

CHATHAM BOROUGH PLANNING BOARD

February 7, 2007

7:30 p.m

Chairman H.H. Montague called the Chatham Borough Planning Board meeting of February 7, 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, Patricia Rush, David Gerridge, Alison Pignatello, Thomas Sennett, Bill Jankowski, James Mitchell, Councilman Bruce Harris, Mayor Richard Plambeck.

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

Members Absent:

John Hague, Alan Pfeil.

Mr. Montague announced that if there was any one in the audience who is present tonight to discuss the Shailja, LLC application, it will not be heard tonight. The applicant has a conflict tonight. The next hearing will be February 14, 2007.

Minutes

The meeting minutes of November 1, 2006 were approved as amended.

Checklist for Complete Application

Mr. Montague noted that Mr. Foster has been backed-up with work recently and didn't get a chance to up-date the checklist.

Mr. Montague reported that he has put together a simple format copying the Mendham NJ's check-list. He distributed copies to Board members. There will be 75 items for this check-list, which will come to six or eight pages. Mr. Foster pointed out that the first 14 items will be on a separate schedule. These 14 items are applicable to every one of the applications which are submitted. These items could make up the second part of the schedule.

Mr. Montague currently has all the pertinent material at his office. He said he will proceed and type in the correct words in this present format.

Side Yard Setbacks

Mayor Plambeck reported that the sub-committee has been working on this issue. The sub-committee didn't agree on everything; however, they did agree that the present side-yard ordinance has definite problems that need addressing.

Mayor Plambeck brought up residential side yards. In this situation, there is currently a single number no matter what the zone, lot size, or height is involved. The only exceptions is when a resident is adding a single story addition to an existing building, he can encroach into on up to a 9 ft. setback.

Mayor Plambeck pointed out that currently measurements are not taken to the peak of the structure, but to the midpoint of the slope. That method is different from every other town which Mayor Plambeck has reviewed. Most towns have a 35 ft. height measured to the peak; **the** Borough has a 33 ft. height measured to the mid-point. The Borough is essentially allowing greater height than most of the neighboring towns.

Mayor Plambeck reported that recently there have been cases of very large lots; however, these lots may be twice as deep as they are wide. The buildings going up on these lots have been three times the width going across the narrow dimension than they are deep. The builders in these situations are not taking advantage of the depth of the lot when they are building these structures. This type of construction is imposing on the neighbors on either side. Mayor Plambeck reminded everyone that the main reason for side yard setbacks is to provide enough light and air for the neighbors. He believed for the larger lots this should not be an imposition. What he is proposing would only really apply to the larger lots. There is more than enough room to put the building on these lots without having to impose on the neighbors.

Mayor Plambeck proposed that minimum lot side yard setbacks be established based on the lot's width but with a minimum based on the size of the building in terms of stories. If someone wanted to put a small building on a small lot, a 9 ft. setback for a single story house would be permissible. A 12 ft. minimum would be established for a two-story building. Mayor Plambeck noted that there are 3 story houses that are grandfathered in. Many of these three story homes are of a historic nature. If the owners wanted to modify these homes, the Borough could allow a 15 ft. setback. This would give the owners an incentive to maintain what they have. Mayor Plambeck discussed what Chatham Township's recent regulations for side yard setbacks.

Mayor Plambeck believed 15% for side yard setbacks is a reasonable amount. This percentage is also in line with what Madison's regulations. Mayor Plambeck said he has received comments that this would be hard to measure. He pointed out that the side yard measurement needs to be done in the Construction Office. The Construction Office will have the dimensions of the lot when the application comes in. The formula is a simple multiplication exercise that 4th graders could do to come up with what the setback would amount to on a 60 ft., 70 ft., or 90 ft. lot.

Mayor Plambeck stated what can be measured in the field, has to be what the drawings say. Whether someone has over-built or not, cannot be eye-balled. What has to be taken into consideration is what the Code states, what do the plans show, and what has actually been built. The Construction Official or an engineer can deal with this aspect.

Mayor Plambeck brought up the provision about adding an additional setback when you actually add height to the building in terms of feet. His concern about this action is that it has been ineffective in the past. He did not believe it would be effective in the future. It's much more complex to calculate the height in terms of feet than it is to determine the story heights. Most towns have both requirements – a height limit in terms of feet, and a story height. Most towns in the area have a 2 ½ feet story limit for residential structures and a 35 feet height limitation measuring to the peak. Mayor Plambeck has brought up the question of whether or not the basement is a story. If it is a story, is it a full story or a half story? That is based on a height of 5 feet and whether 50% or more of the basement is above 5 feet.

Mayor Plambeck believed in measuring the side yard setback by lot width and based on the number of stories is consistent with what many other towns do. This would be an easy measurement to do and won't be as confusing as what is in place now. He also felt this method would be fairer than a flat number.

Mayor Plambeck recommended after the side yard issue is settled, the Board should look at how height is measured. The way the Borough measures height is currently out of step with how the neighboring towns do it.

Mr. Montague distributed a sheet giving his views on the side yard issue. He reported that for the side yard setbacks, Mr. Taylor measures to the ridge line. Mr. Taylor claims that this is not difficult to do.

Mayor Plambeck noted that Mr. Taylor has done this to show that certain houses are still within the Borough ordinance; however, technically the Borough ordinance allows more. This section should be corrected.

Mr. Montague pointed out another issue that concerned him. When you measure to the side yard setback, you measure to the façade. If a portico or steps exist, you do not measure to these items. He described the side yard situation of the house next door to his house. Mr. Montague believed that you're starting to deal with 12.4 ft., 12.5 ft., etc., if you have a standard foot and inch yard measurement, you cannot figure out what 12.6 feet is for side yard setbacks. He didn't feel that type of measurement should be used. He preferred using figures of even feet. Mr. Montague explained the table that he had distributed. He also questioned where the figure would be rounded off to. To the nearest foot?

Mrs. Pignatello suggested that the Construction Office, after reviewing the plans, send the Planning Board a report stating whether or not the plans comply with the town's percentage requirements for setbacks.

Councilman Harris was concerned that a side yard formula, based on the lot width, may become too complicated.

Mrs. Pignatello said a resident who was concerned about a neighbor's construction getting too close to his own house could call the Construction Office and ask what the side yard setbacks are.

Mr. Sennett believed it would be reasonable to round up to a whole number.

Mayor Plambeck pointed out that the majority of the lots in the Borough are in fairly even increments to begin with.

Councilman Harris didn't agree with this observation. This doesn't match with what is in the tax records.

Mayor Plambeck felt the only time it gets complicated is when an odd-sized lot is involved.

Councilman Harris still disagreed. He read off the side yard measurements on Highland Avenue lots.

Mr. Montague said he would like to keep the formula as simple as possible.

Mrs. Pignatello agreed with Mayor Plambeck's idea of working with percentages. This method would work across the board. It would also be fair if everyone gets a 15% side yard setback.

Mr. Montague said he wouldn't want to change any resident with a property 75 feet or below. He also believed if the side yard setback is less than 9 feet for a one story, a variance should be required.

Mrs. Rush believed that calibrating according to the size of the lot would be more equitable. She felt that the Construction Office is used to doing careful measurements. She agreed with the Mayor's recommendations.

Mr. Sennett asked whether changing the measurement to the peak versus an average of the slope would encourage flatter roofs.

Mr. Montague answered yes.

Mayor Plambeck pointed out that he has seen that buildings that have put on the flatter roofs have contained their FARs, rather than the height issue.

Mr. Sennett asked if the Board's goal to allow sunlight and air could be addressed through FAR or some other means.

Councilman Harris said he understood there is an issue concerning side yards; however, he believed it relates to FAR. He stated he was very hesitant to look at this situation in a

piece-meal fashion. He did not believe any quick fixes, like a change for the side yard setback, is going to help the FAR situation.

Mr. Gerridge felt that using a percentage to calculate the side yard setback will not help the FAR situation. He believed, however, it may be the first step at improving it. He felt that using a percentage of the lot width for a side yard setback wouldn't hurt. In fact, this method would help prevent people from pushing their houses up against their neighbors' homes.

Mayor Plambeck pointed out that there have been prime examples on Highland Avenue where residents' homes have been well under on the FAR; however, they have been right up to the 12 ft. side yard limit.

Referring back to Councilman Harris's comments, Mrs. Pignatello asked if it would be a good idea for the Board, before they act on this revision, to have architects come in and discuss whether bulk can be controlled without FAR.

Mayor Plambeck reported that he and Mrs. Rush had met with a local architect who was concerned about the FAR issue. The architect had advised the Mayor and Mrs. Rush had suggested if side yard setbacks could be improved on there may be an impact. The FAR could possibly then be removed.

Mr. Jankowski said he has listened to conversations between the Zoning Office and the professionals; he got the impression that they are comfortable with all the requirements in place, except for the side yard setbacks. Side yard setbacks seem to be an issue.

Mr. Montague believed that setbacks are not a factor with FAR. He felt that the square footage of the property controls the bulk and the size of the house. The side yard setbacks did not control the bulk and the size.

Mayor Plambeck brought up by narrowing a house, it will appear less bulky. Mr. Gerridge commented that FAR by itself has not been successful in eliminating bulk. Mr. Montague felt that depended on your own personal perspective on what you feel is appropriate.

Mr. Montague agreed with Mayor Plambeck's approach of working on one issue at a time. He would like to see what can be done with the side yard setback issue before FAR is worked on. Mr. Montague felt that FAR is not a simple issue to address. He would like the Board to first reach a consensus on how the side yard setback should be measured.

Mayor Plambeck brought up that architects are used to seeing either a fixed side yard setback in a zone or a fixed setback based on the width of the lot or a percentage of the lot. These are the typical ways of measuring side yard setbacks in New Jersey. The professionals are used to working with percentages of widths.

Councilman Harris pointed out that some of this problem came about because of the current loophole in the ordinance that talks about making a one story addition to a lawfully existing dwelling. He felt that whoever was involved when this particular ordinance was adopted meant to include “and dwelling that was existing as of the date of the ordinance”. Unfortunately, that language was not included in the ordinance. The writers of this ordinance didn’t mean to create a loophole to allow a person to build a house and then have less of a side yard by constructing an addition two weeks after the house was completed.

Councilman Harris noted that the issue is large lots and the Board is talking about a threshold of 15%. Currently the side yard requirement is 12 feet. He believed that requirement would cover lots up to 80 feet. Councilman Harris brought up the concept would be to have a minimum side yard of 12 feet. For lots over 80 feet, the 15% rule for lot width should be followed and should not vary according to the number of stories. It would remain at 15%.

Mr. Montague said he was willing to go with the 15% above 80 feet; however, he would like porticos and steps be counted in. He noted that there are not many houses in town with porticos and steps on the side.

Mayor Plambeck recommended bifurcating some of these issues and working on them one at a time, he believed progress could be made. He strongly advocated that the 9 ft. loophole be removed. This action would simplify the ordinance. The Board could work on height as a separate issue.

Mayor Plambeck suggested asking Mr. Foster to draft a resolution incorporating the language discussed tonight. Mayor Plambeck recommended that the resolution define what should be included in a setback and what can’t. Mr. Foster pointed out that when the Board talks about determining the side yard setback on the basis of the lot width, they should keep in mind the definition of lot width.

Mayor Plambeck noted that the Board’s sub-committee on side yard setbacks will meet again and discuss the remaining unsolved items on this issue.

Mr. Montague asked the public if they had any comments or questions regarding side yard setbacks.

Bernie Vella, 58 North Summit Ave., asked regarding the second story setback, if an addition is being constructed, would there be different requirements for a second story as opposed to a first story.

Mayor Plambeck answered that there would be a 12-ft. setback no matter what story is involved. If someone is adding to an existing dwelling, a single story addition could extend into that side yard so that only a 9 ft. setback would result.

Mr. Vella showed the Board a photo of a neighbor's house which is currently having both a first and second floor added to the rear. He explained what he believed were the new strange lines to the second story. Mr. Vella believed the setback regulations were the reasons why the house looks so unusual to him.

Mr. Montague reminded Mr. Vella that when someone builds a new house in the Borough today, the setback is supposed to be 12 feet. On the other hand, if this person wants to construct a two story addition or another story over an existing floor, the second story must be set back 12 feet. For a one story addition, the set back requires only 9 feet.

Mr. Vella still felt his neighbor's house now looks "lop-sided and will fall over". Perhaps if the homeowner should have gone before the Planning Board and asked for a variance for the setback.

Mr. Montague clarified that the homeowner would go before the Board of Adjustment for such a variance. He/she has a right to seek such a variance.

Mr. Sennett reminded Mr. Vella that his neighbor's house, with the additions, will not encroach into the side yard setbacks.

Mr. Vella and the Board discussed how this addition may have come about. Mr. Vella assumed that a second story addition is different from a first floor.

Mayor Plambeck stated that this new side yard setback ordinance would give a consistent measurement for both first floor and second floor.

Councilman Joe Mikulewicz, 9 Chatham St., noted that the Planning Board had recommended to the Borough Council a resolution regarding eating and drinking establishments and apartments in the M-1 and M-3 District, and a change of use requirement for these actions. He noted Commerce Street was in the M-1 District. He was concerned about apartments being established on Commerce Street in the future.

Mr. Foster asked Mr. Mikulewicz how he felt about eating and drinking establishments on Commerce Street.

Mr. Mikulewicz indicated he had no issue with eating and drinking establishments on Commerce Street. The employees on Commerce Street should have places to eat. However, if apartments are set up on Commerce Street, the residents will then complain about the long hours these businesses keep on Commerce Street.

Mr. Foster felt that situation would be self-controlling. A possible developer thinking of putting in apartments on Commerce Street would take that situation under consideration and back off from creating apartments on that street.

Mr. Mikulewicz felt that factor wouldn't discourage a developer. He expressed his concern on residential development in the M-1 District. He foresaw sidewalks being

installed and other services being needed in this particular district if residential units are allowed.

Mayor Plambeck believed this particular development is a conditional use under certain conditions; however, the Board should take a look at this issue in the near future.

Returning to the side yard setback issue, Mr. Foster agreed to draft an ordinance amending the LDO on side yard setbacks. He will give the draft to the Board's sub-committee first for their review.

Old/New Business

Mr. Foster discussed the memo he had sent to Board memos regarding the parking requirements in the B-4 Zoning District. His memo asked the question of whether Section 165-25 A. (1) through (5), as the language clearly indicates. Or, should it be interpreted as applying to Sections 165-25 A. through D.? The second page of Mr. Foster's memo is a comparison of the sections and subsections in the two versions with respect to "Minimum off-street parking" in the B zoning districts, except as noted.

Mr. Foster reported that Borough Attorney David Lloyd had spoken with the people who published the code book. These people admitted they made a mistake in printing this section. The reason for this proposed amendment is to correct this mistake. Mr. Lloyd agreed with Mr. Foster that this was "a matter of substance" and it had to be corrected by ordinance.

Mr. Foster discussed the draft ordinance he had put together. The draft ordinance proposed that a new subsection E. apply onto to the sub-sections of subsection Z. rather than to all of subsections A. through D. Board members voiced no objection to this amendment.

Mayor Plambeck made a motion to make these revisions recommended by Mr. Foster. Councilman Harris seconded the motion.

Mrs. Rush asked if this amendment would affect any current situations in the Borough.

Mr. Montague said he didn't know. Councilman Harris answered that his understanding was that the idea of the ordinance was that there would not be a parking requirements for restaurants in the B-4 districts unless you were basically constructing a new building. The Zoning Officer hadn't noticed this re-codification error, so the Borough hasn't been imposing parking requirements on restaurants in the B-4 District.

The Board discussed whether this amendment would impact the current application for 221 Main Street. Mr. Montague felt there was a slight possibility it might have an affect. Mr. Montague suggested that the Zoning Officer look at this draft ordinance with respect to the 221 Main Street.

Mr. Jankowski believed that since it was only a mistake in publishing, the Board should just go ahead and approve this amendment.

Mr. Montague asked the public if they had any comments on this matter. There were none.

The Board indicated that they wanted to go ahead and vote on these revisions.

A roll call vote was taken:

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

On other matters, Mr. Montague distributed to Board members correspondence from residents commenting on a current application before the Board. Copies of the correspondence will be sent to the applicant.

Mr. Montague checked that all Board members had received copies of a survey in regard to the Shailja application.

Mr. Montague distributed a letter from Len Taylor, the Zoning Officer, dated January 3, 2007. Mr. Taylor will be discussing the concerns outlined in his letter at the March 7th Planning Board meeting. In the meantime, Mr. Montague suggested Board members take time to study the memo.

Mr. Montague checked to see which Board members had signed up for the necessary training courses. He informed members that when they pick out a date and fill out their form, and submit it to the Borough Clerk.

Councilman Harris brought up the ordinance allowing eating and drinking establishments and restaurants to the M-1 and M-3 Districts. Looking at the zoning map, he realized that by allowing eating and drinking establishments in the M-1 District, those particular establishments would now be allowed along Summit Avenue, in the vicinity of the Borough Recycling Center. Councilman Harris believed that was not the intent of this ordinance. He will recommend to the Borough Council to not allow these establishments in the M-1 District. He had no objections with allowing these businesses in the M-3 District.

Mr. Montague reported that he had a problem with allowing eating and drinking establishments in the M-1 District. The people who want to open these type businesses in the M-1 District would be forced to go before the Zoning Board of Adjustment. That doesn't seem fair to him.

Mayor Plambeck pointed out that the railroad tracks slices those districts in half. He suggested the Board consider what businesses would be appropriate for each side.

Mr. Foster suggested that if there is no objection to eating and drinking establishments on Watchung Ave. and Commerce, the language in the ordinance could be amended so that the M-1 District does include these type businesses except for the pieces of property that front onto Summit Avenue.

Councilman Harris asked if that stipulation would be enforceable.

Mr. Foster didn't believe that such a stipulation would be spot-zoning, because the two areas are pretty much separated and in independent areas.

Councilman Harris said if Mr. Foster believed such an arrangement is workable and wouldn't be challenged, he will go ahead and recommend this amendment at the next Borough Council meeting. Mr. Foster suggested Councilman Harris make the recommendation to the Borough Attorney. If Mr. Lloyd wants, he can consult with Mr. Foster on this proposed amendment.

Councilman Harris asked what the status of the Borough is zoning map and the County. Mayor Plambeck reported that he took the map to Mr. Rice at the county. All the corrections were included. So far Mr. Rice hasn't responded back to Mayor Plambeck.

Mr. Montague opened the floor for public comment. He reminded the audience that any current applications cannot be discussed during Board meeting when the applicant is not present.

Rob Goldberg, 41 Hedges Ave., asked if Board members had received copies of proposed ordinances that he had submitted for the Board's review and input.

Mr. Montague informed Mr. Goldberg that he had received an e-mail from him dated February 7th, at 2:45 p.m., this afternoon. He assured Mr. Goldberg that Board members have received copies of this material tonight. The Board will add Mr. Goldberg's documents to their list of items to review.

Mr. Goldberg also brought up a letter that had been submitted to the Mayor and Borough Council. As a courtesy, Mr. Goldberg signed and submitted a copy to Mr. Montague. Mr. Goldberg noted that this letter was signed by over 200 residents.

Mr. Montague reminded everyone that next week's Planning Board meeting, the Shailja LLC application will be continued.

Bernie Vella, 58 No. Summit Ave., noted that tonight the Board had reviewed the minutes of their November 1, 2006 meeting. He was concerned whether Board members had been kept up-to-date on the Shailja issues discussed at the meetings beyond the November 1st meeting. Perhaps copies of the applicant's court stenographer transcripts could be given out to everyone concerned.

Mr. Montague reminded Mr. Vella that the Planning Board is required to have its own meeting minutes, regardless of whether an applicant has a court reporter. The Board has a copy of all the transcripts submitted by Shailja's court reporter. In order for a Board member to vote on the Shailja application, he/she must have attended all the hearings or listened to the taped recordings of the meeting. Mr. Montague added that the Board is required to act on an application 120 days from the date it is filed. He noted the Shailja application was filed on October 11, 2006. The 120 days are up tomorrow. Tonight the applicant has agreed to an extension to next week. The Board is now obligated to take action under that 120-day rule, at next week's meeting. Also, the Board cannot force the applicant to extend his applications any further.

Mr. Foster told Mr. Vella that the Board cannot hold up their decision because they don't have up-to-date minutes on this application.

Mark Seltzer, 72 Hedges Ave., asked if the Planning Board minutes were available on the Borough's web site.

The Recording Secretary answered no, not yet. She will work with the Borough Clerk to put them on the web site. Approved minutes are always available at the Construction Office for the public to read.

Before adjourning, Mr. Montague checked to see which Board members will be attending next week's meeting (February 14th) and which members were eligible to vote. He will try and have this meeting televised.

The meeting adjourned at 11 p.m.

Respectfully submitted:

Elizabeth Holler
Planning Board Recording Secretary

