

CHATHAM BOROUGH PLANNING BOARD
January 16, 2008 7:30 p.m.

Chairman H.H. Montague called the Chatham Borough Planning Board meeting of January 16, 2008 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, Alison Pignatello, Thomas Sennett, James Mitchell, Alan Pfeil, Vincent DeNave*, John Bitar, Donna Cali-Charles, Councilman Bruce Harris, Mayor V. Nelson Vaughan.

*arrived at 7:40 p.m.

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

Members Absent:

None

Mr. Montague noted that in checking the Board's membership records, he has discovered that Mr. Sennett has not been re-appointed this year; therefore, he cannot cast any votes tonight. Mr. Sennett may still offer comments on tonight's proceedings. He will be re-appointed on January 28, 2008 and will be a full member at the next Board meeting.

Approval of Minutes

The minutes of October 3, 2008 were approved as amended.

Extension of Minor Subdivision for Shaw – 99 Hillside Avenue

Mr. Montague recalled that the Shaw application involved an existing stone wall situated on Borough property in the applicant's front yard. The Board had asked Mr. and Mrs. Shaw to either move the wall back or execute a lease agreement with the Borough. The Shaws chose to execute the lease agreement. Completing the correct process for this lease agreement didn't make it on the most recent Borough Council agenda. It will be on the January 28, 2008 Borough Council agenda.

Mr. Montague explained that the Shaws are seeking an extension from the Planning Board because they don't have a definite response from the town. Mr. Foster's resolution will reflect this situation.

Mr. Foster noted that the title of the resolution he is presenting to the Board is: "Grant of Extension of Time to File Minor Subdivision Deed". Mr. Foster explained that the Shaws had 190 days from the Board's approval to file the minor subdivision deed with the county recording officer. The statute gives the Planning Board, under certain circumstances the option to grant an extension of that time to file the deed.

Mr. Foster said he has e-mailed this resolution to Board members to review before tonight's meeting. Board members had no comments or corrections.

Mrs. Pignatello made a motion to approve Planning Board Resolution No. PB 2008-8, granting the Shaws an extension of time to file their minor subdivision deed with the county recording officer. Mr. Hague seconded the motion. A roll call vote was taken:

Mr. Hague	-	yes
Mrs. Pignatello	-	yes
Mr. Mitchell	-	yes
Mr. Pfeil	-	yes
Mr. DeNave	-	yes
Mrs. Cali-Charles	-	yes
Mayor Vaughan	-	yes
Chrmn. Montague	-	yes

Memorialization of Resolution No. PB 2008-7, HSBC Bank USA, N.A. – 407 Main Street, Preliminary & Final Site Plan Approval

Councilman Harris recused himself from this portion of the meeting.

Mr. Foster reported that he had e-mailed the draft of the resolution yesterday to Board members and the applicant. He had received comments from the applicant's attorney by e-mail. Mr. Foster reviewed some minor revisions he made to his draft. Mr. Foster felt that the resolution, after it is approved, should be recorded by the applicant in the land records of the Morris County Clerk's Office.

Douglas Janacek, Esq., attorney for HSBC, came forward. He felt that Mr. Foster's idea of having the resolution recorded in the Morris County Clerk's Office made a lot of sense in this particular case. For one reason, the owner's consent has not been obtained. Mr. Janacek pointed out that not all of the conditions are precedent to 1) HSBC have the Site Plan package signed and 2) making an application for a building permit. In terms of recording the resolution, the items and conditions will really go away by the time the application for a building permit is made. Mr. Janacek pointed out that all future purchasers of this property, when they do a title search and come across this resolution will have to figure out what it means. He discussed a legal case entitled Sousa vs. Denville which had a similar situation.

Mr. Janacek brought up problems which may result when resolutions are recorded.

Mr. Foster believed that there would be no reason to force the applicant to go to court if there is a change in the resolution. They would just return to the Board to discuss it.

Mr. Mitchell stressed that the Board does not want a large kiosk. He didn't see how the 86 inch requirement for the kiosk's elevation is a problem.

Mr. Janacek said he just felt the recording of the resolution would tie the hands of future boards to apply the ordinances that will be in existence at that point in time.

Mr. Foster stated that the recording of the resolution is really important from the point of view of the municipality, because a resolution, with many conditions, such as this, be on record to ensure that the resolution is clearly remembered.

After further discussion, Mr. Janacek stated that the applicant agrees to record the resolution; however, language should be included that the Planning Board retains the ability to amend the conditions and there is no intent to require title action.

Mr. Montague and Mr. Foster were agreeable to this request. Mr. Montague noted that there were only two Board members present tonight who were eligible to vote on this memorialization.

Mr. Mitchell made a motion to accept and amend the resolution memorializing Preliminary and Final Site Plan Approval for the HSBC Bank USA – 407 Main Street. Mr. Montague seconded the motion. A roll call vote was taken:

Mr. Mitchell - yes
Chrm. Montague - yes

Discussion –Site Plan Waiver Procedures

Mr. Foster referred the Board to the LDO Section 165-162B, concerning Site Plan Review, specifically replacing a permitted use on a property with another permitted use.

Mr. Foster distributed a list of 6 items which the Board may want as a minimum for an application of waiver of site plan review.

Mr. Montague distributed the site plans for 254 Main Street, which proposes a change of use. The applicant is proposing to change the premises from a flooring business to a yoga studio. He noted that the applicant did not provide a survey.

The Board discussed the fee for preliminary site plan review. Mr. Hague suggested a separate fee should be established for this process. The applicant should pay that fee and an escrow number should be assigned. Mr. Hague and Mr. Foster agreed an ordinance would have to be adopted by the Mayor and Council to put this procedure in effect.

Mr. Foster noted he had inserted language requiring the applicant to submit the required documentation for Preliminary and Final Site Plan Approval plus the escrow fee. If a waiver is approved, the application would then be returned to them. Any professionals who have reviewed the application would be paid out of the escrow. Only the balance would be returned to applicant.

Mr. Hague suggested, at the outset, charging the applicant with the minimum preliminary site plan fee and establishing the minimum escrow. The Board could then recommend this new process in an ordinance to the Mayor and Council.

Mr. Foster revised the paragraph concerning the minimum fee and escrow to read: “The application must be accompanied by the required minimum fee for preliminary site plan approval and a minimum escrow for preliminary site plan review. If a waiver is granted, any remainder of the escrow will be return to the applicant.” Mr. Foster agreed to eliminate the requirement of an affidavit from the applicant.

Mr. Hague suggested the applicant submit a list of reasons for the change of use be submitted for the waiver.

Mr. Hague made a motion to approve Mr. Foster’s memorandum of January 9, 2008 as amended for the Site Plan Waiver Process. Mrs. Pignatello seconded the motion. A roll call vote was taken:

Mr. Hague	-	yes
Mrs. Pignatello	-	yes
Mr. Mitchell	-	yes
Mr. Pfeil	-	yes
Mr. DeNave	-	yes
Mrs. Cali-Charles	-	yes
Councilman Harris	-	yes
Mayor Vaughan	-	yes
Chrmn. Montague	-	yes

Mr. Bitar preferred not to vote, because he arrived late in the discussion of this item. Mr. Sennett could not vote because he had not yet been sworn in for another term on the Board.

Mr. Foster introduced the resolution for the Board to go into Executive Session to deal with a personnel matter. A roll call vote was taken to approve this resolution:

Mr. Hague	-	yes
Mrs. Pignatello	-	yes
Mr. Mitchell	-	yes
Mr. Pfeil	-	yes
Mr. DeNave	-	yes
Mr. Bitar	-	yes
Councilman Harris	-	yes
Mayor Vaughan	-	yes
Chrmn. Montague	-	yes

At 8:55 p.m. the Board went into Executive Session.

At 10:50 p.m. the Executive Session and the Regular Meeting adjourned.

Respectfully submitted:

Elizabeth Holler
Recording Secretary