

**CHESTER BOROUGH LAND USE BOARD
AGENDA
NOVEMBER 12, 2020
7:00 PM**

YOU ARE INVITED TO A ZOOM WEBINAR.

WHEN: NOV 12, 2020 07:00 PM EASTERN TIME (US AND CANADA)

TOPIC: NOVEMBER AND USE BOARD WORKSHOP

REGISTER IN ADVANCE FOR THIS WEBINAR:

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CHESTER BOROUGH LAND USE BOARD

AGENDA

NOVEMBER 12, 2020

7:00 PM

1. CALL TO ORDER

2. OPEN PUBLIC MEETINGS ACT

Adequate notice of this meeting of the Chester Borough Land Use Board was given as required by the "Open Public Meetings Act" as follows: notice was sent to the Observer Tribune and the Daily Record, posted on the bulletin board in the Borough Municipal Building and posted on the Borough website and filed with the Borough Clerk. The Land Use Board will hold a regular meeting by web-based platform providing remote access as the meeting will be open to the public remotely. Details for public participation will be posted on the website at [chesterborough.org](https://us02web.zoom.us/j/81128673089). Public can register at Zoom.us and to join:

https://us02web.zoom.us/webinar/register/WN_XxPGNwKVS76CV44DeuSb5g

Webinar ID 811 2867 3089

In the event any member of the public cannot access the public file documents or exhibits, and/or cannot access the Zoom web-based virtual meeting room, they may contact the Board Secretary at kbrown@chesterborough.org or 908-879-3660 x 2123

3. SALUTE TO THE FLAG

4. ROLL CALL

Janet Hoven

Kerry Brown

Stan Stevinson

Anita Rhodes

Adam Sorchini

Stanley Quintana, Alternate #2

Chris Heil

Ken Kasper

Don Storms

Edd Creter

Michael Ferrone, Alternate #1

Steven Warner, Board Attorney

Steve Bolio, Board Engineer

David Banisch, Board Planner

Sarah Jane Noll, Recording Secretary

5. MINUTES

A. October 8, 2020

6. PUBLIC HEARING

A. CPP Streets of Chester, LLC

160 US Hwy Route 206 South; Block 132, Lot 3, Zoning B-3 (historic overlay)

Amended site plan/variance application to erect two freestanding signs (material mailed)

7. RESOLUTIONS FOR ADOPTION

A. Christopher Harris 2020-07

11 Cedar Tree Lane Block 108, lot 13 Zoning R-LD (2 acre)

Variance application to expand existing deck and construct patio area

7. RESOLUTIONS FOR ADOPTION

- B.** Resolution of the Borough of Chester Land Use Board adopting Emergency remote meeting protocols, procedures, and requirements for public participation at remote meetings.

8. COMMUNICATION/DISCUSSION ITEMS

- A.** Proposed ordinance amendment regarding Shade Tree Commission
- B.** Ed Ng's letter

9. PUBLIC COMMENT

10. ADJOURNMENT

BOROUGH OF CHESTER

CHRISTOPHER and MARISSA HARRIS

Block 108, Lot 13

11 Cedar Tree Lane

RESOLUTION

WHEREAS, **CHRISTOPHER and MARISSA HARRIS** (the “Applicants”) have applied to the Borough of Chester Land Use Board (the “Board”) for the following bulk variance relief, in connection with the construction of a ground-level patio and the extension of an existing deck to the rear of the existing single-family dwelling, located on property identified as Block 108, Lot 13 on the Tax Map, more commonly known as 11 Cedar Tree Lane (the “Property”):

1. A variance for a proposed rear-yard setback of 45 feet, whereas the minimum required rear-yard setback in the Residential Low-Density (“RLD”) Zone is 75 feet, pursuant to Section 163-69 and Schedule 1 of the Land Development and Procedures Ordinance of the Borough of Chester (the “Ordinance”); and
2. A variance for a rear-yard setback of 30 feet to an accessory structure (the proposed ground-level patio), whereas the minimum required rear-yard setback to an accessory structure in the RLD Zone is 50 feet, pursuant to Section 163-69 and Schedule 1 of the Ordinance; and

WHEREAS, a virtual public hearing on notice was held on such application on October 8, 2020, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicants and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. Board Chairman Kasper and Board Member Creter recused themselves from hearing the application.

2. All of the application materials and hearing exhibits were posted on the municipal website, and made available to members of the public, within the requisite timeframe, in advance of the hearing. Members of the public were provided with instructions on how to access said materials and participate in the scheduled hearing both via the web-based meeting platform and telephonically, if necessary.

3. All Board Members and Board Professionals and staff participated in the hearing through the web-based platform and were able to perceive the Applicants and the Applicants' professionals, both visually and audibly, in real time.

4. The Property is a significantly undersized (0.52 acre lot area, whereas the minimum required lot area is 2 acres) lot located in the RLD Zone. The Property is presently improved with a two-story frame dwelling, a rear deck, and associated walkways and improvements. The Applicants propose to construct a 442 square foot extension of the existing deck and a 225 square foot new ground level patio.

5. The Applicants' proposal is depicted on a Survey prepared by Patrick A. Cibellis, Jr., P.L.S., dated November 17, 2017, unrevised, same consisting of one (1) sheet. The Applicants also submitted a compendium of five (5) photographs of the Property.

6. The requested variance for the nonconforming rear-yard setbacks to both the extended deck and the new patio is governed by the criteria of N.J.S.A. 40:55D-70(c).

7. Christopher and Marissa Harris, the Applicants, having an address of 11 Cedar Tree Lane, were duly sworn according to law. Mr. Harris testified that he and his family moved to Chester Borough three years ago. He explained that they are seeking to expand their existing deck and to construct a new patio. Mr. Harris further explained that the proposed deck expansion will encroach an additional five (5) feet into the required rear-yard setback, such that the current setback of 50 feet will be reduced to 45 feet. He testified that the Applicants are also proposing to construct a new patio and

that same will be set back 30 feet, whereas the minimum required rear-yard setback from an accessory structure is 50 feet.

8. Mr. Harris explained that the deck and patio will allow the Applicants and their family to better utilize their Property. He further explained that the Applicants had considered various iterations of the plans, but that the current proposal constitutes the best planning alternative in his opinion. Mr. Harris testified that the Property has a spacious rear yard and the proposed improvements will be consistent with both the existing improvements and the overall character of the neighborhood.

9. On questioning, Mr. Harris testified that he had taken the photographs submitted with the application materials in September of 2020, and he confirmed that they are accurate depictions of the Property as it presently exists. On further questioning, Mr. Harris explained that the Property is a significantly undersized lot. He further explained that there is an existing 4 to 5 foot tall fence along the rear of the Property. Mr. Harris confirmed that the proposed improvements will not result in excess impervious coverage.

10. Kenneth Kasper, having an address of 10 Cedar Tree Lane, was duly sworn according to law and expressed his support for the Applicants' proposal.

11. Ed Creter, having an address of 9 Cedar Tree Lane, was duly sworn according to law and expressed his support for the Applicants' proposal.

12. Elizabeth Cokeley, having an address of 16 Ammerman Way, was duly sworn according to law. She expressed concern about stormwater runoff because there is currently significant ponding in her rear yard.

DECISION

13. After reviewing the evidence submitted, the Board, by a vote of 9 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the deficient rear-yard setbacks from both the extended deck and the ground-level patio, pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

14. As to the positive criteria for “c(1)” or “hardship” variance relief for the rear-yard setback deviations, the Board finds that the Applicants have satisfied same by demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. In this regard, the Board recognizes the significantly undersized nature of the Property, as well as the location of the existing lawfully constructed improvements thereon, make it exceptionally difficult for the Applicants to construct the proposed reasonably sized rear-yard improvements in a fully conforming location. The Board further finds that the Applicants have established that no undeveloped adjacent land is available for purchase, which would extend the rear yard to minimize, or eliminate, the proposed rear-yard setback deficiencies. Finally, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulation were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title.

15. As to the positive criteria for “c(2)” or “flexible c” variance relief for the rear-yard setback deviations, the Board finds that the Applicants have demonstrated that the purposes of the Municipal Land Use Law (“MLUL”) will be advanced by the requested deviation from the zoning requirements, and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. In this regard, the Board find that the Applicants have demonstrated that the proposal advances the purposes set forth in subsections (a) and (i) of Section 2 of the MLUL in that it promotes the public health, safety, morals and general welfare and promotes a desirable visual environment, respectively. Here, the Board recognizes that the proposed improvements will be located to the rear of the dwelling and will not be visible from the right-of-way. The Board further recognizes that there is a fence and landscape buffering along the rear of the Property that will screen the improvements and further mitigate the relatively modest detrimental impact associated with the proposal.

16. As to the negative criteria for the requested bulk variance relief, the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan or Zoning Ordinances. The Board considers, as to the first prong of the negative criteria, that the proposal will not render the Property substantially out of character with the existing neighborhood. The Board further recognizes in this regard that while one member of the public expressed mixed feelings and some concern about the application, some members of the public commented in support of the application. As to the second prong of the negative criteria, the Board recognizes that both the deck and patio are permitted, and that the magnitude of the bulk variance relief sought is relatively modest, such that it certainly does not rise to the level of constituting a rezoning of the Property, such that the proposed does not substantially impair the intent and purpose of the Master Plan and the Zoning Ordinance.

WHEREAS, the Board took action on this application and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Chester, on the ____ day of ____, 2020, that the application of **CHRISTOPHER AND MARISSA HARRIS**, for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

1. The Applicants shall post sufficient funds with the Borough to satisfy any deficiency in the Applicants' escrow account;
2. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
3. The aforementioned approval also shall be subject to all State, County and Borough statutes, ordinances, rules and regulations affecting development in the Borough, County and State, including but not limited to NJDEP regulations and permit requirements; and
4. Pursuant to Section 163-77.E.(8) of the Ordinance, any variance relief granted by the Land Use Board permitting the erection or alteration of any structure or structures, or

permitting a specified use of any premises shall expire by limitation unless construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within nine (9) months from the date of entry of the judgment or determination of the Land Use Board.

ROLL CALL VOTE:

Those in Favor:

Those Opposed:

The foregoing is a true copy of a Resolution adopted by the Land Use Board of the Borough of Chester at its meeting on October __, 2020.

KERRY BROWN, Secretary

BOROUGH OF CHESTER

LAND USE BOARD

Dated: October __, 2020

**RESOLUTION OF THE BOROUGH OF CHESTER LAND USE BOARD ADOPTING
EMERGENCY REMOTE MEETING PROTOCOLS, PROCEDURES AND
REQUIREMENTS FOR PUBLIC PARTICIPATION AT REMOTE MEETINGS**

WHEREAS, the purpose of N.J.A.C. 5:39-1 et seq., Emergency Remote Meeting Protocol for Local Public Bodies, is to ensure that local public bodies can continue to conduct official business in an open and transparent manner whenever a declared emergency exists that prohibits physical attendance by members of the public; and

WHEREAS, a “declared emergency” means a public health emergency pursuant to the Health Powers Act, N.J.S.A. 26:13-1 et seq., or a state of emergency, pursuant to P.L. 1942, c. 251 or both, or a state of local disaster emergency which has been declared by the Governor and is in effect; and

WHEREAS, N.J.A.C. 5:39-1.3 permits a local public body to hold a remote public meeting to conduct public business during a declared emergency if the emergency reasonably prevents a local public body from safely conducting public business at a physical location with members of the public present; and

WHEREAS, if during a declared emergency the Land Use Board of the Borough of Chester (the “Board”) holds a physical meeting in a location where, pursuant to State/Federal guidelines meant to mitigate risk, capacity restrictions are required to reduce the number of individuals that can be present in a meeting, the Board shall either:

- 1) Hold the public meeting at another location with adequate capacity for the reasonable expected attendance by the public; or
- 2) Hold the public meeting as both an in-person and remote public meeting; and

WHEREAS, a public meeting held solely in-person without a remote access alternative provided shall not prohibit members of the public from attending in person; and

WHEREAS, adequate notice of the remote public meeting shall also include, in addition to the Open Public Meeting Act requirements of N.J.S.A. 10:4-8, clear and concise instructions for accessing the remote public meeting, the means for making public comment and how to access any public documents on the Borough’s website in the manner set forth at N.J.A.C. 5:39-1.5; and

WHEREAS, at the commencement of a remote public meeting the Chair or the Chair’s designee, or in his or her absence, the Secretary, shall announce publicly and shall cause to be entered into the minutes an accurate statement regarding adequate and electronic notice or an explanation of the reason or reasons such notice was not adequately provided as set forth in N.J.A.C. 5:39-1.5(g); and

WHEREAS, prior to the commencement of a remote public meeting, the Board shall make a copy of the agenda available to the public for download on the Borough’s website and

shall post a copy of same at the building where the meeting would otherwise be held, including posting of same at any designated and clearly delineated handicap accessible entrance to the building, by no later than 3:00 PM on the date of the meeting; and

WHEREAS, the content of the electronic notice shall be posted on the main access door of the building where the public would routinely attend public meetings of the local public body in person and the notice must be viewable from the outside; and

WHEREAS, the electronic communications used for a remote public meeting shall have a function that allows the Board to mute the audio of all members of the public, as well as allow members of the public to mute themselves, and same shall be announced at the beginning of every remote public meeting; and

WHEREAS, pursuant to N.J.A.C. 5:39-1, if the Board holds a remote meeting to conduct public business, it shall use electronic communication technology routinely used in business settings that can be accessed by the public at no cost and with participant capacity consistent with the reasonable expectations of the Board for the type of public meeting being held, and such participant capacity shall, at minimum, not be limited to fewer than 50 public participants (not including persons required to be present to conduct business at the meeting such as the Board members, Board professionals, and all members of the Applicant's team); and

WHEREAS, remote public meetings may be held by the Board in a format as selected by the Board, by means including, but not limited to, electronic communications platforms with video and audio or live streaming via the internet and shall, additionally, provide a telephonic conference line to allow members of the public to dial in by telephone to listen and to provide public comment; and

WHEREAS, when the Board holds a remote public meeting, it shall allow members of the public to ask questions by audio or by audio and video if the meeting is being held over both; and

WHEREAS, any remote public meeting where sworn testimony is being taken shall be broadcast by video, as well as audio, and all individuals giving sworn testimony, including members of the public making comments, shall appear by video; and

WHEREAS, any presentation or documents that would otherwise be viewed by, or made available to, members of the public physically attending an in-person public meeting shall be made available on the internet website of the Borough or made visible during the video broadcast of the remote public meeting; and

WHEREAS, except for quasi-judicial hearings on land development applications or similar public hearings, in addition to making public comments at any remote public meeting, the Board, in advance of the remote meeting shall allow public comments to be submitted to the Clerk by electronic mail and in written letter form by a reasonable deadline to be established and posted on the website in advance of the remote public meeting; and

WHEREAS, except for quasi-judicial hearings on land development applications or similar public hearings, public comments submitted prior to the remote public meeting through

electronic or regular mail shall be read aloud and addressed during the remote public meeting in a manner audible to all meeting participants and the public; and

WHEREAS, a reasonable time limit shall be placed on the reading of individual written comments, all of which shall be read from the beginning until the established time limit is reached; and

WHEREAS, in support of, and respect for, an open, fair and informed decision-making process, the Board recognizes that civil, respectful and courteous discourse and behavior are conducive to the democratic and harmonious airing of concerns and decision making; and

WHEREAS, in an effort to preserve the intent of open government and maintain a positive environment for citizen input and Board decision making, policies and rules shall be established to promote civility and maintain decorum at in-person public meetings and remote public meetings in accordance with N.J.A.C. 5:39-1.4 (f)-(h); and

WHEREAS, if a member of the public becomes disruptive during a remote public meeting, including during any period for public comment, the Chair or the Chair's designee, or in their absence the Secretary, shall mute or continue muting, or direct appropriate staff to mute or continue muting, the disruptive member of the public and warn that continued disruption may result in the member of the public being prevented from speaking during the remote public meeting or removed from the remote public meeting; and

WHEREAS, disruptive conduct at an in-person public meeting or remote public meeting includes sustained inappropriate behaviors including, but not necessarily limited to, shouting, interruption, and use of profanity; and

WHEREAS, any member of the public who continues to act in a disruptive manner at a remote public meeting after receiving an initial warning, may be muted while other members of the public are allowed to proceed with their questions or comments; and

WHEREAS, if time permits, the disruptive individual shall be allowed to speak after all other members of the public have been given the opportunity to make comment and, if the person still remains disruptive, the individual may be muted or kept on mute for the remainder of the remote public meeting, or removed from the remote public meeting; and

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Chester, that the standards and procedures for emergency remote meetings, as set forth in this resolution and as codified in N.J.A.C. 5:39-1 et seq., are hereby established and adopted; and

BE IT FURTHER RESOLVED that procedures and requirements for public participation are hereby established and adopted in order to safeguard public participation in any in-person or remote public meetings in the Borough of Chester and shall apply to all members of the public in attendance at any in-person public or remote public meeting in the Borough of Chester.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board as follows:

Section 1. The foregoing recitals are incorporated herein as if set forth in full;

Section 2. This Resolution shall take effect immediately.

ROLL CALL VOTE:

Those in Favor:

Those Opposed:

The foregoing is a true copy of a Resolution adopted by the Land Use Board of the Borough of Chester at its meeting on November ____, 2020.

KERRY BROWN, Secretary
BOROUGH OF CHESTER
LAND USE BOARD

Dated: November ____, 2020