

CHATHAM BOROUGH PLANNING BOARD  
March 17, 2021 7:30 p.m.

Chairman Susan Favate called the Chatham Borough Planning Board Regular Meeting of March 17, 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 all other participants were present by way of Zoom.

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

Also present:

Kendra Lelie, Professional Planner for the Planning Board

Vincent DeNave, Borough Engineer & Zoning Officer – arrived at 8:30 p.m.

Public Comment

There were members of the public present, but, at this time, had no comments.

Adoption of the Minutes

Chrmn. Favate announced that the March 3, 2021 minutes will be reviewed and voted on at the next meeting.

New and Returning Applications

Application # PB 21-001

111 N. Hillside Ave., LLC

111 N. Hillside Avenue

Block 45, Lot 15

Minor Subdivision with Variances

Gary Haydu, Esq. introduced himself as the attorney for the applicant. He stated that Andrew Andrutchuk is the principal of 111 N. Hillside Avenue. This property currently has a single-family dwelling. The proposal is to create a minor subdivision to the existing lot. The existing home will be renovated. The newly proposed lot will then be developed with a single-family residence.

Attorney Haydu stated that this application is seeking some relief. The application violates a minimum lot requirement. Also violated are the exterior side yard requirements as to Lot 15.01. Rear yard variances and building coverage variances are being sought. Issues that had arisen concerning the parking arrangement has been resolved.

Attorney Haydu reviewed the following witnesses who will be testifying tonight: Andre Andrutchuk, Andrew Clarke, and Paul Ricci.

Andre Andrutchuk, the principal of 111 N. Hillside Ave., was sworn in to testify.

Attorney Haydu confirmed with Mr. Andrutchuk that he was a builder and has done a number of projects in this area.

Attorney Haydu asked Mr. Andrutchuk to explain his proposals for Lot 15.01, which is the lot with the existing dwelling.

Mr. Andrutchuk testified that he is trying to subdivide the lots somewhat equally. The existing house will have its first floor renovated, since currently it has a dated 1970s-80s style, with boxed in rooms. He is proposing to open up the floor plan on the first floor. Mr. Andrutchuk is proposing a renovation/addition on the second floor. He explained the current awkwardness of the second floor, where in some areas the ceiling is too low and some of the doors are cut at a slant.

Mr. Andrutchuk is proposing to construct a detached garage. The garage will be constructed at the front in order to create a backyard for this property. Currently there is no backyard.

Attorney Haydu noted that Lot 15.01 is a corner lot. He asked Mr. Andrutchuk to review his proposals for Lot 15.02.

Mr. Andrutchuk testified that a new home will be constructed that would fit more into the neighborhood. It will match up with what people are currently renovating their homes to look like. This home will have a one car garage. The first floor will have an open floor plan. The second floor will have four bedrooms with full heights.

Attorney Haydu asked Mr. Andrutchuk if he was familiar with the sight triangle with shrubbery on that lot.

Mr. Andrutchuk testified that those shrubs are about 8 ft. high around the perimeter of the property. He intends to let the shrubbery remain to block off the view of the home, and provide privacy to the residents, as well.

Attorney Haydu asked Mr. Andrutchuk if he were willing to remove this shrubbery if it was in violation in this sight triangle.

Mr. Andrutchuk answered yes.

Andrew Clarke, the applicant's engineer, was sworn in to testify. He submitted his credentials to the Board. The Board accepted them.

Mr. Clarke testified that he had prepared the Site Plan for this application.

Attorney Haydu asked Mr. Clarke to review this proposed subdivision with the Board.

Mr. Clarke put the minor subdivision plan up on the Zoom screen. The subject property is at the corner of No. Hillside Avenue and Yale St. in the R-2 district. The existing home actually fronts on Yale Street. The front yard is really on Yale Street, not North Hillside Ave. Mr. Clarke described the existing house, including a shed and a garage. A parking area exists between the garage and the house. Mr. Clarke described the topography of the lot. He also described the existing shrubbery and fence. He felt that some of the shrubs would have to be removed.

Mr. Clarke put up the proposed conditions on the Zoom screen. The proposed subdivided lot will measure 90 feet by 100 feet. A detached garage, with a driveway, is being proposed in front of the proposed home. It will be set back 27.5 feet which will be consistent with the general streetscape. Mr. Clarke pointed out the only neighboring lot adjacent to the subdivided lot. This neighboring lot really fronts onto North Passaic Avenue. Mr. Clarke testified that the homes on Yale Street, on the other side of North Hillside Ave., all the way down to North Summit Ave., are about 26 feet from the setback.

Mr. Clarke testified that the grading for Lot 15.01 will not change too much. A dry well will be installed in the corner of the sight triangle in order to capture the driveway and roof water from the existing home after it is renovated.

Mr. Clarke testified that a new dwelling is being proposed for Lot 15.02. The proposed location of this new home, with regard to the front setback, will be consistent with the neighborhood. He described the proposed patio. To deal with the grading of the proposed lot, a wall will be installed along the perimeter of the lot on the northwest side and the northeast side. This wall will help manage the grade change.

Mr. Clarke asked if the Board had any questions for him.

Chrmn. Favate asked Mr. Clarke if he had looked at the existing front setbacks across Yale Street.

Mr. Clarke answered yes, those front setbacks measured 29 or 30 feet.

Chrmn. Favate felt that those setbacks would serve as better comparisons for the proposed subdivided lot.

Chrmn. Favate asked if any consideration had been given to removing the existing home and constructing the new home that would be more consistent with Yale Street.

Mr. Clarke answered that he had spoken with Mr. Andrutchuk about that option. Mr. Andrutchuk preferred to maintain and upgrade the existing home.

Mr. Williams referred Mr. Clarke to Lot 15.01. He asked what was the idea of putting the proposed garage 10 feet in front of the home? Mr. Williams asked Mr. Clarke if he had done that in any of his other designs.

Mr. Clarke answered no; however, he has never dealt with an application of a house so far back, with a much deeper lot. The reason it is 10 feet in front of the house is because of the requirement of a distance of 10 feet from structures. There is also a great deal of space in front of the home. Mr. Williams asked Mr. Clarke if he knew of any other scenarios in Chatham Borough that have a detached garage in front. This type of garage arrangement is found more at Lake Hopatcong or Cedar Lake. Mr. Williams felt the garage location is extremely out of place for Chatham Borough.

Mr. Clarke answered that he hasn't seen a garage placement like this in the Borough either.  
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Mr. Truilo pointed out that the proposed detached garage on Lot 15.01 is 5 feet from the lot line on the left. What would be the required side yard setback?

Mr. Clarke answered 4 feet.

Mr. Montague asked if any expansion was being proposed for the existing home.

Mr. Clarke answered that the only expansion to the existing home will be the front portico. The existing wrap around porch will be removed. The total footprint of the house will not be increased.

Mr. Truilo asked Mr. Clarke if he was raising the height of the house on Lot 15.01.

Mr. Clarke answered yes. The ridge will go up about 9 feet.

Attorney Loughlin noted to Mr. Clarke that he had testified that the footprint of the home on Lot 15.01 will not expand. Attorney Loughlin referred Mr. Clarke to the report from the Board's engineer report on page 3, that there are bathrooms being proposed for both of the dwellings. With regard to the calculations, the Board engineer, Robert Brightly, found these bathrooms were not so intended as livable space. Attorney Loughlin alerted the Board that Floor Area Ratio (FAR) calculations have not been submitted as a result of this situation. As the Planning Board Attorney, Attorney Loughlin stated he was very concerned about this situation. As a result, Attorney Loughlin questioned whether the Planning Board would be able to hear this case.

Mr. Clarke answered that he had seen Mr. Brightly's report. He stated that he really focuses on what happens outside of the building. Mr. Clarke felt he was not in the position to testify on whether that third-floor space should be included in any FAR calculations.

Attorney Loughlin stated that as the Planning Board Attorney, he has jurisdictional concerns about this application. If that third-floor space is being used as habitable and living space, and not being calculated as Floor Area Ratio, he questioned whether this hearing should be continued this evening.

Mr. Xikes pointed out that the architectural plans reveal that the ceiling heights of those third story rooms reaching a height of 6 feet 8 inches. Also, a bedroom and rec room are shown. Living space is defined as having a height of 7 feet. Mr. Xikes agreed with Attorney Loughlin that this third story is being considered living space.

Mr. Clarke reviewed the definition of FAR for residential districts as found in the Borough ordinance, focusing on the height requirements for living space. Mr. Clarke felt there may have been architectural reasons for the space in question.

Attorney Loughlin still had concerns about the height situations for these third story ceilings. He suggested the Board may want a second look at this application. It may not be appropriate to proceed further with this hearing.

Mr. Williams brought up that there are several items in Robert Brightly's letter dated February 23<sup>rd</sup>. Mr. Brightly had asked that certain calculations be provided.

Mr. Clarke agreed, noting these were the same issues raised by Attorney Loughlin.

Attorney Loughlin stated that, as Board Attorney, he could not make decisions on Building Code issues and height issues. He could only alert the Board to these matters. He will leave it up to Board members on how they want to proceed.

Chrmn. Favate brought up the basement layout. She pointed out that a full bathroom is shown on the basement plans. Another room has the potential of becoming a bedroom. Ultimately, the applicant could then have a six-bedroom house.

Mr. Clarke answered felt that maybe the basement was not included in the definition.

Vice Chrmn. Wagner pointed out that maybe it's a question of where the 7 feet height hits with these rooms in question.

Chrmn. Favate felt that the applicant's architect could address these height concerns.

Chrmn. Favate asked Mr. Clarke why the detached garage has a jog so close the street.

Mr. Clarke answered that the jog may be for aesthetics. The architect could probably answer that question.

Kendra Lelie, the Board Planner had questions for Mr. Clarke. She pointed out that there are a number of mature trees existing on the subject property. Ms. Lelie asked Mr. Clarke whether he had done an analysis on which trees will be removed on the site.

Mr. Clarke answered that he has not done a tree analysis yet.

Ms. Lelie asked if Mr. Clarke had plans to do such an analysis, or will a variance be asked for this situation?

Mr. Clarke answered that the applicant will meet the Borough tree ordinance. He understood tree replacement was required.

Attorney Haydu stated that the applicant will follow the one-to-one tree replacement requirement.

Ms. Lelie noted that she didn't see mechanical equipment drawn on the subdivision plans.

Mr. Clarke stated that there will be mechanical equipment for air conditioning for the proposed home. The location hasn't been determined yet. Mr. Clarke said a compliant location will be found and the required screening will be included.

Attorney Haydu informed the Board that the applicant's architect will not be able to attend tonight's hearing. Architectural testimony cannot be offered this evening.

Attorney Loughlin stated that he was concerned about the unresolved issues concerning calculations that will pertain to possible additional variances. He didn't think the hearing should go beyond this witness tonight with these unresolved matters. There is still the question of whether application was within the Planning Board's jurisdiction.

The Board and Mr. Clarke touched on the attic height issue again.

Ms. Lelie pointed out that it's not within the Planning Board's jurisdiction to interpret definitions like this. It's up to the Zoning Officer or the Zoning Board of Adjustment.

Attorney Loughlin agreed with Ms. Lelie's statement.

Chrmn. Favate concluded that at this point, the Board is not sure whether an FAR variance is needed. Testimony from the applicant's architect is also needed.

Mr. Clarke reviewed the recommendations/comments made by Robert Brightly, the Planning Board's Engineer, in his memo dated February 23, 2021. The applicant will agree to the following recommendations:

- 1) Clarification to be made to the front yard setbacks on the plans.
- 2) The front yard setback dimension for the front porch for both lots will be shown on the plans.
- 3) The lot area measurement for Lot 15 will be corrected.
- 4) The sight line easement will have to be clarified.
- 5) The steep slope area in the back left corner should be addressed.
- 6) The retaining wall should not cross the proposed subdivision line. It should stay entirely on Lot 15.02.

Mr. Clarke stated that he could revise the plans to follow Mr. Brightly's recommendations.

Mr. Clarke reviewed the Board Planner's, Ms. Lelie's memo. Mr. Clarke reiterated that the applicant would follow the ordinance requirements for tree replacement. An inventory can be done for the trees. Mr. Clarke will include information on proposed lighting for the application.

He will also supply details on the location of the A/C mechanical equipment and screening. Mr. Clarke will provide information that the well head protection in these plans will follow regulations.

Mr. DeNave, the Borough Engineer, was present at this time, by Zoom. He stated that there were no problems with the well-head situation. Mr. DeNave pointed out that the well-heads are across town at the DPW complex. The Borough well-heads, at their distance and depth, will not be polluted from the applicant's proposals.

Ms. Lelie recommended a 3-D view of the proposed garage should be submitted as a future exhibit. This would help the Board to understand the visual impact this garage will have on the street.

Chrmn. Favate and Mr. Williams brought up #10 of Mr. Brightly's comments to Mr. DeNave. Chrmn. Favate brought up the concern that the attic space had not been counted in the FAR calculations. It's not clear on the plans how much of that attic space is above 7 feet.

Mr. DeNave explained that the architect should be taking this measurement from the floor to the bottom of the roof rafter. If this measurement exceeds 7 feet, the floor area underneath the area that is over 7 feet has to be counted. Mr. DeNave believed the burden of proof is on the architect when he/she gives testimony on this attic situation.

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

Tom Osucha, 31 Yale St., stated that his home was across the street from the proposed subdivision site.

Mr. Osucha noted that one of the proposed drywells will be down at the corner where the Borough drains are located. He asked wouldn't the drywell, then, impact the sewer system at that location.

Mr. Clarke explained that the function and the intent of a drywell is to capture and hold the water beneath the ground and allow it to infiltrate into the ground itself.

Mr. Osucha said he understood that, but he had concerns about the water dispersing into the sewer system location. Does the dry well really have to be that close to the sewer system drain?

Mr. Clarke answered no, the drywell could be installed a little farther into the yard. Also, the drywell will be installed below the Borough's catch basin. Storm drains on this street are not very deep.

Attorney Loughlin, at this point, swore in Mr. Osucha.

Mr. Osucha stated that he has lived at 31 Yale St. for twenty years and was very familiar with the run-off situation on this street. He asked Mr. Clarke how we can be sure that the proposed drywells will: 1) Be able to support this run-off; 2) Be able to disperse the water 3) Ensure that the water will run downstream and affect other properties. Mr. Osucha asked if a test had been done on this situation.

Mr. Clarke answered that no soil tests had been done yet.

Mr. Osucha stated that he didn't understand that the soil tests could not be conducted now. Why weren't the Board members and residents made aware of a soil test.

Mr. Clarke answered that ordinarily a soil investigation is not done, but not at this stage of a project. It would take place when the construction is going on. Mr. Clarke stated that it is the applicant's burden to not increase the water run-off to the street and neighboring properties. Mr. Clarke stated that he has seen no stormwater management under the present conditions on the site. The drywell may prove to be reasonably effective for stormwater control.

Michael Sarno, 33 Yale St., stated that his property is on the corner of North Passaic Ave. and Yale St., diagonally across the street from the subject property. He asked whether it was typical to subdivide a lot and then have a requirement for several variances, not just one.

Attorney Loughlin answered that an applicant may request a subdivision subject to variances. After considering the testimony and evidence submitted, it is up to the Board to ultimately decide whether the variances would be allowed in order to permit the subdivision to go forward. Attorney Loughlin and Chrmn. Favate advised Mr. Sarno that the applicant's planner could be the best one to answer his questions.

There were no further questions for Mr. Clarke.

Chrmn. Favate asked if the Board had any thoughts on the application so far.

Attorney Loughlin respectfully cautioned that Board members do not give any comments at this time on the application. There may be a jurisdictional matter with this application. Chrmn. Favate agreed with this request, noting that the FAR situation still has to be cleared up. It may be determined that the application will have to be heard by the Zoning Board of Adjustment, not the Planning Board. More testimony is still needed. Chrmn. Favate urged Mr. Clarke to take a different approach to the existing house, perhaps consider removing it. She agreed with Mr. Williams' earlier point that detached garages in front of the residence are not the norm in Chatham Borough.

Attorney Haydu stated that he will take the Board's comments made tonight to the architect and the owner.

Chrmn. Favate asked, assuming that this application will be returning to the Planning Board, what would be an available Planning Board meeting date.

Mr. DeNave felt that this application could be continued at the April 7, 2021 Planning Board meeting.

Chrmn. Favate and Attorney Loughlin officially announced that Application # PB 21-001: 111 North Hillside Avenue, will continued to the April 7, 2021 Planning Board meeting. No further notice is needed.



Before adjourning, Chrmn. Favate noted that Attorney Loughlin has recently sent a memo discussing the ADA matter that was brought up at the last Board meeting. The memo will be reviewed at a future meeting.

At 8:52 p.m. the meeting adjourned.

The next Chatham Borough Planning Board meeting will be on Wednesday, April 7, 2021, 7:30 p.m. It will be a virtual meeting.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary