MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
AUGUST 17, 2020

Mr. Travisano called the Regular Meeting of the Planning Board to order at 7:35 P.M.

Adequate notice of the meetings of the Planning Board of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2020, and January, 2021 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy was filed with the Municipal Clerk and a copy was placed on the bulletin board in the main hallway of the Municipal Building.

Answering present to the roll call were Mr. Travisano, Mr. Franko, Mrs. Ozdemir, Mrs. Ewald, Ms. Hagner, Mr. Hoffmann, Mr. Kelly, Mr. Nelson, Mr. Sheth and Mr. Coviello,.

Mr. Tarasca was absent.

Also present were Township Planner Frank Banisch, Engineer John Ruschke, Board Attorney Steve Warner, and Attorney Amanda Wolfe.

Mr. Travisano moved to excuse Mr. Tarasca's absence. Mr. Nelson seconded the motion, which carried unanimously.

Approval of Minutes

Mr. Franko moved to approve the minutes of the June 15, 2020 and July 20, 2020 meetings. Mr. Nelson seconded the motion, which carried unanimously.

Resolutions

PB 19-102.11-5 & 5.01 The Summit Monthly Meeting Society of Friends, 158 Southern Blvd., Block: 102.11 Lots: 5 & 5.01

Mr. Hoffmann moved to adopt the memorialization resolution for approval of the application by The Summit Monthly Meeting Society of Friends. Mr. Nelson seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Aye; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mr. Sheth, Aye; Mr. Coviello, Recuse; Mr. Tarasca, Absent.

Application PBA-20-003 (August 6, 2020) **Southern Boulevard Urban Renewal, LLC 401 Southern Blvd., Block 48.16 Lot 117.27** Amended minor subdivision

Peter Flannery, an attorney representing the applicant, explained that the application is for a minor lot line adjustment. He said that the site improvements will be as previously approved by the Planning Board. The new lot to be created will be 1.04 acres instead of the previously

approved 3.8 acres. Mr. Flannery said that the Township Committee adopted an amended redevelopment plan that allows for the smaller minimum lot area as well as certain amended bulk requirements that allow for the application to be fully conforming. Mr. Flannery also noted that the reason for the application is to allow the Township to preserve the freshwater wetlands areas on Township property, and also to preserve the Skate Park.

Patricia Ruskan, an engineer representing the applicant, was sworn in to give testimony and was accepted as an expert.

Mr. Ruschke and Mr. Banisch were also sworn in to give testimony.

Mrs. Ruskan presented Exhibit A-1, which was titled "Amended Minor Subdivision Map." She noted that the last revised date of the plan is July 29, 2020. Mrs. Ruskan described the modification in the amended site plan, and said that the redevelopment area has been carved out, and has an area of 1.04 acres. Mrs. Ruskan also noted that the proposed subdivision complies with the Redevelopment Plan. She further reported that the Morris County Planning Board has approved an amended subdivision lot line adjustment. Mr. Flannery asked if there are any variances, and Mrs. Ruskan confirmed that there are not.

Ms. Wolfe asked if Mr. Flannery received the memorandum from Mr. Ruschke's office. Mr. Flannery said that the applicant will stipulate to the technical comments in Mr. Ruschke's memorandum. Ms. Wolfe asked if Morris County approved the second curb cut. Mrs. Ruskan said that the second curb cut was approved as part of the site plan approval process.

Mr. Ruschke noted that he does not have any concerns, and this application is a follow-up to what the Planning Board had already approved. He said that the application formalizes the lot line, and the application before the Board is a formality. Mr. Travisano asked is the Skate Park will remain intact, and if the Township would have the option to expand the Police Department Headquarters or Public Works facility. Mr. Ruschke said that the applicant is appearing at the Township's request, and the Township wanted to reduce the redevelopment area so that the remaining portion can be used by the Township for existing uses and potential future uses.

Ms. Hagner said that she does not believe the Planning Board took into account potential future development when the Arbor Green application was approved.

Mrs. Ewald asked if the location of the curb cuts is changing. Mrs. Ruskan said that it is not changing, however the County has approved the option of a second curb cut.

Mr. Sheth asked if the trees by the Police Department are being removed. Mrs. Ruskan said that as many trees as possible will be preserved.

Mr. Travisano opened the floor for the public to ask questions of Mrs. Ruskan.
Seeing no public questions, the floor was closed.

Mr. Flannery made a closing statement, asking the Planning Board to approve the minor modification of the prior approval. He noted the preservation of wetlands that would be afforded by the approval of this application.

Mr. Kelly moved to adopt the resolution of approval for this application. Mr. Hoffmann seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Nay; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mr. Sheth, Aye; Mr. Coviello, Abstain; Mr. Tarasca, Absent.

A recess was taken at 8:00 PM. The meeting was resumed at 8:30 PM.

Public Hearing: Preliminary Investigation Report as to Whether to Designate 522 Southern Boulevard as a Condemnation Area in Need of Redevelopment

Mr. Travisano stated that pursuant to NJSA 40A:12A-5, the Planning Board has been asked to make a determination whether 522 Southern Boulevard is an area in need of condemnation redevelopment.

Mr. Warner stated that the Public Hearing was properly noticed, and direction was received from the Township Committee for the Preliminary Investigation to be conducted to determine whether 522 Southern Boulevard meets the criteria under the New Jersey Local Redevelopment and Housing Law to qualify as an area in need of condemnation redevelopment. He stated that the designation would allow the Township to use all redevelopment powers available, including the possibility of eminent domain.

Mr. Banisch and Mr. Ruschke were sworn in to give testimony.

Mr. Banisch confirmed that he is a licensed Professional Planner currently serving as the Board Planner, and he prepared a report on the Preliminary Investigation Report for the designation of a condemnation redevelopment area for 522 Southern Boulevard. Mr. Banisch said that the report is dated July 29, 2020. Mr. Warner asked the Township Clerk if the report has been on file for more than 10 days, and Mr. LaConte confirmed that it has.

Mr. Banisch presented his findings as contained in the Preliminary Investigation Report. He provided background on the powers afforded to municipalities by the New Jersey Local Redevelopment and Housing Law. Mr. Banisch discussed the definition of blighted areas, as well as areas in need of redevelopment.

Mr. Banisch discussed 522 Southern Boulevard, and said that the property is an area of 3.3 acres in the midst of the Township's retail area. Mr. Banisch said that the site has a former two-story dwelling that was converted and expanded to hold a restaurant, and there are parking facilities as well. He stated that a Zoning Board application to convert the second story into apartment housing for staff was denied in 1985, and the denial had been upheld by the Appellate Division. He said that is important because the building was not originally built to be a restaurant. The site

is free of environmental constraints, however there are neighboring wetlands that may have a buffer area that may impact a small portion of the site. Mr. Banisch noted that while Charlie Brown's originally closed due to the COVID-19 pandemic, several locations of the chain have gone out of business and there was not an attempt by this location to reopen for take-out or outdoor dining when those options became available. Mr. Banisch also commented on the location of the parcel and its proximity to retail uses and the Juniper Village site. Mr. Banisch commented on the zoning uses in the area, and noted the Township Committee resolution in June that allowed for outdoor dining.

Mr. Banisch noted that the property is currently served by public sewer and water.

Mr. Banisch commented on the statutory criteria analysis. He noted that the restaurant has remained closed despite allowances under Executive Order for restaurants to reopen in a limited capacity. He also noted that there are for-sale signs on the property. Charlie Brown's had also failed to make property tax payments to the Township as required by its lease, and Mr. Banisch said that the property owner represented to the Township that Charlie Brown's owes back rent. Mr. Banisch further noted that the restaurant chain has a history of closings, and there are other locations that have made an effort to offer some limited service during the pandemic. Multiple attempts to contact the restaurant operator by telephone at the listed phone number were also unsuccessful.

Exhibit B-1 was entered into the record, which was an email received from a representative of CB Chatham LLC to Township staff indicating that the restaurant will not be reopened.

Ms. Hagner asked if it would be prudent to update Mr. Banisch's report to account for the email received indicating that Charlie Brown's will not reopen. Mr. Banisch concurred that the email is the strongest evidence that the restaurant will not reopen, and the report can be supplemented with the Board's findings taking into account the evidence. Mr. Warner said that the report does not need to be amended in light of the new evidence but rather the testimonial and documentary evidence during the public hearing would supplement the report as part of the record.

Mr. Sheth asked what will happen with the liquor license. Exhibit B-2 was entered into the record, which is the paperwork submitted by CB Chatham LLC to change the status of the license to inactive "pocket license" status. Mr. Banisch said that there is a presumption that the license will not be active again at 522 Southern Boulevard. The change of status of the liquor license is further evidence that the restaurant will not be reopening. Mr. Sheth asked if the Township could buy the license. Mr. Warner reminded the Board that the discussion at hand is in regard to the potential designation of 522 Southern Boulevard as an area in need of condemnation redevelopment, and the future of the liquor license was not at issue, other than as evidence that it will not be used at 522 Southern Boulevard. Ms. Hagner asked if the maintaining of the liquor license by CB Chatham LLC may be evidence that they plan to reopen elsewhere, and the change in status may not be strong evidence for the criteria. Mr. Banisch confirmed that the change in status to a pocket license is an indication of discontinuance of use of the property.

Exhibit B-3 was entered into the record, which was the petition from CB Chatham LLC for voluntary Chapter 7 bankruptcy. Mr. Banisch noted that he is aware of the bankruptcy filing. Mr. Banisch stated that the petition indicates that CB Chatham LLC has broken their lease with the property owners, and any interest in the tenancy has been rejected by CB Chatham LLC. Mr. Banisch said that due to the bankruptcy petition, it is no longer speculative that Charlie Brown's will not be reopening.

Ms. Hagner asked about the property owner retaining the liquor license. Mr. Banisch indicated that the liquor license is owned by the former tenants CB Chatham LLC, not the owner of the property.

Mr. Banisch confirmed that it is his conclusion that the study area meets criteria 5(b) for the discontinuance of the use of the property.

Mr. Banisch indicated that sub-section 5(d) also applies to 522 Southern Boulevard. He said that the building and the layout is obsolete for continuance of the current use. Mr. Banisch also commented on the setback from Southern Boulevard and the lot coverage, which are detrimental to the welfare of the community. He said that when the use of a property is discontinued, property maintenance becomes an issue. Mr. Banisch further reiterated that the property is located in the commercial center of the Township, which makes it a walkable area within proximity to businesses located in the Township. Mr. Warner asked if the COVID-19 pandemic led Mr. Banisch to consider the criteria more conservatively so as not to jump to a conclusion. Mr. Banisch said that a closure only due to COVID-19 would not justify the designation, however the business has indicated in multiple ways that there is no intention to reopen.

Ms. Hagner asked if State planning documents about Smart Growth could be referenced in the report as a justification for the criteria. Mr. Banisch said that the report could include several pages about Smart Growth. Mr. Warner noted that the testimony offered during this hearing is part of the record, which will be used to determine if satisfactory evidence has been provided to make a determination regarding a designation for a redevelopment area.

Ms. Hagner asked if Criteria 5(e) would fit better than Criteria 5(d). Mr. Warner noted that the testimony offered by Mr. Banisch was that the property poses a detriment to the welfare of the community. Mr. Banisch said that Criteria 5(e) applies, however he did not think he could fully demonstrate that the criteria fits.

Mr. Banisch stated that it is his professional opinion as a licensed Planner in the State of New Jersey that 522 Southern Boulevard meets Criteria 5(b), 5(d) and 5 (h), and he recommends that the Planning Board recommend to the Township Committee that 522 Southern Boulevard be designated as an area in need of condemnation redevelopment.

Mr. Travisano asked if only one criteria needs to be met to make the designation, except for Criteria 5(h) which serves to support the other criteria, which Mr. Banisch confirmed is correct, except that criteria 5(h) alone is not sufficient

Mr. Travisano noted that several residents spoke at prior hearings regarding Affordable Housing and suggested that the commercial center of the Township was a better suited area for the development of Affordable Housing. He asked if Mr. Banisch agrees that the area is better suited for such development. Mr. Banisch said that the area is much better suited for residents to be able to walk to local businesses. He also indicated that there are several reasons why 522 Southern Boulevard is a great location, and the State Plan advances the concept that the Planning Board should reinforce such an area.

Mr. Travisano asked if the criteria for the designation of an area in need of redevelopment is the same regardless as to whether the discussion is about condemnation or non-condemnation redevelopment. Mr. Banisch said that the criteria is the same, and there are State regulations that if condemnation might be used, a municipality has to signify that possibility at the outset of the process.

Ms. Hagner asked if the Redevelopment Plan will be reviewed by the Planning Board. Mr. Banisch said that the Redevelopment Plan will either be drafted by the Planning Board and referred to the Township Committee for approval, or drafted by the Township Committee and referred to the Planning Board for review. Mr. Warner noted that the scope of authority for this discussion is only a recommendation regarding whether the area should be designated an area in need of condemnation redevelopment, and the Board can make a request regarding which body would draft the Redevelopment Plan.

Mrs. Ewald asked if the property being underutilized is part of why the layout of the property is considered deleterious. Mr. Banisch said that underutilization can be one reason for that assessment. He also said that there could be possibility for someone to want to build a new restaurant at the site and that would not be considered deleterious. He also said that the condemnation does not need to occur because of the Affordable Housing aspect.

Mr. Warner noted that the resolution adopted by the Township Committee directing the Planning Board to conduct the Preliminary Investigation does not speak to what happens following the Planning Board's investigation.

Mr. Travisano opened the floor to the public to ask questions of Mr. Banisch.

1. Adam Faiella, an attorney representing Kronos Holding LLC, said that a letter was submitted earlier today listing what he believes are flaws in the Preliminary Investigation report. He said that the Township's goals can be met with non-condemnation redevelopment. Mr. Faiella said that the evidence used by Mr. Banisch in the report refers to the specific tenant of the property, and there is a potential for another restaurant to open at the site or for another use to be sought. Mr. Faiella noted that while several other Charlie Brown's locations closed, some locations were reopened by other restaurants. Mr. Faiella also admitted that the property is for sale, and he said that several offers were received. He further noted that the contract purchaser of the property is the Silverman Group, and he declined to specify the intended use of the property if the sale closes. Mr. Faiella said that there is a potential for a new restaurant to move into the site, and he declined to submit evidence of the claim. Mr. Warner asked Mr. Faiella if Criteria

5(b) requires permanent discontinuance of a use. Mr. Faiella said that the Preliminary Report referred to permanent discontinuance. Mr. Warner noted that Mr. Banisch's testimony was not limited to the discontinuance in the use of the property. Mr. Faiella said that there was a restaurant at the site for several decades. He also addressed Criteria 5(d), and disagreed with Mr. Banisch's conclusions. Regarding Smart Growth planning, Mr. Faiella agreed that this criteria alone is not sufficient for a determination that a site is an area in need of redevelopment, and he opined that opening a restaurant is in keeping with Smart Growth principles. Mr. Faiella said that the property not being put to optimal use does not support Mr. Banisch's conclusion that Criteria 5(h) is applicable. Mr. Faiella further said that the Settlement Agreement between the Township and the Fair Share Housing Center has not yet been subject to a Fairness Hearing. Mr. Warner noted that the Planning Board is acting in the appropriate fashion to consider the study area before the Fairness Hearing, as the Affordable Housing Plan needs to be deemed complete prior to the Fairness Hearing. Mr. Warner also noted that there is no difference in the criteria for condemnation and non-condemnation areas of redevelopment. Mr. Faiella said that if there is not a difference in the criteria, there is a difference in the Township's willingness to use what he considers to be a hostile action. Mr. Warner also disagreed with Mr. Faiella's allegation that the Township Committee is not turning square corners and said that it is a frivolous argument. Mr. Travisano noted that the Township is not moving at this time to condemn the property, Mr. Faiella claimed that the Preliminary Investigation Report is flawed because it focuses on the closure of the business that operated at the property. Mr. Faiella also said that there has not been sufficient time for a new restaurant to open at the site, and he stated that there is no attempt in the report under Criteria 5(d) to tie the obsolescence to the detriment to the welfare of the Township. He requested that the Planning Board not vote to recommend that the site be designated as an area in need of condemnation redevelopment, and he said that a designation on non-condemnation redevelopment would better advance the Township's goals.

2. Mike Hantson, 114 Longwood Lake Road (Jefferson Township), was sworn in to give comment. Mr. Hantson said if a property lays dormant for an extended period of time he could understand the designation of an area in need of redevelopment. He asked if restaurants are a permitted use in the zone, and Mr. Banisch said that they are. Mr. Hantson asked if the owner of the liquor license could hypothetically sell the license to a new business at 522 Southern Boulevard. Mr. Warner objected to the question because it is hypothetical, and Mr. Banisch said that they hypothetically could. Mr. Hantson asked if the parcel is suitable for a new restaurant if the current building were torn down and a new building erected. Mr. Warner objected to the hypothetical question, and Mr. Banisch said that the lot would qualify under the zoning regulations for a restaurant. Mr. Hantson said that there is sufficient parking on the property, and asked if there would be enough parking for a new restaurant. Mr. Warner objected to the question because it is speculative. Mr. Hantson said that the question is related to the report's assertion that the site is not suitable for a restaurant, and Mr. Banisch stated that his testimony was that the current building was a single-family dwelling adapted for use as a restaurant. Mr. Hantson asked if it is possible for the property to be redeveloped as a restaurant. Mr. Banisch said that the Township is not claiming that the property cannot be developed.

Mr. Hantson said that he is opposed to designating property as an area in need of redevelopment, especially when condemnation is being considered. He opined that the Township would be acting too quickly to designate the property as an area in need of redevelopment, as the prior business has only been closed for a few months.

Mr. Warner asked Mr. Hantson if he has any interest in the subject property. Mr. Hantson said that he does not. Mr. Warner asked if Mr. Hantson is either a realtor or a lawyer, and Mr. Hantson said he is not. Mr. Warner asked if Mr.. Hantson is interested in purchasing or leasing the study area, and Mr. Hantson said he does not.

Seeing no further public comment, Mr. Travisano closed the public questioning of Mr. Banisch.

Mr. Warner asked Mr. Banisch if it remains his position that the study area meets Criteria 5(b) regarding the discontinuance of the use of the building for commercial or retail uses. Mr. Banisch said that his position is unchanged. Mr. Warner asked if Mr. Banisch's analysis is based solely on the Charlie Brown's tenant, or if it extends to the retail use as a whole. Mr. Warner asked if it remains Mr. Banisch's opinion as a licensed Professional Planner that the study area satisfies the Criteria 5(b), 5(d) and 5(h) as set forth in the Preliminary Investigation Report and supplemented by testimony and documentary evidence. Mr. Banisch said that it remains his opinion that the study area meets the aforementioned criteria. Mr. Warner asked if the opinion holds notwithstanding the fact that the charge of the Planning Board is to consider the study area as a condemnation area rather than a non-condemnation area. Mr. Banisch confirmed his professional opinion. Mr. Warner asked if the designation permits but does not require condemnation. Mr. Banisch confirmed that the designation will allow the Township to pursue condemnation, however condemnation is not required. Mr. Banisch also said that the study area meets the criteria for an area in need of condemnation redevelopment, and noted that it was the direction of the Township Committee to evaluate the property against that standard.

Ms. Hagner asked if it would be prudent to update the report to reflect the evidence presented at this hearing before taking formal action. Mr. Travisano asked if it is necessary to amend the report if the testimony is part of the formal record. Mr. Warner said that the record includes both the written report and the testimonial and documentary evidence presented at this hearing, and the Board can make a formal decision at this meeting.

Mr. Travisano asked if any of the Board members prefer to defer action to a future meeting. Mr. Franko opined that the Board has heard sufficient evidence, and a decision can be made at this meeting.

Mr. Travisano moved to return to the Township Committee a recommendation, for the reasons set forth in Mr. Banisch's written report as well as the testimony before the Planning Board, to designate the study area as an area in need of condemnation redevelopment in accordance with the draft resolution prepared by Mr. Warner. Mr. Nelson seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Abstain; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mr. Sheth, Aye; Mr. Coviello, Aye; Mr. Tarasca, Absent.

Announcements

Mr. Travisano announced that this is his final meeting as a member of the Planning Board, as he and his family are moving out of the Township. He noted that he has enjoyed serving with the other members of the Board, and he thanked the Planning Board members for being a dedicated group of professionals.

Mayor Kelly said that Mr. Travisano will be missed as a member of the Planning Board, and wished him the best in his future endeavors. Mrs. Ewald also thanked Mr. Travisano for all his work on the Planning Board. The Planning Board gave Mr. Travisano a round of applause.

Mr. Travisano moved to adjourn at 10:19 PM. Mr. Coviello seconded the motion, which carried unanimously.

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Gregory J. LaConte
Planning Board Recording Secretary