

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT  
December 13, 2017

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 Borough Hall. He stated that adequate notice for this Zoning Board of Adjustment meeting was given 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 <sup>st</sup> Alternate	X – arrived 7:37 p.m.	
Alida Kass	X – arrived 7:35 p.m.	
Patrick Dwyer, Esq.	X	

Resolution #ZB 2017-15

A voice vote was taken on Resolution #ZB 2017-15. All Board members present voted to approve the minutes of the November 29, 2017 Zoning Board of Adjustment meeting.

Public Comment

There was none.

Old/New Business

Mr. Montague reported on the recent ordinance the Planning Board had voted on, after determining that it was consistent with the Borough Master Plan: Ordinance #17-12, which would amend and supplement Chapter 165 of the Borough Code relating to Bulk Standards of the Borough's Residential Districts.

Also, Mr. Montague noted that the Planning Board had also approved an application submitted by Twin Elephant Brewing Company, 13 Watchung Ave., for outdoor dining space.

Chrmn. Cifelli asked that Mr. Montague and Mrs. Kecskemety serve on the Nominating Committee to present a slate of Board Officers for 2018.

Resolutions

Application ZB # 17-28

Snarr

58 Lincoln Avenue

Block 17, Lot 12

A motion was made/seconded to approve the resolution confirming the Board's approval of the Front Yard, Building Coverage, and Lot Coverage variances. A roll call vote was taken:

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

New and Returned Applications

Chrmn. Cifelli announced the following applications will be heard tonight, time-permitting:

Application ZB #17-26: Sullivan/Grant - 53 Garden Avenue

Application ZB # 16-006: 8 Watchung Avenue, LLC – 8 Watchung Ave.

Application ZB # 16-020: REO Development – 94 Washington Ave.

Application ZB # 17-31: Greenrose Reso, LLC – 243 Hillside Ave.

Chrmn. Cifelli announced that Application ZB 17-32: Tao Zhang – 2 Martin Place will carry to the January 24, 2018 meeting due to insufficient noticing.

Application ZB #17-26

Sullivan/Grant

53 Garden Avenue

Block: 21, Lot 12.06

Side Yard/Building Coverage/FAR

The following were sworn in to testify:

Carol Grant & Neil Sullivan, the applicants

Carolyn Young, the architect

Ms. Grant gave an introductory statement on the application.

Ms. Young submitted her educational and professional credentials to the Board. The Board accepted them.

Using Sheet ZB-2, Ms. Young described the existing conditions of the home. She testified that the existing first floor is adequate. A two-car garage exists, measuring 27 ft. by 20 ft. The existing second floor has 4 bedrooms and 2 bathrooms. Ms. Young reviewed the different elevations of the house. She believed the house may have been constructed in the late 1960s or 70s. The existing façade is very flat. Ms. Young testified that at the back of the existing house, the second-floor cantilevers over the first floor.

Ms. Young submitted Sheet ZB-1 as Exhibit A-1. This exhibit showed the existing non-conformities of the home. The left-hand side yard setback of the house will be maintained; however, the proposed second floor will be constructed above.

Ms. Young testified that the existing building coverage already exceeds the allowable. The applicant is seeking to add 21 sq. ft. more of building coverage.

Ms. Young stated that a front portico is proposed for the front of the house. The portico will comply with the ordinance regarding setbacks and square footage. The applicant is proposing to extend the second floor above the one-story section of the garage, causing the intensification. This proposed extension will be exceeding the allowable FAR by 102 sq. ft.

Ms. Young testified that the applicant wants to improve the aesthetics of the house and create better amenities. By extending out over the existing garage, a nice master bedroom suite, with closet space and an adequate bathroom will be created. A new laundry room will be created on the second floor of the home.

Ms. Young pointed out that there is a great deal of renovation currently taking place on Garden Avenue. A number of homes are being demolished. She felt the proposed renovation would be a welcome improvement to the neighborhood.

Chrmn. Cifelli pointed out that the Borough had revised their FAR standards a couple of years ago. He asked why the new allowable FAR standard isn't adequate for this project?

Ms. Young explained how the existing condition of the current garage is unfortunately influencing the allowable square footage situation for the rest of the home. The existing garage cannot be reduced. It's only 20 feet in depth. It is overly wide. Ms. Young also believed the aesthetics of the home will be improved with these proposals.

Chrmn. Cifelli asked Ms. Young if she had any information on the homes in the neighborhood.

Ms. Young submitted Exhibit A-2: a photo-board of the neighboring homes. She described the homes in the immediate area. Most of the homes have porticos.

Chrmn. Cifelli confirmed with Mr. Sullivan that there is roughly 24 feet in between his house and the neighbor's home on the right. He also confirmed with Ms. Young that the lots in this neighborhood, on the applicant's side of the street, all seem to have the same frontage, in terms of the width of the property (75 feet).

At Mr. Herbert's request, Ms. Young described the homes in the neighborhood. Many of the homes are new and are made of masonry material. She described the rooflines of the neighborhood.

Mr. Herbert asked whether the proposed bulk for the applicant's home will look out of place in the neighborhood, taking into consideration how the neighborhood is recently developing.

Ms. Young testified that the proposals will be very appropriate and in keeping with the neighborhood. The proposed roofline will make the front elevation very pleasing.

Chrmn. Cifelli noted that there were no dimensions for the proposed rooms on the second story. If the application was approved, he asked that these second story dimensions be submitted to the Borough.

Mr. Herbert asked if the proposed addition would impact the neighboring home on the left.

Ms. Young answered no. Both the applicant's house and the neighbor's home on the left face south. The house on the left receives eastern light that won't be affected by the addition.

There were no questions or comments from the public.

Board discussion began. Mr. Infante believed the side yard variance was minimal. The overall aesthetic change was good. Mr. Haeringer felt that the variances, if approved, would benefit the community. Mr. Tobia and Mrs. Kass agreed with the comments made by Mr. Infante and Mr. Tobia. Mr. Montague and Mr. Herbert believed that the proposals were modest. Chrmn. Cifelli noted that what is being proposed for the second floor was necessary. Also, the benefits outweigh the detriments in this application.

Mrs. Kass made a motion to approve Application ZB #17-26: Sullivan/Grant – 53 Garden Avenue as amended, with the applicant to follow any stipulations made by the Borough Engineer regarding stormwater. Mr. Haeringer seconded the motion. A roll call vote was taken:

Mr. Montague	-	yes
Mr. Herbert	-	yes
Mr. Infante	-	yes
Mrs. Kass	-	yes
Mr. Haeringer	-	yes
Mr. Tobia	-	yes
Chrmn. Cifelli	-	yes

The application is approved.

Application ZB # 16-006  
8 Watchung Avenue, LLC  
8 Watchung Avenue  
Block 134, Lot 2  
Site Plan Application

Gary Haydu, Esq., attorney for the applicant, asked that this application be carried to the January 24, 2018 Zoning Board meeting. A primary witness could not attend tonight's meeting.

Chrmn. Cifelli pointed out how long this application has been listed. He asked Attorney Haydu if the application could at least be started tonight. Attorney Haydu answered that he had no witnesses tonight. He had submitted to Mr. DeNave a formal, written request to carry this application to the January 24<sup>th</sup> meeting. Ms. Boardman, in the Zoning Department, informed him that the application will be heard on January 24<sup>th</sup>. The witnesses have been informed of this change.

Chrmm. Cifelli agreed to carry the application, but informed Attorney Haydu that if his client is not prepared to proceed at that time, the application will be dismissed.

Attorney Haydu agreed with that arrangement.

Application ZB #16-020

REO Development

94 Washington Avenue

Block 18, Lot 15

Site Plan Application

Peter Rosen, Esq., attorney for the applicant, came forward.

Attorney Rosen stated that the applicant is seeking to demolish the existing home at 94 Washington Avenue and construct a new home, following the architect's plans. He listed the names of the three witnesses who will testify tonight.

The following were sworn in to testify:

Andre Andrutchuk, the builder

Edward S. Dec, the engineer for the applicant

Robert Michaels, the planner for the applicant

Mr. Andrutchuk testified that the existing home on the property will be demolished. A new home will be constructed. The new home will be approximately 2100 sq. ft. with an attached single car garage. He described the proposed floor plan for both the first and second floors. A mudroom will be constructed off of the garage. The second floor will have 4 bedrooms with a hallway bathroom and a master bathroom for the master bedroom suite.

Mr. Andrutchuk testified that a detached garage currently exists. The reason that an attached garage is being proposed is because of the sloped lot. Safety conditions and aesthetics were also reasons for the attached garage.

Mr. Andrutchuk noted that the architect for these plans could not attend tonight's hearing. Mr. Andrutchuk clarified that he could not testify on the dimensions on the plans.

Attorney Dwyer confirmed with Attorney Rosen that he and the witnesses had been before the Board previously. Attorney Rosen explained that the reason that he and the applicant are before the Board again is because there was a discrepancy on the denial sheet between the applicant's engineer and the Zoning Officer. It took a month to clear up the discrepancy.

Mr. Montague asked why the proposed home was so close to the street.

Mr. Andrutchuk answered that particular placement of the house would give an entertainment area in the back. A deck will be constructed. A patio could not be created because of the slope of the lot.

Mr. Andrutchuk submitted Exhibit A-3: a street comparison.

The public had no questions for Mr. Andrutchuk.

Mr. Dec, the engineer for the applicant, submitted his professional credentials to the Board. The Board accepted them.

Mr. Dec placed the revised plans on the easel. He testified that the reason for the revision was because the zoning requirement chart must match the Zoning Officer's chart. The variances on the chart now correctly match.

Mr. Dec testified that the front setback of the existing home is at 17 feet. However, to the front steps, it's approximately 10 feet. Mr. Dec referred the Board to the configuration of the proposed home. The side yards will be maintained at 12 feet, both sides, equally spaced. The lot coverage will be reduced with the proposed design. The long driveway in the back will be eliminated. The reason the driveway and attached garage will be placed in the front is because the property slopes from front to back. It's a safety measure. Mr. Dec pointed out that detached garages are not desirable, market-wise, these days.

Mr. Montague expressed concerns about possible water run-off traveling down to the school. Mr. Dec said he will follow any recommendations that the Borough Engineer will give regarding run-off.

Answering a question from Chrmn. Cifelli, Mr. Dec confirmed that there were two different variances being sought. One for the deck and one for the house.

Mr. Infante asked if Mr. Michaels would explain the reason for proposing an attached garage versus constructing a detached garage.

Mr. Dec answered yes.

Chrmn. Cifelli asked if any members of the public had questions for Mr. Dec.

Eric Merse, 92 Washington Ave., noted that his house is directly to the right of the applicant's lot. He felt there was an inconsistency with the building coverage.

Mr. Dec explained the two categories, lot coverage and building coverage, on the plans. The building coverage is 200 sq. ft. more than what is allowed.

Mr. Merse confirmed with Mr. Dec that building coverage variance is being sought, but not lot coverage.

Robert Michaels submitted his professional credentials as a licensed planner. The Board accepted them.

Mr. Michaels reviewed that at the previous hearing he had distributed aerial photos of the applicant's property and neighborhood. He had distributed an FAR analysis of the neighboring properties. This analysis has now been updated to conform with the most recent denial letter. The revised chart is dated 11/29/2017.

Mr. Michaels submitted the FAR analysis for the applicant's neighborhood as Exhibit A-4.

Using the aerial photograph, Mr. Michaels described the location of the applicant's property in relationship to the neighboring properties. He testified that there are some existing non-conforming conditions on the subject property. Mr. Michaels pointed out that the existing setback of the house is non-conforming. It's less than the 30 feet required. Mr. Michaels reviewed the calculations for the three variances being sought.

Mr. Michaels testified that there are two neighboring properties that violate the FAR ratio. Both of them are less than 5500 sq. ft. There are 6 neighboring lots, which, like the applicant's, do not meet the building coverage requirements.

Mr. Michaels testified that the proposed home will provide many modern features that homeowners are seeking. An existing non-conforming side yard setback will be eliminated. With the proposed home, both side yards will be conforming.

Mr. Michaels stated that 4 bedrooms are being proposed. Mr. Cifelli asked if 3 bedrooms could be proposed instead. Mr. Michaels explained that the building footprint wouldn't really change that much, even if one of the bedrooms was reduced.

Mrs. Kass pointed out that the proposed garage, if it were detached, wouldn't count in the FAR calculations.

Mr. Michaels stated that if the garage was constructed in the back, the driveway would have to be extended, thus increasing the lot coverage.

Mrs. Kass noted that the driveway itself is a pre-existing condition, and that the Borough preferred detached garages. She felt that part of the look of the house is not having the garage at the front of the building.

Chrmn. Cifelli asked if the homes to the left and the right have garages in the front.

Mr. Michaels answered no.

Chrmn. Cifelli asked if what is being proposed by the applicant will be changing the streetscape.

Mr. Michaels explained that it was a limited streetscape.

Mr. Montague asked what was driving the proposed building to be so large.

Mr. Michaels answered that all of the lots in the neighborhood that are less than 5500 sq. ft. have the same problems with meeting the FAR requirements.

Mr. Montague clarified his question, asking what was the driving force or need for the FAR variance.

Mr. Michaels answered that the attached garage was part of the need for the FAR variance.

Mrs. Kass suggested that justification be given as to why the garage has to be placed in that particular location.

Mr. Michaels noted that there is no home behind the applicant's lot. A school exists, which is why the applicant's proposed home can be pushed back. If the garage was constructed in the rear yard, it would limit the usable rear yard space even more.

Mr. Haeringer felt that the proposed home was very large. Also, he believed the applicant's lot cannot handle a home this size.

Mrs. Kass pointed out to Mr. Michaels that he is making a set of trade-offs in this application; and that they need justification.

Mr. Michaels stated that the bulk of the proposed home, as seen from the street, would really fit into the same look and rhythm of the neighborhood.

Mr. Haeringer and Chrmn Cifelli believed that the general look from one side of the proposed home, will be one continuous wall.

Mr. Infante asked Mr. Michaels if he could support a statement made by Mr. Andrutchuk about safety reasons for the placement of the proposed garage.

Mr. Michaels pointed out that a longer, sloped driveway traveling to the rear could be unsafe in bad weather.

Eric Merse, 92 Washington Ave., was sworn in to testify. He testified that his lot at 92 Washington Ave. and the applicant's lot originally measured 50 ft. by 100 ft. Problems came up with the traffic from Washington Ave. School, so the Borough vacated a portion of Oliver Street that it still owned. As a result, Mr. Merse's lot now measures 100 ft. by 75 ft. The applicant's lot then became smaller than the two surrounding lots.

Mr. Michaels gave the negative criteria for the application. He testified that the variances can be granted without a substantial detriment to the public good. Mr. Michaels testified that the proposed development will be consistent with the neighborhood development pattern, particularly the front yard setbacks. The proposed bulk would not be seen from the street. The rear yard setback will not be a detriment to the public good, since there are no residences behind the proposed home.

Mr. Michaels testified that the proposed FAR is not out of character with the lots of this size. The FAR will not be discernible from the street. A front porch is being proposed. Front porches are encouraged by the Master Plan.

Chrmn. Cifelli reviewed what was being proposed for the second story.

Mrs. Kass had concerns about the placement of the garage in the back, and the impact that arrangement has on the FAR.

Mr. Herbert felt that the biggest problem right now is that the applicant does not have his architect present tonight to give testimony. Qualified testimony is needed to explain why four bedrooms are necessary. Mr. Herbert reiterated why the applicant needed all this much space on such a small lot. An architect is needed to explain the reasons for the proposed design.

Mr. Andrutchuk pointed out that he is the builder for the proposed home. He stated that people nowadays are looking for decent-sized bedrooms and a decent-sized kitchen. Mr. Andrutchuk realized that the Borough prefers detached garages, but the lot has a slope is making this difficult. He and the architect designed this home to give convenience to the future homeowner. Mr. Andrutchuk stated that the proposed bedrooms will measure 10 feet by 11 feet, which he felt was very minimal once a twin bed and dresser are put in.

Mr. Haeringer stated he understood, as a builder himself, that adequate sizes are needed for rooms in a house; however, a builder has to consider the size of the lot that he has to work with. The house has to fit the land it's constructed on.

The Board further discussed with Mr. Andrutchuk and Mr. Michaels the proposed placement of the garage in the back and its effect on the FAR.

Chrmn. Cifelli suggested a break be taken in the meeting.

At 9:30 p.m. a break was taken in the meeting.

At 9:37 p.m. the meeting resumed.

Attorney Rosen informed the Board that John Shaw, the owner of the existing home at 94 Washington Avenue is present tonight. Mr. Shaw grew up in the house. Attorney Rosen stated that Mr. Shaw could testify on the driveway situation on the property. Attorney Rosen asked the Board if he could bring in the applicant's architect to testify at the next month's meeting. The Board consented.

Eric Merse, 92 Washington Ave., asked he could ask Mr. Andrutchuk some questions. That Board consented.

Mr. Merse asked how far back the proposed house would be in comparison to the two neighbors. He was concerned about the proposed home blocking his view of the neighbors.

Chrmn. Cifelli asked Mr. Andrutchuk how far back the back of his house would be from the rear property line.

Mr. Andrutchuk didn't know.

Mr. Dec, the applicant's engineer, believed the proposed home would be a couple of feet back from Mr. Merse's home.

Attorney Rosen asked John Shaw to come forward.

John G. Shaw, the current owner of 94 Washington Ave., was sworn in to testify.

Mr. Shaw testified that he has lived in the existing home at 94 Washington Ave. since 1955. His father lived in the house until he died in 2014.

Attorney Rosen brought up the issue of the steepness and hazards of the existing driveway. It was difficult for his parents to carry in their groceries from the car to the house. They would slip in bad weather. Mr. Shaw explained that the existing driveway travels downward and makes a hook at the garage. He described a dangerous experience he had some years ago when driving down to the garage in icy conditions. Mr. Shaw testified that drainage on the driveway is not good. It travels down to the back of the garage.

Chrmn. Cifelli asked whether there was a drainage system currently in place to catch the run-off from the driveway.

Mr. Shaw answered that there was always a problem of water entering the garage. A channel drain was added off of the back.

The Board had no questions for Mr. Shaw.

Attorney Rosen asked that the application be carried to next month's meeting. The Board consented.

Application ZB #16-020: REO Development, 94 Washington Ave., will continue to the January 24, 2018 Zoning Board of Adjustment meeting.

Application ZB #17-31

Greenrose Reso, LLC

243 Hillside Avenue

Block: 99, Lot 2.01

Lot Frontage/Lot Width/Lot Coverage/Deck Height

Gary Haydu, Esq., attorney for the applicant, came forward.

Steve Moran was sworn in to testify.

Attorney Haydu stated that the applicant is proposing a two-story addition, and a garage. A master bedroom is proposed above the garage. The proposed decks are needed because of the uniqueness of the lot and the existing slope. Currently there is no usable backyard.

Attorney Haydu noted that two C-2 variances are being sought for lot frontage. This pre-existing non-conformity is triggered primarily because the applicant's property is a flag lot. Attorney Haydu reviewed the lot coverage percentages. He pointed out that the applicant has a flag lot. The flag-staff is essentially the driveway. There is an excess of 160 feet of driveway that otherwise would not exist.

Attorney Haydu stated that relief is being sought for deck height. Two decks are being proposed. They will be in excess of 8 feet. One deck is in conformity. A steep slope exists in the backyard. Without these decks, the homeowner would have no outdoor areas for relaxation or entertainment.

Attorney Haydu noted that the existing home had been damaged by a significant fire incident. It's been abandoned for a number of years. The house requires a total re-build to allow the home's interior to be properly developed. Attorney Haydu said the applicant, with these proposed plans, would like to bring his home into the 21<sup>st</sup> century.

Chrmn. Cifelli asked if anyone had been living in the house since the fire. Mr. Moran answered that the previous owner had been living basically in the basement of the house for 5 or 6 years.

Chrmn. Cifelli asked for testimony on the lot frontage.

Attorney Haydu called Mr. Moran forward. He asked Mr. Moran to explain how the lot frontage is impacted by the flag-staff.

Referring to the survey on the easel, Mr. Moran testified that the applicant's property was flag-shaped where the majority of the driveway begins at "the pole" of the flag. The driveway then runs all the way over to the existing residence. Mr. Moran pointed out all the existing asphalt on the property.

Chrmn. Cifelli noted the pre-existing conforming condition. He asked what proposal needed a variance.

Attorney Haydu answered that Mr. DeNave stated on the denial sheet that a variance was needed. Mr. DeNave had informed the applicant that Chatham Borough does not permit flag lots. Therefore, this lot has to receive approval for going forward into the future when the property is up for sale. Attorney Haydu felt that the flag shape is a pre-existing nonconforming condition. There was always a house on that lot. Therefore, Attorney Haydu felt a variance was needed for this situation.

Chrmn. Cifelli asked if it was possible that the lot was never approved.

Attorney Haydu clarified that the lot was approved because the municipality deeded the land back to the owner. Chrmn. Cifelli confirmed with Attorney Haydu that the property was land-locked and the only way to unlock it was with this deeding of the land. The flag portion of the property was originally owned by the Borough. The Borough deeded that portion back to the property owner.

Chrmn. Cifelli questioned whether the portion that was deeded back had been ever been approved.

Kenneth Malian, one of the partners in this application, was sworn in to testify. Mr. Malian testified that the previous owner of the property revealed that the owner prior to her had deeded the driveway and a portion of the property to the Borough if the Borough ever had plans to build an access road to something below the property. Mr. Malian noted that the deed had stated that if the Borough doesn't use that portion for an access road, they will return it to the property owner. Mr. Malian said this deeding-back arrangement was made part of the closing of the property. However, there is no issue of title.

Chrmn. Cifelli believed that there should be recognition that this new lot, with this deeded-back section, is a non-conforming lot.

Mr. Malian explained that Mr. DeNave suggested that the applicant come before the Board of Adjustment to memorialize the fact that this was a flag lot which was okay to convey.

Mr. Montague pointed out that the deed and the property survey don't match. Different distances are given. Chrmn. Cifelli agreed with this observation.

To help clarify this issue, Attorney Haydu said he will provide a copy of the title insurance policy. This policy will define exactly what the applicant owns.

Mr. Infante noted that the Board has never dealt with a situation like this before. He suggested Board members ask for guidance on what they are being asked to do.

After further discussion, Chrmn. Cifelli asked whether this matter should really be before the Planning Board instead. He also pointed out that a new non-conformity was created when this deeding-back took place.

Mr. Haeringer asked if a steep slope variance was needed.

Attorney Haydu answered no. All the technical reports on the steep slope issue had been submitted to Mr. DeNave. Mr. DeNave determined that a steep slope variance was not needed for this application.

Summing up, Attorney Haydu stated that he will obtain the deed, the title policy, and compare those documents with the survey, and identify any discrepancies. Mr. Malian noted that the applicant will have to return to the Board with respect to the front variance. Mr. Malian asked if

testimony could be given for the deck height variance. Chrmn. Cifelli and Mrs. Kass recommended that the deck issue be discussed at a future hearing. The hour is getting late.

Application ZB #17-31: Greenrose Reso, LLC – 243 Hillside Avenue will carry to the January 24, 2018 Zoning Board of Adjustment Reorganization meeting.

At 10:30 p.m. the meeting adjourned.

The next Zoning Board of Adjustment meeting will be held January 24, 2018, 7:30 p.m., in the Council Chambers, Chatham Borough Hall.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary