

CHESTER BOROUGH  
LAND USE BOARD  
DECEMBER 12, 2019

The meeting of the Chester Borough Land Use Board was held at the municipal building located at 50 North Road on December 12, 2019.

**Opening Statement**

Chairman Kenneth Kasper called the meeting to order at 7:07 p.m. Adequate notice of this meeting was given as required by the "Open Public Meetings Act" as follows: notice was sent to the Observer-Tribune and Daily Record, posted on the bulletin board in the Borough Municipal Building and filed with the Borough Clerk.

**Salute to the Flag**

The salute to the flag was led by Chairman Kasper.

**ROLL CALL**

**Present:**

Kenneth Kasper  
Stan Stevinson  
Mayor Janet Hoven  
Donald Storms  
Kerry Brown  
Edd Creter  
Anita Rhodes  
Chris Heil  
Michael Ferrone, Alternate #3

**Absent:**

Steven Bolio, Board Engineer  
Jennifer Cooper  
Adam Sorchini, Alternate #2

**Also Present:**

Richard Marcickiewicz, Board Attorney  
David Banisch, Board Planner  
Jess Symonds, Standing in for Steven Bolio  
Sarah Jane Noll, Secretary

**Minutes – November 14 2019.**

The minutes of November 14, 2019 were approved as read.

**PUBLIC HEARING:**

**Minor Subdivision and Variance Application - Seneca Hills Corp. Block 115, Lot 8**

Because the application was noticed for 7:30 p.m. the board could not hear the application until then. The board took a recess at 7:10.

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During the recess, Mayor Hoven advised that the windows at Cash were replaced using monies from the Spending plan in the Affordable Housing Element for a low income facility. The new windows are helping to keep the heat in.

The meeting resumed at 7:30 p.m.

**Minor Subdivision and Variance Application - Seneca Hills Corp. Block 115, Lot 8 – continued**

Mr. Marcickiewicz reviewed the notices and found them in order.

Ronald Heymann, Esq. attorney for the applicant introduced himself and apologized for the notice being for 7:30 p.m. rather than 7 pm.

David Seneca, the applicant was sworn in by Mr. Marcickiewicz. Mr. Seneca advised that Seneca Development Group is the entity and is a purchaser under contract. Mr. Seneca testified that the proposed home would be 3,000 s.f. with a country style.

Entered into evidence was **Exhibit A-1** – a brochure picturing the house which had been built in Chester Township. It has a country feel with the front porch. It will have 4 bedrooms and 2.5 bath with city water and septic.

Public Portion –Janet Hoven moved to open the public portion to questions of the witness; Anita Rhodes seconded the motion and since no one in the public wished to question the witness, Janet Hoven moved to close the public portion and Anita Rhodes seconded the motion.

Mr. Banisch asked if Mr. Seneca has spoken to the Wests who are the immediate neighbors to the right of the property. Mr. Seneca advised that he was unable to speak with them. Mr. Seneca stated that he proposes to leave all of the vegetation which consists of trees and brush within a 25' wide area for protection of the neighbor. Mr. Symonds Borough Engineer had no questions of the witness.

Nicholas Wunner P.E. applicants' engineer, was sworn in and was accepted as an expert witness who has testified before the board on other occasions.

Entered into evidence was **Exhibit A-2** - a colored rendering of sheet 2 of the plans showing existing conditions and the topographic survey of the property. He testified that the property fronts on North Road which is a County Road. The SW corner of the property slopes toward the road. He described the existing home on lot 8 which will remain. It is serviced by municipal water.

Entered into evidence was **Exhibit A-3** – sheet 3 of the plans. Proposed lot 8.01 will consist of 2 acres. This lot is being purchased by Mr. Seneca if the subdivision is approved. An application was submitted to the County and they asked that the existing loop driveway be removed. The applicant has agreed to this. They will dedicate 8' along North Road to the county for the Right of way. The property is serviced by water and gas. The existing driveway will be reduced to 35'. The ordinance requires 40'. A flag lot is not permitted. The width of the proposed driveway will be shown on revised plans. The proposed new lot will be serviced by septic and well. The new lot 8.01 will use a portion of the existing driveway to provide access to the dwelling.

Mr. Ferriero's report of November 22, 2019 indicates that this is a minor subdivision not a major as applied for. The report was reviewed.

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The property is located within the Borough's RHD zone district. The application indicates variances are required for lot width for both lots and accessory side yard setback for the remainder lot. The checklist items addressed in the report were discussed.

Mr. Banisch's report of December 11, 2019 was reviewed. Mr. Banisch suggested that the board only grant waivers for completeness provided that the applicant agrees to provide the information requested. Mr. Wunner said that checklist 47 has no wetlands and this note will be added to the plans. A landscape plan may be required.

Stanley Stevinson moved to waive the checklist items for completeness; Chris Heil seconded the motion which was approved by the following vote:

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

**NAYS:** None

The Technical requirements listed in the report were discussed.

Stormwater controls were discussed and that the deeds should contain a notation that future disturbance of lots 8 and 8.01 which results in the total lot disturbance exceeding one (1) acre or new total impervious cover exceeding 0.25 acres, the lot will be classified as a 'Major Development' and will be required to submit a Stormwater management plan. Mr. Marcickiewicz felt that both owners are obliged to cooperate and it was decided that both owners will put notice in the deeds. What is there today is the base line. The Stormwater regulations allows ¼ acre increase. Mr. Kasper asked if the reduction in the loop driveway goes into the calculation. This was answered yes.

The County report dated 11-14-19 was reviewed. The board members did not have a copy. Mr. Heymann read the report into the record. It required that the loop driveway be removed amongst other requirements. All comments were agreed to by the applicant.

The Board professionals questioned the witness; Mr. Symonds had no comments.

Mr. Banish questioned the required site distance and if any trees need to be removed. The witness advised that they have not had an opportunity to evaluate this. The driveway will go through a part of the existing driveway. The electric provided to the rear lot will be underground as shown on the plans. There will be a berm and landscaping on the easterly lot line. This is not shown on the plan. This needs to be shown according to Mr. Banisch. The berm and landscaping is a pre-requisite to the issuance of the c of o. The easement is only on lot 8.01 but runs to the benefit of the owner of lot 8. Mr. Banisch feels a landscape plan is needed. Mr. Seneca agreed to put language in the deed that the owner of lot 8.01 will have the obligation to replant any trees that die. Mr. Stevinson asked who will enforce this. It is between the two owners.

Mr. Banisch had no further questions of the witness. The board members then questioned the witness.

Mr. Stevinson asked about the maintenance of the driveway; this will be a shared driveway agreement for both access and maintenance. Janet Hoven asked where the cars for lot 8 park. The current owner will address this issue when she testifies. Kenneth Kasper questioned the proposed width of 35' for the driveway; the pavement is 10'. Mr. Banisch advised that flag lot driveways are normally 50' in width. The ordinance requires a paved width of 12'. A 10' width is not adequate according to Mr. Banisch. He suggested that a pull off be provided. The witness advised that there is already a pull off area between the two trees.

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**Public Portion** - Anita Rhodes moved to open the public portion to questions of the witness; Chris Heil seconded the motion which was approved unanimously by the board.

Heather Hearon, 30 North Road questioned the runoff which runs toward the municipal complex to the rear of the property. She described the direction of the runoff. She asked if the water would flow toward lot 8 or her property. Mr. Wunner advised that the runoff runs in a north/south direction and that it would run in the direction of her property and he suggested that a berm could be installed which would keep the runoff away from her property. The berm would be installed on lot 8.01 and directed toward lot 9. Anita Rhodes questioned what effect the Stormwater would then have on lot 9. Mr. Wunner suggested that he could put in a trench with stone in it so that the water will seep into the ground or a drywell could be installed. Chairman Kasper pointed out that the driveway is not being changed but the flow of water from it may be a little faster. Mrs. Hearon showed Mr. Wunner where her septic is located. She advised that she bought her house in 2017 and did inherit a water problem in the front of her house. Mr. Banish suggested that the landscaping plan and berm be shown. Janet Hoven suggested that the resolution contain wording that if plant material dies, the owner of lot 8 will be responsible for replacement.

Chris Heil moved to close the public portion for questioning of the witness; Janet Hoven seconded the motion which was approved unanimously by the Board.

Ellen McGraw, owner of lot 8 was sworn in and testified that she purchased the property 7 years ago. She is the seller under contract with Seneca. She testified that she is in agreement with the elimination of the loop driveway. She also asked that the width of the driveway not be 40' as required but rather 35' because of the roots of the pine trees that could be damaged. She also described on the plan where people would park. It is presently a garden but it would be stoned for parking purposes. This has to be shown on the plan. The applicant agrees to this. Mr. Banisch then advised that the first 20' of the driveway has to be paved according to the County. The 20' is usually back from the edge of pavement. This must be shown on the plan. The board discussed the project and asked that the applicant revise the plans to show the changes before the board takes a vote.

The professionals did not have any further questions of the witness.

Planner Jessica Caldwell was sworn in and accepted as an expert witness. Her office is in Newton, New Jersey.

Ms. Caldwell entered the following two exhibits:

**A-4** – Study Area Zoning Map

**A-5** - Block 115, Lot 8

Ms. Caldwell reviewed the exhibits using A-4 first. The property is circled in red; and is surrounded on two sides by the Industrial zone and two sides by residential. She went over the zoning allowed in the zone. This is the largest lot within 1,000'. The next is 2.7 acres and the majority are less than 1 acre. She addressed flag lots. She testified that she does not feel that this proposed lot will negatively affect the surrounding lots. The lot is relatively flat and any development will not be seen. 37,000 s.f. is the average lot size in the area. She reviewed the variances being requested. The C-2 variances were addressed by her. The current lot is 3 x's the current zoning requirement and therefore the creation of two lots is reasonable. The general welfare is served in this case according to Ms. Caldwell. The benefits do outweigh the detriments. Mr. Heymann feels that her report follows Mr. Banisch's report.

Mr. Banish had no questions of the witness. He does not feel that there are benefits to the area especially since the flag lot is not permitted in a residential zone.

The Board members questioned the witness.

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Stanley Stevinson asked Mr. Banisch if he recommends approval; Mr. Banisch said that he recommends that the board gives weight to Ms. Caldwell's testimony. The ordinance was in 2002 when they did not permit flag lots. Mr. Kasper reiterated Mr. Banisch's comments that the board has the ultimate decision. Janet Hoven pointed out that a flag lot was created in 2001 on Seward. No one is sure if this was the reason for the change in the ordinance. There are a couple of other flag lot properties in the Borough. The planner pointed out that another way to develop the lot would be to build a road but that which they are requesting is less intense. Chairman Kasper questioned the portion of lot 8 that juts out toward the west and that there appears to be room for further development on that leg of the lot. The planner addressed this concern. Mr. Banisch suggested that the coverage should be looked at and addressed on the revised plans. The applicant advised that it is on the plans however it does need to be updated.

**Public Portion** -Anita Rhodes moved to open this portion of the meeting to the public for questions of the witness; Donald Storms seconded the motion. Since no one in the public wished to question the witness, Kerry Brown moved to close the public portion; Donald Storms seconded the motion which was approved unanimously by the board.

Since the applicant had concluded his testimony and the plans needed to be revised, the application was carried to February 13<sup>th</sup> at 7 p.m. without further notice.

**Boy Scouts** = Since there was no one in the audience from the Boy Scouts, Kerry Brown will reach out to them to come to the January meeting if there is room on the agenda.

Mr. Marcickiewicz will be retiring in 2020 and has asked to be replaced. He will be here in January, 2020.

Mayor Hoven advised that the appointment of the Board attorney is the authority of the Board not the mayor and council. If any of the board members have suggestions, they are to contact Borough Attorney Brian Mason.

**Adjourn:** A motion was made and seconded to adjourn the Land Use Board meeting at 8:25 p.m.

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Sarah Jane Noll  
Secretary of the Chester Borough  
Land Use Board