

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT

April 19, 2018

7:30 p.m.

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

Names	Present	Absent
Michael A. Cifelli, Chrmn.	X	
Helen Kecskemety	X	
Frederick Infante	X	
Douglas Herbert		X
H.H. Montague		X
Jean-Eudes Haeringer	X	
Patrick Tobia	X	
Alida Kass		X
William DeRosa	X	
Patrick Dwyer, Esq.	X	

Also present:

Kendra Lelie, professional planner for the Borough

Vince DeNave. Borough Zoning Officer & Engineer, arrived later in the evening

Public Comment

There was none.

Resolution #ZB 2018-11

The review and vote of the March 28, 2018 Zoning Board meeting minutes were tabled. These minutes will be voted on at next week's meeting.

Resolutions

There were none.

Returning and New Applications

Chrmn. Cifelli noted that two applications will be heard tonight. They are continuing from previous hearings and are seeking use variances. The two applications are:

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

Application ZB #14-29: 4 Watchung Avenue, LLC – 4 Watchung Avenue

Application ZB #16-006

8 Watchung Avenue, LLC

8 Watchung Avenue

Block 134, Lot 2

Site Plan Application

This is continued from the February 28, 2018 Zoning Bd. of Adjustment meeting.

Gary Haydu, Esq., the attorney for the applicant, came forward. Attorney Haydu and Chrmn. Cifelli reviewed the number of eligible Board members present tonight.

William Weichert, IV, the applicant, was present and remained under oath from the previous hearing.

Answering questions from Attorney Haydu, Mr. Weichert testified that he had ten packages to present to the Board. Each of these packages are tickets from customers who come to his yard at 8 Watchung Avenue. Their monthly statements are attached to these tickets. These packages contain repeat customers of his business. Mr. Weichert stated that he had a mix of customers. He believed that the contractors bought more products from him than individuals who drive in. Mr. Weichert testified that he had quite a number of customers.

Mr. Weichert submitted Exhibit A-5: Ten binders, each a customer of Mr. Weichert's. Each customer was identified by Attorney Haydu:

Customer A: Cardinal Landscaping Services

Customer B: Hickory Landscape

Customer C: Costanza Landscaping

Customer D: Summit Board of Education

Customer E: Drew University

Customer F: Sweetin Landscaping

Customer G: Rose City Paving & Construction

Customer H: Environmental Approach

Customer I: Stashluk Plumbing

Customer J: Episcopo Builders

Attorney Haydu recalled that at the last hearing, a discussion was held about the number of pieces of equipment that were stored in the yard at 8 Watchung Avenue. Some of this equipment was important to Mr. Weichert's business operation. Other pieces of equipment were not in good condition. And some pieces of equipment were going to be disposed of by Mr. Weichert.

Attorney Haydu stated that by a letter dated May 10th, a series of photographs were made available. Mr. Weichert testified that he had hired a drone to take those photographs of his property on or about April 10th. Mr. Weichert had put a black "X" on the photos to indicate what pieces of equipment were going to be sold off or disposed of.

Mr. Weichert submitted these marked-up photos as Exhibit A-6.

Referring to these photos, Attorney Dwyer asked Mr. Weichert if those pieces of equipment marked by an "X" had actually been removed.

Mr. Weichert answered yes. All but two pieces. These pieces will soon be re-located.

Mr. Weichert submitted another set of photos that a drone had taken the following day, April 11th. These photos depict the equipment pieces that are now gone from the site. However, one piece of equipment, still on the site, is awaiting tires in order to leave the site. It is Mr. Weichert's intention to remove this piece of equipment from the site.

Mr. Infante asked if any of the equipment pieces that had been X-out would return to the 8 Watchung Ave. site.

Mr. Weichert answered no. These equipment pieces will never return to the site. He testified that no more than 12 pieces of equipment will be kept on the site. These 12 pieces of equipment would allow Mr. Weichert to adequately maintain his business. Mr. Weichert described this equipment that will be kept on site: bulldozers, wheel-loaders, a roller, a street-sweeper.

The Board and Mr. Weichert further discussed the types of equipment that will be kept on site, and what they are used for.

Mr. Infante asked how many customers did Mr. Weichert have in a day.

Mr. Weichert answered that the number fluctuated. Some days there are no customers. Other days, 20 customers may show up on the site. The type of weather and time of year can influence the number of customers.

Mr. Infante felt that that 12 pieces of equipment was a large number in relationship to the number of customers coming to the site.

Mr. Weichert explained that there could be several projects going on at the same time on site that needed this equipment.

Chrmn. Cifelli asked what items were sold inside the trailer.

Mr. Weichert answered that the trailer has samples for customers to look at. Among these samples are pipe fittings, hand tools, silt fence, etc.

Attorney Haydu asked Mr. Weichert if he currently had 12 pieces of equipment on his site.

Mr. Weichert answered that he would like to have 12 pieces of equipment. He explained how the machinery has to be renewed over the years. Mr. Weichert didn't want the Zoning Official issuing him a violation if he could stay at the number 12. Mr. Weichert testified that currently he does not have more than 12 pieces of equipment.

Mr. Haeringer confirmed with Mr. Weichert that his site at 8 Watchung was not going to serve as a transient parking lot of sorts for job sites. Mr. Weichert stated that his Chatham Main site on Main Street serves that purpose.

Mr. DeRosa confirmed with Mr. Weichert that Chatham Main owned these 12 pieces of equipment. Chatham Stone & Earth rents equipment from Chatham Main on a monthly basis as they are used.

Ms. Leili brought up the area that has been shown on the latest Site Plan. There is an area to be enclosed with a privacy fence. Ms. Leili asked if this area with the fence was designated for the 12 pieces of equipment.

Mr. Weichert answered yes. He believed that those 12 pieces of equipment will be able to fit in that enclosed area.

Ms. Leili recalled at the last meeting, it was felt that a use variance would be needed for another storage area for Chatham Main on this site. Is this use variance still needed? Ms. Leili asked Mr. Weichert if he was storing other pieces of equipment for Chatham Main, that will go back and forth.

Mr. Weichert answered no.

Ms. Leili asked what is the use variance for now.

Attorney Haydu answered that it has been deemed that this is not a principal permitted use.

Ms. Leili asked Attorney Haydu if that was the argument he was going to pursue or will an accessory use be sought.

Attorney Haydu answered that he pursuing a permitted accessory use variance, since that is what had been required by Mr. DeNave, the Zoning Officer.

Ms. Leili disagreed. She believed Mr. DeNave was requiring a Site Plan from Mr. Weichert.

Ms. Leili stated that she wanted to make sure the applicant was in front of the correct Board. She pointed out that at the last hearing, two uses were being discussed for Chatham Stone & Earth and Chatham Main. Chatham Main had been storing equipment at 8 Watchung Avenue.

Attorney Haydu stated that Chatham Main has been eliminated from the process. Chatham Main will no longer store its equipment on the 8 Watchung Avenue site.

Attorney Haydu clarified that the pieces of equipment are the tenant's possessions.

Ms. Leili pointed out that the pieces of equipment that are on the property. They are used for the principal use on this property. At the last hearing, it was understood that the equipment kept at 8 Watchung Ave. was not only for Chatham Stone, there would also be used for Chatham Main and may go back and forth to different jobs. Ms. Leili felt that was the reason for the use variance – two principal uses on one lot.

Mr. DeNave arrived at this point in the meeting, at 8:07 p.m.

Mr. DeRosa felt that if Mr. Weichert could sublease the equipment back to Chatham Main, then 8 Watchung Avenue would become a parking lot for the equipment.

Attorney Haydu didn't believe 8 Watchung would become a parking lot. The testimony has been that Mr. Weichert uses these nine pieces of equipment to conduct his business. These pieces of equipment don't go off site for any other purpose other than maintenance. When the maintenance work is done, the equipment gets returned to the site. Attorney Haydu stressed that Mr. Weichert isn't creating a parking lot for his equipment.

Attorney Haydu stated if Mr. Weichert leased equipment from "ABC Finance Company", he would have the same relationship to that equipment, as he has, because he leases that equipment from Chatham Main. Attorney Haydu emphasized that no shell game was going on here.

Attorney Dwyer pointed out that the testimony has now changed from the last hearing. At the last hearing, testimony was given that the equipment on site belongs to Chatham Main, and is used both by Chatham Stone & Earth and Chatham Main. Tonight's testimony states that the equipment is on the site, it is owned by Chatham Main; however, it is used only by Chatham Stone & Earth. There's now confusion.

Attorney Haydu noted that the equipment on the site, that didn't belong to Chatham Main, has now been disposed of. Attorney Haydu stated that after listening to comments from the Board, Mr. Weichert had then decided to clean up the site, now, rather than later. Mr. Weichert had wanted to show the Board that he was trying to do the correct things. He made an effort to only have equipment at 8 Watchung Avenue and only for Chatham Stone & Earth.

Chrmn. Cifelli questioned whether the applicant was here for a variance or not.

Mr. DeNave stated that if outside storage of vehicles was "being taken off the table" it would then be a permitted use; however, site plan approval would have to be obtained. The applicant would then have to go before the Planning Board, not the Zoning Board. Mr. DeNave pointed out that 8 Watchung Ave., LLC has never been granted any site plan approval. However, it would be a permitted use as a retail trade, since stone and other materials will be sold.

Attorney Haydu pointed out that earlier in tonight's hearing, he had submitted invoices of Mr. Weichert's customers, proving that this is a business that operates for the benefit of the public.

Mr. DeNave stated, that from a zoning point exclusively, he is aware that a retail trade operation is going on at that site. However, he felt that the business hadn't started that way. Mr. DeNave believed the first use on the site had been for storage of Chatham Main vehicles. Now it's morphed into this other use. Mr. DeNave wanted more clarity on what was going on at 8 Watchung. If the applicant testifies that Chatham Main will no longer be storing vehicles at that site, then it becomes a permitted use. However, site plan approval is still needed.

Attorney Haydu agreed with Mr. DeNave's assessment.

Attorney Dwyer stated it is possible to administratively transfer the application to the Planning Board.

A member of the audience, who had been waiting a long time, asked permission to come up and speak.

David Norris, Esq., was sworn in to testify. He stated that he is the attorney for S. Rotondi & Sons, who is situated across the street from 8 Watchung Avenue.

Attorney Norris stated that at the first hearing there had been a discussion of the sale of materials for Chatham Main, 40% of it. It was known that the 8 Watchung Avenue site was used for years as a storage facility for Mr. Weichert's equipment and materials. It then morphed into this retail trade. Attorney Norris pointed out that testimony had been given, under oath, that the material was then going to be sold to customers of Chatham Main. Also, that the equipment on that site was going to be used on jobs all over the place.

Attorney Norris noted that it has not been clarified under oath regarding what Mr. Weichert will be using the 12 pieces of equipment for. Attorney Norris questioned whether the dirt operation that Mr. Weichert had testified on was still part of this application. Attorney Norris questioned why it was just a retail trade now being proposed.

Chrmn. Cifelli called for a break in the meeting.

At 8:17 p.m. a break was taken in the meeting.

At 8:23 p.m. the meeting resumed.

Attorney Dwyer reported that he, Chrmn. Cifelli, and the Board's planner, had taken a closer look at the ordinance with regard to the evidence presented so far with this application.

Chrmn. Cifelli stated that this application tonight is different from the one presented at the first hearing. He confirmed with Attorney Haydu that the application is now considered a retail trade, which is permitted in this particular zone. Chrmn. Cifelli read aloud the definition of "retail trade" as stated in the Land Development Ordinance. In the definition, Chrmn. Cifelli quoted that no drive-throughs would be permitted for retail trade. He asked why wasn't 8 Watchung Avenue not considered a drive-through?

Chrmn. Cifelli stated that if the Board concludes that 8 Watchung Ave. meets the definition of retail trade, that it becomes a site plan application within the jurisdiction of the Planning Board. If the Zoning Board doesn't believe 8 Watchung Ave. meets this definition, the application is for a use variance.

Chrmn. Cifelli suggested Attorney Haydu spend a few minutes in private to discuss this situation with the applicant and his planner.

At 8:26 p.m. a break was taken in the meeting.

At 8:35 p.m. the meeting resumed.

Attorney Dwyer stated that he, the Board planner, and Chrmn. Cifelli, during the break, had talked about the meaning of the ordinance and how it applies to the facts that are represented.

Chrmn. Cifelli said he wasn't comfortable in having the Board make a decision on whether the subject property meets the language of this particular ordinance, without some further consideration. He felt it would be in everybody's interest if the Board could step back, study the ordinance, and be prepared to continue the application at a future date.

Attorney Haydu accepted that suggestion. He believed that the ordinance contemplated Mr. Weichert's type of operation. Attorney Haydu felt the ordinance was meant for maybe a hamburger drive-thru. Customers coming to 8 Watchung Avenue would have to park their vehicles, go into the office, pay for their product, have their vehicle loaded up.

Chrmn. Cifelli told Attorney Haydu that the type of operation that he is describing exists in a prior ordinance which describes retail services. There is a distinction in the ordinance between retail services and retail trade. Chrmn. Cifelli suggested that everyone take a step back. He and the other Board members could then look at the pertinent ordinance more in depth.

Attorney Dwyer suggested Attorney Haydu and Mr. Weichert submit a statement of this most recent position on this application. This statement should be submitted to the Zoning office ten days prior to the next hearing.

Chrmn. Cifelli stated that if the Board believed that Mr. Weichert's business doesn't meet the definition of retail trade, Attorney Haydu and Mr. Weichert could then appeal that decision. If the Zoning Board decides it does meet the definition, it becomes a planning issue and goes before the Planning Board.

Chrmn. Cifelli told Attorney Haydu that he will submit some available meeting dates, so this decision can finally be made.

Mr. DeNave suggested that the applicant submit a letter in writing to him, explaining what the use of the business is. Explain what exactly is being done on site. Mr. DeNave said he could then make a determination. If the applicant doesn't agree with Mr. DeNave's determination, an interpretation can be requested. If this is determined to be a permitted use, and the applicant goes before the Planning Board, the resulting resolution will then state clear regulations of what the business can and cannot do. If the business does some action that's not allowed, it must come before the Zoning Board again.

Attorney Haydu confirmed with Mr. DeNave that this letter should be in a certification form or in an affidavit form. Mr. DeNave stated that this letter could help him determine which Board should be hearing this application.

Attorney Haydu and Mr. Weichert then departed.

Application ZB #14-29
4 Watchung Avenue, LLC
4 Watchung Avenue
Block 134, Lot 1
Litigation and Remand

A court stenographer was present to record these proceedings.

Robert Podvey, Esq., attorney for the applicant, came forward.

Chrmn. Cifelli confirmed with Attorney Podvey that he is present tonight on a Remand from the Superior Court.

Attorney Podvey agreed, clarifying that it is a Remand in light of additional facts. It is not a pure Remand.

Chrmn. Cifelli reminded Attorney Podvey that six Board members are present tonight to vote. One of the Board members was not on the Board at the time this application began.

Attorney Podvey stated that, under the circumstances, he did not want to move forward. He noted in the submission itself, there is a copy of the order of the court, which is Exhibit E. Attorney Podvey noted that Exhibits F & G are not submitted pursuant to the court order. Those are environmental exhibits. He would like a consensus from the Board tonight on whether they would consider those exhibits and perhaps hear testimony from Mr. Hansen, particularly as to Exhibit G.

Attorney Podvey noted that Exhibit F is a DEP website exhibit that shows historic fill existing on this site. Exhibit G is an estimate prepared by Mr. Hansen who testified to the Board as to the total cost of a clean-up to remediate what exists on this site as opposed to letting what is happening currently. Attorney Podvey said he had taken into consideration what has happened over the last year, particularly in court, he felt it would be a good idea to include these two exhibits. Attorney Dwyer had told him that it would be up to the Board to accept these exhibits.

Chrmn. Cifelli, speaking only for himself, felt the addition of these exhibits wouldn't be a problem. However, if the court's order is relatively specific as to what the Board is supposed to do. Chrmn. Cifelli stated that he did not want to go afoul of that in any way.

Attorney Podvey stated that Attorney Dwyer and Borough Attorney Lott submitted an order. Attorney Podvey noted that he had added to the order. Attorney Dwyer and Attorney Lott had returned with the language for Item 4. Attorney Podvey said he couldn't predict what the court will do.

Attorney Dwyer pointed out that Items 1, 2, and 3 were what the court wanted. When Attorney Dwyer had drafted the Consent Order and sent it to Counsel. Attorney Podvey indicated that he

would prefer Item 4 added. Attorney Dwyer said that the Judge wanted a consensus from the Board that Item 4 be part of the Consent Order.

Summing up, Chrmn. Cifelli informed Attorney Podvey that if he wanted to submit an item, he is free to do so. Attorney Podvey can submit what he believed to be relevant outside of Items 1, 2, and 3. The Board can then determine how much weight to give it. Attorney Podvey was satisfied with this arrangement.

Application ZB #14-20: 4 Watchung Avenue LLC will be carried to the April 25, 2018 Zoning Board of Adjustment Agenda.

Also, Application ZB #16-006: 8 Watchung Avenue, LLC will be carried to the April 25, 2018 Zoning Board of Adjustment Agenda.

At 8:55 p.m. the meeting adjourned.

The next Zoning Board of Adjustment meeting will be held on Wednesday, April 25, 2018, 7:30 p.m., Council Chambers, Upper Level, Chatham Borough Hall.

Respectfully submitted:

Elizabeth Holler
Recording Secretary