

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT
 August 22, 2018 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 of this Zoning Board of Adjustment meeting was 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:

Vincent DeNave, Borough Engineer & Zoning Officer
 Kendra Lelie, PP, AICP, ASLA, Planner for the Board of Adjustment

Resolution #ZB 2018-15

The minutes of the July 30, 2018 Zoning Board of Adjustment were approved by the Board.

Public Comment

There was none.

Resolutions

Application ZB #18-08

Gopalakrishnan & Krishnamurthi

67 Hedges Avenue

Block 54 Lot 61

Building Coverage/Lot Coverage/Front Facing Setback

Attorney Dwyer summarized this application which proposed a garage after major improvements had been done to the existing home. Three variances were being sought for this garage. These variances could not be granted under the Municipal Land Use Law. The Board denied the application. A roll call vote was taken to approve this resolution confirming the Board's denial of the variances:

Mr. DeRosa - yes
 Mrs. Kecskemety - yes

Application ZB #18-03

Tolleson

37 Roosevelt Avenue

Block 53 Lot 48

Side Yard Setback/Building Coverage/FAR

Attorney Dwyer summarized this application which proposed a new garage very close to the side yard and utilizing their old garage for living quarters. The Board felt there was sufficient testimony to grant the C1 variance. A roll call vote was taken to approve this resolution confirming the Board's approval of these variances:

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

Application ZB #18-09

Alden

74 Fairview Avenue

Block 4, Lot 2

Front Yard Setback

Attorney Dwyer summarized this application which proposed construction of a front porch, which required a front yard setback variance. After a neighborhood analysis was presented by the applicant, the Board approved the Front Yard Setback. A roll call vote was taken to approve this resolution confirming the Board's approval of this variance:

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

Application ZB #18-04

Zito

56 Kings Road

Block 29, Lot 19

Building Coverage/Lot Coverage/Garage Height

Attorney Dwyer summarized this application which proposed construction of a garage with an attached covered patio at the rear of the property. The applicant had reduced the size of the garage to now hold two cars. After the applicant made reductions to her plans, the Board approved the variances. A roll call vote was taken to approve this resolution confirming the Board's approval of the variances:

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

Application ZB #18-11

Crowley

52 Red Road

Block 113, Lot 11

Rear Yard Setback

Attorney Dwyer summarized this application which proposed a 3-story addition, on the left-hand side of the house that would face the railroad tracks. The house sits on a corner lot. Screened vegetation also exists between the applicant's home and the neighbor's home. The Board approved the rear yard setback variance. A roll call vote was taken to approve this resolution confirming the Board's approval of this variance:

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

Returning and New Applications

Chrmn. Cifelli announced the status of the following applications:

Application ZB # 16-006: 8 Watchung Avenue, LLC – will be heard tonight
 Application ZB #17-30: Main St. Development Group, LLV – 585-589 Main St. is still pending
 Application ZB #18-01: Hume – 233 Fairmount Ave. – will be heard tonight
 Application ZB #18-13: Frey – 7 Ellers Drive – is scheduled to be heard tonight
 Application ZB #18-14: Williams – 36 Kings Rd. – is scheduled to be heard tonight
 Application ZB #18-15; Rajappa – 56 No. Summit Ave. – is scheduled to be heard tonight
 Application ZB #18-16: 548 Main St., LLC will be carried at the request of their attorney, Gary Haydu, Esq.
 Application ZB #18-17: Catullo - 49 Fairmount Ave. – is scheduled to be heard tonight
 Application ZB #18-18: Ou – 27 Girard Ave. – is scheduled to be heard tonight

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 meeting.

Attorney Haydu stated that William Weichert, the owner of 8 Watchung Avenue, LLC is present tonight to provide additional testimony as requested by the Board. The Board asked for further information on how the applicant's business operates, specifically whether this would be considered a drive-through business. The Board also wanted to know the height of the materials kept on site.

Attorney Haydu noted that Andrew Clarke is present tonight to testify on the overall storage of the materials. He also noted that a planner was present tonight to testify on Mr. Weichert's behalf.

Mr. Weichert remained under oath from the previous hearing.

Chrmn. Cifelli recalled that a discussion had been held by the Board of whether the use would conform to what the zone required. Subsequent to that discussion, a certification was to be submitted from Attorney Haydu's office.

Attorney Haydu submitted Exhibit A-8: the certification.

Chrmn. Cifelli brought up the question of whether the operation proposed at the applicant's property complies with the Borough ordinance. If the operation does not comply with the ordinance, would the applicant be entitled to a use variance?

Chrmn. Cifelli confirmed with Attorney Haydu that there had been an issue about the height of the building materials stored within the retaining walls. Attorney Haydu pointed out that the retaining walls, at this point, are no higher than 4 feet. The height of the piles that go above the retaining walls may be an issue.

Chrmn. Cifelli asked Attorney Haydu what ordinance he is referring to in terms of being in compliance and how does the applicant comply with what is being permitted by that ordinance.

Attorney Haydu answered that the applicant is entitled to the storage of materials within the ordinance.

Chrmn. Cifelli asked if the principal use of this business would be the sale of earth products and soil to the general public, as well as to landscape contractors. Attorney Haydu felt that under the Borough's ordinances, those sales would be deemed retail sales to the general public.

Chrmn. Cifelli confirmed with Attorney Haydu then that this business is retail trade. Chrmn. Cifelli noted that retail trade is permitted in this particular zoning district. He asked what would be the definition of retail trade.

Attorney Dwyer read aloud the definition of retail trade as found in the Borough's Land Development Regulations.

Chrmn. Cifelli asked if there was a site plan.

Attorney Haydu answered that they had an engineering plan and other material that had been previously marked.

Andrew Clarke, the applicant's engineer, put the site plan on the easel. Mr. Clarke remained under oath from the previous hearing. At Chrmn. Cifelli's request, Mr. Clarke pointed out where the bins would be located. The bins will be concrete blocks installed in the middle where the various materials will be stored. Enough space will be provided for circulation. An existing soil stock pile will become more contained and delineated. Landscaping will be planted to screen the front side of the bin area.

Mr. Clarke testified that a fenced-in area will be created for the equipment that loads and moves the materials. This particular equipment will be used for only the activities on site. Mr. Clarke explained how the circulation would work for visiting trucks loading up.

Chrmn. Cifelli noted that certification of operation has been received. He confirmed with Mr. Clarke that the operation described in the certification will occur physically on the site.

Chrmn. Cifelli read aloud the following language from the Borough's Land Development Regulation: "No retail trade establishment shall have any drive-through vehicle aisles or windows for any service to the public in that manner."

Chrmn Cifelli believed that in the certification it states that only employees of the business are allowed to load. Attorney Haydu agreed with that point.

Chrmn. Cifelli stated that he has trouble, with the drive in/pickup process, understanding why this is not a contractor's yard.

Attorney Haydu stated that this is definitely not a drive-through facility. He believed that a drive-through facility contemplates that there is a very specific path to travel from one point to another. The applicant's site has the ability for someone to move about the yard, and go from one bin to another. Attorney Haydu pointed out that the applicant will not have an ordering lane or pick-up window on his site.

Attorney Haydu and the Board discussed what is considered a drive-through facility. Attorney Haydu noted that the ordinance has no definition for a drive-through business.

Attorney Haydu brought up the example of an Ace Hardware customer parking his car, ordering a large item, and having an Ace employee carrying the item out and loading it into the car.

Chrmn. Cifelli noted that this particular application involves a use variance. He felt that the Board members were hesitant in deciding on this application, because in the future, other businesses may be using the Board's interpretation of this ordinance when seeking approvals.

Mr. DeRosa suggested a "walk-through" be explained on how a customer would drive through the site to pick up materials and exit the site.

Mr. Weichert explained that a customer would drive in with a pick-up truck. The customer would walk into the office, place his order, and receive his ticket. The customer will be given directions on where to go to pick up his requested materials. The customer would drive to the correct pile and have his vehicle loaded by a loading machine. The material would be covered by tarp. The customer would then drive off the site. Mr. Weichert felt this procedure was the same procedure followed by neighboring building trades business. Mr. Weichert pointed out that a homeowner could visit his site with his car and an employee could shovel the requested materials into little buckets for the customer.

Mr. DeRosa asked how would that process not be considered a drive-through.

Mr. Weichert felt that a customer picking up stones, mulch, etc. from his site would be the same as a customer picking up lumber from a lumber yard. He pointed out that his employees will be helping the customers load up their vehicles with the needed materials.

Mr. Haeringer asked Mr. DeNave, the Borough Zoning Officer, if he considered Dreyer's Lumber, next door, as retail trade?

Mr. DeNave answered yes.

Mr. Infante pointed out that a customer does not "drive through" Dreyer's Lumber business. Mr. Weichert's business uses arrows.

Mr. Weichert explained that the arrows are to show customers where to safely drive. The arrows will help prevent drivers from coming head to head on the site.

Mrs. Kass asked what scenario is the ordinance prohibiting that's a drive-through that doesn't have a customer window.

Attorney Haydu noted that the applicant's planner could address that issue.

Mrs. Kecskemety explained the procedure she followed when picking up mulch at The Farm in Green Village. She considered that The Farm would be a drive-through business.

After further discussion, Mr. DeNave explained that if the Board believed Chatham Stone & Earth is a drive-through business, the application needs to stay in front of the Zoning Bd. of Adjustment. If the Board believes that this business is only a retail trade, the application should go before the Planning Board. Mr. DeNave pointed out that the difference from Mr. Weichert's business and Dreyer's Lumber is that there are more transactions for a customer to do inside Dreyer's Lumber.

Mr. DeNave noted that when this particular ordinance was adopted, he didn't know what the governing body was intending to prohibit. The present ordinance has implications for many other business in this M-1 District. Mr. DeNave felt that the Board was trying to define a potentially poorly worded requirement currently in the ordinance.

Chrmn. Cifelli asked Board members if they were willing to accept this type of arrangement as proposed by Mr. Weichert at 8 Watchung Ave. on every piece of property in this particular district.

Ms. Lelie, the Board's Planner, read aloud from the APA Planner's Dictionary giving four definitions of a drive-through.

Ms. Lelie concluded that the Board has to interpret whether what is being proposed, or whether the current form of operation at Chatham Stone & Earth, has the same characteristics of Ace Hardware's drive-through type of service.

Attorney Haydu asked Paul Ricci, the applicant's planner, to come forward to address this drive-through concern.

Paul Ricci, planner for 8 Watchung Ave., LLC, was sworn in to testify. He submitted his credentials to the Board. The Board accepted them.

Mr. Ricci stated that he had represented MacDonald's on their drive-through applications. He pointed out that with the MacDonald's drive-through arrangements, MacDonald's is trying to get the customers through a queuing lane between 90 seconds to 180 seconds. At Chatham Stone & Earth, vehicles arrive on site and can park in a parallel fashion, still allowing 18 feet for a driveway to circulate around the yard.

Mr. Ricci testified that there is no formal queuing lane. He pointed out that there is no other way to purchase a bulk-large product unless this product is loaded into a vehicle. Mr. Ricci disagreed with Chrmn. Cifelli's belief that Chatham Stone & Earth is a general contractor's yard.

Mr. Haeringer felt that there is a lack of explanation for this type of business. He felt it would be dangerous for the Board to rule on this application.

Mr. Ricci believed that retail trade was no longer the situation here. He pointed out that contractor's offices are permitted in this particular zone. Accessory to that is storage up to 50% of the lot is permitted. Here at 8 Watchung Ave. approximately 20% of the lot is used for storage. It would still be a permitted use.

Mr. Ricci felt that any way the application is looked at, the use is really permitted, unless a real stretch of the definition is taken.

Chrmn. Cifelli asked Mr. Ricci, as a planner, if he believed every piece of property in that particular zone could look like 8 Watchung Avenue, it would be consistent with the intent and purposes of the Borough ordinances.

Mr. Ricci pointed out that this particular zone is for industrial use. He considered this zone to be all inclusive that allows almost every use that can be contemplated today. Mr. Ricci testified that Mr. Weichert's business would be permitted.

Chrmn. Cifelli asked what would be excluded in this zone.

Mr. Ricci answered hazardous materials.

Chrmn. Cifelli and Mr. Ricci further discussed the definition of retail trade. Mr. Ricci felt that if the Board really believed Mr. Weichert's business was a drive-through business, the applicant could create a "T" intersection with a dedicated loading area, where someone would have to load at a specific area on the site plan, with a delivery truck. This would not be considered a drive-through business, because a clearly designated area is being dedicated.

Attorney Haydu noted that if something needs to be done with this particular ordinance, it needs to go back to the Borough Council to better define it. He pointed out that the Board does not have the right to expand the ordinance.

Mr. Montague felt that a drive-through business does not have the customer get out of his car.

Attorney Haydu noted that a customer would have to get out of his vehicle for a second time. The owner of the material would have to tarp his material before the vehicle can drive off Mr. Weichert's lot.

Chrmn. Cifelli asked what is precluded in this ordinance in terms of retail trade.

Mr. Ricci felt that the ordinance is encouraging other uses.

After further discussion, Attorney Haydu stated that the applicant could create a loading area. It could be required that the product be delivered to that loading area and then loaded onto individual vehicles. If a specific loading area was created, any concept of drive-through would then be eliminated.

Chrmn. Cifelli stated he would like to review such a plan. He cannot rule on just a concept. He felt that the Board should concentrate on what plan is being presented tonight, not a concept. The Board has to decide whether the proposed use of the property is in conformity with the definition of retail trade. If the Board believes this use is in conformity, this application should go before the Planning Board. It then becomes a site plan application, not a use application. Chrmn. Cifelli noted that if the Board decides the proposed use is in conformity with the ordinance, the Board then decides on whether or not to approve a use variance.

Ms. Lelie, the Board planner, suggested that when the Board takes a vote on whether or not the proposed use is or is not characteristic of a drive-through, the Board should specify on what that characteristic is. Chrmn. Cifelli accepted the recommendation.

Chrmn. Cifelli asked if the public had any questions for the witnesses. There were none.

Chrmn. Cifelli asked Mr. DeNave for his final thoughts on this application.

Mr. DeNave stated that based on the fact that there is no queuing lane on the site, and the customers have to get out of their vehicles and walk to a building, makes a compelling argument that Chatham Stone & Earth is a retail trade. Mr. DeNave was not sure that there is a big difference between the circulation patterns on other businesses like Dreyer's Lumber. Mr. DeNave believed that this application would be more suited, at this point, for the Borough Planning Board to hear.

Ms. Lelie pointed out that there is not a great deal of guidance in the Master Plan or evidence of whether this particular use is prohibited, other than the fact that the Borough does not want to see drive-throughs. The Borough probably does not want to see that type of queuing in front of a building.

Mr. DeRosa brought up the instance of a customer visiting a quarry business. He asked Ms. Lelie if there is some ordinance requirement about customers not having to get out of their vehicles, wouldn't the business then be considered a drive-through?

Ms. Lelie said that would be a possibility. A very narrow interpretation exists.

Mrs. Kass asked Ms. Lelie if whether a customer gets out of his car determines whether a business is a drive-through.

Ms. Lelie answered yes. That would be one of the characteristics of whether a business meets the definition of a drive-through.

There were no comments from the public on this application.

Chrmn. Cifelli asked for comments from the Board. Mr. Tobia felt that he hadn't heard enough testimony to feel that this application is distinguished. Mrs. Kecskemety believed that the way Mr. Weichert is selling his materials is very close to how Dreyer's Lumber and Fusco's sells materials. Mr. Montague felt that the ordinance had to do with drive-throughs for food businesses. He believed Mr. Weichert's business did not fall under this ordinance's stipulations. Mrs. Kass expressed concerns about the proposed loading up arrangements. Mr. DeRosa felt that drive-through aisles were being proposed, which, he believed were not permitted by ordinance. Mr. Infante felt that the Board is dealing with a "drive-through" which, he believed, was a bald statement without any definition. He wouldn't feel comfortable applying a definition in this situation. Mr. Haeringer agreed with Mr. Infante's point. It was Chrmn. Cifelli's interpretation of the ordinance, that drive-through aisles were prohibited.

Attorney Dwyer clarified that the Board will be voting on the interpretation of the ordinance as to whether the use per se is allowed under the ordinance.

Mr. Ricci asked if the Board could distinguish between what is a driveway and what is a drive-through. Mr. Ricci felt that drive aisles are being proposed, not drive-through lanes. He and Chrmn. Cifelli briefly discussed what would be considered a drive-through lane and what is a driveway lane.

Attorney Dwyer clarified that the motion would be is to whether the ordinance allows the use that has been described by the applicant. A “yes” vote would indicate that this particular business at 8 Watchung Ave. is not a drive-through business and the use is permitted. A “no vote” indicates that the Board member considers Mr. Weichert’s business is a drive-through and a use variance would be needed. A roll call vote was taken:

Mrs. Kass	-	no
Mrs. Kecskemety	-	yes
Mr. Infante	-	no
Mr. Montague	-	yes
Mr. Haeringer	-	no
Mr. Tobia	-	no
Chrmn. Cifelli	-	no

Chrmn. Cifelli noted that the next issue is whether the applicant is entitled to a use variance. Chrmn. Cifelli and Attorney Haydu noted that this criteria will be presented at a future date when the applicant would be prepared.

Chrmn. Cifelli announced that Application ZB #16-006 – 8 Watchung Avenue LLC will carry to a September Zoning Board of Adjustment meeting. Attorney Haydu will be notified what meeting date in September that this application will be continued.

Chrmn. Cifelli also announced that Attorney Haydu’s other application, Application #18-16 – 548 Main Street, LLC will be carried to a September Zoning Board of Adjustment meeting.

Application ZB #18-01

Robert Hume

233 Fairmount Avenue

Block 98, Lot 10

Front Yard Setback/Lot Coverage/Building Coverage/

Front Facing Setback/Disturbance of Slope

This is continued from the February 28, 2018 Zoning Board hearing.

Gary Haydu, Esq., attorney for the applicant, came forward. Attorney Haydu recalled what testimony the applicant had submitted at the previous hearing. Among the proposals, the applicant desired to build a temporary road that would run down the side of the property, instead of craning an excavating machine down the property, which may prove dangerous. The applicant is proposing to put a full foundation under this house as opposed to constructing leverage outside the foundation.

Attorney Haydu noted that Paul Anderson had testified on some of the engineering issues of the property. Attorney Haydu stated that Bruce Davis, the applicant’s landscape architect, was present tonight.

Bruce Davis came forward. Mr. Davis was sworn in to testify at the February 28th hearing. Tonight he submitted his professional credentials to the Board. The Board accepted them.

Mr. Davis put Drawing Sheet L-2, the applicant's landscape plan, on the easel. Mr. Davis testified that the site has a number of ash trees, which will be removed. He noted that horticulturists have recommended that ash trees be removed on sites because of the spread of Emerald Ash Borer.

Mr. Davis testified that new plantings will be put in on the slope. These new plantings will include thirteen types of native plants, five other non-native plants, 14 native-type trees, and two non-native trees. One hundred seventeen shrubs will be planted.

In order to help stabilize the slope, Mr. Davis testified that a core-mat system provided by the Pine Lands Nursery. A seed mix will be planted along the slope side. More plantings will be installed between the proposed home and the existing homes below.

Attorney Haydu asked Mr. Davis to review the topography of the site and how he had considered the water flow on the property.

Mr. Davis answered that the applicant's civil engineer worked out a grading plan for this project. There will be stone swales installed on the side to make the water go around the proposed house on both sides. Evergreen trees will be planted to provide privacy to the neighbors on either side. Landscape lighting with a low impact will be installed to illuminate the entry courtyard area.

Board members and Mr. Davis discussed the proposed swales.

Mr. Haeringer asked how long would it take to stabilize the slope after the proposed plantings are put in the ground.

Mr. Davis answered that the slope should be pretty stable after the second year of planting.

Mr. Infante asked Mr. Davis whether he had ever done a project like this before.

Mr. Davis answered yes. He had been involved with the site plans of office buildings on a hillside in Bridgewater, NJ.

Mr. DeNave asked Mr. Davis if he had a chance to look at the soils on the applicant's site.

Mr. Davis answered that he had looked at soil maps. He has not done any on site excavations.

Mr. DeNave asked Mr. Davis if he had any concerns on 25 plus per cent slopes that some of these plantings will have problems.

Mr. Davis felt sure that problems would result when heavy rains come down; however, staking with the core mat will be done. It will all be a matter of maintenance. He explained the core mat in more detail to the Board. Mr. Davis stated that the core mat was designed to stabilize the soil

until the new plants grow up through it. When the plants grow up through it, they establish roots that hold the soil.

Attorney Haydu asked Mr. Davis whether the trees that were selected, were chosen because these particular trees have roots that grow deep.

Mr. Montague asked if any of the existing trees on the site will be kept.

Mr. Davis showed on the landscaping plan the trees, on the border, that will remain.

Ms. Lelie asked Mr. Davis about the vegetated area that will be preserved on site. What does this area include?

Mr. Davis offered to have those particular trees identified.

Mr. Davis testified that after conferring with Mr. DeNave, plantings will be put in below the house, below the lawn, in order to stabilize the area.

Ms. Lelie confirmed with Mr. Davis that the ash trees in that particular area will eventually be removed.

Ms. Lelie asked about the trees that will supplement the ash trees that will be removed. What would be the heights of the new trees?

Mr. Davis answered that the new trees would be the same ones listed for the other proposed trees on the site.

Ms. Lelie asked if any of the new trees would be evergreens?

Mr. Davis answered yes. There will be Colorado spruces. These trees start from 8 feet to 10 feet.

Ms. Lelie asked Mr. Davis how long would it take for a tree to reach the needed height to serve as a buffer to the back of the proposed house.

Mr. Davis answered that "it would take a while". It would take two or three years to make the trees look established at a height of 10 feet. The trees would then be covering about 5 feet of the proposed building.

Ms. Lelie asked if Mr. Davis would consider planting more substantial trees that are already 10 ft. or 15 ft high?

Mr. Davis answered that the matter of cost comes in. It would be expensive to plant trees over 10 feet high on a steep slope like the applicant's.

Ms. Lelie asked about some existing ash trees on the northwest corner of the property, close to the proposed driveway.

Mr. Davis said an effort will be made to preserve them. Hopefully, these ash trees will stay alive at least until the newer trees are planted.

Ms. Lelie suggested that any construction within the dripline that those trees be need to be shown as kept or removed. She asked that the drip line be included in the plans.

Ms. Lelie noted that there were three spruce trees on the northeast side of the property. The rest is stabilization material in that section. Is there a reason why additional planting would not be provided in this section, knowing that this is to be a buffer area?

Mr. Davis stated that additional evergreens could be planted there.

Ms. Lelie asked if the applicant would be interested in putting in a conservation easement on his property to prevent any future clearing of these areas.

Attorney Haydu answered that idea would have to be studied.

Summing up, Ms. Lelie recommended that substantial trees be planted on the property. She felt that would be one of the ways that helps with the mitigation of dealing with the land disturbance on this property. Ms. Lelie believed that the substantial trees will also provide a good buffer between the proposed home and the neighboring homes. Mr. Davis said that he and the applicant will look into that suggestion.

Answering a question from Mr. Haeringer, Mr. Davis described the route of the temporary road on the site.

Mr. DeRosa asked how long would it take to create that road.

Mr. Davis noted that the existing guard rail would have to be cut.

Robert Hume, the applicant, came forward. He remained under oath from the previous hearing. Mr. Hume showed where the road would run. He testified that the whole design for the front wall hasn't been planned yet. Mr. Hume stated as digging goes on, possibly a form will be put down to hold back the earth. He explained where the construction machines will be put in place on the property.

Mr. Hume put the architectural elevations dated 10/31/2017 on the easel. He explained the route of the temporary road. Mr. Hume will have his architect testify on the proposed foundation. He believed his proposals will create better drainage on the site than what now exists.

Mr. DeNave asked Mr. Davis if he was familiar with the most recent revision to the Borough's Shade Tree ordinance. The revised ordinance was adopted by the Borough Council a couple of months ago.

Mr. Davis believed so. He confirmed with Mr. DeNave that a one to one replacement for shade trees is required.

Mr. DeNave asked for the total number of shade trees that will be removed for this project. He reminded Mr. Davis that any removed shade tree would have to be replaced with another shade with the correct caliber.

Mr. Davis said that a match could be made. Mr. DeNave asked that these replacement shade trees be shown on the plans.

Mr. DeNave asked Mr. Hume what would be the deepest part of the excavation.

Mr. Hume answered 13 ft. to 15 ft. He will have the architect testify further on that situation.

The public had no questions for Mr. Davis.

Attorney Dwyer confirmed with Mr. Davis that he will submit a plan indicating which trees will be removed on the property.

Mr. Davis's testimony was finished.

At this point in the meeting, Chrmn. Cifelli announced that Application ZB #18-13: Frey – 7 Ellers Drive will be carried to the September 26, 2018 Zoning Bd. of Adjustment meeting.

Marc T. Marion, the project architect for the applicant, came forward. He remained under oath from the previous hearing.

Mr. Marion reviewed what elevations that Board members had received.

Mr. Marion stated that the applicant's property is very unique. No yard exists. The proposed floor plan is for "reversed living". Mr. Marion described the proposed floor plans. The top floor of the home will contain the main living area. Four bedrooms, two bathrooms, and a laundry area will be situated on the lower level. An elevator to the lower level is being considered. A basement will be constructed under this lower level. A two-car garage is proposed for the main level. Living space is being proposed for under the garage. The lower level will measure almost 1700 sq. ft. The exterior will be mostly stucco with a stone water table. Mr. Marion noted that most of the glazing will be at the rear of the home.

Chrmn. Cifelli asked for the height of the house.

Mr. Marion answered 16 ½ feet above the front grade. The house will have a one story feel to it. It will be just a little lower than the road. Mr. Marion believed the house will have a low impact on the street. He pointed out that the proposed house meets FAR requirements.

Chrmn. Cifelli asked how far out would the deck extend from the proposed house.

Mr. Marion answered that the deck would stick out 10 feet from the house. It will be cantilevered.

Chrmn. Cifelli asked if this deck would need additional support.

Mr. Marion answered that some steel will be running up.

Mr. DeNave informed Chrmn. Cifelli that this feature is not considered a deck by the Borough ordinance, because there are no supports.

Mr. Marion confirmed that it was considered a balcony. Another balcony is being proposed off of the master bedroom. This balcony will be lower and will stick out 4 feet.

Ms. Lelie pointed out that the proposals are over the required building coverage by 500 sq. ft.

To help address this issue, Mr. Marion distributed copies of Exhibit A-2. Mr. Marion testified that from the existing grade to the basement level in the front, that the excavation would not be that deep. There will be a lot of filling in at the front of the house. Mr. Marion stated that the full foundation was being proposed for safety reasons, to hold up the house. He believed the cantilevering will provide a solid foundation and an equal load distribution on a difficult site.

Chrmn. Cifelli asked if the cantilever could have additional supports with columns running down.

Mr. Marion did not see what the benefits of columns would be. He was not sure if the Borough regulations would allow these columns. The arrangement would no longer be considered a cantilever.

Mr. DeNave noted that by the definition of building coverage, these columns would create building coverage. The lack of columns would eliminate the building coverage.

Mr. Haeringer asked where the dirt from the excavation will be stored.

Mr. Marion said another witness could answer that question.

Mr. DeNave asked Mr. Marion if he had looked at the soils on the site.

Mr. Marion answered no.

Mr. DeNave said, depending on the soils, if he told the applicant that he would be dealing with some serious rock on the site and a hammer would have to be used, could the design be changed?

Mr. Marion answered that the height of the basement could be reduced.

Mr. DeNave confirmed with Mr. Marion that the proposed design could change depending on the soils.

Ms. Lelie confirmed with Mr. Marion that the proposed home would be under the maximum building height regulation. Mr. Marion also discussed the number of proposed bedrooms.

The public had no questions for Mr. Marion.

Paul Anderson, the applicant's engineer, came forward. He remained under oath from the previous hearing.

Attorney Haydu asked Mr. Anderson to testify on the proposed temporary road to be created for excavation work. Also, how would the property be restored after this temporary road was no longer needed.

Mr. Anderson testified that the exact means of constructing the road has not yet been determined. Construction vehicles will enter the property on native ground as opposed to filler ground. Mr. Anderson believed having the vehicles drive down a gradual slope would be a safer method. The size of the construction vehicles, the sheet pilings, have not yet been decided. These determinations will be made on the verge of construction.

Mr. Anderson testified that the structural engineer will design the foundation of the proposed home. The grading of the temporary road can then be determined.

Mr. Montague asked whether the foundation will be sitting on soil or on rock.

Mr. Anderson answered that soil testings still have to be done before the foundation can be designed. It is difficult to access the site. The guard rail has to be cut.

Chrmn. Cifelli asked if there would be any safeguards implemented along with the service road to deal with the run-off and disturbance of the steep slope as construction goes on?

Mr. Anderson answered that control barriers will be installed as well as a super silt fence. It's possible multiple silt rows may have to be installed. After some of the grading is put in place, the stormwater collection system should be installed. This collection system would control the water and return it to the ground. Chrmn. Cifelli stated that he had concerns about the people living below this project.

The Board and Mr. Anderson discussed how long this project will take. It may take a few months to clear the property.

Mr. DeNave noted that Mr. Anderson had been involved with the site plan for the steep slope construction next door to the applicant's lot. He asked Mr. Anderson whether he had been involved with the initial application which was subject to the law suit.

Mr. Anderson clarified that he had done the original design for Mr. LoboZZo before it was sold to other people.

Mr. DeNave confirmed with Mr. Anderson that he was familiar with the types of soil encountered on the LoboZZo property and the means of construction use. Mr. DeNave confirmed with Mr. Anderson that he was familiar with all the issues involving steep slope. Mr. DeNave noted that the Borough ordinance contemplated not disturbing all this land. Mr. DeNave then asked Mr. Anderson if this house could be built without putting in the access road?

Mr. Anderson answered yes, the road could be eliminated; however, the needed equipment and process changes. Construction becomes more complicated.

Mr. DeNave asked if the construction be done safely.

Mr. Anderson answered yes; however, the cost of construction would increase.

Mr. DeNave and Mr. Anderson discussed the tree situation on the property. Mr. Anderson testified that the applicant proposes to re-vegetate the slope. During construction, there is a plan to mitigate any damage caused by the grading and disturbance of those areas.

The public had no questions for Mr. Anderson.

Attorney Haydu noted that the applicant's planner will be testifying next. Since it may be a lengthy presentation, perhaps this testimony should be given at a future date.

Chrmn. Cifelli announced that Application ZB #18-01: Hume – 233 Fairmount Avenue will carry to the September 26, 2018 Zoning Bd. of Adjustment meeting.

Chrmn. Cifelli announced that the remainder of the applications on tonight's agenda will carry to the Regular Meeting of the Zoning Board of Adjustment on September 26, 2018.

The next meeting of the Zoning Board of Adjustment will be held on Wednesday, September 26, 2018 meeting, 7:30 p.m., in the Council Chambers, Chatham Borough Hall.

Respectfully submitted:

Elizabeth Holler
Recording Secretary