

CHATHAM BOROUGH PLANNING BOARD  
February 17, 2010 7:30 p.m.

In Chairman Crater's absence, Board member H.H. Montague called the Chatham Borough Planning Board meeting of February 17, 2010 to order at 7:40 p.m. in the Council Chambers, Chatham Municipal Building. Mr. Montague announced that all legal notices have been posted for this meeting.

Members Present:

Mayor V. Nelson Vaughan\* Councilman Bruce Harris, Donna Cali-Charles, H.H. Montague, Vincent DeNave, Susan Favate.

\*arrived at 7:40 p.m.

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

Members Absent:

Chairman Richard Crater, Vice Chairman John Bitar, James Mitchell, Joseph Mikulewicz.

Ms. Rizzuto added the following to tonight's agenda:

Annual Resolution #7: Re-adoption of the Planning Board's bylaws

Annual Resolution #8: Re-adoption of the Resolution setting procedures for site plan waiver

Ms. Rizzuto announced that the following resolutions will be on the agenda to be memorialized at the next Planning Board meeting (3/3/10), not at tonight's meeting:

10-01 Tricare Treatment Services, LLC – 47 Main Street

10-02 Dance Innovations/Tenant: Botanical Blooms

The Checklist Discussion will not take place at tonight's meeting.

Open to the Public

Lorraine Teisch, 42 Tallmadge Ave., stated that she was concerned about the Parrot Mill Inn being used as a treatment facility for people with gambling addictions. In her research she found that gambling addicts often had other addictions. These additional addictions may not surface until the individual is in treatment. Mrs. Teisch noted that she and the neighbors are very much concerned about this fact. She asked the Board to consider how Tricare would change the desirability of the town.

Mr. Montague explained that Tricare Treatment will be a change of previous use from another permitted use. Tricare is considered a health, professional facility which is permitted in this particular zone. Under the present rules and regulations of New Jersey, the public does not have to be notified on this type of application.

Mr. Montague noted that Tricare Treatment is seeking a Waiver from Site Plan Review. He reviewed the information that Tricare had to submit for this type of waiver. Tricare has submitted all the required information. At the February 3<sup>rd</sup> meeting, Tricare had answered the Board's questions concerning this facility, its operations, and clientele. The Board fulfilled what it is allowed to do under State regulations and Borough ordinances for this type of application.

Ms. Rizzuto discussed with Mrs. Teisch's concern about this application "setting a precedent" for future applications.

Mrs. Teisch asked what if Tricare wanted to bring in additional counselors to deal with additional addictions on this site.

Ms. Rizzuto answered that the Board, in their questioning of the applicant, was informed that no clients with "cross addictions" would be allowed at the Tricare facility.

Mrs. Teisch further pursued the residents' concerns about Tricare clients having addictions other than gambling.

Ms. Rizzuto recalled that the Board had heard that clients, before admission, undergo an intensive screening process by Tricare. This particular program by Tricare is very expensive, and is not covered by insurance. If a client, staying at the facility, has a cross addiction, that would be a violation of the resolution, if the waiver were approved by the Board. The Board can enforce the resolution. Ms. Rizzuto reminded residents that there is confidentiality in regard to medical records. She noted that it is not the Board's job to police the patients of medical professionals.

Mrs. Teisch stated that the residents had researched the web site for Tricare's Baltimore facility and its owner, Michael Osbourne. On his web site, Mr. Osbourne said he interviews prospective clients by phone, not in person.

Ms. Rizzuto said it was her understanding that most clients are referred to Tricare by interventions. Interventions involve a direct meeting with clients. She pointed out that the Board cannot require criminal background checks on a professional operating an office in town. The Board also cannot impose mandatory drug tests on clients. Whether Tricare takes these particular measures is up to them.

Meredith Eckert, 31 Roosevelt Ave., noted that she had heard that if Tricare decided to include treatment for clients with alcohol and drug problems, Tricare would have to appear before the Board again. Is that something the Board would say yes to? Why would the Board say no to drugs/alcohol treatment and yes to gambling treatment?

Mr. DeNave confirmed with Ms. Eckert that she was asking whether the Tricare facility could all of a sudden turn into a drug/alcohol treatment facility. Mr. DeNave noted that testimony and research had been done that Tricare will be a completely different type of facility with different types of doctors. Mr. DeNave felt the governing body will be

looking to see if, constitutionally this type of usage can be blocked in the Borough. State licensing is required for alcohol and drug counseling. Mr. DeNave recalled that Mr. Osbourne had testified that if a client, after the phone interview, had arrived at the facility and showed symptoms of cross addictions, the client will be moved out immediately. Tricare does not have the required licensing to handle additional addictions.

Ms. Eckert expressed concern about the turn-over of strangers arriving in local neighborhoods with so many small children.

Michael Callahan, 53 Tallmadge Ave., implored the Board to re-open the Tricare application until a loophole can be found to stop this treatment center. He reviewed research he had found regarding Michael Osbourne and the Baltimore Tricare center. Mr. Callahan pointed out that Gamblers' Anonymous did not endorse Mr. Osbourne's treatment services. Mr. Callahan quoted a NY Time's article describing Mr. Osbourne as "a profiteer with no success rate".

Rachel Grainger, 25 Roosevelt Ave., asked that the application be re-opened when Mr. Osbourne is present so a full community dialogue can take place. She reported that there were a number of other mothers who couldn't make tonight's meeting, but were very concerned about this facility. She was surprised to hear that no license was required of Mr. Osbourne in the field of gambling addiction. She questioned if this gambling rehab really *did* fall within the permitted use for this district. She asked that the Board re-open this application.

Christine Walls, 16 Tallmadge Ave., felt that the staying-over aspect of this proposed facility is not a continuing use approval. She stated that the inn is not intended as a housing facility to lock people in for five weeks. She asked the Board to re-open the application. Mrs. Walls asked if the Board approves the 6 rooms shown on the site plan today would this keep the facility to 5 patients.

Ms. Rizzuto clarified that the Board agreed to the change of permitted use from an inn to a continuing use of an Inn with medical facilities. Mr. Montague added that the Board expects Mr. Osbourne to maintain the number of rooms and patients as stated in the resolution.

Mrs. Walls said she felt uncomfortable about Mr. Osbourne, in an article, stating that gamblers are "in a desperate stage". She did not want people in "a desperate stage" living in her section of town. Mrs. Walls felt that the Board is approving the expanding of the continuous use.

Ms. Rizzuto informed Mrs. Walls that this belief about expanding the continuous use could be a legitimate argument.

Mrs. Walls expressed her disappointment that the neighbors were not notified of the Tricare hearing. The Board would then have had a sense of the neighbors' serious concerns about this facility.

Jeninne Carrano, 138 Washington Ave., asked whether there would be a medically trained staff on Tricare's premises 24/7. She pointed out that addicts are desperate people who treat their families badly. She felt the Tricare facility would not bring anything good to the Chatham community. Ms. Carrano believed property values would go down if the facility came to be. She also felt that the Parrot Mill Inn did not have the safety code to house addicts. She asked if there was anything the residents could do to stop this facility.

Ms. Rizzuto said assuming that the memorializing of the resolution gets adopted; there is a 45-day appeal period to the Superior Court of New Jersey. She noted that the Board had followed all the correct procedures in the hearing and addressed a number of concerns. The conditions in the resolution will reflect the Board's actions.

Councilman Harris stated that testimony had been given and recorded that the facility's clients will stay inside the facility. Testimony had also been given that there had been no police action at the Baltimore facility in the 20 some years it operated.

Ms. Carrano still did not want the Tricare facility in Chatham. She was still concerned for the safety of the children in the community. She questioned how the Board had interviewed Michael Osbourne. She asked for steps on how to fight this facility from coming into the Borough.

Tracy Tango, 55 Coleman Ave. West, asked if any of the Board members had researched this facility.

Mayor Vaughan reviewed the information he had found out about Mr. Osbourne's facility in Baltimore. He had made inquiries about Mr. Osbourne's testimony that the police had never been summoned to the Baltimore facility. He found it was true. Mayor Vaughan noted that Toby Kennedy had offered to meet with the residents about this facility. He assumed this offer still stands.

Ms. Tango said she couldn't understand how an inn is the same as a lock-in. She asked Ms. Rizzuto why this factor could not be considered a loop-hole.

Ms. Rizzuto answered that Tricare was not approved as a lock-in facility. She reviewed with Ms. Tango the number of bedrooms in the inn, the number of clients plus a manager who would be staying at the facility. Ms. Tango concluded that people with addictions will be residing at the Inn, 24/7, locked in at the premises without a licensed, professional on premises. Ms. Rizzuto clarified that the Board approved Tricare as a professional office space with continuing residential use similar to the Parrot Mill Inn.

Mr. DeNave reported that he had done a great deal of legal research in regard to the use issue. He pointed out that the Planning Bd. was not supposed to determine whether Tricare was a good use. The Board had to determine whether or not to waive the site plan application. If Tricare was not a permitted use for this particular district, Tricare would have to go before the Zoning Board of Adjustment.

Ms. Tango questioned the number of bedrooms and who would be using them. She was concerned about an increase of clients in the future. Mr. Montague pointed out that the resolution clarifies how many clients will be allowed at the facility. For Ms. Tango, Councilman Harris briefly reviewed the proposed floor plan.

Rosalinda Rubio-Williams, 25 Tallmadge Ave., asked how could the residents “not make this (Tricare) happen”. Ms. Rubio-Williams reiterated the safety concerns expressed by her fellow residents.

Patrick Sweeney, 33 Roosevelt Ave., asked if there had been any discussion among the Board members to notify the residents of the Tricare hearing.

Mr. Montague answered according to state law and the Zoning Officer the applicant did not have to give notice.

Mr. Sweeney asked who decided on the actual use with this application.

Mr. DeNave answered that he was the one who decided on the use.

Mr. Sweeney asked has the Board, on other occasions, given notices with regard to waivers of site plans.

Ms. Rizzuto answered no. She clarified that the Board directs the applicant to give notice where required.

Mr. Sweeney asked, have there been other occasions, when the Board required an applicant to give notice of a waiver of a site plan.

Ms. Rizzuto answered no.

Michael Richichi, 22 Tallmadge Ave., confirmed that, at the hearing, the Board could only decide on whether a site plan should be filed. The Board could not outright disapprove the whole operation.

Ms. Rizzuto and Mrs. Favate agreed with Mr. Richichi’s assessment; however, Mrs. Favate pointed out that the Board could add certain conditions. Ms. Rizzuto noted that the Board had imposed a number of conditions that Tricare must follow.

At Mr. Richichi’s request, Mrs. Favate explained what a site plan involves. A site plan generally involves the outside appearance such as the façade, parking, and landscaping. Site plans don’t really address the particular use of the building. The use of a building falls under the purview of the Board of Adjustment.

Ms. Rizzuto reviewed what information the applicant had to provide for the waiver. She pointed out that the Board can impose *reasonable* conditions on Tricare. The Board cannot require that Tricare clients be locked down. The Board cannot require criminal

checks be done on the clients. Ms. Rizzuto felt that the safety concerns expressed by residents are going to be addressed through some of the legitimate limitations in the resolution. Regarding enforcement, she pointed out that reviews of the building will be done, for example health inspections. Periodic inspections can be done when Tricare is in operation.

Mr. Richichi asked whether it was possible “this could have happened without any official notice until the facility changed”.

Ms. Rizzuto said that was correct. In the future, the Board could decide to recommend some changes to the governing body about this type of use in this particular zone.

Julia Callahan, 53 Tallmadge Ave., reviewed with Ms. Rizzuto where the meeting minutes and agendas can be found.

The Board answered that if residents want to listen to audio recordings of meetings, they can contact the Borough Clerk and set up a time to listen to the recording at Borough Hall.

Mrs. Callahan asked if the Board’s task was to decide whether to waive the site plan review, on what grounds did the Board have to ask the applicant about cross addiction.

Ms. Rizzuto felt that the question of “cross addiction” would fall under the Board’s heading of general health, safety and welfare. The Board was also asking questions regarding the certification process.

Mrs. Callahan believed that a change of use is really involved in this situation. The clients will be staying for a long time at the facility.

Terence Walls, 16 Tallmadge Ave., asked the Planning Board and Borough Council to re-open the case.

Councilman Jim Collander, 24 Coleman Ave., noted that he had lived on Tallmadge Ave. for eight years and he understood the concerns expressed by residents. He pointed out that the Planning Board members give many hours of service to the town. The Board members are bound by strict legal boundaries. Mr. Collander suggested the Borough Council should see if there is a role for them to play in this situation. Also, he asked that legal guidance be given to the residents on the next step they should take.

Ms. Rizzuto answered that she cannot give legal advice to members of the public. She clarified that she has only been retained to give legal advice to the Planning Board when called to do so. However, if the public is dissatisfied with anything the Board, the public has 45 days from the date of adoption of the written resolution to appeal to the Superior Court of New Jersey, located in Morristown. The residents would be best served as a group. Perhaps they could hire an attorney. Appeals must be written and they must have a legal basis. She suggested the residents wait and verify the adoption of the resolution

and decide whether they will want to appeal. It would be an appeal against both the applicant and the Planning Board. The Board's attorney must file an answer and be prepared to defend the Board's decision. The applicant must also have an attorney prepared to defend his application.

Ms. Rizzuto added that if the residents do not want this type of use in their B-3 District, they can appeal to the Borough to review the ordinance and consider putting this use in a different zone. The Borough Council cannot over-rule what the Planning Board does. Only in very limited circumstances is there an appeal from the Planning Board to a governing body. A legal appeal would be from the Planning Board to the Superior Court of New Jersey.

Seema Ismail, 15 Parrot Mill Road, noted that her house is right next to the Parrot Mill Inn. No fence is in place. She has two children at home. She asked if there were any regulations with regard to keeping distances between buildings.

Mr. Montague explained that there are yard off-sets for each zoning district, including the B-3 District. If someone wants to change an off-set, they would have to seek a variance and notify the residents. Ms. Rizzuto noted that the Board had not required the applicant to put up a fence. She encouraged Mrs. Ismail to attend the community meeting, if held, with Mr. Kennedy and his tenant, Tricare. A fence is not an unreasonable request.

Fahran Ismail, 15 Parrot Mill Road, said he realizes that there was nothing the Board could have done to stop Tricare Services. He felt it was simply an administrative approval.

Robert Ehrbar, 39 Tallmadge Ave. asked if the Parrot Mill Inn is preserved as a historic site.

Mr. Montague answered no; however, it is in the Borough's Historic District.

Mr. Ehrbar said that most people present tonight would much rather see the inn torn down than see it become a rehab center.

Ms. Rizzuto said if Mr. Ehrbar goes to the community meeting with the property owner, he could mention that fact. It's not something the Board can do. If the building were eliminated, there's a possibility that a much more intensive use could go in.

Councilman Harris asked the residents in the room if Tricare were to hold a meeting with neighbors, would they be interested in attending.

The residents indicated that they would definitely like to attend such a meeting.

Rachel Granger, 25 Roosevelt Ave., brought up the decision made by the Zoning Officer about this particular use. She asked if the Board discovers a way this application could

be re-opened on the basis of this use decision and any other basis, please seriously consider it.

Michael Callahan, 53 Tallmudge Ave., disagreed with Ms. Rizzuto's advice to Board members that it is not the Board's responsibility to find loop-holes in this application. He reported that in 2007 Tricare Treatment Services tried opening a facility in West Palm Beach, Florida and were turned down. Mr. Callahan wondered what the residents in West Palm Beach did to stop this facility from coming to fruition. Why isn't Chatham Borough, as a community, doing the same thing?

Mr. Montague asked, before closing the Public Comment time, if there were any other topics, other than Tricare, that the public would like to comment on. There were none.

At 9:50 p.m. a break was taken in the meeting.

At 10:05 p.m. the meeting reconvened.

#### Approval of Minutes

The meeting minutes of February 3, 2010 were approved as amended.

#### Annual Re-adoption of the Board's By-laws

Mrs. Favate made a motion to adopt Resolution #7 as amended, re-adopting the Planning Board's By-laws. Mrs. Cali-Charles seconded the motion. A voice vote was taken. The resolution was unanimously passed.

#### Resolution of Application for Waiver of Site Plan Review

Ms. Rizzuto said that this resolution would set forth a new procedure for proposed changes of permitted uses. This resolution states all of the required filings. She advised that the Board should re-adopt this resolution every year. Mr. DeNave made a motion to adopt this resolution regarding the waiver procedures. Mrs. Favate seconded the motion. A voice vote was taken. All Board members, except Mrs. Cali-Charles, voted in favor of the resolution. Mrs. Cali-Charles abstained from voting.

Mr. DeNave explained how a technical review committee would be beneficial to the property owner before his application goes before the Planning Board.

Mr. Montague believed that the Board spent the same amount of time hearing and responding to the Waiver of Site Plan Review, as in the Tricare case, as they would have had it had been a full site plan.

Mr. DeNave said he would like this new procedure, if approved, be put in the Land Use ordinance book, not voted on every year by the Board.

Ms. Rizzuto pointed out that if this resolution was approved, the Applicant's Checklist should be changed to reflect this change. She and the Board discussed the time frame that the applicant must follow when filing an application.

Mr. DeNave brought up a current situation of a change of retail trade to retail trade (Botanical Blooms). He felt it should not have gone before the Planning Board. The Borough Administrator believed otherwise.

Mr. Montague offered to research where this resolution, if approved, would fit in the applicant's checklist.

After further discussion, Ms. Rizzuto suggested that this topic be put on the agenda of the next Board meeting, when Chairman Crater and other Board members are present.

#### Sign Ordinance

Ms. Rizzuto reported that she has received comments from Board members for this ordinance.

Mr. DeNave reported on the research he had done on local awnings. The majority of the awnings he measured were 9 inches high. Most of the letterings measured 6 inches high. He felt 6 inches was very acceptable. Mr. DeNave and Mr. Montague agreed these measurements would be good. In his research, Mr. Montague had found that there were tiny lights wrapped around some of the business signs.

Councilman Harris read aloud quotes from a letter from the Borough Council to the Planning Board. The letter stated that the primary purpose of the revisions was to follow the Council's directions and to make the sign ordinance more "merchant friendly" during these difficult economic times. A number of restrictions are being proposed for elimination. Existing vague provisions need to be clarified. He felt, so far, the draft sign ordinance is not "merchant friendly". If anything, Councilman Harris felt the draft ordinance seems more restrictive.

Mrs. Favate gave her views on church signs which had been discussed at the last meeting. She noted that federal law states that no governing body should impinge on an "exercise of worship". Even though there may be a great deal of information on church signs, the churches can argue that information is critical for their existence. Mr. DeNave pointed out that local churches have put up multiple banners. Also, schools are operating in church buildings that have their signs up. Maybe if the banners get out of hand, Ms. Rizzuto suggested the zoning official can have a friendly chat with the church.

Discussion on the sign ordinance will continue at the next Board meeting.

#### Clothing Bins

Mr. Montague will compose a memo to Board members of changes he feels should be made to the model ordinance.

#### Riparian Buffer Ordinance

Councilman Harris noted that Mr. DeNave still needs to show the Board what Borough properties will be affected by the riparian buffer.

PODS

Mr. DeNave asked Board members to look at the model ordinance and send him their comments. Currently he is receiving phone calls asking where PODS may be placed on properties. He felt a definite time limit should be set for the placement of PODS. If the Board can't reach a consensus on PODS regulations, a subcommittee will be formed.

Before adjourning, the Board decided to make to make their future agendas more descriptive.

At 10:55 the meeting adjourned.

The next Planning Board meeting will be held Wednesday, March 3, 2010, 7:30 p.m., Council Chambers.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary