

CHATHAM BOROUGH ZONING BOARD OF ADJUSTMENT

December 21, 2022

7:30 p.m.

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

Attendance was taken:

Names	Present	Absent
Michael Cifelli, Chrnm.	X	
Frederick Infante	X	
Jean-Eudes Haeringer	X	
Joseph Treloar		X
David DeGidio		X
Peter Hoffman	X	
Curt Dawson	X – present by way of Zoom	
Christopher Tarnok	X	
Joseph Barrette	X	
Patrick Dwyer, Esq.	X	

Also present:

Kendra Lelie, PP, AICP, ASLA, Professional Planner for the Planning Board

Robert C. Brightly, PE, PP, CME, Engineer for the Planning Board

Public Comment

There was none.

Resolution #ZB 2021-01

Mr. Haeringer made a motion to approve the minutes of the November 7, 2022 Zoning Bd. of Adjustment meeting as submitted. Chrnm. Cifelli seconded the motion. A voice vote was taken. The minutes of November 7, 2022 were unanimously approved as submitted.

Chrnm. Cifelli made a motion to approve the minutes of the November 16, 2022 Zoning Bd. of Adjustment meeting as submitted. Mr. Haeringer seconded the motion. A voice vote was taken. The minutes of November 16, 2022 were unanimously approved as submitted.

Resolutions

Application ZB 22-017

RMI Properties, LLC

87 Watchung Avenue

Block: 109 Lot: 5

Minimum Side Yard Setback

Attorney Dwyer summarized this application which proposed a second story to a single family dwelling. The Board felt the testimony met the necessary criteria and granted the variances.

Chrmn. Cifelli made a motion to approve the resolution confirming the Board’s approval of Application ZB 22-017. Mr. Haeringer seconded the motion. A roll call vote was taken:

Mr. Dawson	-	yes
Mr. Barrette	-	yes
Mr. Haeringer	-	yes
Mr. Tarnok	-	yes

The resolution was approved.

Returning and New Applications

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

Application ZB 22-008: Hume – 233 Fairmount Avenue

Application ZB 22-019: 350 Main Street

Application ZB 22-022: KJ Singh – 86 Orchard Road

Application ZB 22-016: Stienstra – 49 Van Doren Ave. will be carried to the January 25, 2022 Zoning Bd. Meeting at the request of the applicant’s attorney. Revised plans have recently been submitted.

Application ZB 22-008

Robert Hume

233 Fairmount Avenue

Block: 98 Lot: 10

Minimum Lot Area

Minimum Front Yard Setback

Disturbance of Steep Slope

This is continued from the First Hearing held at the November 7, 2022 Zoning Bd. of Adjustment meeting.

Attorney Lipari reviewed which Board members were present tonight and were eligible to vote on this application.

Attorney Lipari reminded the Board that the applicant is seeking to build a single family home on a single residential lot, which has some extreme topographical challenges. He stated that since the last hearing, some tweaks have made to the original plans.

Attorney Lipari called Paul Anderson, the applicant’s engineer, forward. Mr. Anderson remained under oath from the previous hearing. He asked Mr. Anderson to explain the recent changes made to the plans.

Mr. Anderson put the plans dated 12-12-2022, on the easel. These plans were the original Site & Grade Plans SP2022, now showing the recent revisions.

Referring to the plans, Mr. Anderson testified that a previous index issue has now been corrected. A Zone Table Identification has now been added. The Usable Lot Area category has

been added. A calculation has now been done on the front yard impervious, which is in conformance.

Mr. Anderson pointed out that a note has been made to the plans that the garage setback does not meet the Borough's setback requirements. Stormwater calculations have been added to this sheet.

Mr. Anderson testified that the stormwater drainage for this project has been designed to handle the entire volume of a 100 year storm. It can also handle the run-off from the roof, from the front yard, and from the driveway.

On the revised plans, Mr. Anderson pointed out the proposed paver driveway. The proposed driveway will be porous with gravel underneath it. Water will go into the pavers, be soaked in, and uniformly enter the ground under the driveway area. Two large drywells will be installed in the front yard.

Mr. Haeringer asked if the gravel under the deck will count as impervious surface.

Mr. Anderson answered yes, zoning-wise the gravel will count as impervious surface. The pavers will allow the water to go into the ground.

Mr. Anderson explained that he has now balanced out the heights of the proposed retaining walls. He brought up the site distance of the property. The driveway will only mildly slope downward. It will not exist below the road. Mr. Anderson felt there would be no issue on site distances with this project.

Mr. Anderson testified that the driveway is designed appropriately for the homeowner to back out into the turn-around and leave the site safely in the forward direction.

Mr. Anderson noted that changes have now been to the site's vegetation plan.

Mr. Anderson labeled the revised plans he had put on the easel and testified from tonight as Exhibit A-2.

Mr. Brightly, the Board's Engineer, confirmed with Mr. Anderson certain recommendations that he (Mr. Brightly) had made to him since the last hearing.

Mr. Brightly and Mr. Anderson discussed the increase noted for the FAR. Mr. Anderson testified that the FAR still easily conforms to the Borough ordinance.

Mr. Brightly pointed out that at the last hearing, the Board had wanted a calculation of the area under the cantilevered area. There had been some discussion at that last hearing of whether that area was technically disturbance or not.

Attorney Lipari stated that the applicant's architect can address that situation tonight.

Mr. Anderson discussed the proposed lot coverage which he believed was conforming. The retaining walls are not to be included in the lot coverage calculation.

Ms. Lelie, the Board Planner, confirmed with Mr. Anderson that the Zoning table will be updated to indicate the maximum total lot coverage, which will be 1,677 sq. ft. A variance for lot coverage will not be required.

Mr. Brightly asked Mr. Anderson if he had done any site line profiles at all.

Mr. Anderson answered no; however, he has stood at the site, looked in both directions and can see 500 to 600 feet in either direction.

Mr. Brightly confirmed with Mr. Anderson that if the County gives their approval, no additional vegetation needs to be removed beyond what is shown for the limit of disturbance.

Ms. Lelie asked if the deck had been included in the impervious coverage calculation.

Mr. Anderson answered no.

Attorney Lipari called Marc Marion, the applicant's architect, to come forward. Mr. Marion remained under oath from the previous hearing.

Attorney Lipari asked Mr. Marion to review the revisions that he had recently made to the plans.

Referring to the revised plans, Mr. Marion testified the air conditioning platform will be slid back against the deck. Also, 966 sq. ft. is the calculation for the cantilevered area and the deck.

Mr. Marion marked his revised plans Exhibit A-4, and dated it as 12-22-2022.

Mr. Marion testified that the deck will be an open one. Water will be able to drain through it.

Mr. Haeringer asked for more information on how fire emergencies will be handled on the property.

Mr. Marion answered that the fire engines will access the home from the street. A dry well will be installed between the garage and the house.

Mr. Marion and Mr. Haeringer discussed the proposed lower floor of the home. Mr. Marion testified that all the bedrooms will have egress windows, installed according to Code, and will comply with exiting requirements. A door will be constructed to allow residents to go out on the back deck.

Mr. Haeringer asked where the residents would go after exiting the house when a fire emergency breaks out.

Mr. Marion answered that would be up to the residents. Families usually work out an emergency exit plan and a mutual meeting place.

Mr. Marion confirmed with Mr. Haeringer that there will be no staircase, and no path at the side of the home. The house will be built to code.

Ms. Lelie referred Mr. Marion to the area underneath the deck. She asked wouldn't the existing vegetation soil be compromised since a building and a deck will be above it.

Mr. Marion answered that there is "a lot of error below the deck". He noted that the vegetation of the property runs southeast. Other than the existing trees, Mr. Marion felt that the property would receive enough light for under the deck. With the deck being open, it will be receiving water on a natural basis.

Attorney Lipari pointed out that the applicant and his experts are not seeking a variance on this aspect.

Ms. Lelie stated that she would rather have this area included in the land disturbance calculation and that a variance be sought. She also noted that trees will be removed outside the limit of disturbance. Ms. Lelie questioned why this action wasn't included in the limit of disturbance.

Mr. Marion indicated that he didn't know.

Attorney Lipari indicated that matter could be addressed further after Mr. Marion finishes his testimony. The applicant's engineer could probably address that issue.

Chrmn. Cifelli asked Ms. Lelie if she was concerned about stormwater bringing up the limit of disturbance, since there is the ordinance for stormwater to run evenly down the slope.

Ms. Lelie explained that slopes should have as much root coverage as possible. Roots hold the soil in place, and will help control soil erosion. She would rather have testimony given for a "D" variance for limited disturbance instead of claiming that disturbance is not really happening, thereby not needing a variance.

Mr. Hoffman asked if anything could be put under the deck to limit future soil disturbance and provide some stabilization. He also asked if the pouring of gravel would constitute a land disturbance as well.

Ms. Lelie believed it would be a land disturbance; however, the gravel would be a mitigation for the soil erosion issue. She would rather see a variance being requested.

Ms. Lelie read aloud the land disturbance definition from the LDO.

Mr. Brightly pointed out that there is a separate definition under 165:141 which mentions the maximum disturbance limit of 300 sq. ft. He felt that the way this ordinance is written, removal of vegetation is considered land disturbance.

Attorney Lipari believed that the land disturbance ordinance has been complied with; however, perhaps a condition could be created, requiring the applicant to obtain that particular variance at another time.

Ms. Lelie clarified that the Board is not asking the applicant to create a variance and then mitigate. She believed that there is a variance already in place for an intentional or unintentional disturbance. She noted that the deck becomes an unintentional disturbance; whereas putting in gravel would be an intentional disturbance. Ms. Lelie would like to see some kind of mitigation. Perhaps some native plantings could be put in.

Chrmn. Cifelli pointed out that Ms. Capone, the applicant's final witness, may be able to testify more thoroughly on this matter.

Attorney Lipari read loud the application's legal notice for the application, which fortunately included catch-all language stating that any additional variances that may come up in the proceedings could be included in the application.

Paul Anderson, the applicant's engineer, came forward once again. He remained under oath.

Ms. Lelei noted that the Board has to make sure that the D-3 variance meets the definition for land disturbance or not. She pointed out that the proposed removal of trees must be included in the land disturbance area. Ms. Lelie pointed out on the plans which trees were marked by the applicant for removal. Mr. Anderson confirmed that the trees marked with Xs were the trees to be removed on the site.

Ms. Lelei pointed out some trees on the northeast side of the site. Ten to 12 trees seem to be outside the limit of disturbance.

Mr. Anderson clarified that any trees that are outside the limit of disturbance will not be removed. He will update the plans with this clarification.

Mr. Brightly confirmed with Paul that the run-off for the entire roof area will go to a dry well.

Mr. Haeringer believed that the area under the deck will not receive a full day's sunshine. Moss will probably grow in that area. He believed this condition would constitute land disturbance.

Attorney Lipari noted that the deck will have open slats, so water and air will be able to get through. However, direct sunlight will be impeded.

Mr. Infante asked if some kind vegetation could be planted to impede the risk of water running down, but sunlight could still be received from the southeast.

Attorney Lipari stated, if the application was approved, a condition could be included to have the applicant put in plantings under the deck.

Christine Capone, the applicant's planner, was sworn in to testify. She submitted her professional credentials to the Board. The Board accepted them.

Ms. Capone stated that the variances have been reduced. However, without any variance relief, this lot would be zoned into inutility. It's an existing undersized lot in the R-1 Zone. She explained what triggered the D-3 variance. The only burden that really has to be reconciled in this case is whether this particular location would be appropriate for this particular use. Ms. Capone reviewed that the lot variance is seeking 15,000 sq. ft.

Ms. Capone pointed out that the subject property is an undersized lot. The applicant had sent letters to neighboring property owners asking if he could buy their properties to cure this deficiency. Ms. Capone brought up the minimum front yard setback variance which is asking for 20.8 feet where 30 feet is required.

Capone noted a specific provision in the Borough ordinance which specifies that the Borough allows for a reduction for front yard setbacks when it comes to steep slopes. By minimizing the front yard setback, it would minimize the disturbance to the slope.

Ms. Capone testified that there will be a conforming disturbance at 2,954 sq. ft. where 3,000 sq. ft. is permitted. The area under the deck currently is not being included.

Ms. Capone reviewed the criteria for C-1 and C-2 variances with regard to this application. Because of the property's significant topographical condition, a C-1 variance will apply for front yard setback and lot area.

Ms. Capone pointed out that the Board could grant both front yard setback and lot area variances if one or more purposes of the Municipal Land Use Law will be advanced. Ms. Capone believed that 4 of the Municipal Land Use Laws will be advanced if this application was approved.

Ms. Capone pointed out the proposed FAR will be below the allowable.

Regarding home density, Ms. Capone had studied sizes of homes within the 200 ft. radius. Nearly 70% of the home within the radius, are similar to the size of the applicant's proposed home.

Ms. Capone testified that there is sufficient space to develop this property.

Ms. Capone felt this application is clearly a hardship case according to the Municipal Land Use Law.

Ms. Capone brought up the negative criteria. She believed the benefits for approving this application will outweigh any detriments. Some variance relief has to be granted or the applicant will have no reasonable way to develop this property.

Ms. Capone discussed at length the area under the deck. She suggested the applicant would work with the Board's professionals to come up with a planting plan for that area.

Ms. Capone brought up the front yard setback variance and why it is needed to limit the proposed land disturbance.

Ms. Capone testified that the proposed building will comply with all building codes. It will not be violating any light, air, or open space.

Ms. Capone reviewed the sizes of the neighboring homes in the immediate neighborhood.

Ms. Capone felt that there will be no detriments if this application was approved.

Ms. Capone read aloud goals stated in the Borough's Master Plan that she believed will be advanced by this application, if it was approved.

Ms. Capone felt that the applicant has considered the size and scale of the adjoining properties. An attempt was made to eradicate the existing non-conformities.

Ms. Capone reminded the Board that if reasonable variance relief was not granted, this property will be zoned as non-utility.

Ms. Capone believed the burden of proof has been met for this application. This property is an appropriate location for this proposed development. No substantial detriment will impact either the Borough's Zone Plan or the Public Good.

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

At 9:15 p.m. the meeting resumed.

Attorney Lipari asked Ms. Capone to return to the presentation table. He asked her to discuss the location of the proposed garage.

Ms. Capone referred to the Board to Exhibit A-4. She pointed out the garage will be flush with the proposed home. The Borough ordinance requires that the garage should be set back 5 feet from the house. A variance will be needed to keep the garage flush with the house. If the garage was constructed 5 feet back, additional land disturbance will result. Additional impervious coverage would be needed. Ms. Capone felt keeping the garage flush with the house would be a better zoning alternative.

Ms. Capone and Attorney Lipari discussed the waiver that is being asked for the proposed deck height elevation.

Chrmn. Cifelli and Attorney Lipari discussed the attempt made by the applicant to purchase neighboring properties. Attorney Lipari stated that, with help from a real estate attorney, no agreement could be reached by any reasonable terms for such a purchase.

Chrmn. Cifelli brought up the front yard setback, of 20.8 feet. He noted that testimony had been given that the proposed placement of the front of the house basically resulted because of the steep slope. A certain portion of the building has to be constructed on the level land that exists.

Ms. Capone added the practicality factor. Also a better zoning alternative would result.

Chrmn. Cifelli reviewed the variances being sought:

- 1) Lot area
- 2) Conditional Use
- 3) Front Yard Setback
- 4) Garage Location
- 5) Waiver for the deck height

Chrmn. Cifelli and Ms. Capone noted that the question still remains whether a variance would be needed for land disturbance under the cantilevered area.

Ms. Capone felt that the Board and the applicant could agree to reasonable conditions to install crushed stones, plants, etc. The Borough ordinance may give possible solutions to address this situation.

Ms. Capone noted that if the Board decides a variance is needed for this cantilevered ground area, the applicant can substantiate the burden of proof to grant that variance.

Mr. Infante asked if any testimony had been given on the impact the disturbed portion of the applicant's property may have on the neighboring properties below. What is the distance between the disturbed property line to the neighboring property behind the applicant's lot.

Attorney Lipari felt the applicant's engineer could answer that; however, what currently exists has to remain by ordinance.

Mr. Infante asked if there were any objects like trees to deal with any run-off that may travel to the properties directly behind.

Paul Anderson, the applicant's engineer, returned to the table. He testified that 50 feet of woods exist down in that area. The only run-off would be from what water falls through the applicant's deck.

Ms. Capone returned to the presentation table.

The public had no questions for her.

Mr. Haeringer asked what if, instead of the current application, a two-bedroom house with no deck and no over-hang was being proposed.

Ms. Capone answered that a variance would still be needed for the 12,549 sq. ft. Another variance would be needed for the 4500 sq. ft. usable lot area.

Ms. Capone felt that the only variance is really for the front yard setback variance. She pointed out that the Borough ordinance encourages that the proposed structure should be pushed forward. Also, a two-bedroom home would not match the prevailing homes in the neighborhood. The Master Plan wants home to be in keeping with the homes in the immediate area.

Ms. Capone reminded the Board that the home will be under the allowable FAR limit for an R-1 District.

Mr. Haeringer still had concerns about the size of the proposed home and the proposed land disturbance. He pointed out that disturbance will occur during the actual construction.

Addressing Mr. Haeringer's concerns, Ms. Lelie felt the question is whether this home, as proposed, will sit well on the site, will accommodate stormwater management, and can accommodate re-vegetation. She asked if there are any negative impacts that haven't been mitigated.

Mr. Haeringer felt he hadn't received a clear answer regarding the disturbance for both short term and long term construction. Also, he hadn't heard any testimony on long term maintenance for the landscaping.

Ms. Capone answered that this could be a condition of approval that the attorney will in the resolution, stipulate maintenance for what is put under the deck.

Mr. Infante pointed out another steep slope home that has been under construction for years now on Fairmount Ave. Have there been any reports on run-off problems impacting the neighbors below?

Attorney Lipari answered that he, the applicant, and his witnesses do not have direct information on that situation. All that the applicant and his experts can control is what they are proposing on their own subject property. The applicant's construction will comply with all of the Building Codes.

Mr. Infante asked if any of the neighbors living below the proposed project had offered any comments or questions on this application.

Attorney Lipari answered that none of the neighbors below, on either side, have made comments or opposed this application.

Steve Williams alerted Chrmn. Cifelli that someone on line had a question.

Alex Tyo, 288 Hillside Ave. stated that he lived below the subject property. He pointed out that Attorney Lipari had stated earlier that none of the Hillside Ave. residents had any comments or questions on this application. Mr. Tyo, one of the residents, is present tonight (on line). He will wait for the appropriate time in the hearing to give his views.

Attorney Lipari noted that he had no further witnesses to testified. He summarized the application. Attorney Lipari felt that the application is the best possible plan to develop this particular lot. He pointed out that if the plans were not approved, the property will then have no economical viable use.

Attorney Lipari closed the application and submitted it to the Board for a vote.

Alex Tyo, 288 Hillside Ave., was sworn in. He testified that that he also owns the property of 241 Fairmount Ave., which is the adjoining steep slope lot to the applicant's lot. Mr. Tyo's 288 Hillside Ave. property is the downhill adjoining lot.

Mr. Tyo stated that he didn't understand the construction proposed to build a home 18 feet above ground level at the extreme end without disturbing what is outside the dotted lines shone on the plans. He believed that the drainage plan only applied to the area within these dotted lines.

Mr. Tyo disagreed with the earlier testimony stating that the area going downhill is heavily covered with leaves. He claimed that it was thick brush.

Mr. Tyo urged the Board to take a continued hard look at the disturbance envelope being proposed. Perhaps it should be part of the package of requested ordinances.

Mr. Infante asked Mr. Tyo if his property was situated below the steep slope home currently being constructed on Fairmount Ave.

Mr. Tyo clarified that his property was not the primary lot behind the house under construction on Fairmount Ave. Addressing an earlier question, Mr. Tyo stated that construction items have traveled downhill from that construction job. An excavator had rolled down the hill, which had been a serious impact on the property owner next door to him on Hillside Avenue.

Mr. Infante asked about any run-off from the construction above.

Mr. Tyo answered no run-off has come down on his property on Hillside Avenue.

There were no other comments from the public.

Chrmn. Cifelli asked Board members to consider whether the area under the cantilevered area of the deck would qualify as land disturbance, indirectly.

Attorney Dwyer asked Attorney Lipari if the applicant would accept a variance regarding the cantilevered area as land disturbance and have it included in the overall application.

Attorney Lipari answered that the applicant will abide with a reasonable condition if it is determined that a variance is required for this matter.

Board discussion began. Mr. Hoffman stated he was comfortable with this application. He felt that the area under the deck/cantilever should be included as a variance. Mr. Haeringer and Mr.

Dawson believed that there should be a variance for the area under the deck/cantilever. Mr. Dawson pointed out that the vegetation under the deck should be suited to low light or else gravel could be put down in that area. Mr. Infante appreciated Mr. Tyo's testimony, especially his statement that he (Mr. Tyro) did not experience run-off from the existing steep slope home being constructed above on Fairmount. Mr. Tarnok and Mr. Barrette both would prefer a variance for the area under the deck/cantilever. Chrmn. Cifelli stated he fully understood the reasons for the front yard setback variance. He noted that it was not good to have a Borough lot, like this one, to be zoned out of existence, which could happen if the application was denied. He will vote to approve this application.

Chrmn. Cifelli made a motion to approve Application #ZB 22-008: Hume - 233 Fairmount Avenue with the inclusion of a variance for the land disturbance under the deck/cantilevered area and a requirement that the applicant take any mitigation steps deemed necessary by the Borough Engineer and subject to the review by the Board's Planner. Mr. Infante seconded the motion.

A roll call vote was taken:

Mr. Dawson	-	yes
Mr. Infante	-	yes
Chrmn. Cifelli	-	yes
Mr. Haeringer	-	no
Mr. Hoffman	-	yes
Mr. Tarnok	-	yes
Mr. Barrette	-	yes

Application #ZB 22-008 was approved.

Application ZB #22-019

350 Main Chatham, LLC

350 Main Street

Block: 79, Lot: 12

Side Yard Setback

Floor Area Ratio

Building Height

Off Street Loading

Off Street Parking

Steven Azzolini, Esq., attorney for the applicant, came forward.

Attorney Azzolini noted the lateness of the hour. He asked if the application could be heard at a Special Meeting of the Zoning Board of Adjustment, after the Board holds its Reorganization meeting. He pointed out that this application is for a Commercial Site Plan and involves a "D" variance. Attorney Azzolini noted that he will have to do a re-notice for a Special Meeting.

Chrmn. Cifelli indicated that could be done. He stated that the Board has a number of residential applications waiting to be heard.

Attorney Dwyer and Chrnm. Cifelli suggested that this application be carried to the next Regular Board meeting. At that meeting, the date for the Special Meeting could be announced.

Chrnm. Cifelli officially announced that Application ZB 22-019: 350 Main Chatham, LLC will be carried to the January 25, 2023 meeting without further notice.

Before adjourning, Attorney Dwyer asked that interested Board members please email him if they would like to apply for Board Chairman, Vice Chairman, or Secretary positions for the new year.

At 10:14 p.m. the meeting adjourned.

The next Chatham Borough Zoning Board of Adjustment will be held on Wednesday, January 25, 2023, 7:30 p.m., in the Council Chambers, Chatham Municipal Building. It will be the Board's Reorganization Meeting for 2023.

Respectfully submitted:

Elizabeth Holler
Recording Secretary