDonough that there will be 17 off-site parking spaces created. Mr. McDonough noted that the required screening for loading areas cannot be created because of the unusual shape of the applicant’s property. The required screening for the parking would also be difficult to do.

Mr. McDonough reviewed all of the lower level design exceptions. The relief being sought for these lower level designs is because of unpractical conditions. Strict or literal enforcement of the ordinance would serve no real practical planning purpose for these plans.

Mr. McDonough believed, from a planning standpoint, the proposed restaurant would be a positive investment for the community. The relief being asked for will not outweigh the many public benefits that would result from this application, if approved.

Attorney Geffner confirmed with Mr. McDonough that the proposed plan, if approved, would not produce any adverse impact upon the neighborhood or its general welfare. He also confirmed with Mr. McDonough that there will be no adverse impact on the Borough Zone Plan or Scheme of the Borough of Chatham.

Chrmn. Cifelli asked if catering facilities were allowed in the M-3 District.

Mr. McDonough believed so.

Mr. Degidio and Mr. McDonough discussed the protective railing that will be installed as a barrier. Justin Mihalik, the applicant’s architect, provided more details for Mr. Degidio regarding the proposed railing/barrier.

Mr. Brightly, the Board’s engineer, pointed out that the grading of the driveway will be half a foot higher than the dining area. Mr. Mihalik noted that at the sidewalk the driveway and dining area

will be at the same elevation. The driveway eventually elevates, becoming flush with the dining area.

Mr. Brightly asked how high and how thick is the proposed retaining wall.

Mr. Mihalik clarified that the retaining wall will not be a place where people can sit. The wall will be taken up to the point of grade and then convert to the rest of that into architectural treatment. The change in grade will only be 2 feet. Mr. Mihalik explained this grading plan would prevent water from rain and snow from coasting into the dining area.

Mr. Brightly and Mr. Mihalik discussed the proposed mechanicals to be installed on the roofs. Mr. Mihalik testified that there will be mechanical equipment installed on several different roofs. They will all be screened. Mr. Mihalik stated that he did not know at this point the height of the mechanicals; however, the applicant intends to meet the Borough Ordinance and Code. If need be, the interior physical roof-line will be adjusted downward to meet the Borough requirements.

Chrmn. Cifelli asked what is the height being requested for the building.

Mr. Mihalik answered 43 feet above grade, measured at the front of the building. He reminded the Board that the site, as it increases to the rear, that 43 feet reduces downward.

Mr. Haeringer noted that 3 kitchens were being proposed. Is there a requirement on how many kitchens that could be proposed and their exhaust systems?

Mr. Mihalik answered that there was no limitation on the number of kitchens; however, the necessary sanitation lines and the exhaust systems must be installed according to Code. The local Board of Health also has standards that have to be met regarding restaurant kitchens.

At Chrmn. Cifelli's request, Mr. Giurintano will include the flush curb arrangement in the plans to keep the pavement from unraveling. Mr. Giurintano also promised to gate the secondary rear entrance to the restaurant.

Mr. Brightly believed that the proposed ramp at the rear could be made ADA compliant. He can work with the applicant's engineer on that matter.

Mr. Giurintano answered that if the ramp cannot be made compliant, the applicant will then gate it.

On other matters, Chrmn. Cifelli brought up the proposed lights having house side-shields.

Mr. Giurintano testified that the lighting analysis does include the house side-shields.

Chrmn. Cifelli asked about the species of trees to be planted.

Mr. Giurintano answered they would be Ball Hall maples.

Chrmn. Cifelli asked if the 10 angled parking stalls could be designated for compact cars.

Mr. Giurintano answered that they could assign these parking spaces for compact cars; however, the ordinance does not have a provision for anything less than 50 parking stalls.

Mr. Brightly concurred with Mr. Giurintano's answer. He explained the tight parking conditions that would result. Mr. Brightly suggested the curb height could be lowered for these angled spaces.

The Board brought up the possibility of a bicycle rack on the site. This had been discussed previously. Mr. Giurintano stated that the site cannot really provide a good location for a rack.

Ms. Lelie suggested a bike area could be created in the two parallel parking spaces on the south side of the interior donut parcel.

Mr. Giurintano answered that two or three bikes could probably fit in that space; however some of the landscaping will be lost.

Ms. Lelie felt that the landscaping was not vital in that location. Mr. Giurintano agreed. He will try and integrate as many bike spaces as possible.

Mr. Degidio asked if there was a reason why two ramps are needed at the back of the building. Mr. Giurintano explained why the loading ramp has to be as close as possible to the building. The handicap ramp's location was decided on because of the grading situation that exists.

Chrmn. Cifelli confirmed with Mr. Giurintano that the restaurant will not have any outdoor speakers playing music. Mr. Giurintano clarified that any music on the restaurant's deck will be projected forward, towards River Road. Attorney Geffner pointed out that the applicant will comply with the Borough's noise ordinance.

Mr. Haeringer brought up that the proposed parking spaces are less than 40% of what is required. Who will be affected by this?

Lee Klein, the applicant's traffic engineer, came forward. He remained under oath from the previous hearing. Mr. Klein noted that 116 parking spaces are required. He testified that 39 spaces are required on the site. 17 spaces will be provide off-site. The variance is for 16 spaces. 25 parking spaces may be available for customers on the street. Answering Mr. Haeringer's question, the shortage of 35 spaces would most affect the applicant.

Mr. Treloar asked if this new proposed number of parking spaces and its deficiency would acerbate the parking situation even more.

Mr. Schwab explained that when some of the other businesses on River Road close, he will use some of their parking. Mr. Schwab stated that he has been discussing parking with the developer of BNE. Attorney Geffner noted that it is anticipated that a number of walkers from the new developments will be visiting the restaurant.

Chrmn. Cifelli assumed that the construction of the new restaurant will be done in phases. He also assumed that the current restaurant will continue to operate while construction is going on for the new building. Will a temporary C.O. be obtained? How long will that run? What are the plans for a pedestrian access at that point?

Mr. Mihalik answered that the demolition of the building will typically take place when the opening date of the new building becomes known. Chrmn. Cifelli noted that the current parking arrangement will no longer exist once the new construction begins. He asked what the projected time-frame for construction would be.

Assuming the application gets approved, Mr. Mihalik answered construction could take one to two years. Eighteen months is probably the reality. Also with regard to the timeframe, Mr. Schwab pointed out that he would have to obtain a new liquor license for the new building.

Chrmn. Cifelli reviewed the list of variances being sought for this application. Mr. McDonough agreed with Chrmn. Cifelli's list.

Chrmn. Cifelli reviewed the design waivers being sought. He asked if the proposed signage for the new building was ever submitted to the Borough Sign Committee.

Mr. McDonough and Attorney Gaffner did not believe so.

Mr. McDonough and Chrmn. Cifelli confirmed that a design waiver was being sought for the size of the parking stalls.

The Board had no further questions for Mr. McDonough.

Chrmn. Cifelli asked if the public had any questions for this witness.

Rosalie Tringali, 33 Schindler Ct., noted that testimony had been given that 3 kitchens are being proposed for the new building. Does that mean 3 exhaust fans will be in operation, sending out cooking smells? Will the smells then waft towards the train tracks?

Mr. Mihalik stated that the exhaust fans will be installed on top of the roof and be out of sight. Those fans will blow upwards, not in any one direction. Mr. Haeringer pointed out that there will be a number of tiers of roof. He confirmed with Mr. Mihalik that one of the exhaust fans could be on the lowest tier. Mr. Mihalik confirmed with Mr. Haeringer that the fans will comply with the Borough's Code.

Chrmn. Cifelli asked Ms. Tringali if she currently smells cooking exhaust.

Ms. Tringali answered no. However, when the new restaurant is completed, it will be closer to her home than the present restaurant. She was just concerned with the 3 kitchens producing food smells in her direction.

Mr. Hoffman stated he had understood that not all 3 kitchens will be cooking at the same time.

Ms. Tringali asked if the restaurant's trash enclosure will be covered or open.

Mr. Mihalik answered that the outer enclosure of the trash area will have a screen. The dumpsters will have covers on them. Mr. Mihalik said the owner of the restaurant will have to make sure the dumpsters are always closed after trash is put in. There will be multiple garbage pick-ups during the week.

Chrmn. Cifelli reminded Ms. Tringali that the restaurant would try to prevent any bad smells coming from their trash enclosures. It would be bad for their business. The restaurant also has to follow the local Board of Health Code. Mr. Schwab added that his business partner runs a garbage business. His partner will be very vigilant about emptying the dumpsters.

Barbara Stanley, 37 Schindler Ct., had concerns about the noise. She asked about possible noise that will emanate from the mechanicals on the roof. Ms. Stanley asked which floor of the restaurant would have the music. After watching the Zoom recording of the last hearing, she was not clear about that, and where will the music flow to? Will there be any outdoor music taking place? Has a noise study been done about this noise/music situation?

Mr. Mihalik put Sheet TR-2, the second and third floors, on the easel. He testified that all of the music will be played indoors at the restaurant. The second floor will have sliding glass doors in two locations at the front to force the music sounds out to River Road. The third floor will have a bar area towards the back half of the building. Music may be played in that bar area; however, no large bands will be playing. Many time it is one musician. The third floor will also have a sliding glass door at the front to allow any music to spill out onto River Road and possibly the restaurant's drive-aisle.

Mr. Mihalik put Sheet TR-1, the first floor plans, on the easel. A sliding glass door partition will be installed at the front. There will be movable tables at the front. Music can be played in that front area.

Mr. Mihalik noted that Ms. Stanley asked about the height of the restaurant's roof in relationship to the train tracks. On the roof drawing, Mr. Mihalik pointed out where people would be standing at the roof level. That roof level is approximately 26 feet, plus or minus, above street level. Therefore, the roof level will be above street level. The back of the building will be solid. Everything will be happening towards the front of the building. Mr. Mihalik pointed out the mechanicals that will be installed on each level. The roof equipment will all be screened to tone down any sound from the roof equipment.

Mr. Mihalik testified that no sound/acoustical testing has been done for the restaurant. He pointed out that the roof-top equipment will be no different from what is installed on the restaurants and apartments on Main Street. He pointed out that the manufacturers for this equipment do the testing for noise acoustics.

Mr. Mihalik testified a generator will be installed at the back of the building for emergency situations. This generator will meet any sound requirements specified by the Borough ordinance. He assured Ms. Stanley that any music for the new restaurant will be indoors.

Attorney Geffner informed Ms. Stanley that if she felt the restaurant was ever violating the noise ordinance, she should contact the Borough's enforcement officer.

Barbara Murray, 11 Schindler Ct., brought up the possibility of the owner of Lot 5 someday selling his property to Mr. Schwab. Is there any guarantee that Lot 5 will not be used for outdoor dining?

Chrmn. Cifelli answered that if that happens, Mr. Schwab would then have to return to the Board and seek another variance. Also, Chrmn. Cifelli seriously doubted Mr. Schwab would change his building plans at this stage if Lot 5 was put on sale.

Mr. Brightly and Attorney Dwyer discussed when deed consolidation would take place, if the application was approved.

There were no further questions from the public for the witnesses.

At 9:40 p.m. a break was taken in the meeting.

At 9:50 p.m. the meeting resumed.

Chrmn. Cifelli asked Attorney Dwyer if the public had emailed any questions to him about the application. Attorney Dwyer answered no.

Chrmn. Cifelli confirmed with Attorney Geffner that there was no further testimony from the applicant and his witnesses.

Attorney Geffner stated that the applicant is offering to reduce the height of the new restaurant by 1 foot, in order to change the "D" variance for the height to become a "C" variance. The new proposed height will be 38 feet 4 inches.

Attorney Geffner stated he, the applicant, and his witnesses greatly appreciate the two special meetings held by the Zoning Board of Adjustment to hear this application. He thanked everyone on the Board for their time. Attorney Geffner believed this proposed restaurant will improve the streetscape of River Road. It will comply with the new Master Plan and will be a great addition to River Road's Redevelopment Plan. Attorney Geffner closed the application and submitted it to the Board for a vote.

Chrmn. Cifelli asked if the public had any comments.

Paul Ivans, 15 John St., was sworn in to testify. He voiced his support for this application. Mr. Ivans felt the proposed restaurant will greatly add to the development of River Road. It will also be a good family place. Mr. Ivans spoke about Mr. Schwab's many activities and contributions to Chatham life. Mr. Ivans thanked the Board for their time.

There were no more public comments.

Chrmn. Cifelli asked the Board professionals for their comments.

Mr. Brightly discussed two concerns he had on the application. He believed the applicant could create 14 parking spaces adjacent to Lot 3, if these spaces were at 90 degrees with a 24 ft. aisle versus a 16 ft. aisle. Mr. Brightly also expressed a concern about the concrete retaining wall and how it would provide protection for the dining area.

Ms. Lelie believed that the plan will work. She is satisfied with the planning testimony that was given. Ms. Lelie was confident that the applicant's engineer and architect will return with any details regarding the safety perspective for the dining area. She was glad that bicycle spaces were being added.

Mr. Haeringer asked for Ms. Lelie's views about the parking spaces.

Ms. Lelie pointed out that driving is not such a major necessity these days with the operation of Uber and people walking. Ms. Lelie stated that she was comfortable with the parking that is being proposed. This area in the Borough will be transformed soon, including the streetscape area. More sidewalks will be installed. People will be walking from the River Road developments to eat at the restaurant.

Chrmn. Cifelli asked for comments from the Board. Mr. Hoffman stated that he is generally supportive of the application. It will be consistent with the vision the Borough Council has for this area of town. His concerns about the parking on the site has been addressed by the testimony that was submitted. He felt the design was beautiful. He commended the applicant for working with the Board in making some revisions. Mr. Haeringer was in full support of the application. He felt it had been well prepared. He was glad to see the height reduced a little. Mr. Treloar stressed the importance of the proposed means of protecting diners from the drive-in area. Like Mr. Treloar, Mr. Degidio had concerns about the safety of the outdoor diners and the proposed drive-in area. He felt the design of the building was well done. Mr. Infante agreed with the previous comments made by the Board. However, he wanted to point out this proposed restaurant will fulfill the Borough's obligation to the new residents who will soon be living on River Rd. Chrmn. Cifelli suggested the applicant speak with the restaurant's liability carrier about the dining area and the drive-in. He considered the variances being requested would be the right package of variances for this property.

Chrmn. Cifelli made a motion to approve Application ZB 20-012: Chatham Holdings, LLC – 34 River Road with the applicant to follow any recommendations made by the Borough Engineer regarding stormwater. Mr. Haeringer seconded the motion. A roll call vote was taken:

Mr. Infante	-	yes
Mr. Haeringer	-	yes
Chrmn. Cifelli	-	yes
Mr. Hoffman	-	yes

Mr. Degidio - yes
Mr. Treloar - yes

Application ZB 20-012: Chatham Holdings, LLC was approved.

At 10:15 p.m. the meeting adjourned.

The next Chatham Borough Zoning Board of Adjustment Meeting will be held on Wednesday, August 24, 2022, 7:30 p.m., in the Council Meeting, Chatham Borough Municipal Building. It will be an in-person meeting.

Respectfully submitted:

Elizabeth Holler
Recording Secretary