

CHATHAM BOROUGH PLANNING BOARD  
February 20, 2007 7:30 p.m.

Chairman H.H. Montague called this Special Meeting of the Chatham Borough Planning Board of February 20, 2007 to order at 7:30 p.m. in the Council Chambers, Chatham Municipal Building. Mr. Montague announced that legal notices have been posted for this meeting. The Planning Board meeting which had been scheduled for February 14, 2007 was cancelled due to inclement weather.

Members Present:

Chairman H.H. Montague, Patricia Rush, David Gerridge, Alan Pfeil, James Mitchell, Alison Pignatello, Bill Jankowski, Councilman Harris, Mayor Richard Plambeck.

Charles W. Foster, Esq., attorney for the Board, was present.

Members Absent:

Thomas Sennett, John Hague.

Shailja, LLC–Dunkin’ Donuts/Baskin Robbins, 118 Main Street–Block 53, Lot 32  
Preliminary & Final Site Plan Approval

Brian Burns, Esq., attorney for Shailja, LLC, was present.

Mr. Montague noted that tonight is the fifth hearing for Shailja LLC. Shailja is seeking initial and final site plan review. The applicant is also seeking a number of variances and waivers. Mr. Montague asked Mr. Burns if he wanted to sum up his application at this point.

Mr. Burns stated that he did his summation at the last hearing. However, he had some additional comments to make.

Mr. Montague recalled at the last hearing that the Board had requested comments on this application from the Chatham Emergency Squad, the Chatham Fire Department, and the Chatham Police Department. The Board specifically wanted to hear their comments regarding the Hedges Ave. driveway. Mr. Montague distributed letters from each of these entities. Also distributed was a letter from Mr. Burns dated February 19<sup>th</sup>. Mr. Montague noted that Mr. Vella has submitted photos.

Mr. Montague summarized the letters from the Chatham Police Department, the Fire Department, and the Chatham Fire Department. The Police Department has no issue with the prohibitive right hand turn on Hedges Ave., but reminds the Board that the Police Dept. will not be able to enforce this prohibition without a specific ordinance passed by

**the Borough Council.** If that is not accomplished, any such prohibition sign would be unenforceable.

Mr. Montague reported that the Chatham Fire Department had no reason to challenge these proposed plans. In case of fire emergencies, their trucks will be stationed near a fire hydrant on Main Street. They added that the use of any driveway will not be a factor, although the driveway may temporarily be blocked off during an emergency response.

Mr. Montague reported that the Chatham Emergency Squad had no issues with the proposed plans whether or not the access on Hedges Avenue is eliminated. If an ambulance responds to this site, it will be avoiding the parking lot completely regardless of its ultimate configuration. The ambulance would park at the curb on Main Street and the responders would enter the front door of the building. The Squad believed that the configuration would be no more awkward than any entrance or exit from a private property driveway.

Mr. Foster said he believed it was the Board's traffic expert (Mr. Meth), and possibly the applicant's traffic expert, **who** stated that there was parking on the north side of Main Street. Mr. Foster reported that he himself passed by an undistguishable sign at the east end of the applicant's property, on Main Street near the curb. This sign specifies "no parking from here to corner". Even though the sign is not easy to read, parking is not allowed at the Main Street frontage of the applicant's site.

On his resolution for site plan approval, Mr. Foster had made a referral of the law regarding off-site traffic conditions affecting the decision of a Board of Adjustment or Planning Board. This referral came from Cox, the expert on Zoning. Mr. Foster suggested Mr. Burns could elaborate on this issue some time during the evening.

Mr. Burns said that Mr. Foster had correctly summarized the law in the resolution that is when you're dealing with a permitted use, the issue of the traffic that you get is determined by the zoning. The volumes of traffic come with the use. The question comes down to, can a driver enter and exit the site safely. Mr. Burns felt that the Board has correctly addressed that matter during the hearings.

Mr. Foster confirmed with Mr. Burns that he agreed with him that an application cannot be turned down solely for the reason that there is off-site traffic congestion.

Mr. Foster also confirmed that a letter has been received from Mr. Burns confirming his agreement last Wednesday, when the scheduled meeting was cancelled, to grant the Planning Board an extension until tomorrow, February 21<sup>st</sup>, to make a decision. That letter was distributed today.

Mr. Foster noted that Board member Alan Pfeil has either listened to the tapes of all past Shailja hearings or has read the transcripts. Mr. Pfeil has now signed a certification that he has read and understands what has transpired and understands the evidence. Mr.

Foster stated that Mr. Pfeil is therefore eligible to vote tonight if the Board makes their decision tonight or whenever.

Mr. Montague said that Mr. Burns had comments on the resolution.

Mr. Burns said he had a copy of the latest draft he had received today from Mr. Foster. Mr. Burns pointed out that this document is Version 4, which is different from what he reviewed last Friday. Mr. Burns said many of the items in his letter have addressed these items. He suggested rather than go through his letter, he would prefer to go through this latest draft resolution and offer comments.

Mr. Burns referred the Board to page 12, item #3, which referred to requiring the applicant to mount a camera on its store to monitor the Hedges Ave. access to and from the site. This camera will report to the Borough Police any turns out of the site made to the right, or north, onto Hedges Avenue. Mr. Burns said he had no objection to that idea. Item #3 also suggested that the applicant be responsible for reporting to the Borough Police any turns out of the site to the right or north onto Hedges Avenue. Mr. Burns said that the applicant would be happy to report any such movement that his business observes. However, Mr. Burns could not guarantee that an employee would be out observing that driveway from 6 a.m. to 11 p.m. The tapes will be made available to the Chatham Police to document any violations.

Mr. Foster said the idea was to have an employee monitor the camera in the store from time to time. There doesn't have to be employee actually standing outside the store watching for violations. If the employee sees the license plate of a violator, he/she should get in touch with the police.

Mr. Burns answered that the applicant cannot have an employee watch the traffic monitor 24/7; however, an employee can "reasonably" watch the monitor periodically. If a violator is observed, the employee will report it to the police.

Mrs. Rush asked if Mr. Burns could elaborate more on the right turn issue. She recalled at the last meeting, the Board had discussed having a traffic attendant deal with this matter. Now there is talk about having a **to allow someone to** camera monitor the traffic.

Mr. Foster pointed out the offer of the monitoring camera came from Mr. Burns and his client. The suggestions from the Borough came from the Borough Administrator, the Chatham Police, the Mayor, and the Borough Engineer.

Mayor Plambeck stated concerns were raised by the Borough Administrator, Mr. Falzarano, who was a Chief of Police for many years. The Chatham Borough Traffic Officer, Roy George, and Police Captain Sullivan expressed concerns what type of person should be monitoring and controlling this traffic situation. Also, from what location should this monitoring take place? There was a concern whether they could do what the resolution seemed to be implying that the Borough was obligating itself to do. Discussions then took place and the Borough Attorney drafted a letter based on the

meeting with Captain Sullivan, Officer Roy George, Mr. Falzarano, and Mayor Plambeck. An idea of a monitoring camera eventually was suggested. Mr. Burns agreed that was his understanding of what had transpired.

Mrs. Rush said it was her understanding that if the monitoring by the camera was ineffectual, there would be an attendant working intermittently.

Mr. Foster noted that was condition #4 in the resolution. He clarified that if the Police Chief determines at some time in the future that because of the increase of traffic congestion, either on Main St. or Hedges Ave., it will be necessary for the police to have an officer at that location. The applicant will be obligated to pay the Police Department in accordance with Borough procedures.

Councilman Harris was still unclear how the monitoring camera would be helping the traffic situation.

Mr. Burns said the camera will be mounted probably on the rear corner of the building, closest to Hedges Ave. It will be aimed to film all the cars that are leaving the Hedges Ave. driveway. The applicant will have a monitoring device inside that will be watched, probably by the store manager. Directions will be listed on the wall regarding time periods the monitor has to be watched and the reporting of any violations.

Councilman Harris asked at what point does a report be made to the Police Department.

Mr. Burns answered that hasn't been decided yet. Would the Board want a report made on a daily basis? He felt a weekly report to the Police Dept. would be more sensible. This report would include the license plates of all the vehicles which made the illegal right turn. Mr. Burns assumed that the police would then issue the violator a summons through the mail. Mr. Foster pointed out that there will be a sign inside the store and **there will be** two signs on the Hedges Ave. driveway, reminding customers that the Hedges Ave. exit is being monitored by camera. People will have plenty of notice of this camera surveillance.

Councilman Harris felt that this whole idea of having a traffic attendant monitoring the vehicles exiting the Hedges Ave. driveway is unworkable. He received the impression from the Emergency Squad and the Fire Department that they feel the Hedges Ave. driveway is not necessary for reasons of safety. Councilman Harris reiterated his feelings that there is a real concern about what the impact of the Hedges Ave. driveway will have on Hedges Avenue. He would like to see that driveway closed during the peak morning hours.

The Board discussed the parking situation on Hedges Ave. Mr. Montague said it was his understanding that the Board will suggest to the Borough Council that they review the parking situation on this street and take any appropriate steps.

Mr. Burns brought up the condition regarding the no right turn sign. He noted that the sign will contain a reference to the access being monitored by camera. Mr. Burns noted that because of the requirements of the uniform manual on traffic control devices, this information will not actually be on the sign. The words will be underneath it, on the post.

Mr. Burns brought up Condition #4. He reminded the Board and Mr. Foster that the applicant has to be notified by the Borough if a traffic officer is needed, and that the applicant will be liable to payment.

Mr. Foster felt Mayor Plambeck should comment on that situation, because the Board discussions last week indicated that the traffic questions will basically be taken out of the hands of the Planning Board.

Mayor Plambeck noted that if a determination needed to be made, it needed to be made by an expert. In this particular case it would be the Police Chief. Mayor Plambeck said he was not familiar of what procedures and what notices the applicant would need. Councilman Harris agreed that the Chief of Police would make this determination.

Mr. Burns pointed out that this procedure would be a very significant expense. Mr. Burns felt it would not be realistic for the applicant to have a traffic officer posted at that intersection for 8 hours. He strongly recommended that there be a forum on this situation where give and take is exchanged.

The Board further discussed the traffic situation. Mr. Pfeil asked if the Board's traffic concerns **would be addressed** by implementing Councilman Harris's idea of closing off Hedges Avenue during the morning peak hours. Mrs. Rush pointed out the possibility of customers using Hedges Ave. beyond peak hours as a cut-through.

On other traffic concerns, Mr. Burns recalled that Hedges Ave. residents were concerned about the delivery trucks and the beepers they use when they back up. The delivery people have informed Mr. Burns that they don't use beepers. Mr. Burns had something in writing from Metropolitan Baking Company that states that fact. Mr. Burns said if this beeper-condition should ever change, the truck should then do his deliveries in the driveway next to the front entrance and have him pull out straight. He shouldn't back up. Mr. Burns did not want the driveway blocked off at all.

Mr. Foster reminded Mr. Burns that Councilman Harris had suggested the driveway access just be closed only during the peak hours in the morning. Deliveries will probably be made way before those peak hours.

Mr. Burns still felt that the Hedges Ave. driveway should remain open.

Mayor Plambeck recalled that the reason the Board touched base with all three emergency services was to get their views as to whether the Hedges Ave. driveway was necessary for them. Their responses indicate that the driveway is not essential for their services.

Mr. Burns noted that the applicant's feelings were that it would be better to have this driveway. Also, he and the applicant felt it was better not to have a dead-end parking lot. If this parking lot has a reputation for being hard for cars to get out of, it won't be used, and customers will then park where they aren't supposed to.

At Mrs. Rush's suggestion, Mr. Foster corrected Condition #9 to read that no deliveries will be made between 6:00 a.m. and 9:00 a.m.

Mr. Montague returned to Condition #4 having to do with the Police Chief determining if an increase on traffic occurs on either Hedges Ave. and Main St., that an officer be on duty there to control traffic.

Councilman Harris suggested Conditions #3 and #4 be deleted and replace them with language stating that the Hedges Ave. driveway will be blocked during certain hours. Those hours could be decided on.

Mayor Plambeck noted that this arrangement could be done. If the applicant's business has been in operation for some time, they could appeal that decision.

The Board discussed the camera situation. Mrs. Pignatello felt the camera would also serve as a back up to any claims made by Hedges Ave. residents of vehicles making right hand turns out of the driveway. Mr. Montague explained how he felt the camera would be worthwhile.

Mrs. Rush felt that closing the Hedges Ave. driveway would promote customer parking on Hedges Avenue.

Mr. Burns suggested the Board require the applicant to install some type of gate. The gate could be left open with the camera on to monitor the traffic situation. If the traffic becomes a problem, the applicant will come before the Board again. Mr. Burns brought up that the DOT says that the Hedges Ave. driveway has to stay open; the applicant has to then keep it open.

Mayor Plambeck noted that the Board's traffic engineer stated that if there is an application which goes before the DOT regarding the curb cuts, etc., and if the subject of the Hedges Ave. driveway is brought up, the Board needs to have their traffic engineer present at that meeting.

Mr. Burns said he had no problem with that.

Mr. Pfeil agreed with Mr. Montague's idea that the monitoring camera be continued to be used. Also, Mr. Pfeil would like to see the Hedges Ave. driveway be closed from the start of the business day at 6:00 a.m. to 9 a.m.

Councilman Harris said he preferred having a gate close off Hedges Ave. driveway from 6:00 a.m. to 9:00 a.m. If the applicant feels it should be opened, he can come before the Board.

Mayor Plambeck agreed with Councilman Harris's suggestion. Also, the monitoring camera could be kept on to observe traffic patterns.

After some further discussion, Mr. Foster brought up the condition that the Hedges Ave. driveway be closed for a set period of time. After that period of time, the applicant can come back and request that it be opened for three months. That would be a good way to test this driveway.

Councilman Harris disagreed with the time-frame idea. He would like to close the Hedges Ave. driveway, and leave it up to the applicant to return to the Board if he wants changes.

Mr. Burns brought up that if the DOT says that the Hedges Ave. driveway has to be kept open, that's it. Mr. Burns said he and the applicant have no control over this situation. The DOT has the final say.

Mr. Montague said he assumed Mr. Burns could obtain something in writing that this is the case. Mayor Plambeck agreed, saying that particular determination will probably be made at a meeting with the DOT. The Board should have their traffic representative at that meeting.

Moving on to other issues, Mr. Burns referred the Board to Condition #7. Mr. Burns noted that the Board already has an e-mail from the DEP that they were satisfied with the Dunkin' Donuts proposed development. Mr. Burns said he was surprised that Mr. DeNave was successful in obtaining this e-mail from DEP on behalf of the Borough. Mr. Burns asked the Board to receive this communiqué from the DEP as 'their word'.

Councilman Harris said he would like to know more about the author of this DEP e-mail and what authority they have to speak on behalf of DEP.

Mr. Burns told Councilman Harris that realistically a letter will not come from the Commissioner of DEP.

Mrs. Pignatello added that from her work in environmental law, getting an interim letter from the DEP is very rare. She was surprised that Mr. DeNave had received a communiqué from the case manager of DEP.

Mr. Foster offered to find out more about the author of this communiqué, what his position is, and what authority this person has to send out such a communiqué.

Mrs. Pignatello said she has seen from her work experience that typically when the soil remediation is done, the final report is submitted. This report refers to soils and ground

water. After that, a no further action letter is received. She **cautioned** the Board **the** State of New Jersey moves at its own pace.

Mr. Foster said he will attach the DEP's e-mail to the resolution.

On another aspect, the Board discussed the possibility of the applicant having someone other than Environmental Waste Management Associates (EWMA) certify that the soil cleanup has been completed in such a manner that the applicant may proceed with the development of the site. Board members felt that the certification letter should not be accepted unless the Board can examine the qualifications of this environmental consultant.

Mr. Burns clarified that the qualification of this consultant would be submitted to someone, probably the Borough Engineer who could determine if this consultant was qualified. The Board was agreeable to this idea. Mr. Foster added that the consultant would have to become fully familiar with this application.

At Mr. Foster's request, Mr. Burns reviewed Condition #9, that no deliveries be made to the site between the hours of 11:00 p.m. and 4:30 a.m.

Mayor Plambeck asked Mr. Burns if the applicant will have a cleaning staff to work off-hours.

After consulting with the applicant, Mr. Burns said the employee staff will clean the store a half hour after closing time, 11:00 p.m.

Mrs. Rush asked if the garbage pick-up will be on a daily basis.

Mr. Burns answered that the garbage will be picked up during the day, 3 times a week.

At Mrs. Pignatello's request, Mr. Montague reviewed that the Board is looking to close the Hedges Ave. driveway for the time period 6:00 a.m. to 9 a.m., Monday through Saturday. If the applicant wants this condition changed, he has to come before the Board. The monitoring camera will be in place and will provide weekly reports to the Chatham Police Department. The Board will also recommend to the Borough Council that a no-right turn ordinance be adopted at this location.

Mayor Plambeck suggested that before the Board votes on the whole resolution, they may want to vote on the individual amendments they agree on. Before this step, the Board should ask the public for their comments.

Mr. Jankowski asked how the Board proposes to block off the Hedges Ave. driveway. Mayor Plambeck felt that whatever means of blocking off the driveway could be decided on by the Borough Engineer.

Mr. Montague asked the public for their comments.

Bernie Vella, 58 North Summit Ave., predicted that traffic violations, noise and health issues will result if the Planning Board approves this application. If a Dunkin' Donuts is established at this location, there will be a major increase of traffic attempting to make a left hand turn onto Hedges Ave. or directly into the proposed site. Mr. Vella stated that at the present time the only traffic going east on Main St., and making a left hand turn at that point, are most likely to be Hedges Ave. residents. He felt that the traffic studies made at this location, have proved that the vehicles trying to enter the Dunkin' Donuts site will be backed up on Main St., waiting for vehicles traveling west, to give them a courtesy opening to allow them to make their left turns.

Mr. Vella offered for the Board's review a police record from the Madison Police Department of all accidents that have occurred in the Madison Dunkin' Donuts parking lot or in front of the store. This police record also showed the number of times individuals had to be dispersed from the premises in the past three years.

Mr. Vella discussed the public health issue. He noted that the proposed site is a known contaminated site as recorded by the DEP. He also noted that the Borough Engineer has received an e-mail from the DEP stating "soil and groundwater contamination associated with Exxon/Mobil and Kimber Petroleum are present at this site. The Bureau of Underground Storage Tanks does not have any issue with a Dunkin' Donuts at this site." However, Mr. Vella pointed out that further on in the DEP's e-mail it states that soil contamination in the western corner of the property could be of concern if the building is installed over the contamination. This is the precise area where the Dunkin' Donuts building will be erected.

Mr. Vella noted that the applicant has indicated that they will clean up the contamination as part of their site construction and will get a professional expert to attest to the clean-up. Mr. Vella did not want the Board to agree to this procedure. He felt if the clean-up was that easy, the site should be given a clean bill of health first, either by the applicant or the property owner, and approved by the DEP before the Board approves the application. Mr. Vella felt that if the Board doesn't first have this site cleaned up and approved by the DEP, the Borough may be liable for any ramifications that may occur due to the contamination.

Mr. Vella reported that the residents near the proposed site are concerned with the noise level associated with the back-up alarm of the delivery trucks during the day. Mr. Vella said he didn't know the size of the delivery trucks visiting the Chatham site; however, he saw and photographed 8-wheel Dunkin' Donuts tractor trailer trucks making a delivery at the Madison Dunkin' Donuts Store. He didn't believe the back-up signal could be turned off on this size truck. There may be an OSHA requirement involved. Mr. Vella felt that an 8-wheel delivery truck will not be able to fit into the space designated for deliveries at the proposed Chatham site.

Summing up, Mr. Vella believed that the Planning Board had more than ample grounds to deny the applicant's request to build a Dunkin' Donuts at this time, or to deny in the future any type of similar business at 118 Main Street.

Mary Jane Dobbs, 10 North Summit Ave., ask that a condition be added that no deliveries be allowed between 8 p.m. and 8 a.m. by a truck with a back-up beeper device. If there is any violation, that Dunkin' Donuts be held accountable for it.

Ms. Dobbs said she couldn't understand why there should a left-hand turn allowed from Main Street into this facility. She felt this arrangement will create a huge traffic issue on Main Street. If right turns are not allowed onto Hedges Ave., it's only fair that left turns onto the Dunkin' Donuts site should be prohibited, at least during the 6 a.m. to 9 a.m. period.

Ms. Dobbs believed the residents deserved something more than just an environmental comment on an e-mail. She would like to see an environmental statement in an official letter.

Martin Selzer, 72 Hedges Ave., reminded the Board that he had submitted a report and a survey. He said he would like to go over the survey now with the Board.

Mr. Burns objected to any evidence regarding an opinion survey. It's inadmissible evidence "which would taint" the proceedings.

Mr. Foster felt Mr. Burns' objection should be sustained. However, the Board, if it wishes, can receive the statement from Mr. Selzer, with the understanding that little or no weight can be attached to it. The Board can receive all sorts of information; however, some of it can't by law be considered evidence.

Mr. Montague clarified to Mr. Selzer that he is allowed to present his own opinions and individual position.

Mr. Selzer stated that he agreed with the results of the survey that nearly 80% of the Chatham residents around Hedges Ave. and Main St. are against the establishment of a Dunkin' Donuts/Baskin' Robbins at the corner of Hedges Ave. and Main St. He agreed with the beliefs of the survey that traffic is the most important issue involved with the application. The second most important issue believed by Mr. Selzer and the survey respondents was that Dunkin' Donuts doesn't fit into the character of the town.

Mr. Selzer went over the review standards followed by the Planning Board. He said that these review standards stipulate that proposed constructions must have a unified or a historical character compatible with surrounding areas. Also, the access to **the** proposed site must be safe and convenient for pedestrians and vehicles. Mr. Selzer felt that the proposed Dunkin' Donuts application fails on all these standards.

Mr. Selzer pointed out that on June 13, 2006 the Historic Preservation Commission had suggested the Borough hire a professional architectural historian. The Commission had felt it was worth spending money on this professional review because the Historic District is so valuable to the Borough. Mr. Selzer said it's not clear to him that this has been done.

Mr. Selzer noted that the proposed store will be very close to residences. He was concerned about the amount of trash this store will be generating and it being an unsafe factor for the nearby homes.

Mr. Selzer discussed the traffic issue. He noted that the gas station on the site generated 36 trips. Mr. Selzer noted that Mr. Meth, the Board's traffic expert that 200 more trips will be made to this site if Dunkin' Donuts store is built.

Summing up, Mr. Selzer strongly questioned what stake this applicant will have in this community.

Martha May, 20 Kimball St., asked if the Dunkin' Donuts in Madison will close if the Chatham store is opened.

Mr. Montague answered that the Board had no real input on that.

Mrs. May asked if Dunkin' Donuts plans to put up signs on Route 24 advertising the Chatham Dunkin' Donuts.

Mr. Montague said he did not recall any testimony on that situation.

Mrs. May asked if there was some means the Board could prohibit this signage in their draft resolution.

Mr. Montague stressed that it was the Board's responsibility to deal with this particular site and the conditions that go with this site. The Board's authority does not go beyond the boundaries of the Borough.

Mrs. May asked if the Board knew the number of health code violations at the Madison Dunkin' Donuts.

Mr. Montague answered that the Board has no testimony on that.

Mrs. May asked if she made the illegal right turn out of the Hedges Ave. and her car's license was photographed, will the police come and ticket her?

Mr. Montague suggested she direct that question to the Borough Council and whatever ordinance they adopt on this situation.

Mrs. May believed this proposed Dunkin' Donuts will be an attractive nuisance. There is nothing to prevent the young people from hanging out at this store, since ice cream will be available. She reported to Mayor Plambeck that the fence on the north side of the property is now missing. Also, as of today, the vacant gas station has been broken into. She felt this particular property is not being protected as of now.

Hans Decker, 37 Hedges Ave., believed that this proposed Dunkin' Donuts will be a magnet for traffic traveling east in the morning hours. He predicted these vehicles traveling east will take left turns onto the store site, increasing an already dangerous situation of speeding. He recommended that the Hedges Ave. driveway be eliminated.

James Cronin, 18 Hedges Ave., brought up the design and placement of the monitoring camera and gate on the proposed site. He asked if the Historic Preservation standards will be applied to this camera and gate.

Mr. Montague answered that matter has not been discussed.

Mr. Cronin asked that the same type of aesthetic standards that have been applied to other aspects of this application be applied to the camera and gate.

Mr. Cronin pointed out that a Baskin Robbins business will be on the site, as well as a Dunkin' Donuts store. He felt there will be heavy patronage by children. He noted the nearest traffic-controlled cross-walk is at Main Street and University Ave. Mr. Cronin asked that the Board recommend to the Borough Council that a minimum crosswalk, like the one on Coleman Ave. and Railroad Plaza, be established at Hedges Ave. and Main Street. He predicted a significant number of children will be trying to cross Main Street to reach this store.

Mr. Montague answered that if the Board members agree, they will take these suggestions into account.

The public comments were finished.

Mr. Burns indicated that the applicant would be willing to get input from the Historic Preservation Commission regarding the gate.

At 9:35 p.m. a break was taken.

At 9:45 p.m. the meeting resumed.

Mr. Montague noted at this time all Board members now have a draft resolution put together by Mr. Foster. This latest resolution includes all the input given by the Board so far.

Mr. Foster suggested that Board members now go over the conditions of this resolution, which approves the application, grants the variances and design waivers, and lists the various conditions.

Mr. Foster reviewed with the Board the revisions he had made to Conditions #3 and #4, on pages 12 and 13 of the resolution. Mr. Foster reviewed the revisions he had made on Condition #7 and Condition #9.

At Councilman Harris's request, Mr. Foster again read Condition #3, concerning the Hedges Ave. driveway, traffic controls and the monitoring camera.

Referring to Condition #3, Mr. Burns informed Mr. Foster that the applicant cannot be responsible for reporting every turn that exits the Hedges Ave. driveway; however, the applicant will do "reasonable monitoring" and report observed turns. He stressed that there won't be someone watching the monitoring camera 24/7. Mr. Burns asked if the applicant should submit the tape of this camera to the police.

Mayor Plambeck suggested that the employees report their observations and provide a copy of the tape.

Mr. Burns agreed to that condition.

Councilman Harris suggested adding a sentence stating that the Borough will seek to encourage DOT to permit the Hedges Ave. driveway to be closed during the hours set forth by the Board. Mr. Foster added these words: "The Borough Planning Board will be represented by its traffic engineer before the DOT. he (the traffic engineer) will advocate before the DOT that the Hedges Ave. driveway be closed during the indicated hours." The Board approved of this language.

The Board decided to delete Condition #4.

Mr. Foster asked Mr. Burns if he would like the Board to vote on this revised resolution tonight. If it is approved, the Board can memorialize the resolution at its next meeting.

Mr. Burns indicated these actions were acceptable to him and the applicant.

Councilman Harris brought up the issue of no left turns allowed from Main Street. He suggested the Borough Traffic Committee could look at that situation. This concept would include all left hand turns from Main Street, not just at Hedges Ave. and Main Street. Mr. Foster included Councilman Harris's recommendation in the resolution.

The Board had no more additions or corrections to the resolution.

Mrs. Pignatello made a motion to approve the resolution, with all the revisions made by Mr. Foster and the Board, for preliminary and final site plan approval, variance and design waivers proposed by Shailja, L.L.C. for 118-122 Main Street, subject to

memorialization at the Board's next meeting, March 7, 2007. Councilman Harris seconded the motion.

Mr. Montague asked the Board if they had any comments before voting.

Councilman Harris noted that the Board was forced to abide by a permitted use, eating and drinking establishments, in this particular zone. He felt in the future the Board should review what is permitted in this zone. He noted that the applicant has worked hard with the HPC to come up with an acceptable design. Councilman Harris felt the Board has gone as far as it can with the traffic concerns for this application.

Mr. Gerridge said that he has reviewed the Master Plan and the ordinances with regard to this application. He concluded that if the applicant meets the requirements of the ordinance the Board must approve the application. There is no basis **for** denying this particular site plan unless a specific requirement from the ordinance is not satisfactorily fulfilled by the applicant. Even though people may be unhappy about the application, it does fulfill the requirements of the ordinance.

Mr. Pfeil pointed out that the ordinance that Mr. Gerridge is referring to was established only in August of 2003. It's a recent event that allowed for eating and drinking establishments specifically in the B-3 zone.

Mrs. Rush pointed out that there is currently one other eating and drinking establishment in that zone (Bella Luna).

Councilman Harris and Mayor Plambeck agreed that the Board should move quickly to revise this particular ordinance on eating and drinking establishments. Mayor Plambeck recalled there was a feeling at the time this ordinance was adopted in 2003, that the Borough's downtown should become livelier and bring more customers to our businesses. Perhaps it has gone too far now. The Board should re-visit this issue in the B-3 zone. Mayor Plambeck commended the applicant for working with the HPC and following their suggestions. Mayor Plambeck believed that the application is now better than when it started out. He realized, though, that it's not what everyone wants.

Mr. Montague noted that the applicant has worked with the Board and the HPC to provide an establishment to replace an existing run-down building. The applicant has met the regulations in the current ordinance. The regulations that have made people unhappy, can be reviewed by the Board in the future.

A roll call vote was taken:

Mrs. Rush	-	yes
Mr. Gerridge	-	yes
Mrs. Pignatello	-	yes
Mr. Pfeil	-	yes
Mr. Jankowski	-	yes

Councilman Harris - yes  
Mayor Plambeck - yes  
Chrmn. Montague - yes

Mr. Burns thanked the Board for all their time and for holding this Special Meeting tonight.

The meeting adjourned at 10:30 p.m.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary