

CHATHAM BOROUGH PLANNING BOARD  
March 3, 2021 7:30 p.m.

Chairman Susan Favate called the Chatham Borough Planning Board Regular Meeting of March 3, 2021 to order at 7:30 p.m. Chrnm. Favate announced that all legal notices have been posted for this meeting. This was a virtual meeting. Board members, Attorney Loughlin, and other participants were all present by way of Zoom.

| Name                        | Present | Absent |
|-----------------------------|---------|--------|
| Mayor Thaddeus Kobylarz     | X       |        |
| Council Member Frank Truilo | X       |        |
| Steve Williams              | X       |        |
| H.H. Montague               | X       |        |
| Vice Chrnm. Wagner          | X       |        |
| Chrnm. Susan Favate         | X       |        |
| Curt Dawson                 | X       |        |
| Bill Heap                   | X       |        |
| Torri Van Wie               | X       |        |
| Joseph Mikulewicz           |         | X      |
| Gregory Xikes               | X       |        |
| Vincent K. Loughlin, Esq.   | X       |        |

Also present:

Vincent DeNave, Chatham Borough Zoning Officer & Engineer

Public Comment

There was none.

Resolution # PB 2021-01

The following Planning Board meeting minutes were approved as submitted:

February 3, 2021

February 17, 2021

Application Resolutions

Application # PB 20-003

Hot Yoga Sanctuary, LLC

240 Main Street

Block 57, Lot 18

Change of Use/Site Plan Waiver

Vice Chrnm. Wagner made a motion to approve the resolution memorializing the Board's approval of Application # PB 20-003 permitting a Change of Use/Site Plan Waiver for Hot Yoga

Sanctuary, LLC to operate at 240 Main Street. Mrs. Van Wie seconded the motion. A roll call vote was taken:

|                       |   |     |
|-----------------------|---|-----|
| Council Member Truilo | - | yes |
| Mr. Williams          | - | yes |
| Mr. Montague          | - | yes |
| Vice Chrmn. Wagner    | - | yes |
| Chrmn. Favate         | - | yes |
| Mr. Heap              | - | yes |
| Mr. Dawson            | - | yes |
| Mrs. Van Wie          | - | yes |
| Mr. Xikes             | - | yes |
| Mayor Kobylarz        | - | yes |

#### Discussion Items

Chrmn. Favate noted that Council Member Truilo has asked if he could briefly discuss ADA accessibility and how the Board could further provide ADA accessibility, especially in Chatham's downtown.

Council Member Truilo gave a brief history of the American Disability Act (ADA) that created federal guidelines for states to follow. Summarizing the Act, Council Member Truilo stated that in all buildings, accessible by the public, both new and existing, both large and small, a good faith attempt shall be made to reduce, mitigate, and remove obstacles that inhibit the general public's access, wherever possible. Council Member Truilo felt this statement indicated that the age, size and extent of work on a building has no bearing on its application.

Council Member Truilo suggested, moving forward, that the Planning Board when they consider Site Plan and Change of Use applications, the Board should inquire what could be done to meet the requirements of the ADA. Council Member Truilo suggested that a condition be included when these applications are approved, at the very least, a good faith attempt be made to ensure any obstacles or conditions that exist, where feasible, be addressed. He felt an attempt should be made to make Chatham Borough more barrier free one application at a time.

Council Member Truilo felt that the Board had missed an opportunity to apply ADA standards to the recent Hot Yoga Sanctuary application. He pointed out that a side door exists at the Hot Yoga Sanctuary. He described the conditions of this side entrance, also how a person would approach it by foot. Council Member Truilo believed a ramp with a guard rail could have been suggested for installation. He suggested, moving forward, efforts should be made to make Chatham more barrier-free.

Council Member Truilo suggested, where it is feasible, the Board should make the landlords and applicants aware that the ADA barrier-free does exist. He would like Chatham Borough to become more barrier-free. As we all get older, it becomes harder to deal with stairs. And unsafe.

Vice Chmrn. Wagner answered that it was hard enough to get new businesses into Chatham. Now another burden is put on the Building Department requiring new businesses to go through the permit and inspection process to become ADA compliance. Vice Chmrn. Wagner stated that if the renovation work for these properties is over 20%, the owner and architect then have to consider ADA installations. For buildings constructed before 1992, ADA compliance would be an unnecessary burden on new businesses.

Council Member Truilo disagreed. He felt that the law stipulated that ADA compliance be done wherever feasible.

Vice Chmrn. Wagner pointed out that if a building was constructed before 1992, it is “grandfathered” with regard to ADA regulations. If 20% of the property is being renovated, then some ADA elements have to be incorporated.

Council Member Truilo disagreed. He stated he was just trying to clear up whatever obstacles exist downtown. He wasn’t looking to put a huge burden on landlords and tenants. Council Member Truilo felt the Yoga Sanctuary could have been an easy fix. One more accessible business unit would have been achieved.

Vice Chmrn. Wagner asked Attorney Loughlin if the Planning Board would be placing an undue hardship on the Building Department, permit-wise, if the ADA elements were required, especially for older structures built before 1992. Wouldn’t the Planning Bd. be over-stepping its bounds?

Attorney Loughlin stated that he could do a short memo giving what the requirements of the law would be on this matter. He added that he understood both sides of the argument being discussed tonight. Attorney Loughlin explained that the purpose of the Waiver of Site Plan/Change of Tenancy was to try and be as reasonable as possible for tenants looking to open up businesses in Chatham. Attorney Loughlin felt the installment of ADA elements is really a code issue and is beyond the control of the Planning Board. However, the Board is free to raise the ADA issue to applicants for discussion.

Chmrn. Favate accepted Attorney Loughlin’s offer to compose a brief memo giving Board members an idea of what the legal requirements would be for ADA compliance, when new tenants come before them.

Council Member Truilo stated that he would just like an awareness be made for the need for handicap accessible elements in buildings.

Mr. Williams asked Attorney Loughlin if the Planning Board could have requested the Hot Yoga Sanctuary to install handicap access elements to their building?

Attorney Loughlin answered no, because of the age of the building. As far as a legal mandate, the ADA would be considered a code issue in applications like this.

#### New and Pending Business

On referral from the Governing Body: Ordinance #21-05 “Borough of Chatham Proposed Amendments to Land Use Ordinance Chapter 165 Article XIV Stormwater Management and Control

Chrmn. Favate noted that every municipality has to approve these revised Stormwater Regulations, which come down from the State of New Jersey. She asked Mr. DeNave to explain it more fully to the Board. Chrmn. Favate also noted that the deadline for approval of these amendments was yesterday; however, many towns have not met the deadline either.

Mr. DeNave agreed; however, he pointed out that all applications are retroactive to the deadline date. March 2<sup>nd</sup> will be the date used for the implementation on this stormwater ordinance when it ultimately gets approved.

Mr. DeNave explained that the State came out with a template that they wanted each community to use. The Watershed Institute came out with a template that had been beefed up. Mr. DeNave stated that he was tasked at looking at both of those documents. He consulted with other town engineers in surrounding communities. Mr. DeNave had removed some of the language which did not apply to Chatham Borough.

With regard to Chatham Borough, Mr. DeNave felt that not only major development be handled, but also minor development projects. Most of what Chatham Borough has is minor development projects.

Mr. DeNave reviewed the language for the policy statement that he recommended for infill development, when a home is demolished. Some of the practices of green infrastructure will be included. Grass swales are one way to take away pollutants. Measures will be taken to keep the water on the property as much as possible and cleaning it through an above ground means before it drops into the Borough’s storm sewer system. Mr. DeNave noted that 90% - 95% of the ordinance language came from the template. The remaining 5% - 10% is minor tweaking that he has done to make the regulations conducive to Chatham Borough.

Mr. DeNave asked the Board if they had any questions.

Mr. Heap asked Mr. DeNave if he could give an example of cleaning the water above ground.

Mr. DeNave reviewed the language pertinent to that method. He quoted the ordinance language that spoke about cleaning stormwater run-off by filtration by soil. Stormwater can go into a rain garden or into a swale. Pea gravel can also be used to accept stormwater. The contaminants will then be captured before the stormwater drops off into a storm sewer or dry well.

Chrmn. Favate suggested a minor adjustment to the definition of minor development in the stormwater regulations.

Chrmn. Favate asked what the anticipated timeline for the Borough Council is to adopt these amendments to the Stormwater Management and Control.

Mr. DeNave answered that this matter will be on the agenda for the next Borough Council meeting.

Mrs. Van Wie noted that Rozella Clyde, a member of the Environmental Commission, had reviewed these stormwater regulations in depth. Dr. Clyde had some comments regarding replacing impervious coverage with water vehicle pieces.

Mr. DeNave stated that there were reasons why the automobile pieces were not included in these regulations. He will go over this matter with Dr. Clyde with a phone call and discuss with her other comments she had made.

Mr. Xikes asked how did the Borough handle leader run-off from homes sometimes going onto a neighbor's property, creating ice conditions in a driveway. Mr. Xikes didn't think there was anything in the Building Code that prevented these situations.

Mr. DeNave agreed that the Building Code did not address this situation. The stormwater ordinance will give a certain amount of discretion. The situation of stormwater run-off possibly creating icy conditions would have to be handled differently. Perhaps the leaders could take the water out to the back of the property. As much of the water as possible could be captured.

Mr. Xikes asked if drywells were acceptable.

Mr. DeNave answered yes; however, an effort should be made to have as much stormwater run over land, to naturally clean the water, before it reaches a drywell, then into the ground water.

Mr. Xikes pointed out that the Borough, in some instances, allows connections into the storm sewer. Is that normal?

Mr. DeNave answered that if the property owner has a connection out to the street, and an icing condition does not result in the street, a connection could be allowed to the storm sewer. However, these situations are monitored. The Public Works reviews these connections to the storm sewer.

Mrs. Van Wie asked if there were any provisions in the River Road Development Plan that will capture and filter the stormwater.

Mr. DeNave said the developers are currently working on stormwater measures. They will have to meet the stormwater requirements.

Mr. Dawson asked if the BMPs (Best Management Practices) gave examples of impervious surfaces.

Mr. DeNave answered that impervious surfaces are defined in the Borough ordinance. Anything that is not grass or mulch is considered an impervious surface under the Code.

Mr. Xikes brought up that in his backyard, and his neighbors' backyards, there are drainage swales that run through multiple properties. He also mentioned a drainage culvert that runs down through Carmine Street, runs under the road, and goes into a stream. What is the regulation for maintaining that drainage swale through all of those yards? Mr. Xikes was concerned someone may fill up that swale, block it up and create a flooding situation downstream.

Mr. DeNave explained that the Municipal Land Use law prohibits people from altering or changing a water course. If someone is filling in an existing water course, the Borough has the right to stop them, if the Borough can define it as a water course, carrying water to multiple parties.

Chrmn. Favate asked why the language concerning Riparian Rights had been removed from the ordinance. She pointed out along the Passaic River are issues with Riparian Rights.

Mr. DeNave pointed out that the Borough owns all the property along the Passaic River. Riparian rights would then be a moot point. Mr. DeNave noted that all of the Borough parks flood.

Mr. Heap stated that his home is at the base of Fairmount Avenue. There is a spring that runs across Fuller Avenue on into Hillside Avenue. There have been seasons where his backyard is filled with water until March. Mr. Heap felt there were only two options, either the water runs into his basement or it runs into the street. He realized that to change that spring flow would be a difficult proposition.

Mr. DeNave agreed that Fuller Avenue, looking at the historical maps, has springs all over. The Borough has tried to capture some of these springs with underground piping; however, springs have a mind of their own.

Vice Chrmn. Wagner made a motion to approve the resolution that Ordinance # 21-05: Borough of Chatham Proposed Amendments to Land Use Ordinance Chapter 165 Article XIV Stormwater Management and Control, was consistent with Chatham Borough's Master Plan. Mr. Williams seconded the motion. A roll call vote was taken:

|                       |   |     |
|-----------------------|---|-----|
| Mayor Kobylarz        | - | yes |
| Council Member Truilo | - | yes |
| Mr. Williams          | - | yes |
| Mr. Montague          | - | yes |
| Vice Chrmn. Wagner    | - | yes |
| Mr. Dawson            | - | yes |
| Chrmn. Favate         | - | yes |
| Mr. Heap              | - | yes |
| Mrs. Van Wie          | - | yes |
| Mr. Xikes             | - | yes |

The resolution was approved.

Mr. DeNave briefly went over what applications will be appearing before the Board in the near future.

At 10:27 p.m. the meeting adjourned.

The next Chatham Borough Planning Board meeting will be held on Wednesday, March 17, 2021, 7:30 p.m. It will be a virtual meeting.

Respectfully submitted:

Elizabeth Holler  
Recording Secretary