

CHESTER BOROUGH
LAND USE BOARD
September 10, 2020

The Regular meeting of the Chester Borough Land Use Board was held at the municipal building located at 50 North Road on September 10, 2020.

Opening Statement

Chairman Kenneth Kasper called the meeting to order at 7:01p.m. 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 have been posted on the website at chesterborough.org. Public can register at Zoom.us and to join:

[HTTPS://US02WEB.ZOOM.US/WEBINAR/REGISTER/WN_WU5FYIREQPGNMTBC1D9AXQ](https://us02web.zoom.us/webinar/register/wn_WU5FYIREQPGNMTBC1D9AXQ)

Webinar ID 817 7133 0017

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 - 7 p.m.

SALUTE TO THE FLAG

ROLL CALL

Present:

Mayor Janet Hoven, Class I
Kerry Brown, Class II
Kenneth Kasper, Class IV
Anita Rhodes, Class IV
Donald Storms, Class IV
Chris Heil, Council Representative, Class III
Stan Stevinson, Class IV
Edd Creter, Class IV
Michael Ferrone, Alternate #2
Stan Quintana, Alternate #3

Absent:

Adam Sorchini, Alternate # 1
Steven Bolio, Board Engineer
Paul Ferriero, Board Engineer

Also Present:

Steven K. Warner, Esq., Board Attorney
David Banisch, Board Planner
Sarah Jane Noll, Recording Secretary

Thomas Quinn, P.E. – conflict engineer

Public Hearing – Land Development Applications

Chester Village Square – Benito’s Trattoria – 50 Main Street, Block 129, Lot 3 –Amended site plan application/variance to construct a 163-sf addition to the rear of the building and construct roof over existing patio area. Attorney Patrick Dwyer from Nusbaum, Stein, Goldstein, Bronstein & Kron was present representing the owner Donald Duryea.

Board Attorney Steve Warner found the notice to be sufficient and that it was timely noticed. The Board has the jurisdiction to hear the case.

Attorney Patrick Dwyer made an opening statement. He reviewed the variances being sought. Ronald Kennedy from Gladstone Design and Donald Duryea, owner of the property were present. Mr. Warner swore in all 4 witnesses which included Thomas Quinn, P.E. conflict engineer for Steve Bolio and David Banisch, board planner.

Ronald Kennedy reviewed his background and was found to be an expert engineer and planner and testified that all his licenses remain in good standing in the State of N.J.

Mr. Kennedy explained the existing conditions and the proposed changes to be made. Mr. Kennedy had control of the screen and described the plan which was entered into evidence as **Exhibit A-1- Plan** with an overlay of a google map from the state of NJ. He then reviewed exhibit A-1. The orange line borders the lot in question which is known as lot 3 in block 129. There are currently three (3) buildings on it. In 2002 and 2003 application was made and reviewed by the board and included several lots some of which were re subdivided and one consolidated. All buildings share a common parking area. The focus tonight is in the center which is Benito’s Trattoria Restaurant. The plan is to remove a small shed structure at the rear of the building and replace it with an expansion at the rear of the building. The intent is to use the existing parking spaces for the proposed addition and still have the parking spaces but at a depth of 18’. The shed roof at the rear of the building is not eliminating any parking stalls. The kitchen is at the rear. A porch over the existing patio at the front of the restaurant which has been there since 1992 is proposed. There is 28’ distance from the core of the property to the main street. There is no proposed change to the seating. The landscape beds will be reduced in size. Also participating in the presentation was **Matt D. Draheim** who is employed by Gladstone Design. The increase of 115 s.f. will increase the impervious coverage from 87% to 87.5% and requires a variance. The side distance from the current building to the property line is .8’ and is being reduced to .6’ and from the eveline it would be 0’ from the property line. He concluded his overview.

Donald Duryea testified to the reasoning for the addition to the restaurant. The front porch roof is needed because of the pandemic and he advised that the 50 seats on the inside were approved by the Board. Mr. Duryea than asked the board if they would consider increasing the inside seating to 75. Because he is only allowed 25% seating with the pandemic the 25 additional inside seating would then give him 19 seats inside and he would have the outside seating weather permitting. Business is from 5 p.m. to 10 p.m. The other retail shops on the property are closed at this time. They have 106 parking stalls available. The busiest time for the restaurant is Friday and Saturday

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evenings. There have been no complaints from the other businesses in the area regarding the parking. There was no further testimony from Mr. Duryea. Chairman Kasper advised that the questions of the witness will be deferred until Mr. Kennedy is finished with his testimony. The application contained the previously approved resolutions regarding this property. Chairman Kasper advised that he had reviewed the previous resolutions of approval and saw nothing regarding the seating inside the restaurant. Mr. Dwyer advised that the legal notice has a catchall phase which would cover the variance to allow more seating. Mr. Duryea felt that the seating limitation was in the resolution. Mr. Kennedy continued his testimony and cited the parking summary which was on the variance plan. The seat count is tied to the parking spaces. 119 spaces were required by ordinance, but they received approval by either a variance or a design waiver from the board and then provided 106 parking spaces. Mr. Banisch did say parking requirements are in the zoning ordinance and therefore it is a bulk variance. Mr. Banisch testified that 128 parking spaces are required, and they are proposing 106. He asked if the loading zone is used for parking. Mr. Kennedy said that the loading area is counted as parking spaces and he believes that it is used by the staff. Mr. Kennedy testified that the 50 seats were always on the inside. He added that generally the outside seats which are about 25 are not counted because they are seasonal. He was not sure of the building code for the indoor seating. The ordinance allows outdoor dining until November 1st. A bulk variance would be needed for the requested 100 seats (75 inside and 25' outside). Mr. Dwyer indicated that the applicant would amend the application to include the variance for seating. 136 parking stalls would be needed for 100 seats. They will amend the plan to show the additional parking and seating. Mr. Kennedy showed the architectural drawings showing the 12' addition to the kitchen with a new staircase. Entered into evidence was **Exhibit A-2 – Architectural Drawings prepared by Melito dated 1-17-20 showing the rear kitchen; Exhibit A-3 – Architectural Drawings prepared by Melito dated 8-17-20 showing the addition of the roof over the front patio.**

Ronald Kennedy now testified as a planner and addressed the requested 115 s.f. of new lot coverage. There is 87% existing coverage and with the proposed addition and roof it would increase to 87.5%. He testified to the variance for the side yard setback of .6' to the property line and 0' from the property line to the facia. 5' is required. There will be 1.5' from the front corner of the existing building to the property line. He addressed the existing landscaping along that property line and advised the board that Donald Duryea also owns adjoining property. He views all three lots 3, 4 and 17 as one lot. The lot and block numbers are different in the resolutions. It was his testimony that these three (3) reliefs are aspects which would make a business survive; the requests are de minimis; there are no issues with the storm water calculations. He summarized his testimony.

Mr. Kennedy addressed the items in the review letter of Mr. Quinn, conflict engineer on behalf of the Borough of Chester. He did address the depth of the parking spaces and the fence and planters which will remain. The applicant will infill some of the plant areas and address the missing shrubs on the east side. The applicant stipulated that they would submit cross access easements for the parking to the extent necessary. Mr. Quinn noted the lot number changes from the resolution to date. The old plan was lot 19 and the new plan shows it as lot 17. Chairman Kasper suggested that the resolution clarify the lot numbers. Mr. Quinn conceded to the number of parking spaces being 106. Mayor Hoven noted that the ordinance section 198-4 allows seasonable dining with a November 1st deadline. Mr. Quinn questioned the ADA stall which is a federal statute and he advised that he needs to be sure that the loading dock is not blocked. Mr.

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Kennedy advised that there is a temporary tent which is covering the handicapped space. Mr. Kasper asked that an alternate handicapped space be provided. They will check this and comply with the walkway into the building. Mr. Warner asked the applicant to stipulate to provide an ADA complying space which the applicant agreed to. Mr. Quinn advised that he had nothing further to add and that the applicant has covered it all.

Mr. Banisch's report was reviewed. Donald Duryea testified that there is no change to the loading dock. He said that the deliveries are usually by 9 or 10 a.m. Several of the delivery people have keys to the restaurant. No new site lighting is proposed. They will be putting lighting under the canopy. Mr. Duryea said this would be done at the direction of the board's planner. Chairman Kasper asked that the applicant work this out. In response to Mr. Quinn's question, Mr. Duryea testified that there is sufficient parking for the lunch service. Mr. Banisch asked for a durational limit if the parking becomes an issue explaining that the applicant can be asked to remove the 25 outdoor seats. Mr. Warner commented about the legal aspect to this requirement since the granting of the request would allow the parking to be permanent. He suggested that the board consider putting a time frame on the seating both inside and outside and limiting it to the duration of the pandemic. He asked the applicant if they would stipulate to a durational variance. Chairman Kasper asked to focus on the 25 outdoor seating and suggested that element of approval to be subject to the seasonal ordinance adopted by the Council. Both Mr. Dwyer and Mr. Duryea agreed to that. It was suggested that the additional inside seating be limited to 30 days after the governor's order. Mr. Duryea would prefer that the additional seating indoors be permanent. Chairman Kasper and several board members questioned if there is room for 25 more seating inside. Mr. Duryea advised that he would like the additional 25 seats inside be permanent but would concede to it being just during the pandemic.

Questions by the Board.

Edd Creter stated that he is supportive of the businesses in town, but he questions the parking and seating on this application. He cannot see where 25 more seats would be located inside. He understands they were doing it for the 25% which would give them 6 more seats. Mr. Duryea agreed to investigate the additional 25 seats. The board offered that the Board of Health and perhaps the Fire Marshall have the authority on the number of seats in the restaurant. Mayor Hoven questioned if the architect has looked at the plans to see if an additional 25 seats can go inside and has anyone looked at the sewer allocation which would determine if the expansion of the number of seats is permissible. The architect has not been spoken to about this according to Mr. Kennedy. Chairman Kasper suggested putting a temporal approval on the seating in the building. Mayor Hoven wants to make sure that this decision is consistent with all the restaurants in town.

Anita Rhodes questioned the increase of 25 additional seating inside. Mr. Kennedy answered that the outdoor seating has been there since 2002 and had been existing prior to that time. Mayor Hoven explained that if there was already outdoor seating, the restaurant does not have to go to the town for special approval.

Mr. Kennedy said that there are a lot of parameters that are reviewed before the maximum occupancy is established. Mr. Quintana said that the parking is a moot point until the other parameters are met.

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Michael Ferrone asked if there is a permanent HVAC system installed. Mr. Duryea said that there is no HVAC proposed and he personally is concerned about gas heaters being used under the tents.

Public Portion – Since there was no one from the public participating in the meeting, the public portion was opened and closed to the public.

Mr. Warner addressed the parking variance and the notice which was served. The notices were given to the property owners around lot 3. Mr. Duryea advised that he and his family are owners of lots 4 and 17. Mr. Duryea testified that PTS LLC is his daughter, son and himself and that he has no objection to the parking change or the increase in the deviation.

Mr. Dwyer summarized the application.

Mayor Hoven moved to entertain the deliberation of the board; Stanley Quintana seconded the motion which was approved unanimously by the board.

Chairman Kasper asked for comments of the board members. Mayor Hoven explained that she was fine with the application and variances until the 25 inside seats were added. She does not feel that they should increase the number. She is not comfortable with the 25 seats increase inside. Chairman Kasper asked if the other members agreed with the Mayor. Stanley Quintana suggested that the approval of the increase be authorized by the fire marshal and sewage engineer. There was discussion and Anita Rhodes suggested until the facts are known, the application should be continued to the next meeting. Chairman Kasper suggested that the variance relief be granted subject to approval of all governing entities. Natural Systems is the Sewer consultant.

Mayor Hoven moved to approve the application granting variances for parking; impervious coverage; side yard and the increase in the 25 additional outside seats subject to the approval of the Board of Health, Sewerage Authority, Fire Official, and all other entities and officials, and copies of same shall be submitted to the Borough Engineer; Anita Rhodes seconded the motion which was passed by the following roll call vote:

AYES: Mayor Janet Hoven; Kerry Brown; Kenneth Kasper; Anita Rhodes; Donald Storms; Chris Heil; Stanley Stevinson; Edd Creter and Michael Ferrone.

NAYS: None

RESOLUTION:

John & Christine King – 73 Collis Lane, Block 207, Lot 5

Board attorney Steve Warner reviewed the resolution with the board.

Stanley Stevinson moved to adopt the following resolution; Edd Creter seconded the motion which was passed by the following roll call vote:

AYES: Janet Hoven; Kerry; Brown; Kenneth Kasper; Anita Rhodes; Donald Storms; Chris Heil; Stanley Stevinson and Edd Creter.

NAYS: None

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JOHN M. KING
Block 107, Lot 5
73 Collis Lane

RESOLUTION

WHEREAS, **JOHN M. KING** (the “Applicant”) has applied to the Borough of Chester Land Use Board (the “Board”) for the following bulk variance relief, in connection with the construction of an in-ground swimming pool with a walkway surrounding said pool, to be located in the rear yard of property identified as Block 107, Lot 5 on the Tax Map, more commonly known as 73 Collis Lane (the “Property”):

A variance for a proposed rear-yard setback from an accessory structure (in-ground pool) of 19’6”, whereas the minimum required rear-yard setback from an accessory structure is 50 feet in the Residential Low-Density (“RLD”) Zone, pursuant to Section 163-69 and Schedule 1 of the Land Development and Procedures Ordinance of the Borough of Chester (the “Ordinance”); and

WHEREAS, a virtual public hearing on notice was held on such application on August 13, 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 Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. 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.

2. All Board Members and Board Professionals and staff participated in the hearing through the web-based platform and were able to perceive the Applicant and the Applicant’s professionals, both visually and audibly, in real time.

3. The Property is an undersized (24,800 square foot lot area, whereas 2 acres minimum required) and narrow (158 feet wide; 175 feet required) lot located in the RLD Zone. The Property is presently improved with a two-story frame dwelling, slate patio, deck, and associated walkways and improvements. The Applicant proposes to construct an in-ground swimming pool, with dimensions of 16’1” by 39’10”, with a surrounding three (3) foot wide walkway, in the rear yard.

4. The Applicant’s proposal is hand depicted on a Boundary Survey prepared by Philip A. McEntee, Jr., P.L.S., dated August 12, 2019, unrevised, same consisting of one (1) sheet.

5. The requested variance for the nonconforming rear-yard setback to an accessory structure is governed by the criteria of N.J.S.A. 40:55D-70(c).

6. John M. King and Christine S. King, having an address of 73 Collis Lane, both were duly sworn according to law. Mr. King testified that he is seeking approval to construct an in-ground pool with a surrounding walkway. He further testified that the existing nonconforming shed was removed after the Survey was prepared.

7. On questioning, Mr. King testified that the current improvements on the Property result in approximately 5,345 square feet of impervious coverage, and together with the proposed 990 additional square feet of improvements, the proposed total impervious coverage would be 6,335 square feet, which is less than the maximum permitted impervious coverage of 7,351 square feet for the Property. Mr. King further testified

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that the only nonconforming condition created by the installation of the proposed pool and surrounding walkway is the proposed accessory structure rear-yard setback of 19.5 feet to the pool, whereas 50 feet is required.

8. On questioning as to the impact of the proposal on the neighborhood, Mr. King testified that the entirety of the rear of the Property abuts a cemetery. He further testified that there exists a 6-foot tall solid fence along the rear property line of the Property and surrounding the entire rear-yard area. The Applicant stipulated, as a condition of approval, to maintaining the fence and installing the requisite locking mechanism, same to conform with all applicable pool safety requirements.

9. Mr. King stipulated, as a condition of approval, to enclosing the pool by a permanent fence in accordance with the required building codes, as per the New Jersey Uniform Construction Code, and that any light used above the surface of the water to illuminate the swimming pool (no lighting is proposed) shall be so arranged and shielded that the light will be reflected away from adjoining premises.

10. On questioning by the Chairman, Mr. King testified that the rear-yard setback to the dwelling is 50 feet and, therefore, it is impossible to locate the pool in a conforming rear yard location compliant with the required 50 foot rear-yard setback requirement. He also testified that the pool is required to be in the rear yard, and even if the pool were located in a side yard, the Applicant would not have clear vision of his children and others in the pool, thus raising safety concerns.

11. No member of the public commented on, or objected to, the Applicant's proposal.

DECISION

12. After reviewing the evidence submitted, the Board, by a vote of 8 to 0, finds that the Applicant has satisfied his burden of proving an entitlement to the requested variance relief for the deficient rear-yard setback from an accessory structure (an in-ground pool), pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

13. As to the positive criteria for "c(1)" or "hardship" variance relief for the rear-yard setback deviation, the Board finds that the Applicant has 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, him as one of 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 impossible for the Applicant to construct the proposed pool in a conforming location. The Board further finds that the Applicant has 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 deficiency. Finally, the Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulation were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title.

14. As to the positive criteria for "c(2)" or "flexible c" variance relief for the rear-yard setback deviation, the Board finds that the Applicant has 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 Applicant has 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 proposed pool will be located to the rear of the dwelling and will not be visible from the right-of-way and a cemetery abuts the entirety of the rear yard. In this regard, the Board recognizes that if the pool were to be located in the side yard, the Applicant would not have a clear vision of his children and others using the pool, thereby creating a potentially unsafe condition. The Board finds that the relatively modest detriment associated with granting the requested relief is mitigated by the conditions stipulated to by the Applicant.

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15. As to the negative criteria for the requested bulk variance relief, the Board finds that the Applicant has 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 out of character with the existing neighborhood, and that the relatively modest detriment is mitigated by the conditions stipulated to by the Applicant, as set forth below. The Board further recognizes that no member of the public objected to the application. As to the second prong of the negative criteria, the Board recognizes that a pool with surrounding walkway is 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.

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 **JOHN M. KING**, for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

1. The Applicant shall post sufficient funds with the Borough to satisfy any deficiency in the Applicant's escrow account;
2. The Applicant shall comply with Section 163-70(O)(7)(c) and (d) of the Ordinance which provide that pools shall be completely enclosed by a permanent fence in accordance with the required building codes as per the New Jersey Uniform Construction Code and any lights used above the surface of the water to illuminate any swimming pool shall be so arranged and shielded that the light shall be reflected away from adjoining premises, same to be subject to the review and approval of the Borough Engineering Department;
3. The Applicant shall remove the nonconforming shed if same has not yet been removed and same shall be subject to the confirmation of the Borough Engineering Department;
4. The Applicant shall comply with all applicable pool safety fencing and self-closing gate requirements, same to be subject to the review and approval of the Borough Engineering Department;
5. The Applicant shall submit full scale drawings to the Board prior to the signing of the plans;
6. The Applicant shall revise the plans to include a signature block for the Chairman, Secretary and Borough Engineer on the cover sheet. The Applicant shall also revise the plans to include clearly legible plan dates and any future revision dates, and same shall be subject to the review and approval of the Borough Engineer;
7. 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;
8. 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
9. 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.

Tack Veterinary Holdings, LLC., - 114 US Highway 206 North, Block 103, Lot 51- Amended Site Plan -Applicant Requested to be carried to October 8th meeting without further notice.

Board attorney Steve Warner discussed this application with the board and advised the board that Kerry Brown should request an extension of the tolling time through the month of October.

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Failure to receive that extension will result in the board having to take action to dismiss the application without prejudice. The application is carried to October 8, 2020 **with notice**.

Donald Storms made the motion to carry the application to the October 8th meeting, but the meeting must be noticed and to dismiss the application without prejudice unless an extension is granted by the applicant through the month of October; Stanley Stevinson seconded the motion which was passed by the following roll call vote:

AYES: Janet Hoven; Kerry Brown; Kenneth Kasper; Stanley Stevinson; Donald Storms; Chris Heil; Anita Rhodes; Edd Creter; Michael Ferrone.

NAYS: None

Minutes – The minutes of the August 13, 2020 were approved as corrected.

Executive Session – matters relating to possible litigation

Mayor Hoven moved to close the meeting to the public because of matters relating to possible litigation; Donald Storms seconded the motion which was passed by the following roll call vote:

AYES: Janet Hoven; Kerry Brown; Kenneth Kasper; Anita Rhodes; Donald Storms; Chris Heil, Stanley Stevinson; Edd Creter; Michael Ferrone; Stanley Quintana.

The board came back into the regular meeting at 9:55 p.m.

PUBLIC COMMENT – There was no one in the public

ADJOURNMENT - There being no further business, the meeting was adjourned at 10:06 p.m. by motion of Mr. Creter and a second by Mr. Storms.

Sarah Jane Noll
Recording Secretary