

**LAND USE BOARD
BOROUGH OF CHESTER**

**MANJIT BAJWA
Block 123, Lots 1 & 2
128 Main Street**

RESOLUTION

WHEREAS, **MANJIT BAJWA** (the “Applicant”) has applied to the Borough of Chester Land Use Board (the “Board”), for preliminary and final major site plan approval and the following bulk variance and design waiver relief, in connection with the renovations of an existing building such that the first floor will consist of a general store/market and the second floor will consist of three apartments, as well as related site improvements, all of which will be located on property identified as Block 123, Lots 1 and 2 on the Tax Map, more commonly known as 128 Main Street (the “Property”):

1. A variance for a pre-existing nonconforming front-yard setback of zero (0.0) feet, whereas the minimum required front-yard setback in the B-1 Historic Business (“B-1”) Zone is 10 feet, pursuant to Sections 163-69 and 163-72.B.1.d and Schedule 1 of the Land Development and Procedures Ordinance of the Borough of Chester (the “Ordinance”);
2. A variance for a proposed front-yard setback of -1.1 feet from Main Street, whereas the minimum required front-yard setback in the B-1 Zone is 10 feet, pursuant to Sections 163-69 and 163-72.B.1.d and Schedule 1 of the Ordinance;
3. A variance for the expansion of a nonconforming structure, whereas no nonconforming structure shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance, pursuant to Section 163-76 of the Ordinance, and including a front yard variance for the expansion to permit a setback of zero feet (0’) from Main Street for the expansion of the second story of the building where ten feet (10’) is required pursuant to Sections 163-69 and 163-72.B.1.d and Schedule 1 of the Ordinance;
4. A variance for 21 parking spaces, whereas the required number of parking spaces is 29 (6.1 spaces for the proposed apartments and 20

spaces for the retail use), pursuant to Section 163-80 and the Residential Site Improvement Standards (“RSIS”);

5. A variance for a pre-existing nonconforming parking buffer of 3 feet to the east side of the parking lot, whereas parking and/or loading areas of any size area may not be extended to the property lines and must provide a minimum 5 foot buffer along the lot lines, pursuant to Section 163-81.A of the Ordinance;
6. A variance for parking buffer of 1.9 feet to Main Street, whereas parking and/or loading areas of any size area may not be extended to the property lines and must provide a minimum 5 foot buffer along the lot lines, pursuant to Section 163-81.A of the Ordinance;
7. A variance for a parking buffer of 1.9 feet to Budd Avenue, whereas parking and/or loading areas of any size area may not be extended to the property lines and must provide a minimum 5 foot buffer along the lot lines, pursuant to Section 163-81.A of the Ordinance;
8. A variance for a parking buffer of 3 feet to the east property line, whereas parking and/or loading areas of any size area may not be extended to the property lines and must provide a minimum 5 foot buffer along the lot lines, pursuant to Section 163-81.A of the Ordinance;
9. A variance for no proposed loading space, whereas any commercial or business use shall provide, at the side or rear of its lot, access and space for the loading and unloading of delivery trucks which shall be accessible from public and private alley or other way to be used for such purpose, pursuant to Section 163-83.A of the Ordinance;
10. A variance for no proposed loading space, whereas there shall be a loading space provided of 250 square feet for every 25 feet of principal store frontage (here, 388 square feet), pursuant to Section 163.83.A of the Ordinance;
11. A variance for one 15 square foot attached sign and two customer entrance signs having a sign area of greater than 2 square feet (9.37 square feet and 15 square feet), whereas one 15 square foot attached sign per business is permitted and single tenant buildings with multiple customer entrances shall be entitled to erect one additional sign for purposes of identifying another means of entering the building provided said signage does not exceed two (2) square feet, pursuant to Sections 163-89.B.2 and 63-89.B.5 of the Ordinance; and
12. A design waiver for illumination levels exceeding 0.01 footcandles at a property line, (where the property abuts a right-of-way, the maximum

light trespass may be measured at the curb line), pursuant to Section 163-47.41.e of the Ordinance; and

WHEREAS, virtual public hearings on notice were held on such application on December 10, 2020, and January 14, 2021, at which times 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 consists of Lots 1 and 2, which together form a triangular shape with reverse frontage on Main Street and Budd Avenue. The Property is located in the B-1 Zone and the Historic Preservation District Overlay and is presently improved with a two-story commercial building, porch, deck, gazebo, sheds, and associated accessways. Of note, the pools shown on the Survey are a vestige of Pleasant Pools, which previously occupied the Property.

4. The Applicant proposes to renovate the existing two-story commercial building. The first floor will consist of a general store/market and the second floor will consist of three

apartments. The proposal includes site improvements such as a new twenty-one (21) space parking lot, a new refuse area, a patio space, septic field and associated appurtenances.

5. The Applicant's proposal is depicted on engineering plans prepared by Michael J. Roth, P.E., dated August 5, 2020, last revised December 23, 2020, same consisting of seven (7) sheets; and Architectural plans prepared by William P. Byrne, R.A., dated December 23, 2020, unrevised, same consisting of four (4) sheets. The Applicant also submitted a Survey prepared by Arthur J. Schappell, Jr., P.L.S., P.P., dated May 18, 2020, (signature date of October 7, 2020), same consisting of one (1) sheet; a site plan for Pleasant Pools, undated, same consisting of one (1) sheet; and a Stormwater Management Letter also prepared by Mr. Roth, dated September 30, 2020.

6. The requested variance relief is governed by the criteria of N.J.S.A. 40:55D-70(c).

7. Mark Blount, Esq., entered his appearance on behalf of the Applicant, Manjit Bajwa.

8. David J. Banisch, A.I.C.P., P.P., the Board Planner, and Steven B. Bolio, P.E., C.M.E., the Board Engineer, both were duly sworn according to law.

9. On discussion of Mr. Paul Ferriero's November 24, 2020 review Letter, the Board granted the requested checklist waivers and deemed the application complete.

10. William P. Byrne, R.A., having a business address of 10 Main Street, Chester, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture.

11. Mr. Byrne described the current condition of the building and testified that the exterior consists of vinyl siding and clapboard. He explained that the Applicant's goal is to restore the building to its former condition. Mr. Byrne testified that the Applicant has done extensive

research to ascertain what materials were originally used so the same, or substantially similar, materials can be used for the exterior renovations. Mr. Byrne explained that the exterior colors depicted on the plans accurately represent the colors that were used on the original building. He further testified that the existing building footprint will not be altered by the proposed improvements. Referencing the architectural plans submitted with the application, Mr. Byrne described the proposed exterior improvements which include the addition of a dormer, a modification of the pitch of the roof, and the construction of an additional entrance to the proposed general store. Referencing Sheet 2 of the architectural plans, which depict the rear elevation, Mr. Byrne explained that the Applicant also proposes to construct a dormer on the shed roof, a cupola, and a covered portico. He described the proposed exterior changes to the Budd Avenue side of the building, which include the addition of a shed roof and faux barn doors.

12. Mr. Byrne testified that the proposal does not include construction within the right-of-way and clarified that the proposed roof dormer is set back from the right-of-way. He explained that the existing signage will be retained. Referencing Sheet 3 of the architectural plans, Mr. Byrne described the proposed retail space. He explained that two (2) new bathrooms are being constructed, as well as a means to access the upstairs apartments.

13. Mr. Byrne testified that the Property was previously used by Pleasant Pools as a pool display area. Referencing Sheet 4 of the architectural plans, Mr. Byrne described the proposed apartments on the second floor, which consist of two (2) two-bedroom apartments in the center and rear and one (1) three-bedroom apartment in the front of the building. On questioning as to the proposed hours of operation, Mr. Byrne testified that the anticipated hours will be 5:00 AM to 12 AM. He further testified that the Applicant proposes to construct a patio to provide an outdoor dining area for customers to enjoy ice cream and food products available at the general store.

Mr. Byrne clarified that the Applicant is not proposing table service and confirmed that there is not a commercial kitchen proposed as part of the renovations. He opined that the proposal would improve a keystone building located in the center of Chester such that it will more aesthetically pleasing than the existing building and will promote the general welfare.

14. Mr. Banisch requested that the Applicant revise the plans to reflect the dimensions and square footage of the apartments on the second floor and the Applicant stipulated to same. On questioning, Mr. Byrne testified that there are currently three exterior doors to the first floor space and stipulated that at least two of the doors will be operational at all times, in accordance with the Ordinance requirements. On further questioning, Mr. Byrne explained that the building has been vacant for approximately six (6) weeks.

15. Mr. Bolio questioned whether the existing exterior speakers on the side of the building will be used and Mr. Byrne advised that the speakers were previously used during the holidays to play holiday music and will be removed by the Applicant. On discussion of the proposed lighting, Mr. Byrne stipulated, on behalf of the Applicant, to revising the plans to include a lighting detail and lighting information on the existing gooseneck lights. He further stipulated to revising the plans to include the dimensions of the retail and building areas.

16. On questioning, Mr. Byrne testified that the mechanical equipment will remain in the basement where it is currently located and that the apartments will use mechanical equipment proposed to be located in the attic area. He further testified that the current vinyl and clapboard siding will be replaced with Hardieplank siding. On questioning as to whether there is access to the apartments from the general store, Mr. Byrne confirmed that there is no such access and that access to the apartments is from the entrance located on Budd Avenue. He explained that the building code requires the Applicant to provide two means of access to the retail area. On

questioning as to how the doors will open, Mr. Byrne explained that the doors will swing inward so as to avoid them opening onto the sidewalk and potentially interfering with pedestrian traffic.

17. On questioning as to whether the existing building can support the proposed apartments, Mr. Byrne explained that the residential use is 50% less intense than the current use, and that the structural stability of the building will be evaluated to confirm it is, and will be, structurally sound. Mr. Byrne testified that, while the building is not currently sprinklered, the entire building will be sprinkled as part of the proposed improvements. He further testified that the ceiling heights will comply with the building code requirements. On discussion of the magnitude of the Applicant's proposal, Mr. Byrne explained that the maximum number of bedrooms is seven (7) and the maximum occupancy is fourteen (14) people. The Board discussed the proposed hours of operation and noted that no other stores in the Borough are open until midnight. Mr. Byrne advised that the Publick House, when it was operational, may have stayed open to that time. On discussion as to the proposed bathrooms, Mr. Byrne explained that there will be no prohibition on the use of the bathrooms by the public.

18. On questioning, Mr. Byrne testified that there will be large coolers located in the market, which more than likely will be located along the outer walls, but he explained that the details have not been formalized yet. He further explained that there are historic photos that may dictate where various improvements and structures will be located. Mr. Byrne testified that the building currently is 25 feet tall and, with the addition of the cupola, it will be 31 feet tall. On discussion, Mr. Banisch advised that the current zoning allows for multifamily apartments, and that the Borough encourages apartments along Main Street.

19. Mr. Byrne introduced into evidence, as Exhibit A-1, an architectural plan, last revised December 8, 2020, depicting the proposed removal of the roof extension over the new

entry doors. He further introduced, as **Exhibit A-2**, a signage plan for Sign 'A' to be located on the front porch roof, and Sign 'B' to be located at the rear of the building on the rear wall. Mr. Byrne testified that Sign A will be 4 feet in height by 8 feet in width (32 square feet) and Sign B will be 7 feet in height and 4 feet in width (28 square feet). He further testified that the signage is not internally illuminated and, specifically, that Sign A will be upward lit by roof mounted fixtures and Sign B will have lighting fixtures shining onto the sign from above. Mr. Byrne explained that there are no changes proposed to the existing signage.

20. Michael J. Roth, P.E., P.P., having a business address of 52 Quail Run, Long Valley, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering and professional planning. Mr. Roth introduced into evidence, as **Exhibit A-3**, an aerial map depicting the existing conditions dated December 1, 2020 and, as **Exhibit A-4**, an aerial site plan rendering dated December 1, 2020. Referencing **Exhibit A-3**, Mr. Roth testified that the existing building is located within 1.1 feet of the Main Street right-of-way and 11.5 feet into the Budd Avenue right-of-way. He explained that the proposed loading area is in the front yard which is not permitted. Mr. Roth explained that the existing impervious coverage is 94%, which exceeds that maximum permitted impervious coverage of 70%, but that, as part of the proposal, the coverage will be reduced to a conforming 68.4%. Referencing **Exhibit A-4**, Mr. Roth described the proposed changes to the Property, which include the installation of a three-foot tall picket fence, which will replace the existing chain-link fence along Main Street. He explained that the site lighting will be shut off within one hour of the close of business. Mr. Roth explained that the variance relief sought by the Applicant and contended that said relief could be granted pursuant to **N.J.S.A. 40:55D-70(c)(1) and (c)(2)**.

21. Mr. Roth explained that the Property is a corner lot with two frontages. He testified that the Applicant initially proposed 22 parking spaces (whereas 26 parking spaces are required), but since one of the parking spaces is located within 10 feet of the Main Street right-of-way, the Morris County Planning Board removed said parking space (reducing the total number of onsite parking spaces to 21 spaces) as set forth in the Morris County Planning Board report, dated November 20, 2020. He explained that there will be a new curb cut on Budd Avenue that will provide for ingress and egress. Mr. Roth testified that the existing depressed curb at the western portion of the Main Street frontage will be removed and replaced with full faced granite block curbing. He further testified that the sidewalk along Main Street is being extended and that the Applicant proposes to construct a sidewalk from the patio at the rear of the building to Main Street. Mr. Roth introduced into evidence, as **Exhibit A-5**, a Truck Turning Plan, dated December 1, 2020, and, as **Exhibit A-6**, a roadway improvement plan, dated May 11, 2020.

22. On questioning, the Applicant stipulated to revising the plans to include the proposed security lighting with a motion sensor, and submitting to the Board a copy of Board of Health approval. On discussion, the Applicant stipulated, as a condition of approval, to increasing the height of the picket fence to 4 feet tall, which, Mr. Roth opined, will address the drop in grade. The Applicant further stipulated to providing the requisite information as to items 12, 14, 17, 19, and 20, and to complying with items 21-24, 27-30, 32, 34, 37, 38, 40-43, 47 and 48 as set forth in Mr. Ferriero's November 24, 2020 Review Letter.

23. Mr. Banisch noted that the signage over the roof in the front of the building is prohibited according to Section 163-95 of the Sign Ordinance. He also explained that the Ordinance requires that prior signage be removed within 90 days of building vacancy. Mr. Banisch requested that a detail of both the brick walkway and patio be shown on the plans. He advised that

the trees which were pruned by the County should be removed and replaced with shrub plantings. On discussion of item 6 in Mr. Banisch's December 9, 2020 Review Memorandum, regarding encroachments into the right-of-way, Mr. Banisch opined that the Board could approve a site plan with the noted encroachments, but could not approve variances for the encroachments into the right-of-way as it does not have jurisdiction over same. He explained that if the encroachments are approved, the Applicant is advised that the encroachments are subject to removal by the legal entity vested with jurisdiction over the public rights-of-way (i.e., the County Planning Board or the governing body).

24. On discussion of the existing signage, Mr. Blount discussed Section 163-76.A.2 of the Ordinance, which restricts the expansion of nonconforming structures, and he advised that pursuant to the MLUL and governing case law, variances run with the land unless, and until, same is intentionally abandoned. Mr. Blount contended that the Ordinance addresses abandonment of use, not the abandonment of the structure. He stated that the Applicant has no intention of abandoning the existing signage, but instead plans to replace it. On discussion of the hours of operation and site lighting, the Applicant proposed that, on Friday and Saturday, the general store would be open until midnight, but that Sunday through Thursday, the general store would be open until 11 PM. On discussion of the proposed landscaping and the December 1, 2020 Review Report prepared by John A. Olivo, L.L.A., A.S.L.A., of the Shade Tree Commission, the Applicant stipulated, as a condition of approval, to submitting a landscaping plan and working together in good faith with the Board's landscape architect and professional planner to ensure that same is acceptable. Mr. Blount advised that the vacation of the public right-of-way will be resolved by the Borough.

25. On questioning as to the number of parking spaces dedicated for the residents and how same would impact the number of parking spaces available for customers, Mr. Roth advised that the parking arrangements will be worked out once the Applicant secures tenants and prepares the leases. On questioning as to the width of the ingress and egress off Budd Avenue, the Applicant stipulated to investigating the location of the proposed ingress and egress and the potential impact of the headlight glare created by vehicles leaving the facility and directed at the dwelling located across from the driveway at 24 Budd Avenue. The Applicant was advised that, during certain winter months, vehicles are not permitted to be parked on the street for snow removal purposes and, that if vehicles are parked on the street during this timeframe, they would be subject to fines. On questioning as to the location of the proposed mechanical equipment, Mr. Byrne explained that same (except for the proposed condenser units) would be located in the attic. The Applicant stipulated, as a condition of approval, to revising the plans to depict the proposed locations of all of the mechanical equipment and the condenser units.

26. The Applicant requested that the matter be carried to January 14, 2021, and the Board granted the Applicant's request, with the Applicant extending the time to act through the month of January, 2021.

27. At the January 14, 2021 hearing, Mr. Blount advised that the Applicant had revised the plans to address comments received from the Board at the December 10, 2020 hearing. He explained that the Applicant will be the owner and operator of the proposed general store and that the Applicant would stipulate to limiting the hours of operation to 6:00 AM to 10:00 PM, Monday through Sunday. Mr. Blount further explained that the Applicant and his professionals investigated other options for the proposed parking lot, but ultimately determined that the proposed location yielded the highest number of parking spaces. He advised that the Applicant had also investigated

the history of the dwelling across the street at 24 Budd Avenue and discovered that, although the property is improved with a single-family dwelling, the property itself is located within the B-1 Zone and is surrounded by other commercial uses. Mr. Blount further advised that the Applicant had revised the proposed signage, as well. He confirmed that the Applicant stipulated, as a condition of approval, to complying with all of the comments and requirements set forth in all of the review memorandum prepared by the Board professionals to date.

28. Mr. Roth introduced into evidence, as **Exhibit A-7**, a Layout and Dimensioning Plan (Sheet 3 of 7 of the revised site plans), last revised December 23, 2020. Referencing same, he testified that the driveway on Main Street will allow for two-way access and that three (3) of the twenty one (21) parking spaces will be specifically designated for the three (3) apartments. On discussion of an alternative parking layout, Mr. Roth explained that, if the location of the parking lot and septic system were reversed, the number of potential parking spaces would be reduced by 20%. He explained that the Applicant investigated the Institute of Transportation Engineers (“ITE”) parking generation requirements for a convenience market and that the ITE provides an average peak rate of 5.44 spaces per 1,000 square feet or a demand of 20 parking spaces for the general store. Mr. Roth further explained that the Borough’s parking demand of one (1) space per 180 square feet of retail would also result in a parking requirement of 20 parking spaces. As such, he opined that the ITE requirements and the Ordinance requirements are consistent and the Applicant’s proposal is compliant with both.

29. Mr. Roth testified that the Applicant is proposing a new driveway onto Main Street and he opined that same would reduce the amount of traffic exiting onto Budd Avenue. He further opined that, by redirecting traffic off of Budd Avenue and onto Main Street, the impact of the proposal on the adjacent residential dwelling across the street from the Property, particularly as to

headlight glare, also would be reduced. The Applicant stipulated that exiting from the Budd Avenue driveway would be prohibited after 7:00 PM and he further stipulated to installing signage stating same. Mr. Roth noted that the details of the new driveway on Main Street would be subject to the review and approval of the Morris County Planning Board.

30. Mr. Roth introduced into evidence, as **Exhibit A-8**, the site plan for Pleasant Pools, which previously occupied the Property, dated November of 1977. He explained that the proposed parking lot is located in approximately the same location as was approved for Pleasant Pools. On questioning as to whether the Applicant had considered whether the new driveway will have a sufficient line of sight, Mr. Roth testified that it would have same and he confirmed that same is set forth on the plans. On questioning as to how many other lots have access on both frontages, Mr. Roth advised that he had not investigated same, but he opined that the entrance on Main Street is necessary for the site to function properly. Mr. Roth introduced into evidence as **Exhibit A-9**, an email dated January 7, 2021, confirming the Applicant's conversation with the Supervisor of the Morris County Planning Board that the proposed driveway on Main Street likely would be approved by the Morris County Planning Board. On questioning as to whether two vehicles could pass each other in the proposed Main Street driveway, Mr. Roth testified that the driveway is 24 feet in width as required to accommodate two vehicles simultaneously. On discussion of enforcement of the 7:00 PM turning restriction on Budd Avenue, the Applicant stipulated, as a condition of approval, that same would be subject to Title 39 enforcement and that the Applicant would install the necessary signage.

31. On questioning as to whether the Applicant could eliminate the variance relief required for the insufficient buffering, Mr. Roth opined that same could not be done because the Property is constrained by both a storm pipe that bisects the lot and a septic field. He explained

that the Applicant had to obtain approval from the Board of Health for the proposed distance between the septic field and the storm pipe, and that shifting the outdoor dining area/patio to the left (west) would further reduce that distance, thereby potentially requiring additional relief from the Board of Health. On questioning as to whether the parking lot could be located on top of the septic field, Mr. Roth explained that the septic field is not intended for parking because the field needs to breathe to function appropriately. Mr. Bolio concurred with Mr. Roth's testimony, and confirmed that the Applicant's plan had already been approved by the Board of Health and that changes to the plan may require additional approval.

32. On questioning as to whether the proposed loading area is functional, Mr. Roth confirmed that it is so, and that a delivery truck or garbage truck could enter the Property on Budd Avenue and then reverse back onto Budd Avenue and continue in an easterly direction. The Applicant stipulated, as a condition of approval, to complying with the applicable ordinance provisions regarding the hours of refuse collection (i.e., not before 7:00 AM or after 5:00 PM). Mr. Roth noted that Budd Avenue is within the B-1 Zone and that there are ancillary cross-streets that connect to Main Street. On discussion of whether there will be access from the sidewalk on Main Street, Mr. Roth explained that, previously, there was no such access because the pools on the Property required the installation of safety fencing, but that access to the sidewalk is now part of the proposed improvements.

33. On questioning as to the proposed parking spaces within the right-of-way, Mr. Banisch explained that, if the Board acknowledges the parking spaces, the Applicant does not have any special rights to occupy said spaces and, if the Borough prohibits on-street parking, vehicles in those spaces could be removed. He further explained that the two parking spaces within the right-of-way do not count towards the Applicant's parking requirement since they are not

located on the Property. On further discussion of the functionality of the loading and trash areas, Mr. Banisch suggested that, instead of backing out onto Budd Avenue, the delivery and garbage trucks could pull through the parking lot and exit onto Main Street. He explained that, in his opinion, bypassing the loading dock and circling through the east side of the parking lot would be the most practical approach and would avoid potential safety concerns associated with backing out onto Budd Avenue. On discussion of whether the Applicant could require one-way traffic, such that vehicle ingress would be via Budd Avenue and egress via Main Street, Mr. Roth explained that it is crucial for the Applicant to have an exit onto Budd Avenue. He further explained that such a restriction on two-way traffic would be problematic during rush hour and would create a less safe condition.

34. On questioning as to whether the Applicant is proposing to utilize the septic field for recreational purposes, Mr. Roth explained that the field will be for passive use only and will not be utilized for play equipment or as a drivable surface. On questioning as to the proposed HVAC condenser equipment, Mr. Roth explained that two condenser units are shown on the plans, but that additional condensers may be necessary for the apartments and/or the coolers proposed within the general store. On questioning as to whether the proposed picket fence will interfere with the line of sight of the new driveway, Mr. Roth testified that a motorist would be making a turning movement after he or she has already passed the sidewalk/fence area. On questioning as to whether the entrance to the building on Main Street is necessary from an engineering perspective, Mr. Roth explained that it was not, but that said entrance is necessary for the site to function properly.

35. Mr. Byrne introduced into evidence, as **Exhibit A-10**, a four (4) sheet compendium of revised architectural plans, dated December 23, 2020. Referencing Sheet 1 of 4, Mr. Byrne testified that the Applicant removed the existing signage on the front porch and at the rear of the

Property to reduce the number of variances requested. He explained that the new sign (Sign A) will be suspended from the center of the porch area and have dimensions of 10 feet wide by 1.5 feet high. Mr. Byrne testified that there will also be a sign above the new entry doors on Main Street (Sign B) that will be illuminated with gooseneck lighting and have dimensions of 7'6" wide by 1'3" high. Referencing Sheet 2, Mr. Byrne testified that the Applicant is proposing a third sign (Sign C) that will be slightly smaller than the existing signage and will comply with the maximum size of 15 square feet. He explained the Sign C will also be illuminated with gooseneck lighting fixtures, such that all of the proposed signage will be consistent in design and materials. Mr. Byrne testified the proposed signs would be wood signs, painted and have beveled edges. On questioning as to the text that would be on Sign C, Mr. Byrne noted that the final signage design had not yet been determined, but stipulated, as a condition of approval, that the Applicant would obtain the necessary permits and would comply with the applicable standards. He confirmed that Sign C is not intended to advertise sales or otherwise have changeable text.

36. Referencing Sheet 3 of Exhibit A-10, Mr. Byrne testified that the Applicant revised the plans to include the square footage of the general store which is 3,585 square feet, inclusive of all retail areas and lavatories, but not storage areas or stairways. Referencing Sheet 4, Mr. Byrne testified that Apartments 1 and 2 both will have two bedrooms. Apartment 1 will consist of 1,074 square feet and Apartment 2 will consist of 880 square feet. He further testified that Apartment 3 will have three bedrooms and will consist of 1,177 square feet. Mr. Byrne opined that the apartments are luxury sized apartments that will provide a nice living arrangement for the future tenants. On questioning as to the proposed location of the HVAC equipment, Mr. Byrne testified that same will be located to the left of the lavatories and will be buffered by the existing building and utility area. He explained that there will likely be four (4) condenser units and opined that

there is ample space to accommodate same. Mr. Byrne further explained that if ground space becomes an issue, the condenser units can be stacked.

37. On further discussion of the need for the entrance to the general store from Main Street, Mr. Byrne opined that, from an architectural standpoint, the building is more functional with said entrance at the proposed location. He explained that said entrance is visible from Main Street and will be easier to access than the entrances on the front porch and rear patio. Mr. Byrne opined that, for a variety of reasons, the inclusion of the door enhances the proposal functionally and aesthetically, with no associated detriment.

38. On questioning as to the historical use of the Property, Mr. Byrne introduced into evidence, as **Exhibit A-11**, a historic aerial photograph taken from the website www.historicaerials.com taken in 1979. Referencing same, he explained that the parking area appeared to be used as parking in 1979, as well as 2002. On discussion of the hours of operation of Pleasant Pools, Mr. Byrne testified that he was not aware of said hours of operation, but that it would not be unreasonable to assume that they were likely 10:00 AM to 8:00 PM, consistent with similar pool uses in the area. On questioning as to whether there will be cooler cases in the general store and, if so, where the compressors for same would be located, Mr. Byrne testified that the Applicant intends to locate the cooler case compressors alongside the HVAC compressors.

39. On questioning as to whether the Applicant had considered designating one of the apartments as an affordable housing unit, Mr. Blount advised that he had not discussed such a proposal with his client. On questioning as to whether the Applicant would install a bike rack, the Applicant stipulated to same. On questioning as to whether the proposed parking will be sufficient, both Mr. Roth and Mr. Bolio opined that it would be given the mix of employees, customers, and residents and staggered peak hours. Mr. Roth noted that customers may also be walking from other

areas within the Borough which would reduce the parking demand. He further noted that the nature of the general store is quick service and therefore the parking spaces will turnover quickly. Mr. Roth reminded the Board that the Applicant is only deficient three parking spaces and opined that such a deficiency is de minimis.

40. On discussion of the proposed white picket fence, Mr. Byrne testified that the fence was not part of the architectural design, but instead was intended to replace the existing chain link fence. He explained that the fence had been necessary given the prior use of the Property as Pleasant Pools. Mr. Byrne opined that the fence may not be necessary because the plans had been revised to eliminate the grading change in that portion of the Property. Ultimately, the Applicant stipulated to working with the Borough Engineer to determine whether it would be possible to eliminate the need for the fence with additional grading and, if such grading is not possible, to installing the fence if the Board finds it is necessary. On discussion of whether the Applicant is proposing any sound mitigation measures around the proposed condenser units, Mr. Byrne explained that the dumpster enclosure may act as a sound barrier, but stipulated, as a condition of approval, to installing addition sound mitigation measures. The Applicant further stipulated to eliminating the proposed loading space if the Board and its professionals recommended same. On discussion, the Applicant stipulated to designating one of the proposed two-bedroom apartments as a low/moderate affordable unit.

41. On discussion by the Board, the Board determined that eliminating the proposed loading area would improve onsite circulation and reduce the impact of the development on the adjacent properties, because large trucks would not have to back up onto Budd Avenue or make k-turns to safely exit the Property. On discussion of the proposed restriction on the Budd Avenue driveway, such that vehicles shall not use said driveway as an exit after 7:00 PM, the Board felt

that such a restriction would reduce the impact on the residential dwelling across the street from the Property, particularly by limiting the amount of headlight glare. On discussion of the proposed hours of operation, the Board concurred with the Applicant's proposed hours of 6:00 AM to 10:00 PM, Monday through Sunday, with site lighting being reduced to security level lighting 15 minutes post-closing (i.e., by 10:15 PM). The Applicant stipulated to complying with all applicable Borough regulations, including obtaining all necessary permits, complying with the signage requirements in the Historic Preservation District, and not installing any internal neon lighting visible from the exterior of the building through the fenestration of said building.

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

DECISION

43. After reviewing the evidence submitted, the Board, by a vote of 9 to 0, finds that the Applicant has satisfied his burden of proving an entitlement to the requested preliminary and final site plan approval, and the associated bulk variance relief pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2) and design waiver relief.

The (c)(1) Bulk Variance Relief – Positive Criteria :

44. As to the positive criteria for "c(1)" or "hardship" variance relief for the deficient front-yard setbacks, expansion of a nonconforming structure, insufficient number of parking spaces and deficient parking buffers, the loading space size and location deviations and the nonconforming signage, 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 the owner of the Property. In this regard, the Board recognizes that the Property has two frontages, has an irregular triangular shape, and the layout and location of the existing lawfully constructed improvements thereon, including an

existing building, septic field, and stormwater management improvements, all, cumulatively, makes it exceptionally difficult, if not impossible, for the Applicant to construct the proposed improvements in fully conforming locations. The Board further finds that the Applicants have established that no undeveloped adjacent land is available for purchase which would diminish, let alone eliminate, these proposed deviations. Finally, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulations were strictly enforced would not be self-created by the Applicants or any predecessor-in-title. Based on the aforementioned, the Board finds that the Applicant has demonstrated the positive criteria required for the requested bulk variance relief pursuant to subsection c(1) of N.J.S.A. 40:55D-70.

The (c)(2) Bulk Variance Relief – Positive Criteria:

45. The Board finds that the Applicant also has satisfied the positive criteria for “c(2)” or “flexible c” variance relief for all of the aforementioned deviations, by demonstrating that the purposes of the MLUL will be advanced by the requested deviations from the zoning requirements, and that the benefits to be derived therefrom will substantially outweigh the detriments associated therewith. In this regard, the Board finds that the Applicant has demonstrated that the development proposal advances the purposes of zoning set forth in subsections (a), (c), (g), (h), (i) and (j) of Section 2 of the MLUL, in that the proposal (a) promotes the public health, safety, morals and general welfare; (c) provides adequate light, air and open space; (g) provides sufficient space in appropriate locations for commercial and residential uses; (h) encourages the location and design of transportation routes that promote the free flow of traffic; (i) promotes a desirable visual environment; and (j) promotes the conservation of historic sites and districts, respectively. Here, the Board recognizes that the Applicant is renovating an existing but now vacant building located at a highly visible site along the municipality’s vital downtown Main Street.

46. The Board notes that a portion of the existing building footprint encroaches into the Main Street right-of-way and a portion of the south side of the building encroaches 11.5 feet into the Budd Avenue right-of-way. The Board recognizes that the proposed improvements do not result in an exacerbation of the magnitude of the existing deviations, but constitute vertical extensions of the existing encroachments. Of note, the Board finds that the proposed dormer will improve the aesthetics of the building without exacerbating the nonconforming setbacks. As to the parking buffer deviations, the Board recognizes that the conditions are existing and are not being modified or otherwise exacerbated. Additionally, the Board finds that the proposed landscaping will provide an attractive buffer between the proposed parking area and both Main Street and Budd Avenue. In this regard, the Board recognizes that if the Applicant were to comply with the required buffer setback requirements, same would reduce the number of parking spaces that the Applicant could provide, which would further exacerbate the proposed parking space deficiency. The Board finds that the proposed number of parking spaces will be sufficient, based on the unrefuted expert testimony of the Applicant's expert that the deficiency can be alleviated by the proposed signage, the high turnover of parking spaces, the location of the Property such that customers may walk from other areas of the Borough to the Property, and the staggered peak parking demand hours. As to the nonconforming size and location of a loading space, the Board recognizes that, while the Applicant could provide a loading space, utilizing such loading space would require delivery trucks to back out onto Budd Avenue to exit the Property, whereas eliminating such loading area would encourage safer onsite circulation as the trucks could exit on Main Street, rather than Budd Avenue.

47. The Board recognizes that the Applicant has modified his development proposal in accordance with the recommendations of the Board and its professionals, thereby eliminating some

of the variance relief initially requested for the signage. Additionally, the Applicant stipulated to designating one of the three proposed apartments as a low/moderate affordable unit, this further promoting the general welfare. The Board further recognizes that the proposed improvements will improve the aesthetics of the Property, facilitate more efficient onsite circulation, and promote the general welfare of the community, particularly given the attractive design of the building such that it will be consistent with the prior history of the Property and its location within the Historic Preservation District Overlay. Overall, the Board finds that the benefits of the Applicant's proposal substantially outweigh the detriments associated therewith, given that such relatively modest detriments are mitigated by the conditions stipulated to by the Applicant. These stipulated to conditions, as set forth in detail below, include, inter alia, the proposed landscape buffering, aesthetic improvements, provision of ADA compliant parking, and improved access to the Property. Based on the aforementioned, the Board finds that the Applicant also has demonstrated the positive criteria required for the requested bulk variance relief pursuant to subsection c(2) of N.J.S.A. 40:55D-70.

The Bulk Variance Relief – Negative Criteria:

48. As to the negative criteria for the requested bulk variance relief under both of the alternative bases for such relief under subsections c(1) and c(2), 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 the Zoning Ordinance. The Board considers, as to the first prong of the negative criteria, that the proposed improvements will not be out of character with the commercial district or Historic Preservation District Overlay in which the site is located, and, rather, they will render the Property more aesthetically pleasing, given the proposed renovations, and more functional, given the

proposed modifications to the onsite circulation patterns. The Board further recognizes that no member of the public objected to the application, thus supporting the finding of no substantial detriment to the public good. As to the second prong of the negative criteria, the Board recognizes that the general store/market and second floor apartments are permitted uses in the B-1 Zone, 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 or otherwise substantially impairing the intent or purpose of the Master Plan or the Zoning Ordinance.

Preliminary and Final Site Plan Approval:

49. As to the requested preliminary and final site plan approval, the Board finds that the Applicant has demonstrated compliance with the standards and regulations set forth in Sections 163-45 and 163-50 of the Ordinance. As such, the Board finds that the Applicant is entitled to the requested amended preliminary and final site plan approval relief.

The Design Waiver Relief:

50. As to the requested design waiver for an illumination level greater than 0.01 footcandles along the property lines, the Board finds, pursuant to Section 163-52 of the Ordinance and N.J.S.A. 40:55D-51(b), that the Applicant has demonstrated that, because of peculiar conditions pertaining to the Property, the literal enforcement of the illumination level requirements is impractical and will exact undue hardship upon the Applicant. Here, the building itself encroaches into the right-of-way, thereby requiring lighting fixtures to be located closer to the property line than would otherwise be necessary, and sufficient lighting is necessary for safe vehicular circulation and ingress and egress. As such, the Board finds that strict compliance with the illumination level requirement would result in an undue hardship upon the Applicant.

WHEREAS, the Board took action on this application at its meeting of January 14, 2021, 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 _____, 2021, that the application of **MANJIT BAJWA**, for preliminary and final site plan approval and the associated bulk variance and design waiver relief, as aforesaid, be, and is hereby, granted, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);
2. The Applicant shall satisfy any and all outstanding Borough tax deficiencies in full prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);
3. The Applicant shall be responsible for maintaining the level of proposed landscape screening in perpetuity, on an ongoing basis and if, during the initial two year period post-approval, any of the plantings die or fail to thrive, same shall be replaced and reinstalled by the Applicant at the Applicant' sole cost and expense pursuant to Section 163-31 of the Ordinance, all to be subject to the review and approval of the Borough Engineering Department;
4. The Applicant shall revise the plans to include the proposed locations of all mechanical equipment and condensers consistent with the testimony (i.e., such that they will be buffered by the existing building and utility area);
5. The Applicant shall comply with the Ordinance provisions regarding the hours of refuse collection (i.e., not before 7:00 AM or after 5:00 PM);
6. The Applicant shall install a bike rack and same shall be subject to the review and approval of the Borough Planner;

7. The Applicant shall install sound mitigation measures to reduce the sound levels generated by the condenser units and same shall be subject to the review and approval of the Borough Planner and/or Engineer;
8. The Applicant shall not install any internal neon lighting that is visible from the exterior of the building through the fenestration of said building;
9. The Applicant shall provide customer access through each of the customer entrance doors during the general store's hours of operation;
10. All signage lighting shall be directed onto sign faces and, if necessary, shielding shall be installed to prevent any light spillage and light glare to pedestrians and vehicular traffic, both on- and off-site, same to be subject to the review and approval of the Borough Engineer;
11. The Applicant shall reduce the site lighting to security lighting levels within 15 minutes of the close of the general store and shall amend the plans to reflect same, subject to the review and approval of the Borough Engineer;
12. The Applicant shall revise the plans to include notes indicating that all site and sign lighting shall be 3,500K and same shall be subject to the review and approval of the Borough Engineer and/or Planner;
13. The Applicant shall restrict the use of the Budd Avenue driveway to entrance only after 7:00 PM and shall install the necessary signage, including language authorizing the Borough Police Department to enforce such restriction pursuant to Title 39 of the New Jersey Annotated Statutes. The Applicant shall amend the plans to reflect same, subject to the review and approval of the Borough Engineer;
14. The Applicant shall comply with all applicable on-street parking requirements, including, but not limited to, seasonal parking restrictions for snow removal. The Applicant is advised that, if vehicles are parked on the street during this timeframe, the vehicle owners would be subject to fines;
15. The Applicant shall revise the plans to include details for the patio chairs, tables and benches to be provided in the rear (east side) of the building, subject to the review and approval of the Borough Planner;
16. The general store shall only operate between the hours of 6:00 AM and 10:00 PM daily;
17. The Applicant shall remove the trees along the Budd Avenue side of the lot that have been damaged from severe pruning due to overhead utility line maintenance;
18. The Applicant shall submit a revised landscaping plan in accordance with the Borough's Landscape Architect's recommendations and same shall be subject to

the review and approval of the Borough Planner and/or Landscape Architect. Specifically, the Applicant shall submit a separate landscape plan prepared or reviewed by a certified landscape architect, engineer, or planner, drawn to scale of not more than 20 feet to the inch and same shall include existing vegetation by location, botanical name and size. The plan shall identify all material proposed to be removed;

19. The Applicant shall substantially comply with the requirements and recommendations set forth in the December 1, 2020 Review Report prepared by John A. Olivo, L.L.A., A.S.L.A., of the Shade Tree Commission, same to be subject to the review and approval of the Borough's Landscape Architect within his reasonable discretion;
20. The Applicant shall designate one parking space for each of the apartments for a total of three (3) parking spaces, shall install all necessary signage, and shall revise the plans to reflect same, subject to the review and approval of the Borough Planner;
21. The Applicant shall designate one of the proposed two-bedroom apartments as a low/moderate affordable unit subject to the income limitations and other requirements of the applicable Council on Affordable Housing ("COAH") and Uniform Housing Affordability Controls ("UHAC") regulations, and the Applicant shall work in good faith with the Borough Planner to effectuate same;
22. The Applicant shall construct the proposed brick walkway and patio integral to the walkway between the parking area and the general store using the same or substantially similar brick used in the Borough sidewalks adjacent to the site;
23. The Applicant shall obtain approval for the proposed improvements to the right-of-way, including driveway access to Main Street, from the Morris County Planning Board, and shall submit proof of same to the Borough Engineer;
24. The Applicant shall amend the plans to include details for each of the proposed signs and lighting fixtures and same shall be subject to the review and approval of the Borough Planner;
25. The Applicant shall remove prior signage from the premises within 90 days from the date of termination of such use, in accordance with Section 163-95 of the Ordinance;
26. The Applicant shall sign the owner's certification on the cover sheet of the plans;
27. The Applicant shall amend the plans to include a calculation of the gross floor area used within the parking analysis;

28. The Applicant shall submit documentation regarding the capacity of the existing well and whether it has the capacity to serve the proposed retail use and apartments;
29. Loading and unloading shall not take place within a public street;
30. The Applicant shall remove the portion of the existing septic system proposed to be abandoned, as well as all existing improvements proposed to be removed/abandoned from the Budd Avenue right-of-way;
31. The backfill of the pool areas and other improvements being removed shall be performed under the supervision of a licensed engineer. Backfill shall consist of structural backfill (dense graded aggregate) or other suitable material;
32. The Applicant shall revise the plans to note that there will be no onsite burial of trees, stumps, construction debris or materials;
33. The Applicant shall revise the plans to include the front- and side-yard setback lines;
34. The Applicant shall revise the plans to provide a 2% (maximum) landing at the building entrance along the ADA route, as well as additional spot grades;
35. The Applicant shall have the easterly property line staked by a licensed land surveyor prior to any construction and a note stating same shall be added to the plans;
36. The Applicant shall align the proposed pole mounted parking lot lighting fixture with the parking stall striping and same shall be reflected on the plans;
37. The Applicant shall revise the plans to include the mounting heights for all proposed lighting fixtures;
38. The Applicant shall revise the plans to include the hours of illumination for all lighting, including security level lighting;
39. The Applicant shall revise the plans to depict existing and proposed lighting fixtures and account for same within the lighting analysis, and any fixtures being removed should be labeled as such;
40. The Applicant shall remove the existing chain link fence that runs between the corner of the building to the Property corner along the existing paver sidewalk along Main Street. The Applicant shall work in good faith with the Borough Engineer to determine whether it is possible to regrade the existing drop off from the edge of the Main Street sidewalk/wall into the site and, if such regrading is not possible, the Applicant shall install a fence/barrier along the edge of the

sidewalk to replace the existing chain link fence being removed. If the Applicant installs a fence, same shall consist of a picket fence having a height of four (4) feet;

41. The Applicant shall revise the plans to provide additional detail as to the removal of a portion of the existing wall located along the edge of the Main Street sidewalk. Details shall also be provided for the proposed stairs, railing, and paver sidewalk restoration;
42. Water tight joints shall be specified for the proposed storm sewer system;
43. The Applicant shall revise the lawn detail on the plans to remove reference to the meadow;
44. Hairpin striping shall be specified for the proposed parking stalls in accordance with the Ordinance definition of parking space;
45. The Applicant shall submit cost estimates to determine bonding amounts (for improvements being removed within the Budd Avenue right-of-way) and the amount of inspection escrow;
46. The Applicant shall revise the lighting plan to include the proposed gooseneck lights above the faux barn style doors along the Budd Avenue frontage; All proposed sign and building lighting shall be provided on the lighting plan.
47. The Applicant shall revise the architectural plans to include dimensions. Floor areas for the proposed retail space and the proposed apartments, as well as the height of the building, shall be provided on the plans;
48. The Applicant shall comply with the minor stormwater development requirements set forth in the Borough stormwater control Ordinance, which require soil erosion and sediment control measures to be installed in accordance with the standards for soil erosion and sediment control in New Jersey;
49. The Applicant shall submit an as-built plan prior to a certificate of occupancy being issued;
50. The Applicant shall renovate the building in strict accordance with the approved site and architectural plans, including the colors and materials set forth thereon;
51. The Applicant shall not provide table service to customers of the general store or otherwise;
52. The Applicant shall not install a commercial kitchen;
53. The Applicant shall remove the speakers on the exterior of the building;

54. The Applicant shall obtain approval from the Morris County Planning Board and shall comply with the comments set forth in its November 20, 2020 Review Letter;
55. The Applicant shall obtain, and submit to the Board, approval from the Board of Health, if not yet done so;
56. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, including, but not limited to, all prior approvals from the Zoning Board of Adjustment and Planning Board, to the extent same are not inconsistent with the terms and conditions set forth herein;
57. 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;
58. 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; and
59. All construction, use and development of the Property shall be in conformance with the Plans approved herein, all findings, conclusions, terms and conditions of this Resolution and, to the extent not inconsistent therewith, all representations of Applicant and its witnesses during the public hearing. Any deviation from the terms or conditions of the approved Plans, or the terms or conditions of this Resolution, shall be deemed a violation of the terms and conditions of site plan approval and a violation of the Zoning and Land Development Ordinances of the Borough of Chester.

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 February _____, 2021.

KERRY BROWN, Board Secretary
BOROUGH OF CHESTER
LAND USE BOARD

Dated: February _____, 2021