

CHATHAM BOROUGH PLANNING BOARD  
May 13, 2009 7:30 p.m.

Chairman Richard Crater called the Chatham Borough Planning Board meeting of May 13, 2009 to order at 7:30 p.m. in the Council Chambers, Chatham Municipal Building. Mr. Crater announced that all legal notices have been posted for this meeting.

Members Present:

Mayor V. Nelson Vaughan, Councilman Joseph Mikulewicz, Chairman Richard Crater, Donna Cali-Charles, Vincent DeNave\*, H.H. Montague, Susan Favate, James Mitchell.  
\*arrived at 7:40 p.m.

Anne Marie Rizzuto, Esq., attorney for the Board, was present.

Members Absent:

Vice Chairman John Bitar, Alan Pfeil.

Open to the Public

There were no comments from the public.

Approval of Minutes

The meeting minutes of April 1, 2009 were approved as submitted.

Resolution – World Champion K Taekwondo, LLC, - 453 Main Street (CVS Plaza)

Mr. Crater noted that Ms. Rizzuto has prepared this resolution and has distributed copies to Board members.

Ms. Rizzuto briefly reviewed the application. She noted that the Borough Sign Committee has approved the proposed signage. Ms. Rizzuto recalled that the Board felt it was appropriate to waive the site plan requirements. The Board has also approved the change of permitted use. Ms. Rizzuto reviewed the standards the applicant must adhere to.

Mr. Montague made a motion to approve the resolution. Mrs. Cali-Charles seconded the motion. A roll call vote was taken:

Mayor Vaughan	-	yes
Councilman Mikulewicz	-	yes
Mr. Montague	-	yes
Mrs. Cali-Charles	-	yes
Mrs. Favate	-	yes
Mr. Mitchell	-	yes
Chrmn. Crater	-	yes

Mr. Bitar and Mr. Pfeil were absent. Mr. DeNave did not arrive in time to vote on this resolution.

### Committee Reports

Mr. Montague reported that he will have a presentation on FAR for the next meeting.

Ms. Rizzuto gave an update on the progress she has made on the Checklist for Applicants. She will be meeting with Mr. Montague again. They will try and have something to present to the Board at the next meeting.

At this point, Mr. DeNave arrived at the meeting.

Mr. Montague brought up that Ms. Bergailo, the planner, hired by the Board will be beginning work soon. Should the Board meet with her to further clarify her assigned projects. Mr. DeNave noted that Ms. Bergailo has already signed the necessary contracts. Mr. DeNave and Mr. Crater will meet with Ms. Bergailo to review what the contract requires from her. Mr. Crater will report back to the Board on the meeting.

### Romano vs. Curran

Ms. Rizzuto noted that Mr. and Mrs. Romano, of 184 Hillside Ave., were in the audience tonight. Also, Joanne Curran, of 188 Hillside Ave., was present. Ms. Curran is the plaintiff in the litigation filed against the Romanos.

Ms. Rizzuto reviewed what has transpired on this matter:

- Mr. & Mrs. Romano had submitted an application to the Board, proposing a subdivision and variances to subdivide their property at 184 Hillside Ave.
- This subdivision would create a lot upon which a one-family home would be constructed.
- After a number of hearings, the Board took a vote. The majority of the votes were to approve the subdivision with the requested variances.
- The resolution approving the subdivision was adopted by the Board on May 7, 2008.
- After the adoption of the resolution, Ms. Curran, a neighbor of the applicant, filed a law suit in Superior Court to overturn the Board's approval of the subdivision and overturn the granting of the variances.
- Several hearings were held before a judge. The judge felt the Board hadn't been clear whether they had granted a C-1 hardship variance or a C-2 flexible variance. He felt the applicants themselves were not clear in their presentations what type of C variance they were seeking.
- The judge has instructed the Board to reconsider this subdivision matter on a "de novo" basis. No new evidence can be submitted.
- Board members have studied the transcripts, plans, deeds, surveys, photos and reports for this application. Several Board members are new and had not participated in the 2008 hearing.
- The Romanos and Ms. Curran were not allowed to supplement the record in Superior Court or to the Board

Ms. Rizzuto recommended that the Board tonight should do the following:

- Discuss the merits and the demerits of this application.
- Discuss exactly what type of C variance was being sought
- Decide whether the proofs provided by the applicant met the requirements needed for the C variance
- Each Board member should give their opinion of the evidence before voting on whether or not to grant the subdivision and the needed variances.

Ms. Rizzuto reviewed the requirements of each of the variances needed in this subdivision application. Ms. Rizzuto believed a C-2 variance does not apply to this particular subdivision situation. She believed a C-1 variance is needed. Ms. Rizzuto reminded Board members that they need to produce a transcript of tonight's meeting that fully enunciates their deliberations and final decisions to the Judge who had remanded the case back to them.

Mr. Montague did not believe a hardship was involved with this subdivision. He felt that the level of proof that had been presented meets the C-1 variance.

Mr. DeNave gave Ms. Rizzuto information a similar case in Warren Twp. NJ. This case involved a C-2 variance after a subdivision. Mr. DeNave recalled that in the Romano application, Mr. Steck had given testimony that both a C-1 and a C-2 variance were applicable in this application. Mr. DeNave asked Mrs. Favate for her opinion.

Mrs. Favate felt, according to the Municipal Land Use Law, a C-2 variance did not apply in this situation.

Mr. DeNave reviewed Mr. Steck's testimony as stated in the transcript of the hearing. Mr. Steck had presented a C-2 variance argument, pointing out that the benefits of granting the subdivision outweigh the detriments. No change will be made to the existing house. The new lot will produce a house in character with the area.

Mr. DeNave said he had visited the site and had studied the subdivision plan. He pointed out the new house would be on a substandard size lot; however, would conform with all the side yard setback lots. The lot width would be in keeping with the neighborhood. The new house will be in keeping with the scale of the neighborhood. Mr. DeNave said he therefore agreed with the C-2 variance argument.

Mrs. Favate pointed out that the subdivision would create two substandard lots. Since the existing house would not be allowed to expand without a number of variances, a tear-down situation could very well happen. There is the possibility a developer could buy the two substandard lots, merge them, tear down the two houses, and create a much larger house.

Mr. Mitchell felt there was plenty of room to build a larger home without being "locked into" two substandard lots.

Mr. Montague did not believe there was a hardship in this situation. The only hardship he believed would be the creation of the subdivision. Mr. Montague pointed out that the steep slope is a constraint on this situation. Also, this subdivision would be increasing the density for this neighborhood. He could not approve this subdivision.

Mrs. Cali-Charles agreed with Mr. Montague's opinion on the hardship situation. She noted that there is a mixture of large and small houses in the applicant's neighborhood. One large house would not be out of place. If the Board were to approve something substandard, it would defeat the purpose of the Borough Master Plan.

Councilman Mikulewicz stated that he would prefer two smaller homes in this situation instead of one larger home. He pointed out that the Borough should have a mix of housing stock affordable to various income levels. Because of technical reasons, Councilman Mikulewicz could not approve this subdivision.

Mayor Vaughan said after reviewing all the testimony and weighing comments made by Board members tonight, he will probably vote in favor of the subdivision.

Ms. Rizzuto advised Board members if they choose to grant a C-2 variance, they should state their reasons why it should be granted or why it should not be granted.

Mr. DeNave explained to Board members that if the subdivision was not approved, the Romanos could do a knock-down of their existing home and could put up a 3700 sq. ft. house. A house of that size is not in keeping with the neighborhood.

Mrs. Cali-Charles said one larger home may increase the density of the neighborhood. No improvements can be made to the applicant's existing house. In fact, the existing porch had to be removed. Mrs. Cali-Charles didn't see how these actions benefit the community.

Mrs. Favate and Mr. Crater didn't see the hardship. Having a triangular-shaped property herself, Mrs. Favate could sympathize with the Romanos. However, Mrs. Favate believed there was no hardship involved in this situation. There is the ability to expand on the other side and there is also the option to tear-down the existing house and start over. Mr. Crater expressed concern about the steep slope. He did not like the idea of two substandard lots being created if the subdivision was approved.

Mr. DeNave made a motion to approve the Romanos' application for subdivision and associated variances. Mr. Montague seconded the motion.

Ms. Rizzuto asked each Board member, when voting, specify which type of C variance applies in this application and explain why.

Mr. Montague voted no. He did not approve of two substandard lots being created. He did not believe a case was being made for a hardship variance.

Mr. DeNave voted yes. He felt that the benefits of granting this subdivision would outweigh the detriments. No change will be made to the existing house. He believed the new lot would produce a house in character with the area and will conform to the Borough's standards. He felt the applicant made a case for a C-2 variance.

Councilman Mikulewicz voted no. He was concerned about the two substandard lots that would be created. He believed a self-inflicted hardship was being sought. He did not believe this application met the requirements for a C-1 variance.

Mayor Vaughan voted yes. He believed a case was made for a C-2 variance, not for a C-1 variance.

Mrs. Favate voted no. She did not believe a C-2 variance applied to this subdivision. The hardship really arises if the subdivision occurs.

Mr. Mitchell voted no. He did not believe the subdivision rises to a C-2 variance. He believed the application met the requirements for a C-1 variance.

Mrs. Cali-Charles voted no. She did not believe a C-2 variance applied to this subdivision. She felt the C-1 variance was a self-imposed hardship.

Chairman Crater voted no. He did not believe the C-2 variance applies in this situation. He didn't approve of creating two substandard lots.

Ms. Rizzuto confirmed that the motion of approval is defeated by a vote of 6 to 2. The subdivision and variances are not granted.

Ms. Rizzuto clarified that the Board will not be taking any action with respect to the Superior Court matter. Either side (Romano or Curran) can request that this matter go back to the judge; however, they will have to wait for Ms. Rizzuto to draft the necessary resolution. Also, a transcript of tonight's meeting will also have to be made by any party returning the matter to the judge. Ms. Rizzuto said the attorneys for both sides may contact her concerning this legal requirement.

#### Old/New Business

##### PODS Ordinance

Councilman Mikulewicz noted that there had been productive discussion on PODS at the last meeting. He asked whether it was time the Board forwarded a PODS Ordinance on to the Borough Council for consideration.

Ms. Rizzuto suggested the Board has been looking at draft ordinances for PODS. The Board may want to draft their own version of a PODS ordinance and forward it to the Mayor and Council. Another option is to ask the Borough Attorney to do a draft ordinance.

Mr. DeNave suggested that the Board go ahead and send what they have now to the Borough Council with the modifications and recommendations made by the PODS subcommittee.

After conferring with the Board, Mr. Crater told Mr. DeNave go ahead and forward on the PODS material to the Borough Council.

#### New Business

Mr. DeNave informed the Board that another application has been submitted for a site plan waiver for 40 Watchung Avenue. A Change of Permitted Use for this address is also being proposed. A site plan with a parking lay-out has been submitted. Mr. DeNave has requested the applicant to submit photos of any proposed interior renovations.

The next Planning Board meeting will be held June 10, 2009, 7:30 p.m., in the Council Chambers. If the June 3, 2009 meeting is cancelled, notice will be given.

On other matters, Councilman Mikulewicz reported that the Borough Council has recently discussed the sign situation in the Borough. The Council felt the sign ordinance should be reviewed by the Planning Board.

Mr. DeNave noted that he has forwarded his thoughts on to Mr. Bell, the Borough Attorney. Mr. DeNave discussed that a local restaurant had wanted to maintain a sandwich board sign in front of their building. Mr. DeNave said historically the Borough has not permitted sandwich board signs. Mr. DeNave believed the Borough should put some parameters on these types of signs. Mr. DeNave reported that he has requested local businesses to remove their furniture from the sidewalks. These businesses will probably petition the Borough Council to allow them to keep their furniture and sandwich signs in front of their stores. Given the state of the present economy, local merchants have a serious need to advertise their products to bring people into their stores.

Mr. DeNave pointed out that the sidewalk furniture on Main Street are in a NJ State right-of-way. He wasn't sure if the Borough had any jurisdiction in this matter.

Mr. Montague suggested that instead of the sandwich signs, the merchants be allowed to hang temporary signs on their walls or windows.

Mrs. Cali-Charles brought up the situation of signs expressing political opinions being put up in public sections of town. She felt this situation should be considered in the review of the sign ordinance. Ms. Rizzuto pointed out that political expression is on another level. Mr. DeNave felt that political signs are allowable on private property; however, allowing these type signs on public property is questionable. His interpretation of the ordinance is that no sign should be allowed on any public property, unless it is authorized by the governing body. If the Borough Council does not agree with his interpretation, they should give him some direction.

Ms. Rizzuto noted that case law for benches, signs, newspaper boxes, states reasonable limitations for the health, safety and welfare of the public are allowed. However, these

limitations cannot be too vague. Mr. DeNave, as the Zoning Officer needs limitations he can apply with consistency.

Mr. DeNave, Mrs. Cali-Charles, and Mr. Montague will work together on this sign issue and report back to the Board.

A member of the public asked if he could give a brief comment. Mr. Crater opened the floor to him.

Bernie Vella, 58 No. Summit Ave., suggested that before any resolution or application was approved, a summation be made before the Board takes a vote. He felt Ms. Rizzuto's summation tonight had given excellent clarity to the Board.

Councilman Mikulewicz made a motion to go into Closed Session to discuss contract negotiations for the Board Attorney (Ms. Rizzuto). Mr. Montague seconded the motion.

At 9:16 p.m. the Board went into Closed Session.

At 9:40 p.m. the Closed Session and the Public Session adjourned.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary