

CHATHAM BOROUGH PLANNING BOARD

November 7, 2007

7:30 p.m.

Chairman H.H. Montague called the Chatham Borough Planning Board meeting of November 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, Bill Jankowski, Thomas Sennett*, James Mitchell, Alan Pfeil, Councilman Bruce Harris, Mayor Richard Plambeck.

*arrived at 8:40 p.m.

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

Members Absent: Alison Pignatello

This meeting was recorded for future viewing on Channel 21. It was not recorded live.

Minutes

The meeting minutes of Aug. 8, 2007 were approved as amended.

Ogden Memorial Presbyterian Church—286 Main Street—Resolution for Preliminary Site Plan Approval and Variances

Mark Knoll, Esq., attorney for Ogden Church, was present.

Mr. Foster reported that the draft he had sent out last week now has revisions made by Councilman Harris. Board members should now have the final draft which could be worked into a final version. Mr. Knoll has received a copy. Mr. Montague suggested the Board and Mr. Knoll review this resolution page by page.

The Board had no corrections for pages 1 and 2. On page 4, paragraph #7 was revised to read: "Parking. Applicant provided evidence of the need of the church to have a substantial increase in on-site parking, both for its present needs and to accommodate future growth of the church programs at the Site." At the end of paragraph 7, these words were added: "and one handicapped space to the east of the bell tower." In paragraph #8, Mr. Knoll inserted the name of Doug Polyniak, P.E., as the name of the traffic consultant. In paragraph 9, the opening sentence was revised to read: "Applicant's plan, as set forth in its Stormwater Management Report and accompanying drainage area maps, is to direct roof run-off from part of the easterly sides of the buildings."

Also in the middle of paragraph 9, the Board and Mr. Knoll inserted the following sentence: "The Board determined that Applicant may not commence the improvements described in its site plan until the Borough Engineer has concluded that drainage improvements on Elmwood Ave. have progressed to the point that the applicant may commence construction." In paragraph 10, the date of the Historic Preservation Commission's report was inserted (July 17, 2007). At the end of paragraph #12, the following sentence was added: "Applicant has also agreed that its new fixtures will be the same or similar to the new fixtures approved for Borough lighting on Main Street." In paragraph 16-A, the first sentence will read: "It will apply to the Borough and the State of New Jersey for Title 39 coverage." The Board decided to remove paragraph 16-C.

The Board discussed paragraph 19 concerning the written agreement. The paragraph stated that the engineering and legal costs were to be paid by the applicant. Mr. Knoll said the church is willing to negotiate and enter into a written agreement; however, the costs should be carried by both sides. Mr. Knoll did not believe the legal and engineering costs should be paid by the church. He noted that the church has already posted the required fees for engineering review for all of their plans as part of their site plan approval application. Councilman Harris pointed out that the Board cannot require that the Borough incur these costs. Mr. Hague stated that this is a normal expense, different from the engineering fees.

Mr. Foster read a revision recommended by Councilman Harris in paragraph #20: "The evolution of development on the Site for over 100 years did not, for reasons unknown, contemplate providing parking consistent with the current zoning requirements. Mr. Gerridge suggested these words instead: ".did not, for reasons unknown, contemplate providing on site parking consistent with the current zoning requirements." The Board agreed with this change.

On page 12, paragraph 2-A, Mr. Foster included a revision suggested by Councilman Harris: "Applicant will revise its plans to show this, and the revised plans will also show the proposed location of the two new spaces."

Mr. Foster and the Board reviewed paragraph 3-B. Mr. Knoll disagreed with the stipulation: "Applicant will pay the Borough's reasonable legal and engineering costs associated with any such review". He did not believe the church agreed to this particular condition. The church should not have to pay future legal and engineering costs concerning a future review of the drop-off/pick-up plan or how this site will work. Mr. Knoll asked that this sentence be stricken.

Councilman Harris felt this drop off/pickup procedure will require on-going monitoring, so it's a question of whether the taxpayers pay for it or someone else. Mr. Knoll said the taxpayers pay for any of the other traffic monitoring of any safety traffic safety issues. Councilman Harris believed it would be beyond the Planning Board's authority to tell the Borough that the taxpayers will have to pay for this on-going monitoring. Mr. Knoll pointed out that the church has no objection to this monitoring to make sure the drop-

off/pick-up plan works; however, some years down the road expensive engineering and legal fees may arise if there is the church makes this open-ended commitment.

After further discussion, the Board took an informal voice vote. Six members voted to strike the sentence requiring the church to pay future legal and engineering costs for the drop-off/pick-up plan. Three members voted to keep the sentence. The sentence was removed.

Moving on to Signage, the Board agreed that the church must apply to the Borough for Title 39 coverage to provide police jurisdiction over on site parking and traffic flow. This will permit the Borough to make the necessary application to the State of New Jersey.

Mr. Foster included language regarding the normal escrow fees.

Mr. Hague made a motion to adopt the resolution with the revisions made this evening on the draft circulated by Attorney Foster. Mayor Plambeck seconded the motion. A roll call vote was taken:

Mr. Hague	-	yes
Mr. Gerridge	-	yes
Mr. Jankowski	-	yes
Mr. Mitchell	-	yes
Councilman Harris	-	yes
Chrmn. Montague	-	yes

At this point in the meeting, at 8:40 p.m., Mr. Sennett rejoined the Board on the podium.

Also at 8:40 p.m. a break was taken in the meeting.

At 9:00 p.m. the meeting resumed.

221 Main Street Application–Reopening of Hearing for Reconsideration of Conditions

Barry Osmun, Esq., attorney for 221 Main Street, was present.

At Mr. Montague's suggestion, Councilman Harris and Mayor Plambeck recused themselves from this hearing and left the room.

Mr. Montague explained that there were two conditions in the Board's resolution requiring 221 Main Street to make a request of the Borough Council. Mr. Montague noted that 221 Main Street made that request and the Borough Council said no. 221 Main Street is now asking the Planning Board to re-open the application again to deal with these two conditions of the resolution.

Mr. Osmun confirmed with Mr. Hague that the sole purpose of the re-opening of the application is to remove the two conditions in question. He is not re-opening the approvals that were granted.

Mr. Hague reviewed which Board members would be eligible to vote on the decision to be made tonight regarding these conditions: Messrs. Montague, Hague, Gerridge, Sennett. This is an adequate quorum.

Mr. Osmun recalled that the Board had granted Preliminary & Final Site Plan Approval and variances to allow 221 Main Street for the construction of a three-story building with retail on the first floor and residential uses on the second and third floors. The approval was given subject to 18 conditions. Condition #4 required that 221 Main Street appear before the Mayor and Borough Council and secure written assurance regarding continued access to the rear of the property over the adjoining Borough municipal parking lot. Condition #5 states that because several of the 9 permit parking spaces to be purchased each year by 221 Main Street from the Borough will most likely not be used by the tenant of the retail space on the first floor of the proposed building. 221 Main Street was required by the Planning Board to take up this particular issue with the Borough Council, and develop a method so that unused spaces could be used for the benefit of the general public. Both conditions have to be satisfied before a construction permit can be used.

Mr. Osmun stated that 221 Main Street appeared before the Mayor and Borough Council several times in an attempt to satisfy these two conditions. David Lloyd, Esq., the Borough Attorney, recused himself from representing the Borough Council in this matter, since his law office is within 200 feet of the applicant's property. Gail Fraser, Esq. was retained as Special Counsel for the Borough Council.

Mr. Osmun reported that he had met with Ms. Fraser. She had proposed that these two conditions could be satisfied by a Developer's Agreement. Mr. Osmun felt that was a good idea. The resulting Developer's Agreement addressed Condition #4 by providing that if any time in the future the Borough determined to use the municipal parking lot for any public purpose other than a parking lot, or concluded that the lot is no longer needed for public use, the Borough and 221 Main Street agreed to negotiate continued access to the rear of the property at that time. Condition #5 was addressed by providing the Borough and 221 Main St. acknowledgement that the 9 business parking permits, required to be purchased each year by 221 Main St., were permits for non-designated parking spaces within the permit portion of the parking lot. The parties agreed that to the extend the permit portion of the parking lot was not used by business parking and residential permit holders. Obviously, those spaces would be available for general shopper parking in a matter to be determined by the Borough.

Mr. Osmun recalled that after the Developer's Agreement was approved as to form, Ms. Fraser showed him the agreement. Mr. Osmun discussed this agreement with his client, 221 Main Street. His client approved it as to form. At the Borough Council meeting held September 10, 2007, the Council voted 5 to 1 to deny adoption of a resolution authorizing the signing of the proposed Developer's Agreement.

Mr. Osmun said he had sent a copy of the Developer's Agreement in its final form to Mr. Foster. Mr. Osmun also had a transcript made of the Borough Council meeting held on Sept. 10, 2007. He sent copies of this transcript to Mr. Foster. Mr. Foster confirmed that copies of this transcript have been sent to each member of the Board.

Mr. Osmun reviewed some of the comments made by the Borough Council when they discussed whether or not to approve the Developer's Agreement. A concern was expressed that other property owners may want to add stories to their buildings. These property owners may decide then to purchase permit parking spaces. A Council Member at that meeting had stated that this does not address the present problem that exists with parking. This Council Member said that until this parking problem is addressed, that particular Council Member stated that he won't vote for approval. The transcriber could not identify which Council Member had made this remark.

Mr. Osmun noted another statement was made by a Council Member that there is a lovely, one-story building being replaced by a 3-story building that covers 100% of the footage of the property. Also, that the Planning Board, based upon this Developer's Agreement, was going to discuss amending the ordinance so that situation will not occur in the future.

At this point, Mr. Montague said that any official who took part in that Council Meeting is asked to leave the room.

Councilman Joe Mikulewicz, who was in the audience, left the room.

Mr. Montague questioned the correct number of votes taken in this meeting as noted in the transcript. Mr. Foster said the correct number can be found in the approved minutes of that Council Meeting.

Mr. Osmun reported that another comment was made at the meeting that believed a 'McMansion' would be built on Main Street, because it is allowed under current zoning. 'That is not what we want' remarked a Council Member. Mr. Osmun reviewed five other comments made by Council Members. A final acknowledgement had been made by the Council Members that the 221 Main Street application had been approved by the Planning Board; however, 221 Main Street cannot go forward without the Council's approval of this Developer's Agreement (this statement was included in the transcript).

Mr. Osmun noted that 221 Main Street now holds a pocket veto of the approval by the Planning Board by the Mayor and Borough Council. Mr. Osmun reminded the Planning Board members that they have the exclusive authority and power, with regard to Site Plan Review and Approval. Mr. Osmun felt that power has been taken away from the Planning Board by the denial of the approval of those conditions. This desire to change the Zoning Ordinance to prevent this particular building from being constructed is contrary to Section 52 of the Municipal Land Use Law, NJSA 40:55D-52. This section provides that when final site plan approval has been granted, whether it has conditions or

not, the zoning requirements that apply to that development at the time of the approval cannot be changed for two years.

Mr. Osmun felt that even if the Mayor and Council were to change the zoning ordinance, it would not affect this particular development at 221 Main Street for a period of two years and the applicant has the authority to apply for three one-year extensions.

Mr. Osmun said he and the applicant are respectfully asking that Conditions #4 and #5 be removed on the grounds that they cannot be satisfied by the Mayor and Council's failure to approve the Developer's Agreement. These conditions are not only burdensome conditions, but they are impossible for the applicant to satisfy in view of the Developer's Agreement not being approved.

Mr. Osmun quoted a section in Cox stating that if a condition is unduly burdensome, then it can be expunged. Mr. Osmun asked that these two conditions be removed.

Mr. Montague felt that as far as the zoning being changed is not an issue at this time. There is not a need for the Board to review that issue right now.

Mr. Montague reviewed Condition #4: 'No construction permit will be issued to the applicant until written assurance has been secured'. Also, it states: 'No construction permit has been issued to the applicant until the issue described in this paragraph has been addressed by the Mayor and Council, and that the Body has either arrived at a solution to the problem or acknowledge in writing the applicant that it is unable to arrive at a solution.' Mr. Montague believed the part after the "or" is where things currently stand. Mr. Osmun agreed. Mr. Montague said the required writing would be the Borough Council's vote as recorded in their minutes. Mr. Osmun agreed, pointing out that Planning Board members have received transcript of those particular Council meeting minutes.

Mr. Montague brought up Condition #5. He felt the Borough Council should have given 221 Main Street a solution. Mr. Montague believed the Council's solution was that they weren't going to do anything about this matter.

Mr. Osmun noted that 221 Main Street had followed the instructions of the Planning Board in approaching the Borough Council on this parking matter and they were turned down.

Mr. Montague asked Mr. Osmun if, legally, the Borough Council could block 221 Main Street from using their proposed garage without warning.

Mr. Osmun answered that the issue arises of whether 221 Main Street has "adverse possession" of rights. There has been open and notorious use of access across the parking lot to reach the applicant's building.

Mr. Montague said he has not actually heard that the Borough will not give 221 Main Street access. He understood that the Borough Council will not give 221 Main Street a written agreement with a condition that if the Borough changes their mind, and it wants to take back this particular parking area, the Borough will then negotiate with 221 Main Street. Mr. Montague and Mr. Foster believed that the Borough had said "no" to the entire request in that condition.

Mr. Hague believed that Condition #5 has been satisfied. Mr. Hague felt Condition #4 gives the Borough the right to cut off access at any time. The applicant has parking spaces for residential units that are dependent upon that access. That problem had been raised in the hearing. Mr. Hague didn't believe that problem has been solved. Mr. Hague felt that condition was the only way the Board could be sure that there would be access parking on the site. It looks like the Mayor and Council did not want to give that assurance.

Mr. Foster confirmed with Mr. Osmun that he had come to an agreement on the language with Attorney Fraser. Mr. Foster asked what happened to the proposition that was to be presented to the Borough Council at that time.

Mr. Osmun reported that Ms. Fraser had discussed the proposition with the Borough Council. The Mayor and Council, after offering comments, approved Ms. Fraser's third draft. Ms. Fraser sent Mr. Osmun her third approved draft. Mr. Osmun reported that he discussed the draft with his client. At that time, Mr. Osmun did not understand Condition #4 because a municipality probably has the right to condemn property or to take it away and block off access. Mr. Osmun could not envision the Mayor and Borough Council going ahead and turning that particular section into something else and blocking the access to all those other properties back there. He seriously believed that would not happen.

Mr. Osmun said that Ms. Fraser was unable to attend the Council Meeting when the proposed resolution was discussed. Mr. Foster asked where was this resolution put on the agenda. Mr. Osmun said the resolution was put on the Consent Agenda. The Mayor and Council discussed the resolution and voted it down. Mr. Osmun said he didn't attend that particular meeting; however, he watched a recording of it. Ms. Fraser informed Mr. Osmun that the Borough Administrator had called her and told her that the resolution had not been passed.

Mr. Foster brought up Mr. Osmun's reference to Cox about conditions that can be unduly 'burdensome'. Mr. Foster did not believe, as to what was agreed to by the Board, that either of these conditions were unduly burdensome. As far as Condition #5 is concerned, Mr. Foster agreed with Mr. Hague's opinion. The language of that condition is such that the applicant complied with it. The Borough Council for some reason turned down the resolution and decided not to provide 221 Main Street with the approval that it sought (Condition #5). The Board could now determine that this particular condition is satisfied. Mr. Foster believed that the language is very clear that there has to be a written

agreement from the town. He also believed that the applicant's recourse would have to be elsewhere.

Mr. Osmun concurred with Mr. Foster that Condition #4, as originally drawn, is not burdensome; however, the failure of the Mayor and Borough Council to approve that condition makes it unnecessarily burdensome. It prevents the development of this property. Mr. Osmun believed that the Planning Board has the authority to remove that condition. To require his client (221 Main St.) to go to court now and say that the action of the Mayor and Borough Council was arbitrary, capricious, and unreasonable and unlawful under the Municipal Land Use Law, would cost his client even more expensive legal fees. Mr. Osmun firmly believed that the Planning Board had the power to remove Condition #4.

Mr. Foster didn't believe the Board had that power. He pointed out that the Board is limited by the language stated in Condition #4.

Mr. Osmun felt that the Board had the power to modify Condition #4. He reminded Mr. Foster that Condition #4 was a Site Plan condition. The Board has Site Plan Approval authority. The Board is permitting the Mayor and Borough Council to say that the Board's Site Plan Approval is now gone because the applicant cannot now proceed. It is the same as if the Planning Board had denied the application.

To Mr. Foster, Mr. Montague noted that he was not aware that adverse usage rule states that the municipality can't be held to a condition like this. If he had known that fact ahead of time, he would have acted with more restraint. Mr. Montague proposed that the Board remove Condition #4.

Mr. Hague disagreed. He pointed out that the applicant chose the manner in which they wanted to make use of this property. The applicant chose the residential use because they are going to maximize their value out of this property as opposed to using commercial or office or staying at one floor. Mr. Hague stated that he had no sympathy for the applicant. The applicant is saying that they want to demonstrate that they have 4 parking spaces for residential consistent with RSIS; however, the applicant has a problem with access. The argument about the right of the municipality through condemnation to take access is valid; however, when someone takes legal access, they are entitled to some compensation for the taking of that access. In this situation, they are not entitled to compensation because they don't have the access to start with.

Mr. Hague noted that there is an intensification of use for other properties on Main Street that back up onto this parking lot. If the Board gives this access to 221 Main Street, they may be forced to give it to all these other properties. A mess will be created. Mr. Hague stated that he was opposed to removing Condition #4.

Mr. Sennett believed that without the easement, the Board had no assurance that the RSIS parking requirements were fulfilled. How could the Board approve an application without that condition?

Mr. Osmun's impression from the Borough Council meeting transcript is that the Borough Council will soon be changing the ordinance which allows for a 100% build out and three stories.

Mr. Foster recalled that the Board and the applicant had discussed the idea of the applicant obtaining parking permits each year for the Borough parking lot. That method has been done a number of times by other businesses. Mr. Foster confirmed with Mr. Osmun that he had arranged for 9 parking permits. Mr. Osmun pointed out that the Board of Adjustment required Chase Bank to purchase their permits for only one year. In 221 Main Street's case, the applicant is required to renew their permits on an annual basis.

Mr. Foster believed the Borough Council was also discussing eliminating that particular possibility by ordinance also, in addition to changes for lot coverage in the B-4 District and also three-story structure. The fact remains, however, that all 3 of these situations were in existence when the Board made its findings and conclusions and made its very reasonable conditions.

Mr. Montague asked Mr. Foster if the Board had the authority to change a condition under the statute.

Mr. Foster answered that the Board had the authority to re-consider the language of a condition.

Mr. Montague felt that the Board could either leave the resolution as it currently stands or have the applicant pursue other recourses.

Mr. Osmun stated that there were no other recourses. The applicant cannot get a building permit.

Mr. Montague pointed out that the applicant could go to court.

Mr. Foster asked if an attempt had been made to have the Borough Council re-consider their decision.

Mr. Osmun answered that he had a discussion with Attorney Fraser. Ms. Fraser informed him as a courtesy that she had been talking with the Mayor and Council about them re-considering their decision. This phone conversation took place four weeks ago. He has not heard back from her since that time.

Mr. Osmun stated that not only did the Mayor and Council turn down the Developer's Agreement; they also billed 221 Main Street as an escrow fee for \$4,200 for Attorney Fraser's work.

Mr. Montague believed Condition #5 has been resolved. He brought up the possibility of the Board having a legal search done for Condition #4. He noted that only four board members were eligible to vote on this matter.

Mr. Gerridge expressed concern if this situation goes to court.

Mr. Sennett felt that it wasn't the Planning Board's place to interpret what the Borough Council was trying to convey in their decision. The Board had included a condition requiring that the Borough Council approves this access agreement. The Council did not approve it. This ends it.

Mr. Montague and Mr. Sennett believed what happens to the terms and conditions in the future are a separate issue. Mr. Montague felt the Board should focus on deciding whether to remove the condition or not.

Mr. Pfeil pointed out that the Board had included that particular condition because 221 Main Street was the first property which was going to be built out to 100% lot coverage. There was no other option to get access to that parking, if the Borough did something. All the other properties in that same block are not built out to 100%. These properties have their own access to their backs. 221 Main Street does not have such an access. It is a unique situation. Mr. Pfeil said that was the reason he felt strongly this particular condition should be included.

Mr. Hague stated that the applicant has acknowledged that they do not have legal access. A fundamental basis for approval is access. Currently the applicant does not have the legal right to this access.

Mr. Osmun disagreed, stating that the applicant has legal access for now. He pointed out that this area is a public parking lot which has vehicles traveling up and down those aisles. Mr. Osmun felt that this access could not be blocked off. Such an action would be discriminatory.

Mr. Hague reminded Mr. Osmun that this particular area is not a public street. It's a separate tax lot. The lot is owned by the Borough.

After further discussion, Mr. Foster believed that the position expressed in the language in Condition #4 has not been fulfilled. He felt that only recourse for Mr. Osmun and the applicant is to go to court and appeal the Borough Council's decision. Mr. Foster agreed with Mr. Osmun that the Developer's Agreement was reasonably worked out.

Mr. Osmun said if he and the applicant go to court, they would have to include the Planning Board as well as the Mayor and Council in the suit. The Board declined to remove the condition in question.

Mr. Montague believed that the Planning Board had a right to vote on whether to remove Condition #4.

Mr. Foster said he wasn't sure if the Board could take that action. The Board may have to re-open the entire hearing, perhaps starting at the very beginning.

Mr. Osmun stated that 221 Main Street chose to apply to the Board to re-open the case and hopefully have the conditions modified. He said he would talk with his client about that option or the option of going to court.

After further discussion, Mr. Foster believed that if the Board removed Condition #4 they would be doing something substantive. He didn't think the Board had the authority to do this unless they re-open the entire hearing.

Mr. Osmun disagreed with Mr. Foster's statement. He noted that there are 4 Board members present tonight who can vote on this removal. After listening to tonight's discussion, Mr. Osmun felt that if a vote was taken, the vote will result in a tie. Under the Municipal Land Use Law, the motion then wouldn't pass.

Mr. Montague wanted to have a review of what the Board could legally do on this matter. After that is done, a vote could be taken at the next meeting. He asked Mr. Foster's opinion.

Mr. Foster reiterated that as far as both Conditions #4 and #5 are concerned, the Board, in re-opening this application, has the right to say either that the condition has been satisfied or the condition has not been satisfied. Mr. Foster felt the Board members, who can vote on this matter, will agree that Condition #5 has been satisfied, because of its language. Mr. Foster felt the language in Condition #4 has been satisfied.

Mr. Hague made a motion that the Planning Board acknowledge Condition #5 is satisfied and that Condition #4 is not satisfied and that 221 Main Street cannot obtain a building permit until a decision is made regarding Condition #4. Mr. Sennett seconded the motion. A roll call vote was taken:

Mr. Hague - yes
Mr. Gerridge - no
Mr. Sennett - yes
Chrmn. Montague - yes

Mr. Foster said he will prepare a resolution for the next meeting.

HSBC Bank–USA, 407 Main Street, Block 84, Lot 6–Preliminary & Final Site Plan Approval

Councilman Harris recused himself from this hearing because of a conflict of interest.

Mayor Plambeck rejoined the Board on the podium.

Michael Miceli, Esq., introduced himself as the attorney for the applicant. He noted that the application is for Block 84, Lot 6. The proposal is to construct a bank with a drive-through and an ATM on property located in the B-2 District. Mr. Miceli stated that the bank is a permitted conditional use. The proposed plans satisfy all of the conditions of the conditional use. This property is also in the Borough's Historic District. The applicant has appeared before the Historic Preservation Commission (HPC) three times. The plans before the Board tonight have been revised three times to satisfy the HPC. Mrs. Siegel of the HPC was to submit something in writing that the HPC is now satisfied.

Mr. Miceli reported that he had received an e-mail from Mr. Foster based on a conversation they both held yesterday concerning an easement that Mr. Foster had remembered being given to Lot 6 to Lafayette Gardens some time ago. That easement was put in place in 1998. Mr. Miceli stated that a vacation of that easement was done in 2004.

Mr. Miceli submitted Exhibit A-1, a vacation of easement parking dated May 7, 2004.

Mr. Miceli called the applicant's engineer, Daniel J. Dougherty, forward. Mr. Dougherty was sworn in to testify. He testified his business address is 1904 Main Street, Lake Como, NJ. The name of his firm is Dynamic Engineering Consultants. Mr. Miceli submitted his educational and professional credentials to the Board. The Board accepted his credentials.

Mr. Miceli asked Mr. Dougherty to give the Board the site location and the orientation of the site.

Mr. Dougherty submitted Exhibit A-2, an aerial exhibit showing the site. He testified that the applicant's site is located between Lafayette Ave. and Washington Ave. on the eastbound side of Route 124 in Chatham Borough. The site complies with the zoning regulations for the B-2 District. The proposed use is a permitted conditional use. The proposal meets all the conditional use requirements; therefore, it conforms. Kings Supermarket is the site's next door neighbor to the east. To the south and southwest are the Lafayette Garden Apartments. To the west is an existing chiropractic office. Across Main Street to the north is a carpet and rug store.

Mr. Miceli asked Mr. Dougherty to give a description of the existing site conditions.

Mr. Dougherty stated that a building had been demolished on the property between the time the survey was made and submittal of HSBC's application. The site also had a driveway to Main Street and paved areas for the businesses uses in the now demolished building.

Mr. Miceli asked Mr. Dougherty to describe the proposed development.

Mr. Dougherty testified that the applicant is proposing a 3,915 sq. ft. HSBC bank. The bank will have a drive-through lane served by a remote drive-through teller. There will

be a pedestrian ATM located in the lobby. Mr. Dougherty quoted Section 165-17C of the LDO which explained the purposes of the B-2 District. This district is to provide for general business and office uses which provide goods and services to customers on a regional scale. This bank fits that description. Banks are specifically listed as a permitted conditional use as long as the conditions of Section 65:44 are complied with. Those conditions deal with traffic circulation and parking. The first condition regards drive-through portion of a bank use. Drive-throughs are permitted only if sufficient room for parking and circulation and queuing traffic are allowed for on the site.

Mr. Dougherty testified that the parking requirements for the Borough are met in this application. Also, the queuing requirements for the drive-through are being met.

Mr. Dougherty brought up that banks are a permitted use in the Borough as long as the parking conditions are met. The parking conditions are 2 spaces per teller window. In this application, there are 4 teller windows, representing 8 spaces. Five maximum employees are being proposed for the bank. The spaces needed for the employees and ATM customers come to a total of 20 proposed spaces.

Mr. Dougherty noted that the applicant's traffic engineer will be describing the traffic impacts and the adequacy of the infrastructure for traffic. Mr. Dougherty stated that the zoning requirements requiring all the area, yard, building coverage, height, sign, and buffering have been met on this application. Mr. Dougherty said that the application is variance-free; therefore, the bank is a permitted use under the conditional use criteria.

Mr. Miceli asked Mr. Dougherty to describe the access circulation and parking, including the drive-through operations.

Mr. Dougherty submitted Exhibit A-3, a combination of the proposed site plan including the proposed landscaping in color. He testified that the plans will have a full-access driveway out to Main Street. One-way circulation on the site will bring traffic from the access drive past angled parking and around the back of the site past the drive-through lane, and circulating out to the access lane.

Mr. Dougherty stated that the drive-through will have a remote teller. There will not be a drive-through window at the building where cars pull up to the building to deal with a teller. The remote teller will be approximately 35 to 40 feet from the building. The building, on its southern elevation has a teller window, so that there can be visual contact between the teller and the driver/customer at the remote teller location. After the driver/customer makes a transaction, the customer would then lead back into the drive-through lane, circulate counter-clockwise around the building, either leave the site or return to the parking lot and park.

Mr. Dougherty testified that there will be no windows along the eastern elevation of the building. The only window associated with the drive-through lane is on the southern face so that eye contact can be made between the teller and the customer.

Mr. Dougherty stated that angled parking along the one-way aisle will be utilized, again fulfilling the 20 parking space requirement. There will be a full by-pass lane which will be completely separate from the drive-through lane. This arrangement will allow customer traffic leaving the parking lot to circulate the site to get to the exit at the other side of the building.

Mr. Miceli asked Mr. Dougherty if the proposed site provides an efficient, convenient, and safe arrangement for the maneuvering of vehicles exiting the site.

Mr. Dougherty answered yes.

Mayor Plambeck asked that when a motorist is at the remote teller, will there be room for another vehicle to pass by to exit the site.

Mr. Dougherty answered yes.

Mr. Miceli asked Mr. Dougherty to describe the proposed drainage conditions.

Mr. Dougherty testified that the existing site has no stormwater management or drainage facilities. Run-off leaves the site through sheet flow. A portion of the existing site runs off towards Main Street. A larger portion runs off toward the rear to the south. Presently there are no on-site inlets, collection systems, or storage facilities.

Mr. Dougherty stated that the proposed site will have an on-site collection system consisting of inlets and concrete pipe to collect the run-off from all the paved surfaces, as well as any landscaped surfaces. The collection system delivers the stormwater to an underground detention system consisting of 200 linear feet of 48-inch reinforced concrete pipe.

Mr. Gerridge asked if the first angled parking space is near the front yard.

Mr. Foster agreed that part of the angled parking space is close to the front yard. Mr. Dougherty agreed that the rear of the parked vehicle could be beyond the building line.

Mr. Foster believed that situation could be handled with a request for a design waiver. He reminded Mr. Miceli that the ordinance does not permit parking in the front yard.

Mr. Dougherty said he could revise the plans to slide that parking section back.

Returning to the drainage plan, Mr. Dougherty testified that the detention system essentially detains run-off and will pipe any volume underground. It will have an outlet control structure which releases water and run-off through controlled orifices. The outlet control structure is proposed to be tied into the NJDOT collection system retained within the highway. The run-off which leaves the site meets the reductions for soil conservation services' recommendations and for the 2, 10, and 100-year storms; those reductions are 50%, 25%, and 20% respectively. Each of those entities are either exceeded or met by

this system. There will be no additional run-off sent through the NJ DOT roadway. The inlet which receives the existing site is located just out of view down near Lafayette Ave.

Mr. Dougherty stated that the run-off from the existing site that flow to Main Street, and reaches that DOT inlet, will no longer follow that route. The flow will be collected in the applicant's system, go through the bank's outlet control structure and be connected into a manhole located just to the west of the applicant's site on Main Street.

Mr. Dougherty said that he will be ready to answer the issues raised in the report submitted by Mr. DeNave, the Borough Engineer. Board members had received Mr. DeNave's report tonight.

Mr. Dougherty testified that this site does not meet the criteria for a major development under DEP regulations. The utilities for the site will be connected underground to the existing utilities located on Main Street. Landscaping will be planted to increase the buffer at the rear of the site where the property adjoins with the Lafayette Gardens community. The Historic Preservation Commission has requested the applicant to save two existing trees at the front of the site. The Borough Engineer has asked the applicant to save existing trees at the rear of the site, at the south corner. HSBC will save these particular trees.

Mr. Montague said he wasn't clear where the site goes to the back line.

Mr. Dougherty answered that the back wall of the garage and the applicant's property line is approximately 10 1/2 feet. This is shown on the demolition plan.

Mr. Montague noted that there is a gutter and drain in that particular section. This system drains towards the applicant's property. He asked Mr. Dougherty if he was aware of how much water the property will handle when a heavy rain goes into those drains.

Mr. Dougherty pointed out that the drainage patterns there will not change under existing condition.

Mr. Montague noted that there is a macadam road on the left hand side of the property. Is the applicant proposing to keep the back yard open, or will it be fenced?

Mr. Dougherty answered that the applicant wasn't planning to install a fence because of landscaping and grading changes. A fence sounds like a good idea.

Mr. Montague suggested Mr. Dougherty and the applicant consider securing that portion of the property.

Regarding the landscape plans, Mr. Dougherty testified that there will be 12 shade trees, 4 ornamental trees, 23 evergreen trees, 197 evergreen shrubs, 81 deciduas shrubs, and 62 ground cover plantings. Mr. Dougherty stated that the plantings will be concentrated at the rear of the site to provide adequate buffer to the residential district. HSBC is also

meeting the residential buffer requirements specifying 15 feet along the boundaries in the back.

Mr. Dougherty noted that the applicant has received feedback from the Historic Preservation Commission regarding the proposed lighting. HSBC will be installing the site lighting fixture recommended by the HSBC. The proposed light fixtures will be 175-watt metal halide-light fixtures. The pole-mounted fixtures are 15 feet. There will be three dual-mounted fixtures, 5 single-mounted fixtures, and 3 wall-mounted fixtures. These fixtures will provide adequate and safe lighting throughout the site.

Mr. Montague asked how late the lights will be on.

Mr. Dougherty noted that the lobby will contain a 24-hour ATM. The ATM at the driveway will also be lit 24 hours. Anyone using either the lobby ATM or the drive-through ATM would have to circulate the site. A visitor won't be able to leave the HSBC property in his/her vehicle without circulating the site. Therefore, the lighting for the site will operate 24-hours for safety reasons.

Mr. Montague felt the residents would not be happy with 24-hour lighting.

Mr. Miceli said the applicant's engineer will discuss the proposed shielding for this lighting to prevent it from spilling onto neighboring properties.

Mr. Montague didn't believe the applicant's next door neighbor, Kings Supermarket, had 24-hour lighting.

Mr. Dougherty said Kings Supermarket was a different type of business. Customers will be visiting the HSBC facilities at all hours. HSBC wants to provide for their safety.

Mayor Plambeck felt it didn't make sense to have lights on the premises, if there were no visitors between 2 a.m. and 6 a.m. He realized safety at the ATMs was important; however he asked that HSBC be reasonable about their lighting.

Mr. Dougherty agreed. Perhaps motion-sensors could be installed.

Mr. Montague noted that the proposed lights would be mounted 15 feet high. The Board has asked applicants not to install their lights no higher than 10 feet. He would like to hear testimony why the lights had to be 15 feet high.

Mr. Dougherty believed the applicant could give some thought to a shorter pole.

Mr. Montague brought up the small atrium where the ATM in the front of the building is located. What would be the proposed lighting in that little section?

Mr. Dougherty said the applicant's architect will testify on that situation. Mr. Dougherty briefly commented that the lights that will be mounted on the building. The signage will have some lights.

Mr. Miceli asked Mr. Dougherty to describe the proposed signage.

Mr. Dougherty testified that HSBC is proposing one monument sign which will be located on the western side of the driveway on Main Street. This sign will conform to the ordinance requirements. This sign will not be internally illuminated. It will be externally illuminated. The sign will measure 7.7 square feet. The required setback for signs is 5 feet to the property line. The proposed sign will be 15 feet from the property line. Mr. Dougherty stated that all the other signage on the property will comply with the ordinance.

Mr. Montague asked if there will be any entrance or exit signs on the driveway.

Mr. Dougherty answered that there will be no directional signs, other than traffic signs.

Mr. Montague brought up the free-standing ATM. How will the ATM signage be supported?

Mr. Dougherty answered that the signs on the free-standing ATM will be part of the structure of the ATM.

Mr. Montague asked what the structure will look like.

Mr. Miceli said that he and Mr. Dougherty had photos of actual remote teller locations.

Mr. Montague said he understood the ATM will be an awning-type structure. Is that correct?

Mr. Dougherty and Mr. Miceli answered yes. They will provide the Board with more information on the ATM.

Mr. Miceli noted that since the filing of the HSBC application, the Borough adopted an ordinance to change the principal building side yard setback from 5 feet to 10 feet. The proposed plans comply with that requirement. The application's smallest side yard is at 17 feet.

Mr. Montague asked Mr. Dougherty if HSBC had submitted all of their signage plans to the Borough Sign Committee.

Mr. Miceli answered yes. He had submitted enough copies for the Sign Committee's Review.

Mr. Montague said that the Board needed a report from the Borough Sign Committee regarding the proposed signage.

Mr. Dougherty gave testimony on deliveries and trash collection at the site. Any deliveries to this bank will be small. The delivery trucks, FedEx and office supplies, will be small size. Occasionally an armored vehicle will visit the bank. Regarding trash collection, a special contractor will take away shredded papers. The rest of the trash will be removed by the cleaning crew who work at the building. The cleaning crew come to the building during off hours, clean, empty waste paper baskets, and take this particular trash with them when they leave the premises. There will be no need for a dumpster on the HSBC property.

Mr. Miceli confirmed with Mr. Dougherty that he had reviewed the report from TM Associates, dated 11/7/2007, regarding this site. Mr. Miceli asked Mr. Dougherty to go over the items stated in that letter which still needed to be addressed.

Mr. Dougherty testified that he and the applicant agreed with all of the comments stated in the TM Associates memo. These comments can be accommodated in the plans.

Mr. Miceli noted that Mr. Dougherty's testimony is finished. Does the Board have any questions for him?

Mr. Montague noted the time was now 10:55 p.m. Now would be a good time to adjourn tonight's hearing. At a future meeting, time will be given for questions from the Board and the public for Mr. Dougherty.

After some discussion, the HSBC representatives and the Board agreed to continue the application to the November 14, 2007 Board meeting.

Mr. Hague suggested the completeness date of the application be tonight's date, 11/7/07. Mr. Miceli agreed with this suggestion.

Old/New Business

Mr. Montague reminded Board members to take the Borough's Sexual Harassment course if they haven't done so.

Mr. Montague noted that he has distributed information on the State's policy on keeping e-mails for three years. He has checked with the Borough Clerk on this matter. Mrs. Caljean informed him that the Borough doesn't have a policy on e-mails. Mr. Montague suggested the Borough should circulate this State policy to its employees and board members. After some discussion by the Board, Mayor Plambeck suggested the Borough Attorney give his views on this matter.

Mr. Montague discussed information he had received from the State requiring a Master Plan ordinance change. This change has to be made by April 10th.

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

Respectfully submitted:

Elizabeth Holler
Recording Secretary