

CHESTER BOROUGH  
LAND USE BOARD  
November 12, 2020

The Regular meeting of the Chester Borough Land Use Board was held remotely on November 12, 2020.

**Opening Statement**

Chairman Kenneth Kasper called the meeting to order at 7:00 p.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](http://chesterborough.org). Public can register at Zoom.us and to join: Public can register at Zoom.us and to join:

[https://us02web.zoom.us/webinar/register/WN\\_XxPGNwKVS76CV44DeuSb5g](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](mailto:kbrown@chesterborough.org) or 908-879-3660 x 2123

**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:**

Paul Ferriero, Board Engineer  
Adam Sorchini, Alternate # 1

**Also Present:**

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

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**PUBLIC HEARING – LAND DEVELOPMENT APPLICATION:**

**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 at the entrance to the Streets of Chester.

Mark Blount, Esq. was present representing the applicant in the absence of Anthony Sposaro, Esq. This application had been heard at the October 8, 2020 meeting and carried to this meeting without further notice.

Mark Blount refreshed the board on the action items. The requested descriptive diagram was submitted by Mr. Byrne and the mockup of the sign installed on site. The sign lighting will be dimmed 1 hour after the last tenant closes; the tenants' logo will all be the same color, size and locations. There will be no removal of the panels or combining panels into one. The applicant asked that the street address not be put on the sign. The applicant also prefers that the 'Streets of Chester' sign on the brick wall remain. They also prefer for the 2-carriage light at the ends to the sign to be allowed to remain.

A motion made by Edd Creter and seconded by Kerry Brown to exit deliberation and take additional testimony was passed by the board. Mr. Byrne was reminded that he remains under oath. Mr. Byrne advised that the colors on Exhibit A-3 introduced at the October meeting will remain the same. Introduced into evidence were the following exhibits:

**Exhibit A-4 and A-5** – photos showing Mockup of sign on the site from two different locations

Mr. Blount advised that he has no other affirmative testimony to offer and is open to questions of the witness.

Chairman Kasper asked if Mr. Warner, Mr. Banisch or Mr. Bolio have any questions of the witness. They had no questions at this time.

Board Members questioned the witness. Anita Rhodes asked if there had been any changes to the proposed landscape plan from May 2020. Mr. Roth who had been previously sworn did advise that there have been no changes to the plans that were dated May 2020. They had agreed to a change which has not been made. A condition of approval would be the applicant reaching an agreement with the Shade Tree Commission.

Since there were no further questions from the board members, the meeting was opened to the public by motion of Donald Storms and a second by Mayor Hoven. Since no one in the public wished to question the witness, a motion to close the public portion was made by Donald Storms and seconded by Mayor Hoven.

By motion of Anita Rhodes and seconded by Edd Creter, the meeting was opened for deliberations by the Board. Mr. Blount had no objection to this.

Chairman Kasper asked for a consensus of members not in favor of the signs. The members discussed the coach lites and questioned why the applicant does not want to eliminate them. They also felt that the sign was too tall that it blocks some of the stores in the mall. There was a suggestion by the Mayor that the top portion of the sign be removed or the sign be lowered. Members had heard comments from some residents who expressed their dislike for the sign. The

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rendering was shown to the Board. There was a suggestion that the enhanced landscaping would help. Chairman Kasper asked for contrary opinions. It was thought that the audience viewing the sign would be people traveling north and south on Route 206 and not necessarily residents. It was agreed that the proposed sign is too tall and could be lowered. There was a consensus of the members that the sign should be lowered, and the coach lights be removed. Mr. Storms felt that two signs are not necessary and he is not in favor of the sign on the north side.

Mark Blount asked that Mr. Byrne be allowed to testify again.

By motion by Donald Storms and seconded by Chris Heil, the board exited deliberation and allowed Mr. Byrne to testify. David Banisch suggested that the white fencing is too busy and that they consider a black wrought iron chain link fence. He then explained how the proposed carriage lights do not match the lighting on the site. Mr. Byrne suggested dropping the upper part of the sign. He addressed the white existing fencing and agreed that it is not necessary. The board members questioned Mr. Byrne asking why the fonts on the sign are not the same and do not seem to go together. Mr. Byrne advised that they would lower the roof 18" and reduce the sign area by approximately 50%. Mr. Warner advised the board that designing the sign by the board is inappropriate and that the 87.4 sq. ft. signs should either be denied or approved by the board since that is what is in front of the Board. Mr. Blount asked that the board allow the applicant to discuss the issues and that a recess be taken so that he would be able to talk with his client.

A recess of the board was taken at 8:09 so that Mr. Blount could talk with his client. A ten-minute break was taken, and the board addressed the following items during the recess.

**Minutes of October 8<sup>th</sup>** – approved as corrected.

### **Resolutions for Adoption**

**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.

Stanley Stevinson moved to adopt the resolution; Michael Ferrone seconded the motion which was approved by the following roll call vote:

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

**NAYS:** None

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

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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. Edd Creter, having an address of 9 Cedar Tree Lane, was duly sworn according to law and expressed his support for the Applicants' proposal.
12. William Cokeley, having an address of 16 Ammerman Way, was duly sworn according to law. He 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 finds 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.

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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 12th day of November, 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.

### **Chester Village Square – Benito's**

Stanley Stevinson moved to adopt the corrected resolution; Michael Ferrone seconded the motion which was approved 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

8:25 P.M. Mr. Blount joined the Zoom meeting after a 10-minute recess during which he consulted with his client.

Mr. Byrne then advised the board of their proposed changes.

- 1) Size – they will reduce the height from 9' to 6'6" drop the roof section down and remove the wording 'Streets of Chester' from the sign and remove the lighting under the roof but keep the goose neck lights; 2) the carriage lights would be retained but propose them to be identical to those lights in the mall; 3) they would like to have the 2 signs on the north and south sides of the entrance. The landscaping will help to conceal the sign.

Public Portion - No one from the public wished to question the witness so the public portion was closed.

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The board members then questioned Mr. Byrne who explained that the applicant wants to keep the goose neck lights which, in his opinion, is a better look. Mayor Hoven agreed that the goose neck lights are like the lights in the mall. Mr. Byrne advised that the carriage lights are like the lights in the mall. The sign will replace the 3-rail fence. The existing shrubs will be removed, and landscaping will be installed matching the plan which was shown on the computer screen. Mr. Roth did advise that the code does require the fencing around the detention basin and those standards will be met. Mr. Warner asked to be advised of the new proposed dimensions of the sign for the drafting of the resolution. Mr. Blount confirmed that the calculations will be sent to Mr. Warner this coming week. Mr. Byrne calculated each sign would be reduced by 40 sq. ft.

The board then began its deliberations by motion by Chris Heil and seconded by Michael Ferrone.

Chairman Kasper, Stanley Stevinson and Stan Quintana were not fans of the size of the signs. Mr. Stevinson and Mr. Quintana feeling that a precedent may be set. Messers Ferrone, Creter, Heil and Mayor Hoven are satisfied with the proposed size. Mr. Stevinson favors the two signs which he feels helps business, but he still would like the sign to have the street number on it. Kerry Brown and Mayor Hoven support the two signs.

Michael Ferrone moved to approve the site plan with variances conditioned on the reduction in size, conformance with Shade Tree Commission, compliance with the reports of the planner and engineer, dimming of lights as stipulated, the light fixtures to comply with those in the mall and stipulation regarding the logo and the retention of the 'Streets of Chester' sign on the wall; Stanley Stevinson seconded the motion, which was approved by the following roll call vote:  
**AYES:** Janet Hoven, Kerry Brown, Chris Heil, Stanley Stevinson, Edd Creter and Michael Ferrone.

**NAYS:** Kenneth Kasper, Anita Rhodes, and Donald Storms

**Chester EWC, LLC d/b/a European Wax Center**, 173 Route 206, Block 128, Lots 2 & 4

Mr. Warner advised that the notices are in order and the board can hear the application. Mark Blount was present representing the applicant.

Steve Bolio, Borough Engineer reviewed the October 28, 2020 report prepared by Paul Ferriero, Borough Engineer addressing the checklist items for completeness. The application is deemed complete for the board to move forward. Waivers are recommended for checklist items 8, 9, 13, 16, 18, 19, 20, 21, 22, 23 24, 30 & 34. This is a sign variance application to allow one (1) proposed façade sign of 25.9 sq. ft. where 15 sq. ft. maximum is permitted provided, however, that the total sign shall not exceed 10% of the area of the face of the building to which it is attached.

The two witnesses for the applicant Dipali Patel and Mike Sonlin and Board planner David Banisch were all sworn in to testify.

Dipali Patel testified that this will be the 38<sup>th</sup> store in the nation. She also owns the Chester Massage Envy Business located in the mall. This is a Franchise business, and the sign is a

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corporate sign. All signage must be uniform and approved by corporate. There are 800 locations nationwide. The space that she wishes to use has been vacant for approximately 8 months. Since there was no further testimony by this witness at this time, the board questioned the witness. Mr. Quintana asked why the signs cannot be scaled down to meet different municipal requirements. The witness had a drawing of the sign comparing it to the other signs for Verizon and Great Clips. She is not sure if corporate will allow the reduced signage. Mr. Stevinson questioned the size of Massage Envy, but that information was not available.

Kerry Brown advised that there is no public on the zoom meeting, so the public portion was not opened.

The next witness Michael Sonlin testified that he works for **Effective Sign Works** the producer of the signage. They are a nationwide sign company. He has worked them for 14 years. He is neither an engineer nor a planner. His expertise is in the sign design. Mr. Warner recognized him as an expert in his profession. Mr. Sonlin gave the dimensions of the existing signs: Massage Envy is 22.2 sq. ft., and the Verizon sign is 29.16 sq. ft. He explained how he measured the s.f. of the sign so that it could be seen from 150', they are currently visual from 145'. The letters get too small to put LED lighting inside it. 175 lumens per letter on average. It is a white light. It is his opinion that there is no negative impact in allowing the larger sign. Mr. Blount had no further testimony. Mr. Ferriero's report of October 28, 2020 and Mr. Banisch's November 12<sup>th</sup> report were reviewed. # 5 of Mr. Banisch's report questioned the intensity of illumination. Mr. Sonlin advised that it is not adjustable however they could put a dimmer on it if it were deemed too bright. Mr. Bolio feels this is acceptable. It would be a condition to the approval.

Entered into evidence was the following exhibit:

**Exhibit A-1** – 2 page submission dated 8-25-20.

Mr. Banisch questioned the distance that Mr. Sonlin used to justify the size of the sign and its lettering. It was Mr. Sonlin's opinion that the proposed size is barely adequate to be visible. During the questioning by the Board the applicant stipulated that the lights would go on one (1) hour before sunset and one (1) hour after store closure. They will close at 9:30 during the week from Monday thru Friday and at 6 p.m. on the weekends. Mr. Warner asked the applicant to stipulate that they would repair any damage to the façade of the building when installing the signage. They will agree to that. Chairman Kasper asked if they are proposing any additional signage on the window glass and that the applicant familiarize themselves of the Borough's sign ordinances. They testified that the sign will not have sound or motion.

There being no further questions of the witnesses and that there is no one in the public, Mr. Blount concluded his case.

Upon a motion by Anita Rhodes and seconded by Stanley Stevinson, the board deliberated. Edd Creter moved to approve the requested variances conditioned on the stipulations discussed; Stanley Stevinson seconded the motion which was approved by the following roll call vote:

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

**NAYS:** None

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

Mr. Warner explained the reason for the resolution which allows boards or public body to adopt a resolution that essentially mimics the law.

Stanley Stevinson moved to adopt the resolution; Anita Rhodes seconded the motion which was approved.

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

**NAYS:** None

**Communication/Discussion items**

- The Mayor commented on a letter received from Ed Ng regarding lack of notice that the 2<sup>nd</sup> meeting in October had been cancelled and that the minutes of the meetings had not been posted. Kerry Brown addressed the issue and advised that she will make sure that this does not happen in the future. The minutes are now on the website.

**PUBLIC COMMENT** – There was no one in the public.

Mayor Hoven spoke to the acceptance of the anti-degradation study which addressed the Oakdale Creek that flows into the Lamington River. The study determined that water coming out of the plant and going into the creek would improve the quality of the creek. The Borough will be preparing a water quality management plan. The Borough needs to determine how many gallons of the allotted 275,000 will be needed. The Highlands Council has been advocating for the Borough. David Banisch did prepare the grants. The Environmental Committee is working on a project for a grant. She spoke to some of the road work done on Fairmount Ave. and that the curb by the Somody house has been corrected and the road is going to be paved the week of the 23<sup>rd</sup> of November. Work has been done at the intersection of Budd and Grove and they have applied for a grant for the extension of the park to the white stripping. This is for the safety of people around town.

**Meeting Schedule for 2021** – The dates for the year 2021 were discussed by the Board. The meeting in November will be on Wednesday the 10<sup>th</sup>.

Mayor Hoven moved to accept the corrected 2021 meeting dates; Chris Heil seconded the motion which was approved by a voice vote.

**ADJOURNMENT** - There being no further business, the meeting was adjourned at **10 p.m.** by motion of Kerry Brown and seconded by Anita Rhodes.

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Sarah Jane Noll  
Recording Secretary