

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT

December 22, 2016

7:30 p.m.

Chairman Michael Cifelli called this Regular Meeting of the Zoning Board of Adjustment to order at 7:30 p.m. in the Council Chambers, Chatham Municipal Building. He stated that adequate notices for this Zoning Board of Adjustment meeting were given as required by the Open Public Meetings Act.

Names	Present	Absent
Chrmn. Michael Cifelli	X	
Helen Kecskemety	X	
Frederick Infante	X	
Douglas Herbert		X
H.H. Montague	X	
Jean-Eudes Haeringer	X	
Patrick Tobia - 1 st Alternate	X	
John Richardson - 2 nd Alternate		X
Alida Kass	X	
Patrick Dwyer, Esq.	X	

Also present:

Vincent DeNave, Zoning Officer & Borough Engineer

Dr. Susan G. Blickstein, professional planner for Chatham Borough

Robert Brightly, P.E., Engineering Consultant for the Board

Resolution #ZB 16-17

The minutes for the November 30, 2016 meeting were approved as amended.

Old/New Business

Mr. Montague reported that the Planning Board has adopted the 2016 Master Plan Reexamination and Update.

Public Comment

No one came forward.

Resolutions

Application ZB #16-19

Kevin Schmidt
21 No. Summit Avenue
Building Coverage/Lot Coverage
Block 55, Lot 37

Attorney Dwyer summarized this application which proposed to construct a detached garage to the existing house under renovation. The Board had noted that the new Master Plan Update encourages detached garages. The Board felt that the benefits of this application outweighed the detriments and granted the variances. A roll call vote was taken on the resolution confirming the Board's decision:

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

New and Returned Applications
Application ZB #14-29
4 Watchung Avenue, LLC
4 Watchung Avenue
Appeal of Zoning Official Decision/Site Plan Approval
Block 134, Lot 1

This is continued from the September 28, 2016 hearing.

A court stenographer was present to record this hearing.

Roger Podvey, Esq., attorney for 4 Watchung Ave., came forward. Since the last hearing, Atty. Podvey stated that his client had collected newspaper articles, now attached to his letter to the Board dated December 21, 2016. Referring to these articles, Atty. Podvey felt that the parking of new cars, at this location, had been approved by the Zoning Board in 1971 and approved by the governing body.

Chrmn. Cifelli asked Atty. Podvey to give a summary of where this application halted at the last hearing held on September 28th.

Atty. Podvey noted that at the last hearing, Mr. Michael Lanzafama, the applicant's engineer and planner, had not finished his testimony. The transcript of the September 28th hearing had been provided to the Borough. Atty. Podvey recalled

that Mr. Lanzafama had, with a series of photos, testified on the use of the property, in a historic sense. Mr. Lanzafama had also summarized the ordinances regarding this property as they changed over time.

Chrmn. Cifelli noted that the Board had received the letter and attachments from Attorney Podvey dated 12/21/2016. He asked Atty. Podvey to summarize these attachments and how they affect the application.

Atty. Podvey stated that his letter dated 12/21/2016 gives the history of what happened with the applicant's property in 1971, based on newspaper articles from the Chatham Press. These four newspaper articles are dated August 12, 1971, September 30, 1971, November 4, 1971, and December 16, 1971. Atty. Podvey believed that the August 12, 1971 article demonstrates that the Board of Adjustment back then approved Mr. Schmitt's application for the property in question.

Atty. Podvey referred the Board to previously submitted Exhibit A-1, showing the resolution which was adopted on August 4, 1971.

Dr. Blickstein asked if Atty. Podvey had enlarged copies of the microfilmed news articles.

Chrmn. Cifelli indicated that he had enlarged copies of the articles. He distributed copies of the enlarged news articles to Board members.

Atty. Dwyer confirmed with Atty. Podvey that he had no objection to the Board having the enlarged copies of the August 12, 1971 article. Atty. Dwyer marked this enlarged article of Aug. 12, 1971 as Chatham Exhibit #5.

Chrmn. Cifelli read aloud some of the Aug. 21, 2016 article. He asked what property between River Road and the Passaic River was the article talking about.

The subject property, in the current application, is situated on the side of Watchung Ave. where River Road does not traverse.

Atty. Podvey answered that there had been an application submitted on behalf of Otto Schmitt. This document had been attached to the August 23, 2016 letter from Atty. Podvey's office. The application was for the premises at Lot 7A, Block 148., 4 Watchung Ave. The application specified that the subject premises is located in the M-1 District. This district permits similar uses including, but not limited to, storage of building materials, heavy machinery & equipment, storage of rental

trucks, delivery service. Atty. Podvey stated that the proposed use is a provided use under the ordinance. He believed that the drafters of this zoning ordinance considered the storage of motor vehicles as a permitted use, requiring only approval of fencing.

Atty. Dwyer and Dr. Blickstein pointed out that it was the applicant's position that storage of motor vehicles was a permitted use.

Atty. Podvey referred Atty. Dwyer and the Board to Mr. Schmitt's certification, which had been marked as Exhibit A-13. Mr. Schmitt had stated that he had been parking cars on this lot since 1968. Unfortunately, Mr. Schmitt is now deceased.

Referring to his letter to the Board dated 12/21/2016, Atty. Podvey stated that the applicant is seeking a D-2 variance. He noted that Mr. Lanzafama will be testifying tonight, explaining that the variance is really for a D-1 variance.

Mr. Montague asked Atty. Podvey what was his position on the conditions agreed on by Mr. Schmitt in 1971.

Atty. Podvey answered that the condition limited the storage to 125 cars and a fence had to be installed.

Dr. Blickstein pointed out to Atty. Podvey that he originally came before the Board seeking to establish that it was a pre-existing, non-conforming use. That must have been the reason why Atty. Podvey had shown the Board all those aerial photos back in September, proving that a pre-existing, non-conforming use was going on. Dr. Blickstein questioned why Atty. Podvey now wants to propose a D-1 variance.

To help address this concern, Michael Lanzafama, the applicant's engineer and professional planner, came forward. Mr. Lanzafama remained under oath from the previous hearing.

Mr. Lanzafama testified that in light of the resolution, passed in 1971, he and Atty. Podvey believed that this storage arrangement had been granted as a use variance back in 1971, as a D-1 variance. The applicant now wants to expand that 125-car limitation. Therefore, a new D-1 use variance is needed. Mr. Lanzafama felt that the applicant and his witnesses have failed in their attempt to convince the present Board that the applicant was operating under a pre-existing nonconforming use.

Atty. Dwyer pointed out that the Board has made no decision on that matter yet. He asked if the applicant was abandoning the argument that a pre-existing nonconformity was going on.

Atty. Podvey answered no.

Atty. Dwyer confirmed with Atty. Podvey that he basically believed that the outdoor storage of automobiles should be permitted either because it's a pre-existing nonconforming situation or there was a variance granted in 1971 or a brand new variance should be granted today.

Atty. Podvey reviewed the due diligence he has pursued as this application has progressed. He and Mr. Lanzafama took into consideration the comments made by the Board at the last hearing. They are now seeking a D-1 variance.

Chrmn. Cifelli again pointed out that the property mentioned in the 1971 article, was situated between River Road and the Passaic River. The subject property in tonight's application doesn't match this location.

Mr. Lanzafama stated that what had been marked as Exhibit A-2 in the 1971 application, is a copy of the Municipal Tax Map at the time. Lot 8 and Lot 7A are shown. Looking at the area map and tax map, Board members can see that the configuration of the properties are identified.

Charm. Cifelli still felt that a discrepancy still existed.

Atty. Dwyer invited Mr. DeNave to give his thoughts on this situation.

Mr. DeNave stated that he read the news articles from 1971. He is confused how the Carlone/Rillo property ties in with the 1971 application. However, Mr. DeNave did not believe the 1971 approval for the car storage was ever granted by the Zoning Bd. of Adjustment back in 1971. He believed that the Bd. of Adjustment in 1971 voted to approve the variance; however, he didn't believe that the Borough Council ever affirmed that approval. Mr. DeNave pointed out that there are very comprehensive records for every Borough Council meeting, including the Carlone/Rillo property, which *did* get approved for outdoor parking and *did* receive a resolution from the Borough Council.

Mr. DeNave stated that he and his assistants had searched the Borough records for six months before and two years after the 1971 application, and nothing came up

for the Schmitt property from the Borough Council. Every action taken by the Borough Council is recorded.

Atty. Dwyer asked if the property in the 1971 application is the same property as this pending application before the Board tonight.

Mr. DeNave believed they were the same property. Possibly the newspaper reporter had made an error in his 1971 article.

Chrmn. Cifelli stated 4 Watchung Ave. had presented newspaper articles that the applicant's counsel believed was proof that the variance had been approved.

Chrmn. Cifelli asked Atty. Podvey why those articles tend to prove that that the Borough back in 1971-72 took the recommendation of the Zoning Bd. of Adjustment and provided Mr. Schmitt with the variance.

Atty. Podvey answered that his letter to the Board dated 12/21/2016 stated the position of he and his client. He did not know the governing body minutes were still in existence. He didn't have the opportunity to review these minutes. Atty. Podvey felt that Mr. DeNave had the opportunity to review the minutes.

Atty. Podvey asked Mr. DeNave what records did Chatham Borough have going back to Council meetings in 1971 from August until the end of 1971.

Mr. DeNave answered that all Council resolutions and ordinances are kept by the Borough Clerk's Office. He wasn't sure if *all* the minutes had been kept.

Chrmn. Cifelli reviewed with Atty. Podvey the articles that he had submitted.

At Atty, Dwyer's suggestion, the article dated Sept. 30, 1971, the enlarged version, was marked as Chatham Exhibit 6.

The article dated November 4, 1971 was marked as Chatham Exhibit 7.

The article dated December 16, 1971 was marked as Chatham Exhibit 8.

Chrmn. Cifelli noted that there is no indication in these articles that the Borough had granted Mr. Schmitt's variance.

Atty. Podvey admitted that he and his client do not have solid evidence that the Borough Council had taken action. He wasn't sure what the minutes or town records will show on this situation. However, it didn't make sense to Atty. Podvey that Mr. Schmitt "didn't take it to the next step" after obtaining Zoning Bd. approval for what appeared to be a use variance.

Chrmn. Cifelli and Atty. Podvey discussed what may have transpired back in 1971 regarding the subject property.

Mr. DeNave asked if Atty. Podvey and his client had ever taken into consideration that the property next door, Lot 7, was denied in 1970, for a seventy car parking lot for Barnes Chevrolet to park new cars. There is definitive evidence this matter was provided to Atty. Podvey's client.

Atty. Podvey felt that particular situation was meaningless.

Atty. Podvey submitted three more exhibits:

Exhibit A-14: Soil Remediation Action Permit submitted for the subject property on behalf of Kimber Petroleum

Exhibit A-15: Ground Water Remediation Action Permit

Exhibit A-16: Response Action Outcome Letter submitted by the Environmental Consultant for the Responsible Party, dated 11/18/2015

Atty. Dwyer and Chrmn. Cifelli suggested that Atty. Podvey called Mr. Lanzafama forward to testify on these exhibits.

Mr. Lanzafama, the engineer and professional planner for the applicant, came forward. He remained under oath from the previous hearing.

Mr. Montague asked if the Borough Environmental Commission should review these remediation documents.

Atty. Podvey didn't believe so. The jurisdiction in this situation, on environmental matters, lies with the Department of Environmental Protection of the State of New Jersey, not the Environmental Commission of Chatham Borough. These documents prove that this site is not suitable for many of the uses that are permitted in this particular district. Atty. Podvey clarified that his client is not the responsible party for this environmental situation. He offered to bring in the Licensed Site Remediation Professional (LSRP) who did these documents and works for Kimber Petroleum.

Mr. Tobia and Chrmn. Cifelli informed Atty. Podvey that they didn't feel the Board is requiring him to bring in a LSRP to interpret these documents.

Mr. Brightly, the Board's engineering consultant, referred Mr. Lanzafama to Exhibits A-14, A-15, and A-16 indicate a "restricted area". Mr. Brightly asked if this area was shone on the site plan. Mr. Lanzafama answered no.

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

At 9:11 p.m. the meeting resumed.

Michael Lanzafama, the applicant's engineer and planner, came forward. He remained under oath from the previous hearing.

Atty. Podvey asked Mr. Lanzafama to go over the site plan.

Using the site plan on the easel, Mr. Lanzafama described the subject property and its location. He pointed out that storage is permitted in this particular zoning district. The site is currently being used for the storage of vehicles that are on sale at Douglas Motors in Summit NJ, which is less than one mile away.

Mr. Lanzafama stated that Sheet 2 of the plans showed the existing site conditions. The property has a 75 ft. frontage along Watchung Ave. It has a very irregular configuration, resembling a triangle. The property is not impacted by wetlands. The storage of vehicles will not be impacted by flood waters associated with the Passaic River. The site consists of broken asphalt, compacted gravel, etc. For the 40-plus years cars have been stored on this site.

Mr. Lanzafama testified that the applicant is proposing to store approximately 282 car on the property, as shone on the plans. He explained how the new cars were to be stacked on the site. The cars will be brought in from Watchung Ave. by a truck-carrier. Periodically, cars will be taken to the Douglas Motors showroom. Mr. Lanzafama testified that the storage yard will only be accessed by Douglas Motors employees. No customers will be in the yard.

Mr. Lanzafama stated that there will be security lighting installed within the interior of the storage facility. The lighting will be minimal. A security hut, with cameras, will be on the site. Mr. Lanzafama testified that the riparian buffer along the Passaic River is 50 feet. He explained how this long lost riparian buffer will be

re-established. A substantial number of plantings will be put to improve the screening of the storage facility and improve the environment along the river. Mr. Lanzafama testified that the run-off rates will be reduced with these proposed improvements.

Mr. Montague asked which way did the water flow on the site.

Mr. Lanzafama testified that the lot is relatively flat. He explained the contour map for the property. Answering Chrmn. Cifelli's inquiry, Mr. Lanzafama pointed out the area to be paved on the property.

Chrmn. Cifelli asked what would be the distance between the parked vehicles. Mr. Lanzafama answered that 4 deep between cars, before an access aisle, will be maintained. This will allow for Douglas Motors employees to safely shuffle cars around on the lot.

Chrmn. Cifelli asked whether the plans had been presented to the Borough Fire Officials.

Mr. Lanzafama answered no. The Board has not yet required this action.

Answering an inquiry of Mr. Montague's, Mr. Lanzafama pointed out the location of two existing light poles in the lot. They provide adequate illumination. These lights, operating on timers, remain on all night long.

Mr. Montague asked if motion sensors could be used for the lighting.

Mr. Lanzafama said that could be considered.

Dr. Blickstein asked how many cars were currently parked on the site.

Atty. Podvey said he suspected 400 cars.

Mr. Haeringer asked why the applicant is going from 400 cars down to 282 cars.

Mr. Lanzafama answered that the reduction of cars is being proposed to provide accessibility to the vehicles on the site. Access aisles will also be created.

Mr. Montague asked if someone will be presenting a traffic study for the site.

Atty. Podvey answered that Mr. Liebman will be testifying on car deliveries. Mr. Infante asked if the applicant had any other sites for vehicle storage. Mr. Lanzafama answered no.

Mr. Haeringer asked if the proposals met with local fire codes.

Mr. Lanzafama answered that the applicant's witnesses would be glad to meet with the fire department, show them the plans, and listen to their opinions.

Atty. Podvey added that the applicant has not received any comments from either the local police department or fire department.

Dr. Blickstein asked Mr. Lanzafama what was his opinion, as an engineer, having the cars parked at the property line. She pointed out that the applicant's fence is actually on the neighbor's property.

Mr. Lanzafama stated that the applicant can demarcate that area and make sure that his car storage operation does not encroach on the neighbor's property. Perhaps a temporary barrier can be set up.

Dr. Blickstein asked how will the applicant monitor the number of cars (282) for the site.

Mr. Lanzafama answered that his client, Mr. Liebman, would understand that the approval would be for that limited number of cars. He would insure that number of cars would be maintained. The Borough Zoning Officer could make sure that number will not increase. Atty. Podvey stated that Mr. Liebman will testify on how his site can survive with the proposed reduction of vehicles.

Mr. Montague asked if gravel will be put all over the site.

Mr. Lanzafama answered yes. He testified that there will be a paved section down the middle. The rest of the surface will be gravel.

Mr. Brightly confirmed with Mr. Lanzafama that the asphalt currently existing on the site will remain. Mr. Brightly asked Mr. Lanzafama to put the restricted areas on the plans. Mr. Lanzafama agreed to that.

Mr. Brightly asked how the applicant plans to keep the gravel from migrating beyond, into the property's buffer area.

Mr. Lanzafama answered that the gravel will be densely compacted. A metal edging can also be done on the plant beds to control the gravel surface.

Mr. Brightly advised the Board that some type of edge protection should be required.

Mr. Brightly asked if the applicant will have an environmental echo scientist testify as to whether or not whether wetlands permits are needed to remove the gravel.

Mr. Lanzafama testified that a letter from EcolSciences stated that there were no wetlands present on the property. EcolSciences noted that there would be a 50-ft. buffer associated with the river. However, they didn't insist on whether a permit would be needed to re-vegetate that particular area.

Mr. Brightly had concerns about whether a permit was needed for the wetlands.

Mr. Montague asked if there was a fence installed at the back of the property.

Mr. Lanzafama answered no. It hasn't been a problem since his client owned this lot starting in 1996.

Atty. Dwyer and Mr. Lanzafama reviewed the applicant's proposal for the riparian buffer.

Hearing no further questions, Atty. Podvey requested that the hearing be adjourned.

Dr. Blickstein asked that any materials be provided to Board members and the Board's professionals at least a week before the next hearing.

Application ZB #14-29: 4 Watchung Avenue, LLC, will be carried to the Zoning Board of Adjustment meeting scheduled for January 25, 2017.

Chrmn. Cifelli asked Mr. Montague and Mrs. Kecskemety to serve on the Nominating Committee to create a slate of Board Officers for 2017.

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

The next Zoning Board of Adjustment Meeting will be held on Wednesday, January 25, 2017, 7:30 p.m., Council Chambers, Chatham Municipal Building. It will be the Zoning Board of Adjustment's Reorganization Meeting.

Respectfully submitted:

Elizabeth Holler
Recording Secretary