

CHATHAM BOROUGH PLANNING BOARD  
August 5, 2009 7:30 p.m.

Chairman Richard Crater called the Chatham Borough Planning Board meeting of August 5, 2009 to order at 7:30 p.m. in the Council Chambers, Chatham Municipal Building. Mr. Crater announced that all legal notices have been posted for this meeting.

Members Present:

Mayor V. Nelson Vaughan, Councilman Joseph Mikulewicz, Chairman Richard Crater, John Bitar, Donna Cali-Charles, Vincent DeNave, H.H. Montague, Susan Favate.

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

Members Absent:

Alan Pfeil, James Mitchell

Open to the Public

There were no comments from the public.

Approval of Minutes – July 8, 2009

The meeting minutes of July 8, 2009 were approved as submitted. Mrs. Favate abstained from voting on these minutes. She was absent that night.

Cheryl Bergailo, Planner – Status Report

Ms. Bergailo distributed copies of her Business Zones Study, 1<sup>st</sup> Draft, August 2009. She reviewed the items listed in the Table of Contents. The bulk of the Study is an evaluation of the Zoning Ordinance as it pertains to the Business zones. Ms. Bergailo noted that the Board had asked her to look at the number of building stories, building heights, lot coverages, off-street parking requirements, and some of the Borough's design standards. Ms. Bergailo stated that she had recommendations for re-zonings.

Referring to her Parking Utilization Analysis, Ms. Bergailo reviewed her findings on the parking lots spaces and parking permits for the Borough train station. She had obtained information from Traffic Enforcement Officer Nicki Balsamo and Cheri Morris, the Borough employee in charge of Borough parking permits.

Mr. Montague asked Ms. Bergailo if she had done any research on the parking situation behind the Library of the Chathams.

Ms. Bergailo answered that Mr. DeNave will be sending her a copy of the design he did of that area. There are Green Acres concerns with respect to expanding that particular parking lot. Ms. Bergailo suggested the option of putting head-in parking spaces on the access drive in front of the municipal pool.

Mr. DeNave noted that the Borough has an agreement with St. Paul's Episcopal Church about the church's parking lot being used by patrons of the library and people visiting the playground. The church's parking lot will be repaved very soon.

At Mr. Crater's suggestion, Ms. Bergailo gave these high-lights from her analysis:

- None of the "B" Zone parking lots were fully utilized on the days she and her staff made observations
- The best utilized parking lots are: the train station lots, the Post Office Plaza lot, the Firehouse Plaza lot

Mr. Crater questioned the observations made on the Center Street East and Center Street West parking lots, between 10 a.m. and 2 p.m., weekdays. Ms. Bergailo's photo of the Center Street West lot didn't show many parked vehicles. Mr. Crater has received complaints that people going to the Yoga Studio at Main Street have been using up the spaces at these particular municipal lots. The yoga studio holds continuous classes. Ms. Bergailo said she would take another photo of that lot.

Ms. Bergailo continued giving the high-lights of her report:

- The Firehouse Plaza lot is the best used parking lot
- The Post Office Plaza lot is the second best used
- On street parking in the Business (B) Zone is well used, with a turn over of parking spaces
- The most common violations cited by Officer Balsamo is for motorists exceeding the legal parking hours and parking on side streets
- Double parking occurs on the corner of Main St. & No. Passaic Ave.

Ms. Bergailo reviewed the permitted number of stories for buildings in the B-1, B-2, B-3, B-4, and B-5 zones. She reported on how many buildings in each zone complied with the zoning requirements. Ms. Bergailo recommended that the buildings in the B-4 zone be kept at least 2 stories to "maintain the core downtown character." She also recommended that the Borough should relax the parking standard for building expansions in the B-4 zone.

Ms. Bergailo recommended that the following lots be re-zoned to become B-2, making these lots a better transition between the B-4 zone and the R-2 zones:

- Block 57, Lots 3-5, 13-24
- Block 63, Lots 6 and 7

Ms. Bergailo gave her analysis regarding the Borough's building height requirements. She recommended that the Borough's definition of building height be modified to exclude roof-top equipment and parapet walls. A requirement should be established specifying a screen of at least 42 inches be constructed around the mechanical equipment. She suggested that building height be measured to the eave, instead of to the mid-point of the gable.

Ms. Bergailo reported that she and her staff had analyzed lot coverage by zone. She had also analyzed building coverage and FAR by zone. She noted that a number of lots in the B zones do not currently comply with the FAR requirement. She recommended that the FAR requirements be done away with in the “B” zones. Instead, the building coverage requirements, along with lot coverage and parking requirements, should be enforced to control the building size and mass in these zones. The Planning Board should be the appropriate Board to hear “B” zone applications. Ms. Bergailo also recommended the Board consider increasing the permitted lot coverage in the B-1 Zone to 70 percent.

Ms. Bergailo noted that the key to zoning is to reflect the desired character of the area. She didn’t believe there was anything terribly wrong with the zoning in Chatham. She suggested a goal of making the majority of the lots compliant with the zoning standards. The standards need a little fine tuning.

For the B-4 Zone, Ms. Bergailo recommended that a 10 ft. rear yard be required, and an 85% to 90% building coverage standard should be considered.

Ms. Bergailo suggested that the parking standard for banks be treated as a bulk standard rather than a conditional use standard. A more standardized ratio be done for bank parking. No more than 4.5 parking spaces per 1,000 sq. ft. should be allowed. If a bank proposes too many parking spaces, the Board should hesitate in granting impervious coverage variances. A number of the spaces won’t even get utilized.

Regarding retail parking spaces, Ms. Bergailo recommended that the Borough’s standard be reduced to 4 spaces per 1,000 square feet of building area, or 1 space per 250 sq. ft.

Regarding parking spaces for offices, Ms. Bergailo said she will give her comments after she does her third utilization study.

Ms. Bergailo recommended that a reduction of at least 25% be made for the parking standards for properties located within a quarter mile of public parking.

Ms. Bergailo said that a draft ordinance for lighting is included as an appendix to her report. The idea is to control lighting so surroundings are not over-lit at night. Ms. Bergailo said she will study Councilman Harris’s draft ordinance on awnings and signs. Ms. Bergailo noted that many of the lights above store signs are lit by fluorescent tubes, which is not attractive.

Mrs. Cali-Charles felt that the new street lights on Main Street seem extremely bright. She asked if these lights could be dimmed to save taxpayer’s money.

Ms. Bergailo wasn’t sure a bulb like that could be dimmed. Mr. DeNave reported that new bulbs have come out which may be better. Ms. Bergailo said maybe each bulb could be replaced with the new brand.

Ms. Bergailo gave her recommendations for eating and drinking establishments. She noted that out-door dining is currently permitted as a conditional use in the B-3 and B-4 zones. She recommended that out-door dining be changed to accessory standards. She also suggested outdoor dining be allowed on the side streets.

The Board and Ms. Bergailo discussed the drive-through situation. She suggested that drive-throughs should be made conditional uses. Also, Ms. Bergailo felt that drive-through eating and drinking establishments may be appropriate for the B-2 and B-3 zones with minimal lot area requirements.

Mr. DeNave informed Ms. Bergailo that last year the Borough Council prohibited eating and drinking establishments in the B-4 Zone. He discussed the Bella Luna situation with Ms. Bergailo, which was in the B-4 Zone. An upscale deli was interested in operating in that space, but now the ordinance prevents it. People who worked in that part of town did take-out lunches at Bella Luna. Now they are forced to go to another part of town.

Ms. Bergailo said she will do her third study in September, during a busy time. She asked the Board to send her their comments on tonight's presentation by the second week of September.

Ms. Rizzuto suggested Ms. Rizzuto send Board members a copy of her next draft before she appears before them at a fall meeting. Ms. Bergailo agreed to send out copies of her draft by September 28<sup>th</sup>.

Mr. Crater noted that the sign ordinance will be discussed at the Board's September 2<sup>nd</sup> meeting. The public should be alerted of this scheduled discussion.

Ordinance 09-11 – The exclusion of tattoo parlors & body piercing establishments from Retail Services

Mr. Crater noted that Board members should have copies of this ordinance which was introduced at the last Borough Council meeting.

Mr. DeNave reported that he had received an e-mail asking him whether or not the Borough permitted tattoo parlors in their downtown. Mr. DeNave noted that the ordinance currently has vague language with regard to "personal" services. When he brought this particular inquiry to the Borough Council, they took pre-emptive action.

Mayor Vaughan noted that the First Reading of Ordinance 09-11 has taken place. It was unanimously approved. The Borough Council believed this type of business would not fit into Chatham's family-oriented downtown.

Councilman Mikulewicz added that the Borough Council is trying to tighten up the town's retail services. The proposed ordinance is before the Board for review tonight. It will be on the agenda for the next Borough Council meeting. Councilman Mikulewicz noted that the psychic reader who recently left the downtown area has returned.

Mr. Crater asked Ms. Rizzuto for her opinion on this ordinance.

Ms. Rizzuto noted that the Council is proposing to prohibit three types of establishments. She pointed out that zoning and planning ordinances are much more successful when they allow a certain use with reasonable restrictions. An outright prohibition of a use is generally not successful in a court challenge. Ms. Rizzuto said she was not prepared to recommend the Board give their approval of this ordinance to the Borough Council. She pointed out that tattoos may be a freedom of expression, because words can be printed on a person's skin, not just pictures. Piercing, on the other hand, are symbols, not words.

Ms. Rizzuto pointed out that the e-mail inquiring about establishing a tattoo parlor/body piercing establishment may have someone taking a survey on towns with violating ordinances. A complete prohibition of this kind of business could instigate a law suit.

Mayor Vaughan asked Ms. Rizzuto to consult with the Borough Attorney, Mr. Bell, on this ordinance.

#### F.A.R. Sub-Committee Report

Mr. Montague noted that he invited Walter Voytus, Chairman of the Zoning Board of Adjustment, to tonight's meeting. Mr. Voytus can give a report on recent developments on the Board.

Councilman Mikulewicz reported that the subcommittee had met with Jack Kelly of the Rosen Group, Summit NJ. Mr. Kelly informed the subcommittee that he felt the height requirement of 5 feet in the attic was restrictive. The subject of porticos was also discussed at the meeting. Councilman Mikulewicz felt that Mr. Kelly was in favor of a reduction in the FAR requirements. The subcommittee also met with Janet Siegel, of Siegel Architects, Chatham. Mrs. Siegel discussed garages and FAR with the subcommittee. Mrs. Siegel recommended that the Borough tighten up their definition on how a story is measured. She also recommended it would be very helpful if the garage and the attic space were eliminated from FAR calculations.

Councilman Mikulewicz reported that the subcommittee will meet again. He felt there was a consensus to relax the FAR regulations, either by eliminating the attic or making the attic measurement go beyond 5 feet.

Mr. Crater asked that the FAR Subcommittee submit a draft of their final recommendations to the Board. Public comment will be invited when the final report is discussed by the Board.

Ms. Rizzuto recommended that the final report should eventually be reviewed by a professional planner. Perhaps the Board could ask Ms. Bergailo what her fee would be to review this FAR review, if the budget allows.

Mr. Voytus, Chairman of the Zoning Board of Adjustment, came forward. He and Councilman Mikulewicz discussed the reason for the residential FAR study. Councilman Mikulewicz said when he has listened to residents' comments about how hard it is to go through the variance process, particularly seeking a FAR variance.

Councilman Mikulewicz asked Mr. DeNave what has been his experiences with residents seeking FAR variances.

Mr. DeNave said in meeting residents and their architects, he is questioning the 5 feet requirement for attics. Many residents have ways to try and get around the 5 ft. height requirement. The residents and their architects have also tried to lower the peaks of their roofs to reduce their FAR. They also may keep their roofs at their existing heights; however, raise the attic floor by vaulting all the ceilings below. Residents are frustrated at the cost of this work.

Mr. DeNave noted that the ordinance requires a resident to have a garage; however, the resident is charged with keeping a garage. He has seen conversions of two car garages becoming one car garages in order to create more living space. Vehicles are then always parked in the driveway instead of a garage. He urged the Board to re-visit the garage issue.

Mr. Voytus reminded Board members that any changes made to the FAR regulations will affect the light, air, and open space between buildings. He explained how the FAR regulations came about. Mr. Montague and Mr. Voytus noted that the FAR was "tweaked" twice in recent years.

Mr. Voytus explained that applicants have presented legitimate reasons, consistent with the Master Plan, for their FAR variances. He stated that last year 6 out of 8 FAR applications were approved by the Board of Adjustment. Some times applicants modify their plans with regard to FAR.

Mr. DeNave stated that he discourages applicants to not go before the Board of Adjustment, if their FAR variance is more than 1% over the allowable, unless the applicant has a good argument, like safety issues. He did not want applicants to spend a great deal of money and time and then have their application turned down. Their applications should be made realistic. Some applicants disregard Mr. DeNave's advice and go ahead in presenting their plans to the Board. Some applicants have done serious research and testimony on their own and go before the Board.

Ms. Rizzuto believed the main issues of the FAR are garages and attics. She pointed out that over time, the FAR variance may need to be tweaked once in a while. The older housing stock needs updating. Over time family lifestyles change.

Mr. Voytus reported that applicants, as a whole, seem to have understood the FAR regulations. He described a recent FAR application which really improved the house. The proposed changes were consistent with the Borough's Master Plan. He and

Councilman Mikulewicz discussed how an applicant obtains the necessary neighborhood data to present to the Board. Mr. Voytus added that applicants some times don't give valid zoning reasons for what they are proposing. An increase of family members in a house is not considered a valid zoning reason.

Councilman Mikulewicz questioned why below level garages were included in FAR calculations. Mr. Voytus agreed that particular garage situation could be studied and possibly tweaked. However, he cautioned about any changes on the attic FAR situation. He felt attics had a serious impact on the bulk of a house, thus affecting the light and air of the community. Councilman Mikulewicz suggested a change could be made to the side yard and rear setbacks to deal with the bulk situation.

Mr. Voytus brought up the possibility of an attic having less than 50% over 5 feet, not being included in the FAR calculations. That arrangement would allow a homeowner to still have a steep roof.

Mr. Voytus pointed out that the existing setback ordinances and FAR ordinances allows for a variety of houses in the Borough. The appearances of the Borough neighborhoods have remained attractive.

Mr. Voytus said the Board of Adjustment, when looking at FAR variances, are able to assess whether the proposals will impact the community, the light and air of the community. The Board turns down the unreasonable requests for FAR. Some proposals would have been inappropriate for the applicant's neighborhood. Mr. Voytus believed the current zoning ordinances were working well. If the Borough were to make a general increase for FAR, it goes beyond the Board of Adjustment's control.

Board members thanked Mr. Voytus for his comments.

#### Sign Ordinance – Status Report

Mr. Crater noted that the Board should have copies of a draft ordinance prepared by the Borough Council's Sign Committee. He suggested Board members review this draft and give their comments on this draft at one of their September meeting.

Mr. DeNave, who served on the Sign Committee, noted that he had included Councilman Harris's cover letter. Mr. DeNave noted that the changes made in the sign ordinance had to do with enforcement issues. The Sign Committee had reviewed the sign ordinance, line by line.

Mr. DeNave said he would accept comments on this draft by e-mail. Mr. Montague indicated that he had some objections on the draft.

Mr. Crater said that the draft ordinance will be discussed at the September 2<sup>nd</sup> meeting. Public comment will be heard. Mr. DeNave will send a copy of the draft ordinance to the Chamber of Commerce. The Chamber can distribute copies to the merchants. Mr. DeNave said he would welcome comments by e-mail from the merchants on this matter.

The Board discussed where political signs would be allowed. Ms. Rizzuto felt that the language could be tightened up on these particular signs.

The Planning Board meetings of September 2<sup>nd</sup> and September 9<sup>th</sup> 2009 will be held, 7:30 p.m. in the Council Chambers. The Board will try and have these meetings recorded for broadcast for Channel 21.

At 10:35 p.m. the meeting adjourned.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary