

CHATHAM BOROUGH PLANNING BOARD

May 7, 2008

7:30 p.m.

Chairman H.H. Montague called the Chatham Borough Planning Board meeting of May 7, 2008 to order at 7:30 p.m. in the Council Chambers, Chatham Municipal Building. Mr. Montague announced that all legal notices have been posted for this meeting.

Members Present: Mayor V. Nelson Vaughan, Councilman Bruce Harris, John Hague, Alan Pfeil, Thomas Sennett, John Bitar\*, Donna Cali-Charles, Chairman H.H. Montague. \*arrived at 7:35 p.m.

Anne Marie Rizzuto, Esq., attorney for the Board, was present.

Members Absent: Vincent DeNave, Alison Pignatello, James Mitchell.

Approval of Minutes

Regarding the meeting minutes of January 9, 2008, Ms. Rizzuto reported that the following actions will be taken:

- A resolution will be adopted complying with the law providing notices to two newspapers. Originally, the Chatham Courier was the only newspaper designated. The Morris County Daily Record will also receive notices from the Board for publication.
- An addendum will be added to the January 9<sup>th</sup> minutes to reflect this resolution amending Resolution #2008-5.

The Board unanimously approved the resolution.

The minutes of January 16, 2008 were approved as submitted. The minutes for the Closed Session of January 16, 2008 were approved as submitted.

Resolution

Romano Application – Minor Subdivision Review

184 Hillside Avenue, Block 98 and Lot 40

Ms. Rizzuto summarized this resolution, Planning Bd. Res. #2008-21, the variances granted, and the conditions imposed. Among the conditions, she reviewed the following:

- The public hearings for this minor subdivision were held on Feb. 15<sup>th</sup>, March 5<sup>th</sup>, and April 2<sup>nd</sup>. A vote was taken on April 9<sup>th</sup>.
- A motion was made to deny this application. That motion was defeated. The majority of the vote was to approve the application.
- The new lot will be mostly rectangular in shape. It will have a frontage of 65.72 feet on Hillside Ave. and Lafayette Place. The corner lot will continue to exist with frontage on both Hillside Ave. There will be a small area of frontage on Lafayette Place.
- The applicant will pay all fees & charges established by the Borough for review and processing of the application. Also, the applicant will replenish the escrows

within 20 days of request. Any deficiencies must be paid before issuance of any building permit.

- The demolition of the existing porch must be accomplished before the filing of the subdivision deed(s).
- A site easement will be prepared by the applicant's attorney and will be dedicated to the Board for the corner of Hillside Ave. & Lafayette Place.
- The applicant will provide written notice to the contiguous property owners that they are about to apply for a building permit on the new lot.
- This resolution will be attached to the deed(s) that will create these new lots. A reduced copy of the plans will be attached to the deed(s).

Board members made some suggestions and minor corrections to the resolution.

Mr. Sennett made a motion to approve the resolution as amended. Mr. Hague seconded the motion. A roll call vote was taken of the Board members eligible to vote on this application:

Mr. Hague	-	yes
Mr. Sennett	-	yes

Ogden Memorial Church – Final Site Plan Review  
286 Main Street, Block 64, Lot 1

Board members received copies of the site rendering used by Ogden Church in both the church's preliminary & final site plan reviews, as requested by Ms. Rizzuto.

Ms. Rizzuto reported on the progress she has made on this application:

- She has held several discussions with the church's engineer
- She has reached out by e-mail & phone messages to Mr. Knoll, the church's attorney
- She has a draft resolution, but has not distributed it to Board members because she still needs the proposed agreement & other documents from Ogden Church
- Because of the lateness of receipt of these documents, Ms. Rizzuto felt this resolution won't be voted on this current month

Mr. Hague suggested Ms. Rizzuto ask Mr. Knoll to provide a letter confirming that Ogden Church is extending the time for the Board to adopt the resolution. Ms. Rizzuto said she will try to reach out to Mr. Knoll again. If any documents are forth-coming from Mr. Knoll, Ms. Rizzuto will e-mail them to Board members.

Planning Board Powers Ordinance Section 165-157 B (1) – Review & Change

Mr. Montague noted this section is being reviewed because of the Board's initial question of whether it was the correct board, in this case, to approve a subdivision if more than one resulting lot would be substandard.

Ms. Rizzuto pointed out the following:

- Under the Municipal Land Use Law, the Planning Board does have the power to grant subdivisions and variances for two lots or more.
- This particular ordinance, Section 165-157 B had some typographical errors and missed citations.

Ms. Rizzuto explained that she went to the Municipal Land Use Law and has written a proposed ordinance that specifically tracks and follows the language of the applicable state statutes. Mr. Montague confirmed that this proposed ordinance will be replacing the entire “B” paragraph of Section 165-157. No changes will be made to paragraph “A”.

Mr. Hague made a motion to recommend this revision to Section 165-157 B (1) to the Mayor and Borough Council. Mr. Bitar seconded the motion. The motion was unanimously approved. Councilman Harris suggested Ms. Rizzuto write a cover letter to the Mayor and Council explaining this revision.

#### Sign Ordinance Section 165-107: Nonconforming Signs – Review and Change

Mr. Montague noted that there have been recent instances when business owners want to re-paint their existing sign or make other modifications. He believed that the Planning Board had agreed that a modification clause needed to be included in the ordinance to allow a business owner to fix and/or maintain their sign. Currently this ordinance states that nonconforming signs may not be modified unless the modification brings them into conformity with Borough regulations.

Ms. Rizzuto stated the following points:

- Chatham Borough’s existing ordinances, the Borough allows for sign modifications up to a certain period of time.
- If a tenant moves out of a store, and the storefront is vacant for 6 months, and a new tenant comes in, and the sign is non-conforming, the ordinance requires that the sign be taken down & be brought into conformance.
- There is a recent case where a new hair-stylist was moving into an outgoing hairstyling business. The sign was non-conforming. The new hair-stylist just wanted to re-paint the sign and put a new name on it. Technically, the new owner could have kept the old sign up even if it became in disrepair.
- Ms. Rizzuto brought up the legal case of Camera vs. Board of Adjustment. The ordinance in that community required removal of all signs upon a change in ownership. If the sign was non-conforming, it was removed. She discussed conformity in the business district.
- She also pointed out that the Borough would not want to impose a financial burden on a new tenant to change a non-conforming sign.
- The Board could either forward a recommendation to the Mayor & Borough Council, or the Borough Council can initiate a discussion on this issue, and forward their views to the Planning Board on what this particular ordinance

should require. Also, the Board should obtain the Building Department's opinion on the status of the town's business district's non-conforming signs.

Ms. Rizzuto and Mr. Hague discussed other legal cases concerning this type of situation with business signs. Mr. Montague noted that these LDO regulations for non-conforming signs are not easy to enforce. Mr. Hague believed Section 165-108 is unenforceable.

Mrs. Cali-Charles, a member of the Borough Sign Committee, expressed concern about the Committee continuing to rubber-stamp non-conforming signs. Currently the Borough has no ability to have these non-conforming signs removed. She believed a new business should be required to remove a non-conforming sign, and a conforming sign should then be put up. Mr. Hague and Councilman Harris suggested Board members read the Rogers court case concerning non-conforming signs. Mr. Pfeil believed that the goal of the present sign ordinance was the opportunity to get the downtown into conformance when a business changed.

Councilman Harris noted that the Board has been discussing the hiring of a planner to help on certain issues. One of the issues the Board had listed for the planner was help on sign regulations. Ms. Rizzuto suggested the Board re-visit the sign issue again in three months, when hopefully a planner has been hired.

#### Old/New Business

##### Board Engineer

- Mr. Montague reported that Ms Rizzuto has informed him that the number of Board members (3) interviewing candidates for Board engineer may be violating what the Sunshine Law permits. Ms. Rizzuto will further research this matter.

##### Bylaw Plans

- Ms. Rizzuto distributed copies of standard by-laws.
- Ms. Rizzuto suggested the Board could review this set of by-laws, adopt them, and if need be, revise them in the future.
- Ms. Rizzuto suggested Board members could compare this set of by-laws with what Mr. Cox, the municipal land use law expert, recommends.

##### Complete Application Requirements

- Mr. Montague noted that currently there is no mandatory check-list in the ordinance for applicants to follow when submitting plans.
- Mr. Montague also noted that the check-lists of Mendham and Madison have been reviewed by Board members.
- Mr. Hague suggested Ms. Rizzuto review the check-list; make any updates that are needed, checking for any inconsistencies with the ordinance. The check-list will then be returned to the Board members for their review. This suggestion was accepted by the Board.

### COAH Up-date

Ms. Rizzuto reported on a NJ Housing & Mortgage Finance Agency meeting she had attended yesterday.

- To keep the Borough in compliance with COAH, Ms. Rizzuto recommended the Board hire a professional planner **and** begin working on the necessary documents.
- COAH's proposed third round rules have been adopted without change. The effective date will be June 2<sup>nd</sup>.
- COAH has proposed many more amendments. They will be published in June.
- The Board has until Dec. 31, 2008 to file an up-dated housing plan.
- The Borough should work towards adopting a growth-share ordinance and make amendments to their housing plan before Dec. 31<sup>st</sup>.
- Ms. Rizzuto will put together a package of the Borough's existing housing plan and an example of a growth share ordinance.

Councilman Harris suggested the COAH issues be discussed and clarified on the Borough Council level before the Board hires a planner to advise them.

### 221 Main Street – Update

- Mr. Montague reported that an agreement has been reached between 221 Main Street and Joe Bell, the Borough attorney.
- 221 Main Street has submitted new plans. These plans are currently in the Construction Office.

Ms. Rizzuto made the following points:

- that there is pending litigation on this application. Under the Open Public Meeting Act, discussion about this matter should be held during a Closed Session.
- Ms. Rizzuto has had a discussion with the applicant's attorney. All the paperwork will come to her to review, as well as to the Borough Council, and the Borough Attorney. If any settlement is made, it will be a joint settlement if any settlement is approved.

### Public Comment

Bernie Vella, 58 North Summit Ave., noted he had recently sent a letter to the Planning Board. He asked if Ms. Rizzuto had received the letter and whether any action had been taken.

Ms. Rizzuto noted that at the last Board meeting, Mr. Vella had been speaking as a member of the public on a particular matter that is not pending in any formal way before the Board. At that meeting, the Board had sworn in Mr. Vella as a witness when there was no hearing being conducted. Ms. Rizzuto felt that had not been an appropriate method of hearing from the public in an open public meeting. Mr. Vella should not have been sworn in.

Ms. Rizzuto told Mr. Vella if he had any inquiries on the application he is interested in, he should submit them to the Construction Official and Zoning Official. If Mr. Vella feels something should be brought to the attention of the Board, he can come and speak at an open public meeting.

At 9:40 p.m. the meeting adjourned.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary