

CHATHAM BOROUGH PLANNING BOARD

June 2, 2021

7:30 PM

After a brief Closed Session was held, Chairman Susan Favated called the Chatham Borough Planning Board Regular Meeting of June 2, 2021 to order at 7:30 p.m. Chrmn. Favate announced that all legal notices have been posted for this meeting. This was a virtual meeting. Board members, Attorney Loughlin, and other participants were all present by way of Zoom.

Name	Present	Absent
Mayor Thaddeus Kobylarz	X	
Council Member Frank Truilo	X	
Steve Williams	X	
H.H. Montague		X
Chrmn. Susan Favate	X	
Vice Chrmn. Wagner	X	
Curt Dawson	X	
Bill Heap	X	
Torrie Van Wie	X	
Joseph Mikulewicz	X	
Gregory Xikes	X	
Vincent K. Loughlin, Esq.	X	

Also present:

Kendra Lelie, the professional planner for the Planning Board  
Robert Brightly, P.E., engineer for the Planning Board

Public Comment

Steve Palmisano, 306 Hillside Ave., said he will hold his comments for later in the meeting.

Resolution # PB 2021-01

Mr. Williams made a motion to approve the May 5, 2021 Planning Bd. meeting minutes. Council Member Truilo seconded the motion. A voice vote was taken. The May 5, 2021 meeting minutes were approved as submitted.

New and Returning Applications

Application #PB 21-002

Sterling Sun at Chatham, LLC

312 Hillside Avenue

Block: 98 Lot: 2

Preliminary & Final Site Plan

Tonight's hearing is a continuation of the May 19<sup>th</sup> hearing.

Peter Flannery, Esq., the attorney for the applicant was present. He noted that after the May 19<sup>th</sup> hearing, the Planning Bd. had raised a few issues. Attorney Flannery reported that the applicant

has addressed these remaining issues. The Board had wanted to make sure that the Fair Share Center was satisfied with the proposed design for the Affordable Housing Unit. Also, the Board had wanted clarity on the required Affordable Housing Fee for the application. The Board also had wanted to hear any comments from the Borough Fire Official. The Board had requested the off-site sewer connection issue to be resolved.

Attorney Flannery stated that the applicant has submitted the proposed elevation and floor plans to the attorney at the Fair Share Housing Center. Fair Share Center had reviewed this submission and gave their comments. The applicant had considered those comments and re-submitted the plans to Fair Share to review again. As of yesterday, Mr. Garrity sent a letter giving Fair Share's approval of the plans.

Attorney Flannery submitted the approval letter he had received from the Fair Share Housing Center dated June 1, 2021 as Exhibit A-7.

Attorney Flannery briefly reviewed the minor revisions now made to the plans. The proposed affordable unit in the development will now match the market rate unit. A tandem garage will now be constructed in the basement of the affordable housing unit, allowing two cars to park inside.

Attorney Flannery reported that the Borough's Affordable Housing Attorney, Jonathan Drill, had submitted a letter to Board Attorney Loughlin dated May 24, 2021 in which Attorney Drill opined on the affordable housing issue with this application. Attorney Flannery submitted this letter as Exhibit A-8.

At Chrmn. Favate's suggestion, Attorney Flannery submitted the earlier letter from Fair Share Housing giving the outstanding issues with the Affordable Housing unit. This letter was submitted as Exhibit A-9.

Attorney Flannery noted that a message dated May 27, 2021 from Ms. Boardman, the Planning Bd. Administrative Secretary, had stated that there were no comments from the Borough Fire Official on this application.

Attorney Flannery stated that Laurance Appel, the architect for the applicant, and Patricia Ruskan, the applicant's engineer, will be testifying tonight. Mr. Appel remains under oath from the previous hearing. He confirmed with the Board that he is the project engineer for this proposed development.

Mr. Appel submitted Exhibit A-10: Sheets showing the recent modifications made to 5 pages of the plans, dated 06/21/2021. The remaining pages are unchanged. These revisions were made after listening to comments from the Board and the advice from the Fair Share Center.

Mr. Appel testified that the design changes are limited to Unit Type B which is the affordable unit. The width for this unit has now been revised to now be consistent with the market rate units, which measure 16 inches, 6 inches. The affordable unit will now have a two-car tandem garage. Changes have been made to the façade to make the affordable unit fit in better with the market rate units.

Mr. Appel put up the modified architectural elevations on the Zoom screen. The only real difference between these units is the small bump-out on the left side elevation which was needed to accommodate the accessibility requirements of the unit. The retaining wall on the left side has been omitted. The future elevator will be aligned with all three floors. The building massing changes will not influence the height of the building.

Chrmn. Favate asked Ms. Lelie if she had any questions for Mr. Appel.

Ms. Lelie asked if the elevator shaft will function on all 3 floors.

Mr. Appel answered yes. He described the three stacking closets which will be installed on all three floors to accommodate the elevator.

Answering an inquiry from Mr. Brightly, Mr. Appel clarified that the retaining wall that will now be removed will be the front to rear retaining wall that was to create a side entrance.

Council Member Truilo asked for more information on the proposed roofing and siding materials.

Mr. Appel testified that Hardy-Plank will be used for the siding. The windows will be dark and double-hung with black frames with accenting trim. Roof shingles will be installed.

Mrs. Van Wie asked if the applicant had considered installing EV charging stations into the units.

Mr. Appel answered typically EV charging stations are not installed in these units in the beginning; however, the necessary infrastructure is provided for future installments for such units. This arrangement is what the applicant is proposing.

Mr. Heap asked Mr. Appel if any mechanicals had been installed yet for the elevator shafts.

Mr. Appel answered no mechanicals have been installed yet; however, the preparation for the elevators will be put in.

Mr. Heap asked what would trigger the installation of the mechanicals for the shaft.

Mr. Appel answered that if one of the renters had accessibility needs, the process to install the mechanicals would then be triggered.

Attorney Flannery added that the applicant will pay for the installation of the elevator and its mechanicals.

Chrmn. Favate and Mr. Appel discussed the wheel chair accessibility to the affordable unit. She confirmed with Mr. Appel that there will be sufficient space for a side ramp to allow a person in a wheel-chair to access the door at the rear of the garage.

Mr. Xikes asked if an accessibility van would be able to fit into the garage.

Mr. Appel answered yes.

Mr. Williams asked what will be in the future elevator shaft. Will it be secured in some way to prevent a falling accident?

Mr. Appel explained that the closets will be stacked. The closet will then be usable space. However, the floor will be easy to remove if/when an elevator has to be installed. Many times the elevators do not get installed.

Chrmn. Favate asked if the public had any architectural questions for Mr. Appel.

Malia Comcowich, 189 Hillside Ave., asked why won't the developer go ahead and install the elevator shafts in the town homes.

Mr. Appel explained that most residents will not need these elevators. They will be installed in these closets on an as needed basis.

Ms. Comcowich confirmed with Mr. Appel that all the proposed units will be rentals.

Attorney Flannery called Patricia Ruskan, the applicant's engineer, to come forward. Ms. Ruskan remained under oath from the previous hearing.

Ms. Ruskan discussed the proposed storm sewer situation. She and the Borough Engineer had taken a field trip to the location, where the Public Works Dept. had then marked out the existing water line that ran Woods Lane. Instead of the original proposal to run the water line down Woods Lane, the water line will now run east to connect into the storm sewer into the existing inlet on the south side of Hillside Avenue. That proposed arrangement has been presented to the Borough Engineer as well as the Planning Board Engineer. Ms. Ruskan testified that the two engineers had no issues with this alternate arrangement.

Attorney Flannery asked Ms. Ruskan to give testimony on the suggestion made at the last hearing about shifting the proposed parking area. Ms. Ruskan put Exhibit A-11 on the Zoom screen. The proposed parking lot has been shifted to the southeast in order to create 18 ft. long driveways for the two center units. The parking lot itself was pushed closer to Hillside Avenue. A variance is now needed for the western side of the site because the parking lot will be less than 10 ft. away from the side lot line.

Ms. Ruskan asked the Board to disregard the proposed side entrance to the affordable unit. The side entrance will not be happening. There will be a front entrance.

Using Exhibit A-12, with an overlay, Ms. Ruskan explained the second option for the proposed parking area. The parking lot will be shifted 4 feet towards Hillside Avenue. The building could be shifted 5 feet towards the back of the property.

Ms. Ruskan testified that the applicant would really like to maintain the original proposal to have no parking in front of the units, and have all of the parking within the garage unless it was a visitor coming to the development.

Attorney Flannery discussed the proposed landscaping between property lines with Ms. Ruskan.

Attorney Flannery confirmed with Ms. Ruskan that any glare from vehicle headlights will shine out to the street or towards the building. He also confirmed that the accessible parking space at the end of the parking lot will be the least used. Ms. Ruskan agreed, noting that space will be used for visitors.

Ms. Ruskan testified that there will be no retaining wall on the western side of Unit 1, the affordable unit. However, a lower retaining wall will be installed, which will help to create the rear yard.

Mr. Brightly referred Ms. Ruskan to the narrow grass island situated at the right side of the entrance driveway. Would there be any way to narrow down the island on the left side by moving over the 5 parking spaces.

Ms. Ruskan explained that a larger radius for the driveway was proposed was to give room to a fire truck entering the site. However, the applicant can consider shifting things to the east.

Chrmn. Favate asked who would be speaking on the meeting with the Chatham Fire Department and any changes they may recommend.

Ms. Ruskan testified that there were no meetings held with the Fire Department. Attorney Flannery noted that he had received an email dated May 27, 2021 from the Borough Fire Official indicating that he had polled the officers and reported that there were no comments on the plans.

Mr. Brightly had received the impression, in discussions with the applicant, that an additional fire hydrant would be installed on Hillside Ave. for the development.

Ms. Ruskan believed that DPW had come up with the option of moving an existing hydrant out to the front. No direct discussion had been held with the Fire Department on this particular arrangement.

Mr. Brightly pointed out that the re-location of the hydrant has to be subject to the approval of the Fire Department. Attorney Flannery agreed, stating that approval will be a condition if the application was approved by the Board.

Ms. Lelie, the Board's planner, brought up the one foot variance near the proposed buildings. Has any thought be given to moving the building back a foot, thereby eliminating that variance? Ms. Ruskan answered that the applicant prefers the initial plan.

Council Member Truilo confirmed with Ms. Ruskan that Belgian blocks will be used for the curbing.

Council Member Truilo asked if a row of arborvitae could be planted as a buffer between the development and the single-family home to the right.

Ms. Ruskan answered that she had been informed by the Borough Engineer that a sanitary sewer easement exists in that area; however, he suggested some shallow rooted plants or large grasses in that area that would be acceptable.

Mr. Xikes and Ms. Ruskan discussed how a person in a wheelchair could access a town home after exiting a vehicle.

Mrs. Van Wie asked if the landscaping elements in the front part were going to evergreens or deciduous.

Ms. Ruskan answered deciduous.

Mr. Williams stated that he would like, as a condition, if this application were approved, a definitive conversation with the Chatham Fire Department, Chatham Police, and EMS about these plans.

Council Member Truilo asked where the condenser units for the air conditioning units would be located.

Ms. Ruskan suggested Mr. Appel, the applicant's architect answer that question.

Mr. Appel answered that pad-mounted condenser units will be installed. They will be mounted in the rear corners, facing the side. The units will be placed outside of the utility easement on Unit 8.

Chrmn. Favate asked if the public had any questions for the applicant's engineer.

Michael Chidlovsky, 302 Hillside Ave. asked if the applicant had ever considered taking the entire building design and turning it into 3 or 4 units, instead of trying to squeeze so many buildings in one little plot.

Ms. Ruskan answered that she believed the Borough ordinance requires the separation of these units, instead of having a single building with 8 units. She really did not think the applicant would consider reducing the number of units.

Malia Comcowich, 189 Hillside Ave., asked if any of the area to be disturbed is steep slope.

Ms. Ruskan answered yes, there are certain areas within the proposed site, and the area where development is planned, that exist in various sloped categories.

Jennifer McNally, 100 Noe Avenue, asked if this site had been zoned for single family housing and originally had a farm tax.

Ms. Ruskan answered no, this is Borough property that's been designated as an affordable housing zone. To help clarify this, Ms. Ruskan pulled up Exhibit A-2, the aerial map of the property. Ms. Ruskan outlined the site's boundary lines on the map, pointing out the existing undeveloped Borough line.

Ms. McNally confirmed with Attorney Flannery that Sun Sterling has projects under construction currently in Chatham Township.

Saba Hekmat, 1 Wood Lane, asked if Sun Sterling would be constructing these 8 units on .8 acres all in front of Hillside Avenue.

Attorney Flannery answered yes, but there are environmental constraints preventing the applicant from constructing anywhere else.

Mr. Hekmat asked wouldn't the steepness of these slopes make it impossible for the developer to construct homes, or is it just a matter of cost?

Ms. Ruskan explained that in order to develop the slopes as the construction goes upwards, significant re-grading and significant retaining walls must be done as you move further back up the hill, to those sloped areas. The idea is to construct closer to the roadway of Hillside Avenue, which is flatter.

Mr. Hekmat asked why these units would not be built on the Fairmount Avenue side, instead of the Hillside Avenue side.

Ms. Ruskan answered that the slopes on Fairmount Ave. are very steep.

Steve Palmisano, 306 Fairmount Ave., noted that his property is adjacent to the proposed development. Attorney Loughlin swore in Mr. Palmisano. Mr. Palmisano felt, looking at Ms. Ruskan's grading map, there were other areas on the site that could absorb these units. He asked Ms. Ruskan if it was really a matter of choice that these proposed units are being constructed towards the front of the street.

Ms. Ruskan noted that the proposal is to have the town homes closer to Hillside Avenue. She reminded Mr. Palmisano that this property is in an affordable housing district.

Alex Tyo, 288 Hillside Ave., asked if a traffic study had been conducted for this application.

Ms. Ruskan answered yes, a traffic report had been submitted with the application. The applicant's traffic engineer gave testimony at the last hearing.

Mr. Tyo asked if that study had been done in conjunction with the development being done on the Dixiedale Farm.

Ms. Ruskan deferred that question to Attorney Flannery.

Attorney Flannery answered no. The study did not need to be in conjunction with the development next door in Chatham Township. He noted that Corey Chase is present tonight if he would like to respond to Mr. Tyo.

Mr. Chase, the traffic engineer for the project, came forward on the Zoom screen. He remained under oath from the previous hearing. Mr. Chase testified that a traffic study had been done for this application. The study was not done in conjunction with the Dixiedale project. They are two separate projects. Mr. Chase reiterated his testimony that the level of traffic Mr. Chase testified that the vehicles from the Sterling Sun development will not produce a significant increase of traffic on the surrounding roadway network, and would therefore does not need a traffic study like that which was done for the Dixiedale development.

Chrmn. Favate asked Attorney Flannery if he had any further witnesses or testimony to present.

Attorney Flannery answered no.

Chrmn. Favate asked the Board professionals if they had any further questions or issues to ask the applicant's experts.

Ms. Lelie asked if the applicant had responded to her memo dated May 11<sup>th</sup>. Some suggestions had been made on the landscaping as well as the recreation variance that the applicant had requested. Ms. Lelie also asked whether there was some issue in the memo that the applicant was unable to address.

Attorney Flannery and Ms. Ruskan stated that they agreed with the comments made by Ms. Lelie, the Board's planner. Ms. Ruskan recalled that the applicant has agreed to look at reducing the height of the proposed lighting. Also, additional landscaping material will be provided on the eastern side of the site. It will be shallow-rooted plantings as recommended by the Borough Engineer because of the sanitary sewer easement.

Ms. Lelie confirmed that the applicant is agreeing with the affordable housing contribution that has to be made.

Regarding recreation space, Ms. Lelie asked if the applicant would agree to install a passive seating area. There had been some talk of planting shade trees for this area.

Ms. Ruskan stated that the applicant has agreed to increase the size of the plant material.

Attorney Flannery brought up Ms. Lelie's suggestion of creating a walking path on the site. He felt that would difficult since it would involve removing trees and dealing with the steep slopes. However, the applicant has agreed with other comments made by Ms. Lelie.

Ms. Ruskan brought up the suggestion that the applicant provide landscaping between the proposed units. She pointed out that there will be 6 ft. high privacy fences between the units, which will provide privacy between the patios.

Ms. Lelie pointed out that the applicant is proposing both a privacy fence and plant material. She did not believe there would be space for both of these installments. Only 2 feet in width would be available. It appears as though the plant material would be centered on the fence. Ms. Lelie suggested the applicant chose either the privacy fence or the plant material. If the applicant chooses the privacy fence, perhaps some vines could be added.

Ms. Ruskan agreed to keeping the privacy screen with smaller plant material.

Ms. Lelie asked for comments on her proposal for a passive recreation area. Perhaps some pockets for seating could be created on the site.

Ms. Ruskan answered that the applicant has agreed to installing some benches along the site.

Mr. Brightly, the Board engineer, reported that the applicant's engineer has submitted a response letter stating that they would comply with suggestions made in his (Mr. Brightly's) earlier letter.

Chrmn. Favate asked the public if they had any comments on this application.

Steve Palmisano, 306 Hillside Ave., felt that what is being proposed is not in keeping at all with the neighborhood. He pointed out that the proposed parking lot for the development almost makes it to the street. Mr. Palmisano believed a commercial look and feel would result. He also questioned how the requirement would be enforced, requiring tenants to park in their garages, not in the parking area overnight. Mr. Palminsano stated that he knew this was an affordable housing site; however, an effort should be made to make it blend into the neighborhood.

Alex Tyo, 288 Hillside Ave., noted that he had missed the last hearing. He asked if a quick re-cap of where this application is in the process.

Attorney Loughlin stated he was sorry, but the Board is not permitted, at this point in the hearing, to give a re-cap of the zoning of this process. The Board, at this point, has to make a decision of whether to approve this application. Attorney Loughlin noted that what is being proposed is a permitted use in the zone in which it is located. It's not permissible for the Board to give a summary of the development process.

At Chrmn. Favate's suggestion, Ms. Lelie briefly reviewed for Mr. Tyo, the variances being requested by the applicant.

Saba Hakmat, 1 Woods Lane, asked the Board to please reject this design for the benefit of the community. He asked the Board to consider other options.

Michael Chidlovsky, 302 Hillside Ave., felt this wasn't what he and his neighbors had hoped for when they had moved to Hillside Ave. When he takes his children for a walk on Hillside Ave., they have to stay out of the path of vehicles. This development was not what he and his neighbors ever hoped for when they moved to Hillside Avenue. Mr. Chidlovsky noted that certain promises were made to the residents regarding the Dixiedale development. Those

promises, like the proposed walking trail, were reneged on for some reasons. Mr. Chidlovsky did not want the same situation to occur again. He thanked the Board for listening to his and his neighbors' comments.

Lisa Duff, 291 Hillside Ave., asked when did Chatham Township vote on this development.

Chrmn. Favate clarified that this is the Chatham Borough Planning Board. The Board will be voting on this application tonight.

Ms. Duff asked what would be the deciding factor for the Board to vote no.

Attorney Loughlin answered that the Board is allowed to discuss that with the public.

Attorney Flannery summarized the application. He pointed out that the proposed 8 units are permitted. The parking is in conformity. The applicant's engineer has testified to all the engineering details. The applicant's architect has testified on the proposed design of the building. Revisions had been made to improved the proposed affordable unit. Traffic testimony was provided showing the development's traffic will function safely. Planning proofs have been given in seeking the variances. Attorney Flannery reminded the Board that this is a Chatham Borough application. Any developments in Chatham Township are not relevant in determining this application. Attorney Flannery asked the Board to approve the Preliminary & Final Site Plan for Sterling Sun at Chatham LLC.

Mr. Williams made a motion to close the public hearing on this application and move on to Board deliberation. Council Member Truilo seconded the motion. A voice vote was taken. The motion passed.

Board discussion began. Chrmn. Favate stated that this application is in Chatham Borough's Affordable Housing zone. This application is conforming in terms of use, density, bulk standards, etc. Chatham Borough has an application to meet their affordable housing requirements. Chrmn. Favate asked what is the Board's decision on whether to move the proposed units back one foot. Mr. Dawson stated he had no problem with the development being one foot closer to the road. He would not like additional space for the tenants to park in the driveway. He would like them to park under the building in a garage. Mrs. Van Wie and Chrmn. Favate agreed with Mr. Dawson's idea about less parking. The 15 feet could remain in the back yard. The length of the driveway will remain 10 feet as originally proposed. Council Member Truilo commented that he hoped Hardy Plank will be used for the siding, instead of vinyl siding.

Mayor Kobylarz stated that he understood the disappointment expressed by the residents in this particular neighborhood regarding the introduction of a neighborhood development amidst their single-family homes. It was his understanding that this AFD-2 district has been in place at least since 2016 when the last revision for the Borough Master Plan took place. Given the designated zoning here, the developer has submitted an application that is, from a legal standpoint, a right. The proposed development complies with all the current zoning requirements and does not require any discretionary action by this Board tonight. Because of these factors, the Board is confronted with an application that must be approved. If the Board does not approve this

application, the Borough will run the risk of damaging law suits from two parties. Mayor Kobylarz noted that it is too late now to change the zoning of this lot. He did not understand why a previous Planning Board and Governing Body choose to zone this part of town, in this manner, to allow multiple-unit housing in this location. For one, this development will not be near any public transportation connection.

Mayor Kobylarz stated that he would have preferred this AFD-2 district to be located elsewhere, where it would have no impact on single-family residential neighborhoods and have an easy access to public transportation. Mayor Kobylarz pointed out that at this point, the legal right of the developer, given the AFD-2 zoning of this parcel, is manifest, and effectively locked in. Mayor Kobylarz therefore believed that the Board has no choice but to support this application.

Mayor Kobylarz believed this part of town never should have been zoned for multiple-unit housing. He will reluctantly vote in favor of this application.

In the coming weeks, Mayor Kobylarz will be discussing with attorneys and this Planning Board about conducting a review of the Borough zoning ordinance, to find better ways to protect the interest of our single-family homeowners. Mayor Kobylarz felt it was high time that the zoning ordinances be more accommodating and more protective of our Borough homeowners.

Vice Chrnn. Wagner made a motion to approve Application #PB 21-002: Sterling Sun at Chatham, LLC with the agreed upon conditions as listed by Attorney Loughlin. Attorney Loughlin reviewed all the conditions. Council Member Truilo seconded the motion to approve Application #PB 21-002 with the conditions as listed by Attorney Loughlin. A roll call vote was taken:

Mayor Kobylarz	-	yes
Council Member Truilo	-	yes
Mr. Williams	-	yes
Mr. Xikes	-	yes
Mr. Dawson	-	yes
Mr. Mikulewicz	-	yes
Mr. Heap	-	yes
Chrnn. Favate	-	yes

Application # PB 21-002 was approved.

#### New and Pending Business

#### Ordinance # 21-15 Amend and Supplement the Code of the Borough of Chatham with a New Chapter Entitled “Chapter 101, Cannabis Prohibition of All Classes of Business”

Mayor Kobylarz reported that Chatham Borough is opting out of all six categories for commercial opportunities for cannabis.

Attorney Loughlin noted that the legislature act has passed stating that the sale of cannabis would be permissible for recreational purposes subject to restrictions and conditions. It gave the

option to municipalities, if they wanted to prohibit this, they would have to do so by August 2021. An option was offered to municipalities, if they chose not to allow such sales, the town would have to enact an ordinance that would decline and prohibit such activity and opt out.

Mayor Kobylarz believed that if the Borough does not opt out the town is then locked into 5 years of permissible sales. However, in theory, Chatham Borough could opt out, and then opt in the next day.

Attorney Loughlin explained that the Land Use Ordinance will have to be amended regarding this particular vote. The Board must decide tonight on whether this proposed ordinance is consistent with the goals and purposes of the Borough's Master Plan. The Board then forwards their decision on to the Borough Council.

Chrmn. Favate made a motion that Ordinance # 21-15 is consistent with the goals and objectives of the Master Plan and authorizing that a resolution be entered and signed giving this decision by the Board. Vice Chrmn. Wagner seconded the motion. A roll was taken:

Mayor Kobylarz	-	yes
Council Member Truilo	-	yes
Mr. Williams	-	yes
Chrmn. Favate	-	yes
Vice Chrmn. Wagner	-	yes
Mrs. Van Wie	-	yes
Mr. Xikes	-	yes
Mr. Dawson	-	yes
Mr. Mikulewicz	-	yes
Mr. Heap	-	yes

The motion passed.

Mr. Williams did not believe there were any applications in the near future for the Board.

At 9:48 p.m. the meeting adjourned.

The next Chatham Borough Planning Board Meeting of Wednesday June 16, 2021 will be cancelled.

The next Chatham Borough Planning Board Meeting will be Wednesday, July 7, 2021, 7:30 p.m.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary

