

CHATHAM BOROUGH PLANNING BOARD

August 1, 2007

7:30 p.m.

Chairman H.H. Montague called the Chatham Borough Planning Board meeting of August 1, 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: H.H. Montague, David Gerridge, Alison Pignatello, Thomas Sennett, James Mitchell, Councilman Bruce Harris, Mayor Richard Plambeck.

Charles W. Foster, Esq., was present.

Members Absent: John Hague, Bill Jankowski, Alan Pfeil.

Approval of Minutes

The meeting minutes of April 4, 2007 were approved as amended.

Ogden Memorial Presbyterian Church – 286 Main St. – a continuation

Mr. Sennett recused himself from the hearing because of a conflict of interest. He left the room.

Mr. Montague noted that Board members should have three memos recently sent out. Two of the memos were submitted by Mr. Foster, and one was from Mr. Knoll.

The following representatives were present on behalf of Ogden Church:

Mark Knoll, Esq.

The Reverend Dale Dealtrey, pastor of the church

Mr. Knoll invited David Ruitenbergh, Esq., to come forward. Mr. Ruitenbergh is the attorney representing the Montessori School.

Mr. Knoll noted that Ogden Church is returning to the Board to make a decision on the jurisdictional issue. He recalled that at the last meeting, Mr. Hague had suggested that the church present testimony that the requested site plan improvements would not result in an intensification of the use by the Montessori School, then the Board may be able to entertain this site plan application. Therefore, the site plan application would not have to go before the Board of Adjustment.

Mr. Knoll stated that it is the opinion of Ogden Church that the Planning Board can hear and approve this site plan application independent of the question of whether the Montessori School is a conforming or a non-conforming use under the Land Development Ordinance.

Mr. Knoll said that tonight Ogden is prepared to present testimony to establish these two points:

- 1) The construction of the requested site plan improvements would not result in the intensification of the use of the property by Montessori.
- 2) Reverend Dealtrey will give testimony that the church has, during her tenure as pastor, always had a parking problem and has needed parking improvements for several years, well before the Montessori School became a tenant of the property.

Mr. Knoll stated that the church will be able to make the point that the site plan application is for the benefit of the church. He noted that this site plan application will have an ancillary impact on the traffic flow and parking issues around the property. Mr. Knoll believed, however, that the application could be considered independent of the use variance issue with respect to the Montessori School.

Mr. Knoll reviewed the issues raised in Mr. Foster's memo dated July 27, 2007; Mr. Knoll's response letter dated July 31, 2007; and Mr. Foster's letter with today's date.

Mr. Knoll said he appreciated receiving Mr. Foster's opinion; however, he respectfully disagreed with his assessment. Mr. Knoll noted that Mr. Foster believed that the school and the church were "intertwined", and that the site plans would "necessarily involve" the Montessori School. Because it necessarily involves the Montessori School, the question of whether the school is a permitted use, must be addressed at the first instance. In his memorandum dated today, Mr. Foster recognized that there may not be an intensification of the use. Mr. Foster believed that the use question should first be addressed.

Mr. Knoll felt those issues raised by Mr. Foster could best be addressed by Cox, the authoritative source of NJ Land Use Law. Mr. Knoll felt the real issue before the Planning Board is not the use of the property by the Montessori School. The real issue is the site plan application by the church for the parking lots and for the driveways. Mr. Knoll pointed out that the parking lots and driveways are permitted accessory uses under the Borough's LDO.

Mr. Knoll reviewed his July 31, 2007 letter. The letter stated that Ogden church will be seeking this site plan improvement regardless of whether the school building had a tenant or regardless of who the tenant is. The Board should remember that the church came before them nearly 4 years ago, before Montessori took possession of the property, seeking site plan improvements. The church can submit tonight copies of the lease that indicated that when the lease was executed, there was no condition whatsoever that the church should build a parking lot or build a driveway. These items were never a condition of their taking occupancy. The lease expressly states that Montessori acknowledges that the landlord is presently seeking to expand on-site parking at the

property. If such expansion, is implemented, it will change the lay-out and driveway of the Elmwood Ave. side of the property.

Mr. Knoll pointed out that prior to Montessori School entering into the lease; the school understood that the church was going to be seeking site plan improvements on their property.

Mr. Foster said that the Board had copies of that lease.

Mr. Knoll believed that the site plan improvements could be considered by the Planning Board independently of whether the school is a conforming or a non-conforming use.

Mr. Knoll discussed the Conselice case which Mr. Foster had cited in his memo of July 27, 2007. This case involved a mixed use. The court decided that the proposed improvements to the living quarters were going to result in an intensification of the non-conforming use. The court felt that the improvements would increase the parking pressures around the building, as well as increasing the impact on the neighborhood. Mr. Knoll felt that the Ogden application was entirely the opposite. He admitted that the church has a mixed use; however, in this case, the site plan improvements would result in a decrease in the impact on the neighborhood. There will be a lessening of the intensification of the use.

Mr. Knoll clarified that in his letter of July 31, 2007, he is not making an argument that the Montessori is a permitted, non-conforming use. He felt the best way to currently describe the Montessori School is to state that it is a use that was permitted, because there was a certificate of occupancy granted for that use. Considerable sums were **expended** in connection with the granting of that certificate of occupancy in connection with that use. Mr. Knoll felt that it's not a classic definitional non-conforming use, because it wasn't there prior to the adoption of the LDO. However, Mr. Knoll believed that the cases that he has cited on non-conforming uses, and the intensification of those non-conforming uses, are "very apt".

Mr. Knoll pointed out that this is a use that is there and it is not a classic definitional non-conforming use because it was not there prior to the adoption of the LDO. He believed that the cases that he had cited on non-conforming uses, and the intensification of those non-conforming uses, are "very apt". Mr. Knoll stated that if there is no intensification of the non-conforming use, then a "C" variance is appropriate and this Planning Board should have jurisdiction.

Mr. Knoll reminded the Board that the application is for preliminary and final site plan approval and a classic bulk variance. The church is not seeking any kind of a use variance. The question of why the Montessori School obtained a C.O. is a side issue. Mr. Knoll clarified that the church would be here for the site plan approval whether Montessori school was there or not. He will have testimony presented tonight to establish that fact.

Mr. Knoll admitted that the site plan improvements will have an impact on the school and the neighborhood; however, this impact “will lessen the burden on the neighborhood, which decreases the intensity of any non-conformity.”

Mr. Knoll claimed that this is a site plan that the neighborhood has been “begging for”. He stated that something needed to be done on the church property. He pointed out that the church is not changing its use. Mr. Knoll believed that the Planning Board has the jurisdiction for this application. Mr. Knoll stated that the proposed parking in the front has been reduced down to 5 spaces, taking the advice of the Historic Preservation Commission (HPC).

Mr. Foster wanted the Board to know that Mr. Knoll has “muddied the waters” in his July 31st letter. In his letter, Mr. Knoll calls the Montessori School’s use on the property, a “non-conforming use.” Mr. Foster referred Board members to the definition of a non-conforming use as stated in the MLUL: “A use or activity which was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision, or amendment.” In order to qualify under the statutory meaning of non-conforming use, Montessori would have to show either that when it was instituted in 2003, the ordinance allowed it, or that it is a successor of a string of schools, which were operated substantially similarly, going all the way back to when the ordinance allowed it, or the ordinance didn’t exist.

Mr. Foster wanted to make sure that Mr. Ruitenberg could confirm that the Montessori School in Chatham is a for-profit corporation. Mr. Ruitenberg confirmed this statement.

Mr. Foster noted that this is not one of the permitted uses allowed under the Borough’s ordinances. The school is a non-permitted use. Mr. Foster said an increase of this use, or a decrease in use, is not relevant. He felt the church should have an opportunity to show that it is a separate principal use from the school. Also, the church should show that the proposed improvements will benefit the other uses on the property as well as the church and are necessitated by the other uses of the property.

Mr. Foster said if these points could be proved by the church, he could then change his opinion expressed in his memo dated July 27, 2007, stating that this is a non-permitted use and that it was an extension of a non-conforming use, and, because it was a non-permitted use, the application should be taken over by the Board of Adjustment.

Mr. Montague noted that the Construction Office has the Certification of Occupancy stating that the Montessori School is a non-profit organization. The Treasurer of the State of New Jersey had signed this document. Mr. Montague asked if this document was in error.

Mr. Ruitenberg answered yes. It is an error of the State of New Jersey. He referred Mr. Montague to Montessori’s certificate of incorporation. The school had filed as a “for profit” operation. Mr. Ruitenberg stated that the Montessori School has never

represented to either the State of New Jersey, the Planning Board, or anyone that they were a “not for profit” organization.

Mr. Montague concluded that the State had put the incorrect information on their document and the Borough had issued this Certificate of Occupancy.

Mr. Ruitenberg felt that was not the case. When this Certificate of Occupancy came about, it bothered him, because the Montessori School has never represented to anyone that they were a “not for profit” organization. He stated he had submitted an OPRA request to review the Borough Construction Office’s records to see if the Montessori School ever represented to the Borough that they were a “not for profit” organization. Mr. Ruitenberg stated that he found nothing to the effect that such a representation was made.

Mr. Montague pointed out that the document from the State indicates otherwise.

Mr. Ruitenberg stated that there is a certificate of good standing that was obtained from the State by the Borough Attorney. Mr. Ruitenberg wasn’t sure why the Borough Attorney had obtained that document.

Mr. Gerridge said it was his understanding that Ogden Church believed the Montessori School was a not-for-profit organization.

Mr. Knoll stated that what concerned Ogden Church at the outset was if Montessori was to be a for-profit school, the church was concerned that they would be hit with some kind of tax assessment. To protect themselves, the church’s lease had a provision stating that if there was a tax liability associated with the Montessori School’s use, then Montessori would pay for it. Mr. Knoll said that was the extent of the church’s consideration of its profit or non-profit status. Mr. Knoll recalled the church’s main concern at the time was what type of program they were going to run, if there would be a tax bill involved, and would the church be required to pay for it.

Mr. Foster and Mr. Montague still weren’t sure what had been submitted to the Construction Office.

Mr. Ruitenberg stated that testimony can be given that the church had never submitted that certificate to the Borough.

Mr. Ruitenberg said he agreed with everything that Mr. Knoll had attested to. Mr. Ruitenberg felt that as long as the school or church can show that the application will not result in an intensification of the use, the Planning Board should have jurisdiction.

Mr. Ruitenberg stated that after he had received Mr. Foster’s memo, he had received the impression that the Planning Board is stepping back from taking this jurisdiction. Mr. Ruitenberg emphasized that the church’s application is before this board and this board is a quasi-judicial body that is qualified and must make the legal determinations that are

necessary for the determination whether jurisdictional or otherwise of the larger pending matter. In this case, one such determination is whether or not the Borough is estopped from revoking the Montessori School's certificate of occupancy. If the Borough is estopped from revoking the school's certificate of occupancy, then the school's use of the property is permitted, though non-conforming. In this particular situation, the Planning Board retains jurisdiction, as long as the application does not lead to an expansion of the non-conformity or the non-conforming use.

Mr. Foster informed Mr. Ruitenbergh that, if he wanted to argue "estoppel" before the Planning Board, and if the Board agrees to listen to this application, it is because it is forced to because the Borough is estopped from contesting the status of Montessori School as a non-permitted use. Mr. Foster felt that the Planning Board is not qualified to make a decision on the estoppel question. The Board would have to make a condition that the estoppel question be decided by the Borough Attorney.

Mr. Knoll pointed out that this particular question does not have to be decided at this point of time and place. The Planning Board should just be focusing on the Preliminary and Final Site Plan being proposed by the church. Mr. Knoll still believed that a permitted non-conforming use can be allowed as long as there is no intensification of that use.

Mr. Knoll stated that if there is an issue of whether the school is properly there or not, then the Zoning Office can do what it needs to do. However, this issue should not stop the church from being able to accomplish what it needs to.

Mr. Montague noted that the Borough ordinance clearly states that where parking is being addressed in the Borough, all of the uses must be taken into consideration. These uses cannot be separated.

Mr. Foster reminded Mr. Montague that the church has provided a maximum number of spaces that they felt they could handle and it still doesn't reach the required number for the church use.

Mr. Knoll explained why the use question does not need to be addressed for the Montessori School. He noted that there are revised parking figures now which could be given to the Board. He suggested certain issues be considered separately. The church is prepared to go forward with the Site Plan Application with all of the engineering questions answered at the next meeting. Mr. Knoll reiterated the belief that the Planning Board was the correct jurisdiction for this application.

Mayor Plambeck pointed out that there are different uses on the site. Like Mr. Montague had noted, the ordinance requires that all the applicant's calculations consider all of those uses. There are church people present at the site the same time Montessori people are present. He felt it was important for the Board to understand what the requirements were for each of those uses. With this information, the Board could then see whether it was the church or whether it was the school that was the prime driver for this application.

Mrs. Pignatello suggested Mr. Foster could bring up Borough Attorney David Lloyd's comments on this application.

Mr. Foster stated that there are two principal uses on the property, the school as well as the church. If the Planning Board decides not to separate these two entities, the Board of Adjustment would have to consider whether an additional use variance is needed because there are two principal uses on the property. An interpretation of the Borough ordinance now comes into play. Mr. Foster noted that in his memo, dated today, he states that perhaps more than one use is allowed on this property.

Mr. Montague said he would like more testimony from the applicant that the intensity is what the applicant claims it to be.

Mr. Knoll said he could present the findings and a chart from the church's engineering firm, with respect to the parking requirements for the church property.

Mr. Knoll submitted Ogden Church's parking summary prepared by Robert Moschello of Gladstone Design. The summary reported that the church contains 240 seats. The Borough ordinance requires one parking space for every 5 parishioners. The required number of parking spaces for the church alone is 48. For the morning session of Mother's Morning Out, parking spaces are needed for each employee. There are 7 employees in the morning session; therefore, 7 parking spaces are needed in the morning. In the afternoon session of Mothers' Morning Out, 3 parking spaces would be needed for the 3 employees. The Work Family Connection operates Monday through Friday, from 7 a.m. to 3 p.m., has 3 employees; therefore 3 parking spaces are needed. Five church staff members are present Monday, Tuesday, Wednesday, and Friday; therefore, 5 parking spaces would be needed. The Montessori School operates Monday through Friday, 8:15 a.m. to 4 p.m.; twenty-three spaces would be needed for the 23 employees.

Mr. Knoll stated that the intensity use total for the weekdays would require approximately thirty-eight spaces. For Sundays when services take place in the church, 48 spaces would be required. When services take place on the weekday, nearly 86 parking spaces would be required. Mr. Knoll felt that the "driving force" behind this is the number of spaces required for the church on Sunday.

Mr. Knoll said that the church would increase its availability to offer services, adult Bible classes, etc. during the week; however, because of the parking situation this isn't possible.

Mr. Knoll asked the Reverend Dale Dealtrey to come forward. He asked her to testify on the history and background of the church's needs. Reverend Dealtrey remained under oath from a previous meeting.

Reverend Dealtrey presented to the Board a letter she had given to the Borough Tax Office.

Reverend Dealtrey testified that she has been serving as pastor of Ogden Church since September, 1984. She stated that Ogden Church has about 170 members. Sunday worship services are held as well as other important days in the liturgical calendar. Sunday school is held on Sunday mornings. The church tries to offer programs throughout the week. It's very hard for the church to hold mid-week classes and meetings because of the current parking situation.

Reverend Dealtrey recalled that when she arrived at Ogden Church in 1984; she brought up the parking situation to the leaders in the congregation. She noted that parking has been "an eternal discussion" over the years she has served as pastor. It is seriously needed. When funerals are held, a parking nightmare results for both the church and the neighborhood. The church would like to get their parking off the streets and onto the church property where it belongs.

Mr. Knoll asked Reverend Dealtrey, besides the church, who else uses the church building.

Reverend Dealtrey answered the Boy Scouts. About 70 boys use the building on Monday evenings. Parking is a problem for these scout meetings. Other groups who use the building are cub scouts, girl scouts, AA, Swing & Tern. These groups are either sponsored by the church; or, the church just allows them to use the building. Swing & Tern makes a donation to the church.

Mr. Knoll asked Reverend Dealtrey when she first came to Ogden, what were the feelings of the church leadership concerning possible additional parking.

Reverend Dealtrey said the church leadership was aware of the need for more parking; however, they told her it would never happen. The idea was always met with strong resistance by the neighbors.

Mr. Knoll asked Reverend Dealtrey what was the parking situation at similar size churches in town.

Reverend Dealtrey answered that Janet Siegel, Co-Chair of the HPC, had informed her that Ogden Church is the only church in Chatham without a parking lot.

Mr. Knoll asked who the church's tenants were.

Reverend Dealtrey answered Work Family Connection and the Montessori School.

Mr. Knoll asked who the tenant was before Montessori took possession of the property.

Reverend Dealtrey answered Summit Child Care. Summit Child Care was a tenant for 20 years.

Mr. Knoll asked how, after Summit Child Care left the church facilities, the church went about finding a new tenant.

Reverend Dealtrey answered that the church leadership felt at that time to bring the parking issue to a head and put something in place. The church had tried to do so before the Montessori School moved in. Reverend Dealtrey pointed out that she had received calls regularly from schools and daycare centers wanting to rent space from Ogden. Montessori School was one of the entities who called her.

Mr. Knoll asked if Ogden had wanted a tenant that would fit within the mission of the church.

Reverend Dealtrey answered yes; education is a part of the church's value system and church mission. Montessori School fit into the church building's mission.

Mr. Knoll asked what were the other considerations taken by Ogden Church in taking on the Montessori School as a tenant.

Reverend Dealtrey testified that the Montessori School was consistent with Ogden Church's values and missions.

Mr. Knoll asked when Montessori School became a tenant.

Reverend Dealtrey answered 2004.

Mr. Knoll asked prior to Montessori taking possession of the church building, did the church make a parking application to the Planning Board.

Reverend Dealtrey answered yes. The application was for parking along Elmwood Ave. and the church's Elmwood Ave. lot. This application did not include parking on the Main Street part of the property. This application was withdrawn without prejudice because the neighbors strongly protested. Before the church returned to the Planning Board, they held seven meetings with their neighbors to try and create an arrangement that would be mutually satisfactory for both sides.

Mr. Knoll asked Reverend Dealtrey to describe the interplay between the operations of the Montessori School and the operations of the church. Is there a separate entrance for the Montessori School?

Reverend Dealtrey answered yes, there are two separate entrances. The church does not use those two entrances. In turn, the Montessori School does not use the church entrance. Montessori has an alarm installed on their common door. The Montessori School facilities are separate from the church facilities.

Mr. Knoll asked if Ogden Church shared any operational relationship with the Montessori School.

Reverend Dealtrey answered no; Montessori School is a separate operation.

Mr. Knoll asked if Ogden Church would be coming before the Planning Board for this site plan regardless of whether or not there was a tenant on the property.

Reverend Dealtrey answered yes. The church needs this additional parking for their own members. She explained that the church holds meetings, appointments, funerals, study groups, etc. on weekdays and need parking spaces for these gatherings.

Mr. Knoll confirmed with Reverend Dealtrey that she was aware that the Borough will be making changes along Elmwood Ave. Mr. Knoll asked how these changes will affect the church.

Reverend Dealtrey answered that these changes will reduce the number of spaces that the church has available. When Elmwood Ave. is made wider, vehicles will then have to do either angled parking or parallel parking.

Mr. Montague asked Reverend Dealtrey if she had any firm date of when the Borough will be widening the road.

Reverend Dealtrey answered no. The Borough Engineer, Vince DeNave, has informed her that the money for the road-widening has been approved. Mr. DeNave was hopeful that the widening will take place in the fall.

Mayor Plambeck added that Mr. DeNave is trying to look at ways to try and reduce the number of parking spaces. It is not "a given" that the number of parking spaces will increase or decrease at this point.

Mr. Knoll confirmed with Reverend Dealtrey that the graveled parking lot, owned by the church, on the east side of Elmwood Ave. does not have hourly parking requirements. Mr. Montague confirmed with Reverend Dealtrey that at present time, vehicles must park head-in at that lot. She noted that SUVs using those particular spaces currently stick out onto Elmwood Ave. and create problems for motorists driving down the street.

Mrs. Pignatello asked Reverend Dealtrey if she had received complaints from the neighbors about traffic.

Reverend Dealtrey answered yes. Weekday traffic has been more stressful for the neighbors than the weekends. On weekends, parishioners can use the Borough parking lots on Center Street. Reverend Dealtrey reminded Mrs. Pignatello that the church had other activities beyond Sunday worship services.

Doing calculations, Mr. Gerridge believed that parents have been parking more than 153-feet down the street.

Mayor Plambeck clarified to Mr. Gerridge that the church's strip of land stretches down close to the end of the Borough's Center Street West parking lot.

Mr. Montague brought up the Ogden Church side of Elmwood Ave. Is there a no parking regulation at that location?

Reverend Dealtrey answered that parking is not allowed on that west side.

Mr. Knoll asked Reverend Dealtrey to expand on the church's concern that there is safety for children being dropped off by their parents.

Reverend Dealtrey answered that safety is a fundamental concern of the church's. The situation of cars waiting along Elmwood Ave. for a parking space to open up, cars backing in and out of the existing spaces on Elmwood Ave., and parents crossing their children across the street, is not a safe situation. Reverend Dealtrey recalled that she had asked the Borough if a cross-walk could be provided from Center Ave. West to the church's property, but it was denied.

Councilman Harris asked about the dates the additions were added on the church property.

Reverend Dealtrey answered that the sanctuary portion was constructed in 1904. The bell tower was added to the sanctuary in the 1930s. The middle portion of the building was constructed in 1922. The Christian Education Wing was constructed in the 1950s.

Councilman Harris confirmed with Reverend Dealtrey that the Montessori School occupies the Christian Education Wing.

Councilman Harris asked Reverend Dealtrey when each addition was constructed and whether any consideration was given by the church to put in additional parking.

Reverend Dealtrey said she did not know what the church's thoughts were way back then. She just knows that when she became pastor of Ogden in 1994, the leaders of the congregation warned her that the church will never get any more parking.

Councilman Harris asked if Ogden Church had ever considered buying additional property for parking.

Reverend Dealtrey answered that the church didn't have the money for such a purchase.

Mr. Foster pointed out that Ogden Church owns property that fronts on Coleman Avenue. Why was that land never considered for parking?

Reverend Dealtrey answered that the Coleman Ave. property had been considered for parking; however, drainage is a bigger issue on that location, than it is on Elmwood

Avenue. Also, that particular property would not provide the type of access to the building that the Elmwood Ave. and Main St. lots would provide.

Councilman Harris asked if Ogden Church had ever formally considered re-configuring the site so that their side of Coleman Ave. could be used for parking.

Reverend Dealtrey testified that the traffic study had indicated that taking down the garage and putting in a drive-thru between Coleman Ave. and Elmwood Ave. would improve the traffic flow; however, it wouldn't help the parking situation.

Mr. Knoll asked Reverend Dealtrey to testify on the history of the Christian education wing, now used by the Montessori School.

Reverend Dealtrey testified that the Christian Education wing was built in the 1950s when Ogden Church's membership was booming. At that time, Ogden church had well over a thousand members. Hundreds of children were enrolled in Ogden's Sunday School at the time. This particular wing was originally meant to handle this large Sunday attendance.

Mr. Foster brought up the separation of Ogden Church and the Montessori School. In the church's application to the Borough Assessor, for partial property tax exemption, there is a rider stating that the church leases a portion of the Christian Education Building to Montessori Children's Academy. The lease is for the use of the building for pre-school and elementary school classes on the ground floor and part of the first floor of the Christian Education Wing. Mr. Foster noted that the lease states that the Montessori School has limited use of the gym. Reverend Dealtrey stated that the uses of the gym overlap.

Reverend Dealtrey stressed that the church cannot tell Montessori that they need the classrooms that Montessori are presently using from, say, 1 p.m. to 5 p.m. The lease gives Montessori exclusive use of that space during their class times.

Mr. Foster asked wasn't there safety considerations taken for off-road drop off and pick up.

Reverend Dealtrey answered yes, safety considerations were made for all three programs: Mothers Morning Out, Work Family Connection, and Montessori School.

Mr. Foster asked Reverend Dealtrey if she could give an idea of the number of participants of these three programs.

Reverend Dealtrey answered that there are 120 children enrolled in the Mothers Morning Out Program. They are not all there at once. No more than 30 children are on the site at one time. The Work Family Connection has some 20 children in the morning and 20 in the afternoon.

Mr. Knoll asked Reverend Dealtrey if the site plan proposals were approved, and the parking lot is constructed, would the church consider expanding the use of the space by the Montessori School.

Reverend Dealtrey answered no.

Mr. Montague asked if there was space for Montessori to expand.

Reverend Dealtrey answered there really isn't any space for Montessori to expand. There has been no request from Montessori to expand.

Mr. Montague asked how often did Montessori extend its lease.

Reverend Dealtrey answered that Montessori's initial lease was for 5 years. The lease is renewable for 5 year terms.

Mr. Montague confirmed again with Reverend Dealtrey that the Montessori School cannot expand, even if the proposed parking lot is approved.

There were no more questions for Reverend Dealtrey.

At 9:10 p.m. a break was taken in the meeting.

At 9:18 p.m. the meeting resumed.

Mr. Knoll called Nicholas DiGiacomo forward.

Nicholas DiGiacomo was sworn in to testify. He stated that he lived at 10 Smithwold Rd., Somerset NJ.

Mr. DiGiacomo testified that he was the owner and operator of three Montessori Schools in New Jersey. He is the owner and operator of the Montessori School in Chatham. He is responsible for oversee the day-to-day operations of these schools. Mr. DiGiacomo testified that the Chatham Montessori School has about 165 students.

Mr. Knoll asked Mr. DiGiacomo to describe his day-to-day involvement with the Chatham Montessori School.

Mr. DiGiacomo testified that each Montessori school has a director, an assistant director, and an educational staff. They report into an executive director who works out of the Madison NJ location.

Mr. DiGiacomo testified that his task, as the Director of the Chatham Montessori School, is to establish the standards of operation, the goals, and to work with the administrative staff to ensure that his goals are accomplished. Mr. DiGiacomo described Montessori's

method of teaching. He testified that the Montessori School is not a franchise. It is “a philosophy”. He explained the certification which the Montessori teachers must obtain.

Mr. Knoll asked Mr. DiGiacomo to describe the enrollment of the Chatham Montessori School.

Mr. DiGiacomo stated he had a license for 149 students. At any given time, the Chatham Montessori School would not have more than 136 children. He stated that the Montessori School is primarily for pre-school ages. There are only 15 students at the elementary portion of the school. Mr. DiGiacomo explained why he prefers to use religious institutions for the Montessori School.

Mr. Knoll asked Mr. DiGiacomo how he came to find the building at Ogden Church.

Mr. DiGiacomo said a parent from the Madison Montessori School had informed him that the Summit Daycare Center was leaving the Ogden Memorial Church building. Mr. DiGiacomo said he then contacted Ogden Church to see if Montessori could use their facilities.

Mr. Knoll asked Mr. DiGiacomo what he had learned about the parking situation when negotiations went on between Montessori and Ogden Church.

Mr. DiGiacomo answered that at that particular time he was told that Ogden Church was seeking additional parking for their own purposes. A clause was put in the lease to make sure he was aware that the grounds may be torn up in the future for additional parking, and that this alteration may impact the appearance of the Montessori School. It was an acknowledgement that the church needed more parking.

Mr. Knoll asked Mr. DiGiacomo if it was a pre-condition of Montessori School accepting the lease that more parking be constructed on the church property.

Mr. DiGiacomo answered no.

Mr. Knoll asked if parking was something that he demanded in the lease.

Mr. DiGiacomo answered no.

Mr. Knoll asked if Montessori School had any plans to increase their capacity in the church building.

Mr. DiGiacomo answered no. He noted that the church wing which Montessori is using was built in the 1950s. The 1950s infrastructure of the wing would not allow for any expansion. For instance, the current hallways and staircases in the wing are narrow and not up-to-date. Mr. DiGiacomo also pointed out that he is licensed only to have 149 students. He would never have more than 136 students in the wing at any one time. He

could not increase the enrollment without having to meet the necessary safety requirements.

Mr. Knoll asked Mr. DiGiacomo if a great deal of renovations were needed on the property after Montessori School moved into the church facilities.

Mr. DiGiacomo answered yes.

Mr. Knoll asked Mr. DiGiacomo if he had gone to the Borough Construction Office to apply for building permits.

Mr. DiGiacomo answered yes. When he first approached the Borough seeking permits, he explained to the Construction Department what he wanted to do. The Construction Department had informed him that he would have to consult with the Zoning Officer. The Zoning Officer had questioned Mr. DiGiacomo about the type of program Montessori was, what were its hours, etc. After a number of questions, the Zoning Officer had informed Mr. DiGiacomo that the school was a "like use". A "like use" means that the Montessori School would be very similar to the previous tenant, Summit Daycare. A zoning variance would not be needed. The permits would be approved.

Mr. Knoll asked Mr. DiGiacomo if he was ever asked if the school was a "for profit" or a "non-profit".

Mr. DiGiacomo answered no.

Mr. Knoll asked what the status of the Montessori School is.

Mr. DiGiacomo answered that it was a "for profit" corporation.

Mr. Knoll asked Mr. DiGiacomo if he had ever represented to the Borough or to the State of New Jersey that the school was anything other than a "for profit" institution.

Mr. DiGiacomo answered that "he hasn't spoken to anybody about it (the school) being anything other than a for-profit corporation".

Mr. Knoll asked if the school paid taxes.

Mr. DiGiacomo answered yes.

Mr. Knoll confirmed with Mr. DiGiacomo that when the lease was drafted, it was the school's understanding that if there was any tax assessed on the property that the school would pay it.

Mr. Knoll confirmed with Mr. DiGiacomo that he was familiar with the proposed site plan improvements.

Mr. Knoll asked if the site plan improvements were approved and implemented, would the Montessori School have any intention of seeking to expand its current use of the property.

Mr. DiGiacomo answered no. He would not ever attempt to do so.

Mr. Knoll asked if the school had ever received complaints from the neighbors about parking up and down Elmwood Ave.

Mr. DiGiacomo answered yes. Neighbors have complained that parents of the students park in front of their driveway or make turns into their driveways to reverse their vehicle direction. Two Elmwood Ave. residents told him that it was even worse when Summit Childcare was using the church building.

Mr. Knoll noted that Mr. DiGiacomo had conducted renovations on the church property. Did he conduct those renovations because he had obtained building permits and a certificate of occupancy?

Mr. DiGiacomo answered that the only way he would have been allowed to conduct those renovations was to have town approved permits.

Mr. Knoll asked how much the Montessori School had to spend to have those renovations done.

Mr. DiGiacomo answered approximately \$600,000.

Mr. Knoll asked the Board if they had questions for Mr. DiGiacomo.

Mr. Montague confirmed with Mr. DiGiacomo that the Montessori School could go up to sixth grade with the existing students, if these students were willing to continue with the school.

Mr. Foster asked if the \$600,000 were just for the improvements made on the property.

Mr. DiGiacomo clarified that these were improvements made to the driveway. Also, the building needed to be brought up to code. Also, walkways, a playground, and retaining walls needed to be constructed. Before the improvements were put in, there had been flooding problems on Coleman Avenue. The pipes underground needed to be fixed. The water run-off from the roofs was not being processed properly. Extreme interior renovations needed to be done. Asbestos and lead paint needed to be either removed or contained. New floors, ceilings, and light fixtures were needed. Some new structural support also needed to be done. Virtually everything in the building was re-done, including walls.

Mr. Montague asked if there was a demand for enrollment at Montessori.

Mr. DiGiacomo answered that there was an enormous demand from parents wanting their children to enroll at Montessori.

Mr. Montague asked if it was Mr. DiGiacomo's intent to continue the lease in the foreseeable future.

Mr. DiGiacomo answered yes.

The Board thanked Mr. DiGiacomo for his testimony.

Mr. Knoll stated that Mr. DiGiacomo's testimony established important points. One point is that the approval of the site plan, parking lot, and driveways will not result in an intensification of the use of the property by the Montessori School. The church's engineer will prove that point at next week's Board meeting. Another point is that the traffic around the neighborhood will be lessened by the proposed improvements.

Mr. Knoll and the applicant respectfully requested that the Planning Board take on the jurisdiction of this Site Plan application.

There were no questions from the public at this point.

Mr. Montague asked Mr. Foster for his views.

Mr. Foster noted that Reverend Dealtrey has given testimony that the church and the Montessori School are two very separate organizations. The Board should conclude that this is not a mixed use; therefore, the application for site plan approval could be considered separately from the consideration of the status of the Montessori School. Also, the testimony from Mr. DiGiacomo indicates how much the Montessori School expended after receiving approval from the Borough. Mr. DiGiacomo had also testified on his dealings with the Borough which resulted in his approval, which supports the potential claim for an estoppel if the church is not allowed to go ahead without the need for a transfer to the Board of Adjustment, and approval by the Board of Adjustment of a "use" variance.

Mayor Plambeck pointed out that the application is only for parking and access changes, and not for the structure itself. The Board does not have to look at the structure, and the uses within the structure, other than what the LDO requires for parking. The church is seeking a fewer number of parking spaces.

Mr. Foster said the Board has to decide that this is not a mixed use, because of the testimony given tonight. He noted that Reverend Dealtrey had testified that the church had a pre-existing need for this parking and driveway set-up shown in the site plan.

Mr. Montague believed there was a use problem involved here, which needs to be corrected at some time. He noted that a certificate of occupancy had been issued to the

Montessori School, leading us to initially believe it was a not-for-profit organization; therefore, it was believed that there was no violation of the ordinance at the time.

Mr. Foster clarified that the Board didn't definitely know that as a fact.

Mrs. Pignatello pointed out that the attorney of Montessori School requested the necessary documents from the Construction Office, using an OPRA request. The attorney had claimed that he couldn't find a certificate of occupancy.

Mr. Montague said that the Construction Office had given him paperwork of when the decision was made whether Montessori was not-for-profit or for-profit. Unfortunately the present staff in the Construction Office was not there when that decision was made.

Mr. Montague noted that the Montessori School is a very useful and needed entity in town; however, he still had serious concerns about this use situation.

Councilman Harris felt the use issue should be resolved before the Planning Board takes jurisdiction of this application.

Mr. Gerridge believed that this application should not be before the Zoning Board of Adjustment. He felt the Planning Board should have jurisdiction. He questioned whether anyone would really question the matter of jurisdiction down the road and drag out the process even more.

Mayor Plambeck brought up the bifurcation issue. What assurance would there be that both issues will be addressed – the parking and the use if the Planning Board decides that this application falls under their jurisdiction. Could this be a condition of any approval?

Mr. Foster answered that the Planning Board could have a condition in the resolution referring to the estoppel issue, which is substantial, because the Borough allowed this large expenditure to go ahead. On the other hand, the Board could argue that the two uses are separate and they don't constitute a mixed use that would require a re-consideration of the existing use by the school.

Mayor Plambeck asked if the Planning Board would be making the decision for the Board of Adjustment by putting the estoppel argument regarding the use into the resolution.

Mr. Foster pointed out that would not be the only argument. Under some cases where there is enough of a separation of the two uses, the Planning Board would still have enough freedom to handle the site plan application.

Mayor Plambeck felt the real issue was the weekday parking. Unfortunately, the zoning ordinance doesn't address weekday parking. By Borough regulations, the church is still the largest use, based on the number of seats it has. This is a key issue in the application.

He was still concerned that the Planning Board was usurping, with regard to the use question, what should be going before the Board of Adjustment.

Mrs. Pignatello agreed with Mayor Plambeck's observation. She noted that the church is the driver behind the parking numbers, while the problems are created during the week. She would like to see how the use is dealt with, if the Planning Board hears this application.

Councilman Harris said that it is clear that the use is not permitted; however, the Planning Board can't decide that issue.

Mr. Knoll discussed what had happened in the Conselice case, which had also involved a mixed use. Mr. Knoll believed that the construction of the church's proposed parking lot would reduce the intensity of the use (Montessori School) on the neighborhood.

Councilman Harris felt the use issue should be decided before the Planning Board could do anything. The church may want to bifurcate this application. The church could have the Board of Adjustment decide on the use issue, and then the Planning Board could review the Site Plan.

Mr. Foster believed whatever the Board decides today about the jurisdiction issue, it would be defensible.

Mr. Montague asked Mr. Foster if there was any way to have the use issue presented to the Board of Adjustment.

Mr. Foster answered if the Planning Board wants the use issue to be addressed by the Board of Adjustment, the Planning Board should reject the application on jurisdictional grounds. The applicant would then get together with the Montessori School. These two entities could then decide to take the whole matter over to the Board of Adjustment or to try to work out a bifurcation authorized by the Municipal Land Use Law.

Mr. Knoll didn't believe that the use application is a prerequisite to consideration of the site plan. He didn't think the use issue had to be addressed prior to the site plan approval. Mr. Knoll felt that the Planning Board did have jurisdiction over the site plan approval. The church would like to start construction as soon as possible. Mr. Knoll wasn't sure how long an estoppel question would play out.

Mr. Ruitenbergh, attorney for the Montessori School, stated that from the school's perspective, they believe the use has already been addressed, because the school has been issued a certificate of occupancy by the Construction Office. The school would be very hard pressed to now submit themselves to the Board of Adjustment to ask for approval for the use of the church building. If the Borough believes that the certificate of occupancy and the permits were issued erroneously, they can take that matter directly up with the school.

Mr. Ruitenbergs stated that he has reviewed the Borough's records on this situation. He was confident things could be resolved with the Borough independent of this application.

Councilman Harris believed that the Borough is not bound by a mistake made by its Construction Office, if that proved to be the case. If a mistake has been made, it has to be corrected.

Mr. Foster felt under the circumstances, the Borough is bound by such a mistake.

Mr. Knoll pointed out that right now, the Montessori School cannot be compelled to go before the Board of Adjustment. Also, the church cannot be compelled to go before the Board of Adjustment.

Mayor Plambeck pointed out they can be compelled to go before the Board of Adjustment, if the Planning Board decides the Board of Adjustment has jurisdiction on this application.

Mayor Plambeck asked Mr. Foster if the Montessori School was a "not for profit" would this application go before the Planning Board.

Mr. Foster answered yes.

Mr. Knoll pointed out that if this application were transferred to the Board of Adjustment, there would be considerable expense for the church to reconfigure their engineering plans, their presentation, and hiring an expert to address the "D" variance issues.

Mayor Plambeck said he didn't think the church would have to re-configure anything if they had to go before the Board of Adjustment.

Mr. Foster said the fact that the church is being delayed and that the church is going to additional expense are not factors that should be relevant to the Board in making their decision on jurisdiction tonight.

Councilman Harris made a motion that the Planning Board does not have jurisdiction for the preliminary and final site plan approval being presented by Ogden Memorial Presbyterian Church because there is a necessity of a use variance. Mayor Plambeck seconded the motion. A roll call vote was taken:

Mr. Gerridge	-	no
Mrs. Pignatello	-	no
Mr. Mitchell	-	no
Councilman Harris	-	yes
Mayor Plambeck	-	yes
Chrmn. Montague	-	yes

A tie vote resulted.

Because of the tie vote, Mr. Foster suggested the motion could be re-visited at a future meeting. However, Board members weren't sure who would be present at the next meeting, and even if a quorum could be reached next week.

Mayor Plambeck suggested the Board have a further discussion. He reiterated Mr. Foster's comment that this site plan could be challenged whichever Board gets jurisdiction.

Mr. Mitchell noted that this situation has been discussed at very great length. His major concern is safety. He has driven down Elmwood Ave. when small children are exiting vehicles and running across the street.

Mrs. Pignatello said she was concerned about the mixed use involved. Tonight's discussion helped clear up that issue. She said she was persuaded by Mr. Knoll's argument that this is not a mixed use.

Mr. Gerridge agreed with Mr. Mitchell's comments that safety is an overriding concern. He felt the neighbors will always be bringing up the land value and aesthetics argument when new parking is proposed. Mr. Gerridge believed this application was a planning issue, not a zoning issue. The applicant has proved that fact to Mr. Gerridge's satisfaction.

Mayor Plambeck reviewed the weekday activities which are held at Ogden Church. These activities are very beneficial to the community. He felt the fact of whether Montessori is a "for profit" or a "not for profit" is a technicality. One option is for the Board to take another look at the ordinance.

Mr. Montague asked Mr. Foster if he had any recommendations of where the Board should go from here. If someone wanted to change their vote, a motion could be made and another vote could be taken.

Mayor Plambeck said that he was convinced before tonight's meeting, that this application should go to the Board of Adjustment. That opinion has wavered by the testimony he heard tonight.

Mrs. Pignatello made a motion that the Planning Board accept jurisdiction of this site plan and hear the application. Mayor Plambeck seconded the motion. A roll call vote was taken:

Mr. Gerridge	-	yes
Mrs. Pignatello	-	yes
Mr. Mitchell	-	yes
Councilman Harris	-	no
Mayor Plambeck	-	yes
Chrmn. Montague	-	no

Mr. Knoll said the church can be ready to be heard at next week's Board meeting.

Mr. Foster suggested that the application be tentatively scheduled for next week's meeting (August 8th). In the days ahead, however, the Board should see if a quorum can be found for this meeting.

Mr. Knoll informed the Board that she should be receiving a report from the Historic Preservation Commission (HPC) regarding the site plan prior to the August 8th meeting. Mr. Knoll said the plans have been revised to meet with the concerns expressed by the HPC.

A break was taken in the meeting 10:40 p.m.

At 10:50 p.m. the meeting resumed.

Application Checklist

Councilman Harris had suggested changes for the checklist.

The Board and Mr. Foster discussed what amendments will have to be made in the LDO once this checklist is approved.

Mr. Montague reported that he has given a copy of this checklist to Joel Boroff, Chairman of the Board of Adjustment. Mr. Boroff will be submitting any comments from the Board of Adjustment.

Mr. Montague said he will take everyone's comments and corrections and have another draft ready for the next Board meeting.

Side Yard Ordinance for B-2 and B-3 Zones

Mr. Montague reported that he had walked around the properties in these zones. He tried to see what was happening with regard to side yards in this section of town.

Mr. Montague estimated that 25% to 30% of the side yards would be close to the 5 ft. rule. In the B-2 zone, a heavy percentage of parking exists. In this particular situation, Mr. Montague recommended that the coverage rules not be changed.

Mr. Montague said he will put together a memo reporting on his findings.

Councilman Harris stated that he would like to preserve an element of the spacing of buildings along Main Street, particularly the Historic District. He felt that it was a good idea to do an analysis of the various lots in these zones; however, he didn't think an

exhaustive study had to be done on every lot along Main Street. Councilman Harris reminded the Board that they had changed side yard requirements in residential zones without looking at any properties.

Councilman Harris believed the Board currently had enough information to revise the LDO to make side yards in these zones 10 feet. Mr. Gerridge and Mr. Mitchell agreed with Councilman Harris's comment.

Councilman Harris made a motion to revise the side yard ordinance for the B-2 and B-3 zones to be changed to 10 feet instead of 5 feet. Mr. Gerridge seconded the motion. A roll call vote was taken:

Mr. Gerridge	-	yes
Mrs. Pignatello	-	yes
Mr. Mitchell	-	yes
Councilman Harris	-	yes
Mayor Plambeck	-	yes
Chrmn. Montague	-	yes

At 11:10 p.m. the meeting adjourned.

Respectfully submitted:

Elizabeth Holler
Recording Secretary