

CHATHAM BOROUGH
ZONING BOARD OF ADJUSTMENT MINUTES

April 23, 2008

7:30 p.m.

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

Members Present: Chairman Walter Voytus, Patricia D' Ambrosio, Frederick Infante, Helen Kecskemety, Michael Cifelli, Herb Ramo.

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

Members Absent: Peter Hoffman, H.H. Montague, Tayfun Selen.

Approval of Minutes

The minutes of March 25, 2008 were approved as amended.

The minutes of April 8, 2008 were approved as amended.

Resolutions

Memorialized by resolution the approval of variances sought by Graham & Yvonne Greenwood, 76 Rowan Road, to permit the construction of additions to their existing garage, with conditions as stated in the resolution. The resolution was approved (5-0).

Memorialized by resolution the approval of variances sought by Richard Maluga & Elzbieta Skora, 15 University Ave., to permit the renovation of an existing one family framed dwelling, with conditions as stated in the resolution. The resolution was approved (4-0).

Memorialized by resolution the approval of variances sought by Mr. & Mrs. James Behrmann, 9 Red Road, to permit the construction of an attached two-car garage and deck at the rear of their family dwelling, with conditions as stated in the resolution. The resolution was approved (5-0).

Memorialized by resolution the approval of variances sought by Mr. & Mrs. John McFadyen, 14 Pihlman Place, to permit several additions and renovations to the existing one family at this address, with conditions as stated in the resolution. The resolution was approved (3-0).

Old/New Business

The Board discussed whether or not to continue the policy of splitting their votes, with regard to different variances, on applications. They had done so on two applications at their last meeting. Some Board members felt it was not a good practice. Mr. Siegel

pointed out that the 2008 Zoning & Land Use book by Wm. Cox states that it is legal for a Board to split their votes; however, it leads to confusion, particularly on which Board members would be eligible to vote on the resolution. Also, a split vote may confuse an applicant who will have to decide how to change his application to conform with the variance(s) that had been denied. The zoning officer may also face difficulties in dealing with applications which have split votes. Mr. Voytus suggested the Board continue to look at each application as an entity. The Board will amend their rules to reflect this decision on split votes.

Mr. Siegel gave an update on the Omnipoint litigation. The judge reversed the decision made by the Board of Adjustment and granted Omnipoint the right to build their equipment tower on Woodland Road. Mr. Siegel reviewed the conditions the Board had imposed on Omnipoint. One condition was planting additional shrubbery around the compound. The attorney for Omnipoint had informed Mr. Siegel that the applicant will fulfill all those conditions. The attorney, however, recently informed Mr. Siegel that the Board of Public Utilities (BPU) has adopted new regulations regarding plant materials beneath their wires (the wire zone). BPU regulations probably trump local land use regulations. Mr. Siegel has not heard anything further from Omnipoint's attorney on this situation. Once this issue is addressed by Omnipoint, the Board will decide how to proceed.

New and Return Applications

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

- Noah's Bagels, Inc. - 465 Main Street
- Peters - 58 Van Doren Ave.
- Raunick - 2 Mercer Ave.

Mr. Voytus noted that Peters was not present at this time.

Noah's Bagels, Inc. – 465 Main Street

David J. Meshulam, Esq., attorney for Noah's Bagels, was present.
Jed Noah, the applicant, was present and was sworn in to testify.

Mr. Noah clarified that 459 Main Street was his business address. The address for his store premises is 465 Main Street.

Mr. Siegel reviewed that in 1993 the Board of Adjustment granted a variance to Mr. Noah permitting him to establish an eating and drinking establishment. This type of use had been prohibited in this particular area. In 1998, Mr. Noah approached the Board and asked permission to use the rear portion of an adjacent empty store to store ingredients and preparing those ingredients for raw bagels. Mr. Noah had testified that he was baking bagels in the back of his current store; however, he will not be baking bagels in this rear annex of this empty store. Mr. Noah stated that the rear annex will be used in conjunction with the store currently occupied by Noah's Bagels. No baking will take

place in that rear annex. The resolution in 1998 contained explicit condition that no baking oven or ovens shall be installed in that rear annex of the adjacent store (now Windsors Gift Shop).

Mr. Siegel noted that the applicant's property is in the B-2 district. Retail trade is permitted in only two places in the B-2 district, one of which is the CVS plaza. Mr. Siegel reviewed the LDO definition for retail trade.

Mr. Meshulam stated that Mr. Noah is present tonight because the Borough Construction Office now believes that Mr. Noah is in the wholesale business. Mr. Noah does not believe that is true. Mr. Meshulam asked Mr. Noah what his position is with the bagel store.

Mr. Noah stated that he is the owner of Noah's Bagels. He clarified that besides his Chatham store, he has bagel stores in Berkeley Heights and New Providence NJ. Mr. Noah confirmed that in 1998 he had asked permission from the Board to use the rear portion of Windsor Gift Shop for storage and the preparation of bagels. Mr. Noah testified that there have been no changes in that use. No baking has taken place in that rear portion.

Mr. Noah testified that he is not in the wholesale business of bagels.

Mr. Meshulam asked Mr. Noah if he supplied prepared bagels, not baked, from this Chatham premises to the stores in Berkeley Heights and New Providence stores.

Mr. Noah answered yes. Mr. Noah testified that he did not consider this action as wholesale sales. He testified that he did not sell bagels to anyone else on a wholesale basis. Mr. Noah added that he is not asking the Board if he could be allowed to sell to anyone on a wholesales basis.

Mr. Meshulam asked Mr. Noah what exactly was being done on these premises (the rear portion of Windsor Gift Shop).

Mr. Noah testified the he stores all of his ingredients, beverages, and supplies for the Chatham store in this rear premises. Also, the bagels in the raw form, are prepared in the rear premises for the Chatham store. A very small percentage of the raw bagel form goes to the two out-of-town Noah's bagel stores.

Mr. Meshulam asked how the bagels are delivered to the other stores. Mr. Noah answered they are delivered by a truck personally owned by him. Mr. Noah himself operates this truck. The truck is stored in Berkeley Heights in a private parking lot. Mr. Noah testified this truck was never stored in Chatham.

Mr. Noah testified that the Noah's Bagels store in Chatham requires 95% of his time. He has to make the bagels taste the same in all three of his locations. Mr. Noah stated what he sells in his Chatham store is "the completed bagel". The bagels for his other two stores still have to be prepared.

Mr. Siegel confirmed with Mr. Noah that he had appeared before the Chatham Borough Board of Health in 2007. Mr. Siegel reviewed a 2007 letter from Bill Faitoute, president of the Chatham Board of Health at the time. In his letter, Mr. Faitoute had discussed the expansion of the use of this facility (the annex) by providing dough mixing, forming, proofing, raw material, warehousing, and product transportation for two new establishments in other communities without approval from the Chatham Borough Board of Adjustment and the Chatham Borough Board of Health. This action by Mr. Noah has created what is classified as “a proof processing plant” and it is “no longer a retail food establishment”.

Mr. Siegel noted that the meeting minutes of the Board of Health meeting indicated that an Order to Show Cause hearing was held at this meeting. Mrs. Chaput, the Board of Health Chair, said the purpose of this hearing was to give Noah’s Bagels the opportunity to address the charges enumerated in the Show Cause Order served on them on behalf of the Board of Health. Mr. Noah was to demonstrate why his retail food establishment license should not be revoked. Mr. Meshalem represented Mr. Noah at this hearing. At this hearing, Board members had brought up the word “wholesale” which has been painted on Mr. Noah’s truck. Additionally, sales to Shop-rite had been identified.

Mr. Siegel confirmed with Mr. Noah that the word “wholesale” had been painted on his truck. Mr. Noah testified that he had that word painted on his truck for the sake of customers who entered the front of his store and would want bagels at a reduced rate. These particular customers must pick up the bagels themselves. Mr. Noah testified that he supplies bagels, at a reduced rate to some of the churches in town; however, the churches have to pick up the bagels themselves. The truck will not do any wholesale deliveries to locations. The truck is used only for deliveries to his branch stores in Berkeley Heights and New Providence. Mr. Noah stated that he has removed the word “wholesale” from his truck.

Mr. Siegel pointed out the Board of Health minutes also indicate that someone believed that in the rear annex, behind Windsor Gift Shop, Mr. Noah was actually making bagels. Baking of bagels is prohibited. Mr. Siegel asked Mr. Noah if he was doing this. Mr. Noah clarified that in the annex he started the process of making bagels. In the annex, he put the flour and water together and forms the raw bagels. The raw bagels are then taken to the bagel store for baking. No baking goes on in the rear annex. Raw bagels are also taken to the Noah Bagel’s stores in New Providence and Berkeley Heights for baking.

Mr. Voytus asked about the business transactions between Shop Rite and Noah’s Bagels. Mr. Noah answered that Shop Rite picks up their bagels at the front of the Noah’s Bagels store. Mr. Siegel concluded that Mr. Noah was then selling his bagels wholesale, which is prohibited. After consulting with Mr. Noah, Mr. Meshulam said Mr. Noah will no longer sell bagels to Shop Rite.

At Mr. Siegel’s request, Mr. Noah reviewed the ingredients that he currently has stored in the rear annex. Also in the annex are a mixer and a bagel machine. The bagel machine

forms the bagel. The raw bagels are put in refrigerators to be baked at a later time in the various stores.

After further discussion between the Board and Mr. Noah, Mr. Siegel concluded that if Mr. Noah is not going to engage in wholesale trade then he won't need variance relief. The Board, however, should pass a resolution reviewing what transpired tonight at this hearing and the promises made by Mr. Noah. The same restrictions concerning wholesale transactions remain for the two out-of-town Noah's Bagels as well as the Chatham store. Mr. Meshulam stated that Mr. Noah will terminate his business with Shop Rite by the next Board meeting when a resolution could be memorialized.

A motion was made/seconded requesting Mr. Siegel to write a resolution with the decisions made tonight on Noah's Bagels, 465 Main Street. A roll call vote was taken: 6 – yes 0 – no.

At 8:40 p.m. a break was taken in the meeting.

At 8:45 p.m. the meeting resumed.

At this point in the meeting, Peters – 58 Van Doren Ave. was still not present. Mr. Voytus announced that the Peters application will continue to the May 28, 2008 meeting.

Raunick – 2 Mercer Avenue

Brian Raunick, the applicant, was sworn in to testify.

Michael Bazala, the architect, was sworn in.

Mr. Raunick testified that he and his wife are proposing more additional living space. The house was built in the early 1950s.

Mr. Bazala submitted Exhibit A-1, photo-board of the existing house. He testified that the applicant proposes to fill in the space between the garage and the main house. He pointed out the location of the proposed addition. There will be no further encroachment into the side yard on Essex Road than what already exists.

Mr. Bazala submitted Exhibit A-2, proposed perspective. He pointed out the proposed family room and the combined kitchen/dining area. The setback from the main house to the property line on Essex Road is 17.21 feet. The setback of the proposed addition would be 21.6 feet. A one-story open porch is being proposed. Also, a little roof area will be added over the front of the garage.

Mr. Siegel confirmed with Mr. Bazala that the overhang over the garage was for both safety and aesthetic reasons. Mr. Bazala testified that 108 sq. ft. of the proposed building coverage attributes to the roof area over the garage and the roof area over the house's main entrance. The building coverage is over by 89 sq. ft.

Mr. Voytus confirmed with Mr. Bazala that the most recent letter of denial was dated November 28, 2007. Mr. Voytus noted that the denial form listed the proposed building coverage as 1,366 sq. ft. Attached to this denial form is a diagram indicating that the proposed building coverage is 1528 sq. ft. Mr. Voytus asked for clarification. Mr. Bazala answered that the denial form and its calculations were issued by Len Taylor, the Zoning Officer at the time, based on the original design dated March 20th. Mr. Voytus said these conflicting figures do not clarify the exact calculation needed for the variance. Mr. Raunick felt the calculation from the November 28th denial form came from a contractor who did a rough draft of plans. Afterwards, he had hired an architect to have the measurements certified.

Mr. Voytus concluded that he did not have the Zoning Officer's approval or denial based on these plans. Certification is needed for these calculations. Also, Mr. Voytus pointed out that the front yard setback measurement is incorrect. The measurement should be made to the eave.

Mr. Voytus asked that Mr. Bazala and Mr. Raunick have the zoning officer (Mr. DeNave) review the new plans. The calculations have to be approved by Mr. DeNave. Mr. Siegel noted that the front yard setback from Essex Road appears to be incorrect. The side yard setback and building coverage need to be clarified. Mr. Siegel recommended the applicant re-submit their plans to Mr. DeNave and explain to him that the Board, at this time, does not feel comfortable making any decisions until a more current review letter is issued.

The Raunick application, 2 Mercer Ave., will continue to the May 28, 2008 meeting

Before adjourning, Mr. Voytus said he will notify Board members of possible dates for the re-scheduled June meeting.

At 9:10 p.m. the meeting adjourned.

Respectfully submitted:

Elizabeth Holler
Recording Secretary