

CHATHAM BOROUGH PLANNING BOARD

March 7, 2007

7:30 p.m

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

*arrived at 7:50 p.m.

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

Members Absent:

Bill Jankowski

Memorialization of Shailja, LLC – Dunkin Donuts/Baskin Robbins, 118 Main Street – Block 53, Lot 32 – Preliminary & Final Site Plan Approval

Mr. Montague briefly explained the memorialization process to the members of the public.

Mr. Montague suggested that the Board review the latest resolution written by Mr. Foster. Board members should make sure the resolution corresponds to what they agreed to at the February 27th meeting.

Mr. Montague made some very minor word revisions on paragraphs 1 and 2. On page 3, Mr. Foster reviewed a short sentence he had added after paragraph 4: “All other exhibits marked in evidence during the course of the public hearings.”

At Mr. Foster’s suggestion, Cheryl Ehrgott, Esq. came before the Board table. Ms. Ehrgott stated that she is an attorney with the law firm of Burns & Schaeffer. Tonight she is representing Shailja’s attorney, Brian Burns, Esq.

Mr. Montague brought up the second paragraph on page 8 having to do with the mounted camera on the Shailja building and “the written log” of traffic observations made by the employees. Ms. Ehrgott explained that the applicant preferred “written log” over the term “report”. She reminded the Board that the chief job of Dunkin’ Donuts employees is to sell coffee and doughnuts, not write up reports. The applicant is agreeable to the idea of observations and tapes. After some discussion, the Board agreed with the term

“written log of its observations”. Mayor Plambeck pointed out that the tape from the camera will be supplementary to this log.

On page 9, Mr. Foster pointed out the paragraph where he mentions the Borough Engineer, “Vincent DeNave, who testified on environmental and other matters within his areas of expertise at the hearings...” The Board indicated that addition was acceptable.

Mr. Montague noted that all Board members who voted on this application, are eligible to vote on the memorialization.

A roll call vote was taken:

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

Mr. Sennett was not eligible to vote because he was absent from the February 20th meeting when the application was voted on.

Approval of Minutes

The meeting minutes of November 8, 2006 were approved as amended.

Side Yard Setbacks

Mayor Plambeck distributed two documents. One document shows what the current ordinance says about the side yard setbacks. The second document is the suggested changes recommended by Mayor Plambeck.

Mr. Foster informed Mayor Plambeck that he put his suggestions in ordinance form; however, he didn't have copies made.

Mayor Plambeck discussed the circumstances of why he believed changes should be made to the side yard setback ordinance. He has seen on some of the larger lots and some of the deeper lots that property owners have been using as much of the width as they can for additions. He noted that the original ordinance contained a provision that if a homeowner was adding a single story addition to an existing house, instead of going with a 12-ft. setback, go into the setback, but at least have a 9 ft. setback.

Mayor Plambeck noted that residents and architects are becoming very inventive when it comes to setbacks. He believed that was not the original intent of the ordinance.

Mayor Plambeck said that the revisions he made to this ordinance will put a larger side yard requirement on the larger lots. The break point would be at 80 feet, which is a 15% of lot width which would correspond to the current 12 ft. setbacks. This language change

would make the current 12 ft. setback still effective or 15% of the lot width, whichever is greater.

Mayor discussed the deletion he had made to the ordinance. He had removed the provision that stated that a side yard had to be at least four-tenths of a foot in least dimension for each foot of the height of the dwelling. With the 12 ft. setback requirement, that situation only applied once the construction went above 30 feet. The limit is 33 feet. The Borough hasn't seen a house between 30 ft. and 33 ft. in the last 10 years according to the Zoning Officer. This particular provision is difficult because the height of the house has to be known to calculate this. Also, all the grading plans, etc. have to be approved prior to this step. Mayor Plambeck recommended for future houses that the Board look at the lot width because that's probably where you typically get the larger houses.

Mayor Plambeck noted that the ordinance language regarding the corner lot side yard being 30 feet should remain. The people owning the older homes, who wanted to upgrade, still could take advantage of the 9 ft. setback. This regulation shouldn't apply to brand new homes. A dwelling lawfully existing on or before May 1, 2007, may be permitted to extend into an interior side yard, provided such extension shall be set back at least 9 feet from the side property line.

Mr. Montague stated that he did not agree with 80 feet. He recommended 80 feet or less. Anything above 80 feet would be greater than 12 ft. for the side yard setback. Mr. Montague recommended that the language in the ordinance be kept the same for 80 feet or less, allowing a homeowner to build to 9 feet. Mr. Montague felt that would be fair for the smaller lots.

After further discussion, Mr. Montague clarified that he was referring to single story houses, if their lots are 80 ft. or less, a 9 ft. side yard setback only should be allowed.

After further discussion, Mayor Plambeck pointed out that any house currently existing today in the Borough has the same right about the 9 ft. side yard setback, as long as they had a 9 ft. or less side yard setback to put on a one story addition.

Mr. Montague questioned why the rules have to be changed for lots measuring 80 feet or less. He felt these lots should have the 9 ft. setback for their one story addition on that particular side.

Mr. Pfeil said that was allowable, so long as the homeowner did not tear down his house. If the house is torn down, the homeowner will have to comply with all the zoning requirements for building coverage, lot coverage, FAR, etc.

Mayor Plambeck noted that the Board has to recognize that there is older housing stock, much of which pre-dates the zoning regulations. However, with all the complaints from residents unhappy with behemoth houses being put up in their neighborhoods, the Board has to recognize this genuine concern for setbacks. Mayor Plambeck strongly urged that

these side yard setbacks be established because the new houses being constructed now are typically taller. Homeowners now prefer 9 ft. and 10 ft. ceilings. Even a one-story house is now taller than it used to be.

Mr. Sennett believed the side yard setback revisions would be a step in the right direction for the historic preservation goals. The revisions would hopefully discourage homeowners from knocking down existing historic homes.

After further discussion, Mr. Montague felt that an 80 ft. wide lot should always go by a percentage. He believed that lots measuring 80 ft. and under should follow the 9 feet rule.

Mayor Plambeck disagreed with this difference between an 80 ft. lot and an 81 ft. lot. This would require homeowners to go with a 9 ft. side yard setback for an 80 ft. lot and a 12 ft. side yard setback for an 81 ft. lot. Mayor Plambeck didn't recommend this big step up for a minor change in the lot width.

Councilman Harris felt the idea behind the exception in the ordinance for one-story additions was to recognize on smaller lots, the houses are closer together and more relief is needed. If a house is on a small lot, and is within the 12 ft. side yards, those would be the desired side yard setbacks and no encroachment is allowed.

Mr. Hague half-agreed with Mr. Montague's recommendations. He suggested imposing the 12 ft. side yard setback on any tear-down, new construction situation. Mr. Hague felt that the people with the existing lots to have the 9 ft. one story addition, even if their side yard setback is at 12 feet.

Mr. Gerridge felt that 80 feet is a very wide lot. Most homeowners with 80 ft. lots, going to the 9 ft. story addition would be taking advantage of a loophole. For the homeowners with a 50 ft. to 60 ft. wide lot, they might not take advantage. Perhaps the Board should consider another break-point. Mayor Plambeck noted that there was a large number of 50 ft. to 60 ft. wide lots in the Borough.

Mr. Montague said that he had no problem with the May 1st deadline in the revision; he was just reluctant removing certain rights from people with existing houses.

Councilman Harris felt that the Board should decide how strict they want to be with the 12 ft. side yard setback. He noted that the Board does not have enough data on what the lots really are in the Borough to come to a conclusion of what the impact will be. There hasn't been a great deal of public input on this issue. He would like to put the Board's proposal on side yard setbacks out to the public, so residents could give their feedback.

Mayor Plambeck agreed; however, he would like this issue resolved in a timely fashion. People have raised legitimate concerns on side yard setbacks. He has compared how Chatham Borough regulates for side yards to what other towns have in place. Most of the

other towns use a percentage of lot width or will have a particular lot width based on the size of the lot or the zone. The smaller lots are allowed to have a smaller setback.

After further discussion, Mayor Plambeck suggested perhaps the Board may want to make the minimum changes but still address the lots over 80 feet, the language about the one story additions or the width of the existing side yard, whichever is greater. The May 1, 2007 rule will remain. The Board agreed with this suggestion.

Councilman Harris suggested these proposed changes for the side yard setback ordinance should be put on the Borough web site. The existing side yard setback ordinance and a diagram should be also be put on the web site. A press release will also be done.

The Board will re-visit this issue at their April 12, 2007 meeting. By that time the public should have submitted their views or could attend the meeting.

Return of Ordinance

Councilman Harris clarified that this ordinance that started off adding restaurants and eating and drinking establishments as permitted uses in the M-1 and M-3 Districts. The idea of allowing apartments as a conditional use in the M-3 District was included. These changes were reflecting what already was occurring in those districts.

Councilman Harris noted that now allowing for eating and drinking establishments in the M-1 District, a business like Dunkin' Donuts would now be permitted along Summit Avenue in the vicinity of the Recycling Center. A decision was made to remove that allowance. Councilman Harris noted that Councilman Mikulewicz was concerned that this particular ordinance would allow apartments in the M-1 and M-3 Districts. He felt it would provide an incentive to developers to buy up the Borough's industrial districts and build apartment complexes.

Councilman Harris pointed out that in the M-3 District there are already eating and drinking establishments in operation. If these businesses were added as a permitted use, it would allow a business like McDonald's to open up in that district. That was not the intent of this ordinance.

Councilman Harris reported that all of this part of the ordinance has been stricken from what the Borough Council is now considering. All that is left is the portion of the ordinance dealing with site plan review regarding a change of permitted use having to come before the Planning Board.

Mr. Montague confirmed with Councilman Harris that the sections allowing for apartments and eating and drinking establishments in the M-1 and M-3 Districts were stricken.

Mr. Montague noted that anyone wanting to set up eating and drinking establishments or apartments in these districts would have to seek a variance. He believed that would put an undue burden on the Board of Adjustment.

Mayor Plambeck suggested in the future the Board should take a close look at the definitions, conditions and restrictions in order to limit the type of the establishments that would be appropriate to each district. He noted that the eating and drinking establishment ordinance as it stands today doesn't do this.

Mr. Montague pointed out that every restaurant and every deli and eatery in the Borough is an eating and drinking establishment. He noted that all the local restaurants provide take-outs. These restaurants have permits to conduct an eat-in business and a take-out business.

Mr. Foster noted that by definition, these businesses are not considered restaurants.

Mr. Montague agreed, saying these businesses are both restaurants and eating and drinking establishments. They are operating under both definitions.

Mr. Foster felt these businesses were approved as restaurants and when they started allowing take-outs, then they were violating their approvals.

Mayor Plambeck pointed out that restaurants have traditionally allowed people to pick up food. He reiterated his recommendation that the Board review and possibly update the definitions for these type businesses.

Councilman Harris reported that the site plan portion of this ordinance will have its Second Reading before the Borough Council this Monday night.

Councilman Harris brought up another aspect for eating and drinking establishments. He noted that the fact of allowing eating and drinking in the B-2 and B-3 Districts is clearly not what residents want and what the Borough Council had intended with this ordinance. Under the current ordinance, a business like McDonald's would be a permitted use on Main Street area between Railroad Plaza and Commerce Bank. Councilman Harris reported that the Borough Council would like to move forward and amend the LDO to remove eating and drinking establishments as permitted uses in those two zones and also to remove outdoor eating and drinking establishments as permitted uses in those zones. The First Reading for this amendment will take place at the next Borough Council meeting.

Mr. Montague felt that if the Borough Council approves this amendment, it would be usurping a Planning Board's prerogative. One planning review will be eliminated.

Mr. Hague reminded Mr. Montague that when the Borough Council introduces this amendment on March 12th, they have to send it back to the Planning Board for comments. This is just a preliminary look. Mr. Foster said if the Planning Board objects to the proposed ordinance, the Borough Council can still go ahead and adopt it, but it has to be adopted by a majority.

After further discussion, Councilman Harris and Mr. Gerridge felt that time is of the essence for this proposed amendment. They pointed out that a franchise business seeing that Dunkin' Donuts was just approved in this district may try and move in fast with another similar eating and drinking business.

Mayor Plambeck said the Planning Board should spend time to come up with very carefully written additional uses.

Mr. Montague will put this matter on next week's Planning Board agenda. Board members will be receiving copies of the proposed ordinance from the Borough Council.

Old/New Business

Mr. Foster reported that the Borough Council is proceeding with correcting language in the LDO regarding parking in the B-4 District.

Mr. Montague reported there was no Board of Adjustment meeting held on February 28, 2007. All applicants had filed continuation papers.

The Board discussed which governing body is currently dealing with the application of 221 Main Street. The applicant has recently been before the Borough Council. Mr. Hague questioned why this application was before the Zoning Board of Adjustment because of the type of variances as reported by the newspapers. Mr. Hague noted this application involved a site plan for building. Mr. Montague believed a "D" variance is being sought. It wasn't clear what the "D" variance was for – either for parking or height. Mr. Foster said he will contact Alan Siegel, the Board of Adjustment Attorney, to clear this up.

Mayor Plambeck gave out material regarding a local density issue. He noted that a local resident is proposing a pool house, a detached secondary dwelling on his property. The current Borough regulations do not adequately address these situations. Another issue the Board should take a look at is what minimum size addition should the town impose stormwater control requirements for a single family lot.

Mr. Montague reported that Len Taylor, the Zoning Officer, will be at the next Board meeting. He will be expanding on his letter to the Board dated January 3, 2007. Density is one of the issues Mr. Taylor will be discussing.

Mr. Montague distributed copies of a letter from Katie Horan, 6 Rose Terrace. Mrs. Horan is asking the Board to take a closer look at the ordinances dealing with wireless transmission towers.

Councilman Harris brought up the School District's fiber optics project. He noted the little construction flags were still up. The project seems to be stalled. Mayor Plambeck has noticed other unfinished details with the project. He has asked the Borough Administrator to contact the School Board to see what is happening with this project.

Councilman Harris asked if there was an up-date on the Herrigel subdivision on Elmwood Avenue.

Mr. Foster answered that he has received material from Rodger Herrigel. Mr. Foster will be meeting with the Zoning Officer to review this material. Once Mr. Taylor is brought up to speed with this latest information, Mr. Herrigel can begin the regulation application process and be scheduled to appear before the Board.

The Board indicated that they had received the December 6, 2006 minutes. They asked the minutes clerk to put a date on any future minutes she mails out.

Bernie Vella, 58 No. Summit Ave., asked the Board if they had received a memo he had given to Mrs. Bate to distribute to the Mayor and Council Members. He also asked if the Board had received information from Martin Selzer concerning residents' appeal concerning the Dunkin' Donuts decision.

The Board indicated that they only had Mr. Vella's memo.

Mr. Vella informed the Board that an appeal will be forthcoming.

Mr. Foster informed Mr. Vella that he should obtain a copy of the final version of the resolution which was voted on tonight. Mr. Vella should give this copy to whoever will be legally representing the group who is appealing. Mayor Plambeck suggested Mr. Vella stop in the Construction Office this Monday and obtain a copy of the final resolution from Mrs. Maramonte.

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

Respectfully submitted:

Elizabeth Holler
Planning Board Recording Secretary