

CHATHAM BOROUGH PLANNING BOARD

April 4, 2007

7:30 p.m.

Chairman H.H. Montague called the Chatham Borough Planning Board meeting of April 4, 2007 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: Chairman H.H. Montague, John Hague, David Gerridge, Alison Pignatello, Thomas Sennett, Alan Pfeil, James Mitchell, Bill Jankowski, Councilman Bruce Harris,* Mayor Richard Plambeck.

*arrived at 7:55 p.m.

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

Members Absent: none

Side Yard Setback Ordinance

Mr. Montague noted that this issue was discussed at the last meeting. The draft ordinance has been posted on the Borough web site. The most recent draft has been distributed to Board members.

Mr. Montague noted that the definition of a side yard as stated in Chapter 165-10 of the Borough Code would be amended. Another amendment was made to Chapter 165-14E.(1)(a), concerning side, front and rear yards.

Mayor Plambeck recalled that questions had arisen on what could actually extend into a side yard. The Board had decided cantilevered portions of buildings, bay windows, etc. should not be allowed to extend into side yards. However, the following items will be allowed in the side yard: steps and a landing less than 4 feet, and eaves, rain water leaders, and window sills two feet or less.

Mr. Mitchell asked if retaining walls entered into the side yard issue.

Mr. Montague answered that retaining walls fall under land disturbance regulations.

Mr. Montague reviewed the amended language for Chapter 165-14E. (1) (e).

Mayor Plambeck felt the significant change was that for lots larger than 80 feet, the side yard must be 12 feet or 15% of the lot width, whichever is greater. He noted that 80 feet would be the break point. Mr. Sennett brought up how the lot width is measured. Mayor Plambeck confirmed with Mr. Foster that the setback points would be the front setback line as described in the LDO.

Mr. Montague asked Mr. Jankowski if he would be able to do the correct measurements as stated in this amended language.

Mr. Jankowski answered yes, if he was given the proper survey.

Mr. Montague opened the floor up for public comments and questions.

Bernie Vella, 58 North Summit Ave., said he has read the amended language and listened to tonight's discussion. He asked if this ordinance would address second floors.

Mayor Plambeck answered that it would affect anything that would extend into that side yard space, regardless of whether it was first floor, second floor or second and a half story.

Mr. Vella showed photos of a structure currently being built next door to him at 60 North Summit Ave. One of the photos shows the over-hang on the right on the second floor. The other side of the second floor was **recessed** or 3 feet **because of the side yard requirements**. Mr. Vella felt this made it look like there is another house on top of it, hanging over.

Mr. Vella noted that there is a 12 ft. side yard setback from the second floor. Mayor Plambeck said that was legal; however, he didn't understand why the second floor had to be shifted over from the other side. Possibly the other side of the house had 9 feet as a side yard setback to begin with.

Mayor Plambeck and Mr. Montague told Mr. Vella that the amended ordinance could not dictate taste and aesthetics. The purpose of this ordinance is to regulate air and space for the neighborhood.

Mr. Montague noted that the old original ordinance specified a 12 ft. setback on the second floor. If it was less than 12 feet, the homeowner would have had to seek a variance.

Mayor Plambeck discussed a recent ordinance adopted by Chatham Township. Instead of regulating the side yards this ordinance regulates the size of the house. The maximum house size is 70 feet.

Mr. Montague and Mr. Foster discussed where to go with this amended ordinance. Mr. Foster offered to distribute copies of the resolution recommending to the Borough Council that they consider and approve this amendment to the LDO. Mr. Montague said that the Board will vote on the resolution at next week's meeting.

Letter on Ordinance

Mr. Montague distributed the approved ordinance enacted by the Board had sent to Borough Council prohibiting eating and drinking establishments in the B-2 and B-3 Districts.

Mayor Plambeck reported that the Borough Council had adopted this ordinance (Ordinance #07-17) on Second Reading.

Mr. Montague distributed copies of the signed ordinance. He thanked Mr. Gerridge for the excellent letter he had written to the Council regarding this issue.

Minutes

The meeting minutes of December 13, 2006 were approved as amended. Mr. Hague abstained from voting because he was absent from that meeting.

David Gerridge – Residential Stormwater Requirements

Mr. Gerridge explained the up-dates he had made to his last draft and to the land disturbance ordinance. He reported that he had looked at the definition of land disturbance. He believed a definite amount of land elevation change would have to be decided on in order to define land disturbance.

Mr. Gerridge pointed out that currently the ordinance defines any land disturbance is any excavation including drywells. He recommended that the Board should not try to define land disturbance. He suggested that the Borough Engineer and the Board could have the discretion to waive any or all of the requirements as they see fit.

Mayor Plambeck felt some reasonable guidance should be given to the Construction Office and the Borough Engineer. This would help maintain a basis of consistency. Mr. Gerridge pointed out that these two entities already decide what land disturbance is.

Mr. Montague commented that the way the ordinance reads now any movement of soil, even taking a spoonful of soil, is a land disturbance. He noted that the Board has discussed that there should be some minimum level that a person would be allowed to do without a permit.

Mr. Gerridge read aloud the current definition of land disturbance as stated in the LDO: “Any activity involving the excavating, moving, filling or grading of land, including the creation of or an addition to a driveway or parking area. Ordinary lawn care, landscape and gardening activities are excluded, provided that they do not alter the drainage or topography of the land.”

Mr. Gerridge felt if anything should be changed, it should be this definition.

Councilman Harris believed that digging a hole for a lamp post would be land disturbance.

Mr. Montague believed that any digging in the soil, except for landscaping, would be land disturbance. Years ago the Board had tried to put together language in order to prevent some disturbance greater than zero, which is how it stands today.

Mr. Montague suggested the Board decide whether to fix the level of soil disturbance or amend the definition of land disturbance.

Mayor Plambeck pointed out that there have been residents who have done extensive landscaping and changed the topography of their property.

Mrs. Pignatello recommended that the Board carefully maintain a balance, since the storm water management requirements could put an expensive burden on residents doing minor things. She wouldn't want a resident, doing something minor, like putting in a pad for an 80 sq. ft. shed being required to submit a stormwater detention plan. The plan would outweigh the costs of constructing the shed.

Mr. Montague brought up a situation on Dellwood Avenue where a homeowner completely re-landscaped his property. Another homeowner brought in large rocks to put on his property. Both situations caused problems with water run-off. The first project was permitted because it fell under the category of landscaping. The homeowner with the rock project provided the Borough with the correct information and the project was permitted. Unfortunately, it changed the run-off in the neighborhood.

Mr. Hague pointed out that landscaping that changes the topography fits within the definition of land disturbance. He also brought up the question of what "altering the topography" really means.

Mayor Plambeck suggested the Board come up with something reasonable before subjecting a homeowner to a significant expense.

Mr. Gerridge asked Mr. Jankowski what his experiences were in the Construction Office on this situation.

Mr. Jankowski said what the landscapers call "natural landscaping" or "ordinary landscaping" could cost a homeowner \$100,000 worth of landscaping; however, in their mind it's "regular landscaping". Mr. Jankowski said so far no major problems in this area have come up in the Construction Office. Minor problems have come up.

Mrs. Pignatello believed that costs should not be limited.

Mr. Jankowski felt that the current description of land disturbance was very general and could be interpreted in many ways.

Mr. Gerridge pointed out that in general the Board always has tried to avoid anything which impacts on the neighbors. The Borough Engineer already has the right to have a resident change his/her plans if it impacts the neighbors.

Mr. Montague asked Mr. Gerridge what is the allowable run-off for residential properties. Is it zero?

Mr. Gerridge answered that if the Board were approving a site plan or a subdivision or granting a variance, the Board would have the authority to request zero run-off if they wanted.

Mr. Montague believed the current ordinance does not require that.

Mr. Gerridge agreed that the current stormwater ordinance applies only to major developments.

Mr. Montague then believed a property owner could be permitted a 10% change in the run-off. What can stop them?

Mr. Gerridge pointed out that the ordinance prohibits **adverse** impacts on the neighbors.

Mayor Plambeck went over the LDO language concerning land disturbance requirements, specifically the factors the Borough Engineer must consider when reviewing the application. He noted that drainage is one of the factors; however, nothing is said about drainage impact on downhill properties. Mayor Plambeck felt the issues arising in the Borough are how downhill neighbors are affected by construction.

Mr. Montague said he had spoken with a representative from the Morris County Planning Board. The representative informed him that the County Planning Board would like to see zero run-off from residential construction. He also told Mr. Montague that the Board has the right, under the current State rules, to require zero run-off. Mr. Montague felt the Board should give some standards to the Construction Office for them to measure by.

Mayor Plambeck recommended these standards include a no net increase in volumes or no net increase in velocities, or something along those lines.

Mr. Gerridge and Mayor Plambeck noted that the Board has the right to require no zero run-off for residential projects from hereon in; however, it would be the reasonable thing to do in a town that is so highly developed on small lots.

Mr. Montague suggested the Board take a look at the magnitude of change in the Borough. He felt that if someone tears down a house and builds a completely new house they should not be allowed to have any water run-off. Councilman Harris believed **there should be a threshold on the extend of the construction before the stormwater ordinance would apply**. Mayor Plambeck pointed out that most of the stormwater management tools are considering that any development has to address the additional run-off that might be created.

Mr. Sennett asked when the original run-off would be measured. When the original building is demolished?

Mayor Plambeck answered that the pre-existing condition should be taken into consideration in terms of impervious coverage, the topography, etc. with what is being proposed.

Councilman Harris felt a decision should be made on the threshold for the kind of development where applicable.

Mayor Plambeck recommended that a percentage for impervious coverage be taken into consideration.

Mr. Montague suggested that Mr. Gerridge could consult the Borough Engineer and Mr. Jankowski about what could be done in dealing with these particular calculations. In order to make these calculations, the previous contours and the final contours would be needed. Perhaps the Borough Engineer can make a rational decision from that information.

Mr. Gerridge brought up the situation of a resident putting a patio in, which changes impervious coverage. That resident may then be required to put in gravel and a dry well. Mr. Montague pointed out that residents must put in a dry well for decks.

Mrs. Pignatello pointed out that not all residents have items like decks and patios professionally done. She and her husband built their own two-level deck without any architects or engineers. Requiring a resident who uses contractors to build his deck to pay even more for an expensive dry well is not fair.

Mr. Gerridge discussed a recent sub-division made on his street, Elmwood Ave. The applicant had to follow certain conditions. The property owner has installed dry wells all over his property. Mr. Gerridge said the sump pumps at his own house are running considerably more than before this construction. He pointed out that there is a large swale across the front yard of this new property which the landscapers want to enlarge even more. Mr. Gerridge noted that the owner of the new house wanted a 10 ft. basement; however, because he hit water, he had to limit it to 8 feet. Mr. Gerridge said he now has water in his basement. He'll somehow direct the water elsewhere.

Mr. Montague reviewed what he believed were the three suggestions made for residential stormwater requirements:

- 1) The Board has to come up with something more concrete than what already exists for run-off on residential properties.
- 2) The Board has to consider the additional costs to property owners to control this run-off
- 3) The Board has to consider how much of the stormwater review the Construction Office can handle. In some cases, the Borough Engineer may have to give input.

Mr. Gerridge said much earlier he had consulted with the Construction Office and the Borough Engineer and reviewed his ideas with them. He hasn't gone over the finished

project with them. Mr. Gerridge said he would consult these entities and get back to Mr. Montague.

Mr. Montague suggested Mr. Gerridge ask Mr. DeNave if there is some reasonable measurement that could be given to the public.

Mr. Hague reminded Mr. Montague of all the different issues that come up in this ordinance – land disturbance, flood damage, stormwater management.

Mayor Plambeck suggested changing the actual set-up of this ordinance to make it work effectively. Mr. Hague suggested a sub-section be created dealing with decks.

John Eyre, 27 Fairview Ave., recalled that he had spoken with the Board last April about stormwater run-off on Washington Ave. He had felt this particular run-off problem was due to all the trees taken down on Highland Avenue by a developer. Mr. Eyre believed that developers have a much easier time building a house if they chop down all the trees on the lot. Unfortunately, without these trees, the rain water then doesn't sink down into the aquifer. It runs down hill onto other properties.

Mr. Eyre said that these developers are making \$500,000 to \$600,000 a property when they tear down a house and put up a new bigger house. These developers are then walking away and leaving the town with a multi-million drainage problem to deal with.

Mr. Eyre suggested the Board not only consider the change in the topography. They should also look at the changes made to the greenery and plantings shown in the plans.

Mayor Plambeck recalled that it used to be in his and Mr. Eyre's section of town, residents would leave the back third of their properties to remain as woods. Nowadays there is encroachment into these woods.

Mr. Eyre agreed with Mayor Plambeck that when trees are removed, the run-off will change. Mr. Eyre believed that if someone buys up a smaller older, house, tears it down, removes the trees, the Borough should have every right to require zero run-off.

Kurt Langer, 31 Fairview Ave., said he was Mr. Eyre's next door neighbor. Mr. Langer stated that he is the unfortunate recipient of all the rain run-off resulting from clear-cutting and new construction in his section of town. This run-off has rendered his (Mr. Langer's) backyard useless. He invited Board members to look at his backyard and see what impact these changes on neighboring lots have made on his property. Mr. Langer was unsympathetic with the developers and people who are spending hundreds of thousands of dollars creating problems for his property. In these situations, Mr. Langer recommended that the developers doing these projects put \$50,000 or \$100,000 into an escrow account and wait a year or two until it is discovered how their development has impacted the Borough and the neighbors. Mr. Langer felt it was reasonable that the people who create these run-off problems should pay fully for them.

Mr. Gerridge reminded Mr. Langer that when the Borough Engineer's approval is required, the Engineer can put bond requirements in effect. On another concern, Mr. Gerridge believed that there will always be people who will figure out a way to get around any requirements for these developments.

Mr. Gerridge concluded saying he will consult further with Mr. Jankowski, Mr. Taylor and Mr. DeNave on these stormwater requirements. He recommended that in the near future the Board should review the tear-down situation in the Borough.

Councilman Harris recommended that Board members review Section 165-124: Non-Borough trees. The Board may want to consider tightening up these particular regulations.

Mayor Plambeck noted that some towns require that additional trees be planted if a major development takes away existing trees. If a resident cannot or will not put the additional trees on his own property, he can contribute to a tree fund and let the town designate where the trees should be planted.

Old/New Business

Councilman Harris noted that the Board had discussed the density issue. He asked if the Board could move ahead with the idea of hiring a consultant to help them work on this matter.

Mr. Montague said he would like to form a committee of three volunteers to address that issue and decide what the Board should do. Councilman Harris preferred hiring a consultant.

Mayor Plambeck felt that Madison's and Florham Park's ordinance on density were very straightforward and simple for the Construction Office to follow. If it doesn't prove successful, a consultant could be called in.

Mr. Hague agreed with Councilman Harris's suggestion that a consultant be hired. He recommended Cheryl Bergailo be asked to come up with an ordinance proposal. She has worked with the Board before.

Mr. Montague said he will call Ms. Bergailo for help on this issue. He'll stress to her that he didn't want weeks and weeks spent on this project if at all possible.

Mr. Foster suggested Mr. Montague find out what her fee would be and how long this project will take. A contract will have to be made with her firm.

Mr. Foster gave an update on the Shailja, LLC case. He received a letter from Brian Burns, Esq.'s office. It included two letters from Environmental Waste Management Associates (EWMA), the environmental consultant for the owner of the property. Mr. Burns' office is hoping that **the EWMA correspondence demonstrates compliance with Condition 6 in the Board's resolution.**

Mr. Foster suggested that Mr. Montague give copies of this correspondence to the Borough Engineer and to Ms. Pignatello. Mr. Foster felt Mr. DeNave and Ms. Pignatello could make sure that Condition 6 is being complied with. Mr. Montague agreed to distribute these letters as suggested by Mr. Foster. If Mr. DeNave and Ms. Pignatello felt something was not being followed through, Mr. Foster will arrange a meeting with Mr. Burns.

Councilman Harris asked how the Application Checklist was coming along.

Mr. Montague answered that it's been delayed. He's been busy on other projects.

Councilman Harris suggested a typist be hired to put the checklist in an acceptable format. Mr. Montague said he would look into this.

Mayor Plambeck brought up the issues that Len Taylor, the Zoning Official had given the Board at the last meeting.

Mr. Montague said the first of the issues is the density problem. Mayor Plambeck reminded him that the height issue is another matter that will need attention very soon.

Mayor Plambeck reported that placement of parking has come up on recent application. The question has come up whether the Borough actually prohibits parking as a commercial use, making the lower portion of a building a parking garage, and having apartments above. Mayor Plambeck said he asked Elizabeth McKenzie, the Board's consultant that question. Ms. McKenzie answered no; the Borough ordinance does not prohibit that particular commercial use. Mayor Plambeck recommended the Board look into this situation. In the recent application for 221 Main Street a basement garage with apartments above was being proposed.

On other matters, Councilman Harris brought up that the side yard setbacks in the B-2 zone are currently 5 feet. He suggested Board members consider a wider measurement. He believed some of the lots in that area of Main Street will soon be developed. He also suggested that Board members could drive or walk along this particular section of Main Street on the Kings Market side, from just west of Kings, going east up to Railroad Plaza.

Mr. Montague distributed documents for the 221 Main Street application, which has been transferred from the Zoning Board of Adjustment to the Planning Board.

Mr. Foster said he has talked with Mr. Osmun, the attorney for 221 Main Street. Mr. Osmun has to at least describe to the Planning Board what has transpired with the Board of Adjustment with this application and what material had been originally submitted. Mr. Foster reported that Mr. Osmun has a revision of the original plan.

Mr. Hague believed that Mr. Osmun is making a fresh application. What happened before the Board of Adjustment on this application is not relevant. Mr. Hague believed the real question is what Mr. Osmun is proposing to present to the Planning Board.

Mr. Foster believed that Mr. Osmun was aware that proper notification for this application and hearing had to be made to the newspapers.

Mr. Montague said he had spoken with Mrs. Maramonte in the Construction Office. Because of the holiday, the notice may not make tomorrow's Chatham Courier. Mr. Foster said perhaps Mr. Osmun, not the Construction Office, had submitted it to the Courier in time for publication.

Mr. Montague distributed copies of the resolution giving the Borough Council's decision about the proposed parking for 221 Main Street.

Mr. Montague said the hearing for 221 Main Street will be held at the April 11th Planning Board meeting. He will see if he can have the meeting televised.

Mr. Montague distributed new inserts for Board members to put in their LDO books.

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

Respectfully submitted:

Elizabeth Holler
Planning Board Recording Secretary