

CHATHAM BOROUGH PLANNING BOARD
December 9, 2009 7:30 p.m.

Chairman Richard Crater called the Chatham Borough Planning Board meeting of December 9, 2009 to order at 7:34 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, Donna Cali-Charles, Vincent DeNave*, H.H. Montague***Alan Pfeil, Susan Favate, James Mitchell.

*arrived at 7:35 p.m.

**arrived at 7:37 p.m.

***arrived at 7:53 p.m.

****arrived at 8:40 p.m.

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

Members Absent:

John Bitar

Open to the Public

There were no comments.

Approval of Minutes

There were no minutes to review.

Application – Minor Subdivision – Miriam Gunn, 74 North Passaic Avenue

Samuel DeAngelis, Esq., attorney for the applicant, introduced himself. He stated that Ms. Gunn has owned this property at 74 No. Passaic Ave. for 36 years. No variances are being sought for this application. Mr. DeAngelis noted that Andrew Clarke, the applicant's engineer, is present tonight to answer questions. Mr. DeAngelis stated that he and Mr. Clarke have reviewed the Board Engineer's report dated 12/7/09 listing items and issues on this application. John Hansen, the Board's Engineer, was present at tonight's hearing.

Andrew B. Clarke, the applicant's land surveyor and engineer, was sworn in to testify. Mr. Clarke submitted his professional credentials to the Board. The Board accepted them.

Referring to the Board Engineer's report, Mr. DeAngelis asked Mr. Clarke to testify on the sidewalk situation on the applicant's property. Mr. Clarke stated that some of the sidewalk was in poor condition and is in need of repair. If the subdivision were to be approved, it would make better sense to do the new sidewalks when the grading plans are being handled for the individual lots. If the old sidewalks were to be replaced now, they may become damaged and curb cuts would be made in different locations.

Mr. Hansen, the Board's Engineer, clarified that he had recommended that the entire sidewalk frontage be replaced. As for the timing for this sidewalk replacement, Mr. Hansen recommended that the sidewalk be installed prior to the subdivision deeds.

Mr. Pfeil asked when the applicant's house was built. From the audience, Ms. Gunn answered 1872.

The Board indicated that they wanted more information on any fuel tank installations that may have taken place on the property. Ms. Gunn had stated that there had been no fuel tank installations on her property in the 30 years that she had lived there. Ms. Rizzuto pointed out that Ms. Gunn will be sworn in to answer further questions after Mr. Clarke is finished with his testimony.

Ms. Rizzuto confirmed with Mr. DeAngelis that the applicant is seeking a minor subdivision, meaning one lot will be created into two lots. Also, each separate lot will meet the amount of square footage required by Borough ordinance. No variances are needed for either lot.

Ms. Rizzuto confirmed with Mr. Clarke that when he reviewed the deeds, he found that there were no overlaps or encroachments per the deeds. Mr. Clarke testified that he had physically reviewed all three lot lines, and found no encroachments. Ms. Rizzuto also confirmed with Mr. Clarke that he had discovered the depth was 4 inches longer in favor of the applicant's property than what the deed had recorded. No variance is needed for this situation.

Ms. Rizzuto confirmed with Mr. Clarke that there are existing structures, including the structure where the applicant lives, and that there is 190 days to perfect the subdivision. Also, part of the requirement of the resolution approving the subdivision, would be that all overlapping structures be demolished before the subdivision deed is filed.

Mr. DeAngelis confirmed with Ms. Rizzuto that the applicant will comply with all of Mr. Hansen's comments in his engineering report. Ms. Rizzuto asked that a copy of the deed be sent to her law office in Parsippany and a copy to the Board Secretary.

Mr. Hansen discussed one of the comments in his report: "The Board should determine if shade tree should be required along the property frontage. If so, the required the number and species of trees should be determined by the Borough Shade Tree Commission. The position of the trees should be 10 feet in width, and provided along the frontage." Mr. Hansen advised that the appropriate time to install these shade trees would be when/if something was constructed on the lots.

At this point in the meeting, there were no questions from the Board.

Mr. Crater asked if the public had any questions.

Fred Infante, 49 North Hillside Ave., noted that he was one of the rear property owners, behind Ms. Gunn's property. He disputed the 4 inches that Mr. Clarke had testified to. Mr. Infante stated that his property at 49 No. Hillside Ave. was once subdivided. Mr. Infante recalled that he built a fence at the rear of his property, using the survey the Borough had provided. The recent markers put in for the proposed subdivision were installed right next to Mr. Infante's fence. Mr. Infante questioned which survey was correct. Mr. Infante asked if he could now address the water situation.

Ms. Rizzuto noted that that storm water and drainage is an engineering matter and can be addressed at the time of construction of any new homes on the property.

Mr. Infante reported that both he and his neighbor, Stacey Scerbo (51 North Hillside Ave.) experience significant water run-off on their properties. He stated that the fence he had installed years ago at the rear of his property is now 4 to 5 inches off the ground due to erosion. Ms. Gunn had given Mr. Infante permission to go on her property to construct a berm to stop the erosion. Unfortunately, a minor lake still forms.

Stacey Scerbo, 51 North Hillside Ave., described the easterly flow of water which enters the side of her property and goes around her garage. Mrs. Scerbo submitted photos that she had taken of the run-off problems at the rear of her home. These photos were labeled W1 and W2, dated 12/9/09.

Mr. Infante clarified that he and Mrs. Scerbo were not against the proposed subdivision. They were just concerned that any added coverage would worsen the existing water issues on their properties.

Mr. DeAngelis pointed out that if/when a house is constructed, a stormwater plan will be submitted to the Borough Engineer for his approval. Mr. DeAngelis felt tonight's Board meeting was not the appropriate forum to address the storm water situation.

Ms. Rizzuto noted that perhaps the members of the public have not seen the Borough Engineer's report which clearly requires New Jersey State Department of Environmental Protection Storm Water Management Plans and Requirements.

Mr. Clarke, the applicant's engineer, stated that he will probably be doing the grading plans for the subdivided property. He assured Mr. Infante and Ms. Scerbo that he has listened to their comments. He explained how the clay surface of Chatham Borough's soil does not easily infiltrate. Ponding occurs. Mr. Clarke testified that all of the roof water on any new dwellings in the subdivision will be captured in the leader system and put into an underground system, possibly a dry well. He discussed with Mr. Infante the reasons why his fence may have become eroded.

Mr. Clarke explained how he used flags and markers when he surveyed the applicant's property and its boundaries. The new line of the subdivision, if approved, must be marked as well.

Arthur DelPezzo, 70 North Passaic Ave., noted he had a hedge on the south side of Ms. Gunn's property. He has noticed markers/flags about 4 feet from this hedge. Who do these markers belong to?

Mr. Clarke answered that those were his flags. He explained how the flags and spikes in the ground help him to measure the property.

Miriam Gunn, the applicant, was sworn in to testify.

Ms. Gunn testified that she has owned the house at 74 North Passaic Ave. for 36 years. When she bought the house, the old oil tank had been taken out of the basement and put on the corner of the property. The house was gas heated when she moved in. To her knowledge, there had never been an underground oil tank on the property.

At this point in the meeting, Ms. Rizzuto noted the arrival times of Councilman Mikulewicz and Mr. Montague. Councilman Mikulewicz will be eligible to vote on this application. Mr. Montague is not eligible to vote.

There were no further questions from the public.

Ms. Rizzuto reminded the Board that they must decide when the sidewalk should be replaced, if the subdivision was approved.

Mr. DeAngelis noted that the applicant has agreed to do the new sidewalks; however the location of the curb cuts must be done beforehand. Perhaps a condition could be established stating that before any building permits are issued, the curb cuts will be located and new sidewalks must be installed.

Mr. Hansen, the Board's engineer, believed that the curb cuts won't affect the new sidewalk. If the sidewalk were to be installed appropriately, according to the Borough's standards, it will be set up at the correct grade when the curb cuts are put in.

Mr. DeNave added that if the sidewalks were installed now, they could be put in an elevation, allowing a curb cut to go in *any* location.

Ms. Gunn described the condition of her sidewalks. Trucks have been breaking up parts of her sidewalk.

The Board decided that the whole sidewalk should be replaced.

Mrs. Favate pointed out that there is a large tree next to the applicant's current driveway. Can that tree be kept? When is an issue like this decided on?

Mr. DeNave explained that a developer, or an applicant like Ms. Gunn, is required to submit a lot grading plan, which would include landscaping and any trees to be removed.

At that particular time, the Borough will review which trees should be saved and which are in decline.

Councilman Mikulewicz made a motion that the Board approves this minor subdivision at 74 North Passaic Avenue. Mrs. Favate seconded the motion. A roll call vote was taken:

Councilman Mikulewicz	-	yes
Mr. DeNave	-	yes
Mr. Pfeil	-	yes
Mrs. Cali-Charles	-	yes
Mrs. Favate	-	yes
Mr. Mitchell	-	yes
Chairman Crater	-	yes

Adult Entertainment & Tattoo Parlors – Retail Services – final ordinance

Ms. Rizzuto briefly reviewed the revisions she has made to the ordinance after hearing the Board’s comments at the last meeting.

Councilman Mikulewicz made a motion to approve the ordinance specifying limitations and restrictions for adult entertainment uses and tattoo & body piercing establishments. A voice vote was taken. The ordinance was unanimously approved. A copy of this ordinance will be forwarded on to the Mayor and Borough Council, by way of the Borough Clerk’s Office, accompanied by a cover letter.

F.A.R. – final ordinance – review and vote

Mr. Crater thanked the FAR subcommittee for all their hard work on this ordinance. He asked Ms. Rizzuto and Mr. DeNave to review Draft #3 and the revisions that were made.

Mr. DeNave explained that he disagreed with the stipulation that any mechanical equipment, cooling towers, etc. on a building equipment be included in the building height. This stipulation would significantly impact some of the downtown businesses if they needed rooftop equipment. On another issue, Mr. DeNave recommended that the definition for dormer needs further discussion by the Board.

At this point in the meeting, Mayor Vaughan arrived.

Mr. Montague asked if there was a definition for “foundation sill”. Mr. DeNave noted that a definition could be included for lay persons who want to take the measurements themselves. He will write up a definition for “foundation sill” and give it to Ms. Rizzuto.

Ms. Rizzuto asked the Board to decide on the issue of roof top equipment being counted in the building height. The screening element for the equipment was discussed. Mr. DeNave believed a building, being constructed, could be severely impacted based on a height of mechanical, which may be in the center of the building, and not in plain sight.

Councilman Mikulewicz suggested not allowing the screening on a roof to exceed 1 ft. above the mechanical equipment. Ms. Rizzuto recommended eliminating any type of mechanical being included in the height. Mr. Pfeil agreed with Councilman Mikulewicz's suggestion.

At the Board's direction, Ms. Rizzuto re-wrote that section to read: "Any structure housing or screening mechanical or other equipment shall not be included in the calculation of height so long as it does not exceed the actual mechanicals by 1 foot."

Regarding dormers, Ms. Rizzuto noted that a more appropriate term had been suggested: "gable dormer". Mr. Montague explained the difference between a shed dormer and a gable dormer. Ms. Rizzuto revised these terms to read "gable, dormer" and "gable, shed". She will insert a more precise definition for gable dormers. At Mr. DeNave's recommendation, Ms. Rizzuto will delete "Floor Area Gross" from the definition sections. The Board gave no revisions for the definition of "story".

Mrs. Cali-Charles noted that under-ground garages were excluded in the items not to be counted in the FAR calculations. After a Board discussion, Ms. Rizzuto inserted language stating that *below-grade* garages shall not be included in FAR calculations.

Mrs. Favate made a motion to approve the FAR ordinance. The motion was seconded by Mr. Pfeil. A roll call vote was taken:

Mayor Vaughan	-	yes
Councilman Mikulewicz	-	yes
Mr. DeNave	-	yes
Mr. Montague	-	yes
Mr. Pfeil	-	yes
Mrs. Cali-Charles	-	yes
Mrs. Favate	-	yes
Mr. Mitchell	-	yes
Chrmn. Crater	-	yes

Sign Ordinance – draft from Board Attorney

Ms. Rizzuto reported that she has reviewed this ordinance. She and Mr. DeNave will continue to work on it. It will be re-visited at one of the Board's meetings in January.

Meeting Schedule for 2010

Mr. Crater reported that the Borough Environmental Commission may be amenable to moving their meetings to the second Wednesday nights of the month. If this comes to fruition, the Planning Board will then meet the first and third Wednesday nights of the month. The new meeting dates will be officially adopted at the Board's Reorganization Meeting. Ms. Rizzuto said she will obtain the consent of the Environmental Commission, if they are agreeable to the change. She will then contact the Borough

Clerk's Office and Mrs. Maramonte in the Building Department for the necessary resolution. The resolution will be published in the Borough Council Meeting Minutes and on the Community Bulletin Board (Channel 21).

Checklist

Ms. Rizzuto noted that the checklist is not ready. The draft should be ready for the Board to review at their January 20th meeting.

COAH

Mr. DeNave noted that Chatham Borough is trying to get its Third Round Certification through COAH. Most recently COAH has returned to the Borough and required that the Borough somehow account for its unmet needs on prior rounds. On the First and Second Rounds, the Borough did not meet some of its requirements. As part of those Rounds, 54 units were not built.

Mr. DeNave clarified that COAH is not asking the Borough to build these 54 units. COAH is asking the Borough to come up with the zoning which could accommodate these units. COAH is looking at "over-laying zoning" in one of the Borough's districts. The Borough ordinance could then be revised to allow affordable housing in that particular zone. The recommendation from the Borough's COAH consultant and the COAH subcommittee is to have the over-layer in the M-1 and M-3 zone, which would involve Commerce Street and River Road areas. Mr. DeNave noted that Joe Layton, the Board's COAH consultant, advised that the Borough look at 16 units per the acre, based on parking and setback requirements.

Mr. DeNave said a letter will be sent to COAH next week, informing them that the Planning Board is discussing an over-layer zone in our M-1 and M-3 zone.

After further discussion, Mr. DeNave said he will ask Mr. Layton to write a recommendation concerning the zone over-layer for the Board to review. The recommendation can then be forwarded to the Borough Council. This matter will be revisited at one of the Board's January meetings.

Mrs. Favate volunteered to take John Hague's place on the Borough's COAH Committee. Mr. Hague had served as the Planning Board's representative on this committee.

Councilman Mikulewicz noted that tonight is his last meeting as the Borough Council liaison to the Planning Board. However, he will be submitting a volunteer application to serve on the Planning Board as a resident. Mayor Vaughan will take his application under consideration.

At 9:32 p.m. the meeting adjourned.

The Planning Board's Reorganization Meeting will be held January 6, 2010, 7:30 p.m., in the Council Chambers, Chatham Municipal Building.

Respectfully submitted:

Elizabeth Holler
Recording Secretary