

BOROUGH OF CHATHAM PLANNING BOARD
RESOLUTION APPROVING PRELIMINARY AND FINAL SITE PLAN
WITH VARIANCES AND WAIVERS

CHARLEY'S AUNT, INC.
8-10 SOUTH PASSAIC AVENUE
BLOCK 120, LOT 6
BOROUGH OF CHATHAM, NEW JERSEY
APPLICATION # PB-22-002

HEARING: NOVEMBER 2, 2022
RESOLUTION: DECEMBER 7, 2022

WHEREAS, an application having been filed with the Borough of Chatham Planning Board by Charley's Aunt, Inc. as applicant and as authorized by the owner of the property, Rosebud Investments, LLC, a related entity of the applicant, for property located at 8-10 South Passaic Avenue, Block 120, Lot 6, in the Borough of Chatham, New Jersey; and

WHEREAS, this property being located in the B-4 Zone District, and being presently developed with a two-story masonry building with ground floor commercial use, with the applicant occupying the southern portion of the ground floor within the building fronting South Passaic Avenue and Firehouse Plaza (a/k/a 245 Main Street) for the Charley's Aunt Restaurant. The application submitted seeks preliminary and final site plan approval for the proposed expansion of the existing restaurant space on the property. The proposed expansion is within the building and involves the existing and adjacent ground floor retail space to the restaurant. The new retail space to be occupied is to be renovated and retrofitted with a kitchen, two bathrooms (one ADA accessible), and an additional multi-purpose dining room. As part of the site plan submitted the applicant is proposing a small "bump-out" of the adjacent space façade which will result in a reduction of the front ground floor façade setback of the existing vacant space by approximately three feet. The present restaurant is to be renovated with the new space. The proposed setback for the "bump-out" will match the front setback line of the existing restaurant, and no additional off-street parking or other exterior site improvements are proposed other than façade work and new signage. In addition to preliminary and final site plan approval, the applicant is also seeking variance approval for the number of wall signs pursuant to Section 165-105A(1)(c) of the ordinance which allows only one individual wall sign per façade, and a total of two wall signs are being proposed; and the placement of the wall signs and the projections of the signs also require variance relief as being contrary to Section 165-105A(2) of the ordinance. The applicant has also requested waivers from several submission

requirements under the site plan ordinance of the Borough based upon the limited scope of exterior revisions proposed in accordance with the application and plans submitted to the Board in this case; and

WHEREAS, this case having come on for a hearing before the Borough of Chatham Planning Board at its regularly scheduled meeting of November 2, 2022, at which time a quorum of the Board was present to hear and consider this case, and an opportunity was afforded to members of the public and/or interested persons or parties to ask questions and/or to be heard regarding this case, and a verbatim record of these proceedings was maintained; and

WHEREAS, the applicant having filed proof of procedural compliance with all of the rules, regulations, and requirements of the Planning Board for the Borough of Chatham for this matter to be heard; and

WHEREAS, as a result of this this hearing and these proceedings before the Board, the following findings of fact and conclusions have been made by the Board:

FINDINGS

1. Michael S. Miller, Esq. of the firm of Miller & Miller, Attorneys of Chatham, New Jersey appeared to present this case for the applicant. As part of the application materials submitted the Board acknowledged receipt of architectural plans consisting of three sheets prepared by Brian Siegel, Architect, dated July 2, 2021 with revisions through June 9, 2022. The Board also was in receipt of prior resolution of this Board dated April 18, 2018 at which time the applicant was approved to add a 20-seat outdoor dining area behind the existing restaurant building on the property. The applicant and the Board also acknowledged receipt of review memos and reports as dated September 7, 2022 from Robert C Brightly, PE, PP, CME, , the Planning Board Engineer, and September 19, 2022 from Kendra A. Lelie, AICP, PP, LLA, as the Planning Consultant to the Board together with a report from the Chatham Borough Historic Preservation Commission dated August 10, 2020 regarding the proposed building modifications and signage.

2. The applicant's attorney explained for the Board that the application for site plan approval was being made as a result of the applicant's proposal to expand the restaurant into the adjoining existing retail space next door which he stated is currently unoccupied. This expansion he said would require the applicant to "bump-out the wall of the building three feet." Mr. Miller further confirmed that the applicant was seeking variance

relief for a second sign to be used by the restaurant and for the new sign to be extended out from the building which he described as a “blade sign” for the Board. The applicant’s attorney stated that Mr. Ken Decker, as one of the owners of the building Rosebud LLC and as the President of the restaurant corporation, would provide testimony in support of the application as would Mr. Brian Siegel, the project architect.

3. Mr. Ken Decker then testified on behalf of the applicant and reviewed with the Board the longtime operation of the restaurant business by he and his family. He testified that the applicant was now seeking to “knock out the wall of the building to expand into the adjoining retail space which had been formerly occupied by a psychic business. Basically we are required to expand the restaurant business in order to be able to accommodate the additional plumbing we are required to install for a grease trap for the restaurant per the Board of Health requirements. We have been trying to avoid this installation for the last several years since we are a grandfathered restaurant, but the State has indicated to the Board of Health that his cannot be postponed any further. As part of the new work for the new space we will also be relocating the existing bathrooms so that we will have two new bathrooms with one of them being fully handicap accessible. We will also be increasing the seating area for the restaurant by adding 22 seats in the new area, and we will be also renovating our existing restaurant space.”

4. Mr. Miller then asked Mr. Decker to provide additional testimony to respond to the review memos of the Board professionals. Mr. Decker again confirmed for the Board, “The expansion of the restaurant premises is being required due to the Board of Health requirements for the grease trap which has been installed and approved by the Board of Health. We are not having a second kitchen nor adding additional bathrooms. The bathrooms are being ripped out, and two new bathrooms are being moved into the new area, one of which will be fully handicap accessible.” In response to a further question from Mr. Miller as to why the applicant was seeking permission to have a second sign for the property, Mr. Decker stated, “I believe the signage we are proposing will be part of the cosmetic improvements for the building. I am also hopeful to have more exposure from Main Street and a better view of the restaurant from Passaic.” In response to a further question from Mr. Miller, Mr. Decker also testified, “The signs will be provided by Sign Center which is located in Berkeley Heights.”

5. In further discussion with the Board about the signage proposed, Mr. Decker confirmed for the Board Planning Consultant that there was no proposal by the applicant to remove any street trees, and specifically that the trees on South Passaic Avenue did not block the applicant's sign. Mr. Decker further stated in this discussion, "I think these signs will be a plus for our business, and I don't believe we could lower the sign as we need it at that height to be effective." In further testimony to the Board and responding to questions from Mr. Miller, Mr. Decker confirmed that there is off-street parking only for the restaurant in the post office lot and other lots in the area. He further stated, "Many of our customers walk to the restaurant." In responding to further questions and continuing this discussion with the Board about the use of the property and the site plan improvements proposed, Mr. Decker testified, "We do not have any arrangements or agreements for off-site parking for our customers with other owners, and most of our employees have parking permits from the Borough for the Bowers Lane Parking Lot." Mr. Decker also stated in this continuing discussion and testimony that the applicant would not be disturbing or moving the street trees-planters along South Passaic Avenue and that there would be no need for more refuse containers or dumpsters for the business as a result of the increase in space that the restaurant would occupy. Mr. Decker testified, "If we increase the amount of refuse, we already have several collection times during the week, and we can always have more collections. We also have no need to or intention to expand the outdoor dining area that was approved for us in 2018 by the Board. We also have to on an annual basis obtain a permit from the Borough for out outdoor dining space, and again we have no proposal for expansion of this area. We also will be having no change in our loading or delivery area on the property, and yes we have previously removed several trees from the property as a result of the outdoor dining area. We will have no bicycle parking, and I would mention to the Board there is signage in the Town stating that there are no bikes permitted on the sidewalks. Also again the grease trap law and requirements which the Board of Health and the Plumbing Inspector enforce told us we have no more leeway in not installing the grease traps, and the only place for the grease traps to be installed is in the next door space."

6. Board Member-Councilman, Mr. Truilo, who is also a member of the Chatham Borough Historic Preservation Commission, confirmed as was stated in the report of the Commission that the Commission had no issue in the changes to the building and the façade but rather had concerns relating to the blade sign being proposed. Discussion then

followed with the Board as to the details of the signage proposed FOR the second floor of the building when the applicant already has a building sign. In addition the sign being proposed at 12 square feet when the ordinance allows only a 4 square feet sign, and the safety issues associated with mounting a blade sign on the side of the building was also questioned by the Board with the applicant. After reviewing and discussing all of this with the applicant, the Board suggested that the applicant consider a change in colors for the building to "make it less monolithic" as a result of the new work proposed. The Board Planner also offered a suggestion to the applicant that the sign proposed for the second floor be "centered more in the middle of the building to balance it out aesthetically."

7. The Board then discussed with the applicant and the applicant's architect handicap access to the front entrance to the restaurant to improve it to allow better entry into the restaurant including the immediate interior area entryway which appeared to be obstructed as to full access to the restaurant in accordance with the floor plans submitted. Further discussion then followed with the Board about the sidewalk area in front of the restaurant along Main Street and at the corner which appeared to be obstructed and have the need of being better organized and re-aligned as to the seating so that better access to the business and for pedestrians along the sidewalk to be accommodated. In response to a question regarding the review of the application by the Environmental Commission as to the usage of green technology with energy efficient windows and other building materials, was responded to and confirmed by the applicant's architect Mr. Siegel who stated, "Yes, we now meet these current standards with our plans and the materials we will utilize."

8. The Board then discussed with the applicant the signs as far as illumination, and both the architect and Mr. Decker advised, "We haven't decided yet the final details for the signs." Mr. Siegel then reviewed the new work proposed as outlined in his plans which he stated included "as Mr. Decker has testified, the new grease trap which requires the relocation to the new area. Two new bathrooms will be installed in the new area with the elimination of the bathrooms in the current space with one of the new bathrooms being ADA accessible, and a new dining area in the new space where there will have 22 seats available. As to the signage proposed, the size will be similar to others in the retail district in Chatham. As to one of our signs being too high on the building as discussed with the Board by your Planner where we have placed it we believe it is appropriate architecturally for the building. As to the light fixtures we now have two lanterns which are equipped with LED, and we propose to match these fixtures with our new lighting for the retail space that

we will now be utilizing. I would ask the Board to note we already have one light over the existing Charley's Aunt sign on the building now."

9. The architect Mr. Siegel then went over with Mr. Miller the list of necessary waivers for the site plan approval being requested by reference to the Board Engineer's memo. Mr. Siegel in discussing the number of waivers being requested from the checklist requirements for site plan approval testified, "Basically what we are doing is interior renovations of existing space and making cosmetic and functional improvements. The site plan review and approval is being requested due to the 'bump-out' of the wall of the building and limited exterior changes with the façade, signage, and additional work shown in the plans." Mr. Siegel then went over the waivers requested in relationship to Mr. Brightly's review memo. After completing that review with reference to his plans and existing conditions Mr. Siegel stated, "The wall-mounted sign I am showing on the plans will not be eliminated." In response to a question for Mr. Decker as to whether the business would be open during renovations, Mr. Decker stated, "Yes." The Board again discussed front door access to the restaurant as to whether it was and would be fully ADA accessible. The architect responded, "It is not really ADA compliant, but it is still wide enough to allow proper access." It was agreed by the architect and Mr. Decker that the entryway would be reconfigured as to the "hostess stand" and immediate access from the front door to improve ADA access. The size of the blade sign and the proper means of securing it to the building in order to prevent a safety problem was reviewed and discussed by Mr. Siegel with the Board. Mr. Siegel stated that the installation of the sign as proposed would be not only code compliant but also safe.

10. The Board then reviewed with the Board Engineer and the Planner the variance relief required for the signage being the height off the sidewalk, the square footage and projection of the sign, and the number of signs proposed in the site plan. Also the waiver list for site plan approval that had been submitted by the applicant was then summarized including the Board's observation that the longtime usage of the premises by the applicant's restaurant business including the outdoor dining area and also in view of the limited nature of the exterior changes proposed in this case, made it appropriate for the site plan checklist waivers including a current survey to be allowed.

11. There was no further testimony, evidence, nor any public comments or objections raised to this application.

12. The applicant's attorney Mr. Miller requested approval from the Board "based upon the record of what we have presented with the plans and testimony and based upon the long-established business of the applicant at the property. These improvements are necessary for the applicant's restaurant business to operate. In addition this work will improve the appearance, aesthetics, and overall better functioning of the premises based again on the plans and testimony."

CONCLUSIONS

1. The Board finds and concludes that the site plan improvements requested in this case in accordance with plans and testimony offered to the Board in this hearing are reasonably related to and required to allow the applicant to continue to properly operate the long-established restaurant on the property. The Board concludes that these improvements are well designed and presented. The Board commends the applicant for the applicant's commitment to improve, expand, and enhance the appearance of the property and to maintain its business presence in the Business District in the Borough of Chatham thereby reaffirming its commitment to the Borough.

2. The Board believes based upon its knowledge of the subject property and its consideration of the evidence and testimony offered by the applicant and the project architect in this case and from the details of the plans presented that the site plan approval, preliminary and final, that the applicant is seeking in this case can be appropriately allowed by the Board as the plans presented are consistent with principles of good planning and design. The Board notes and concludes as the applicant has submitted and the Board accepts this testimony from the project architect that due to the limited nature of the exterior work proposed in this case and the longtime history of this restaurant building and use at the property, that it is reasonable to allow and permit the issuance of waivers of site plan requirements in the Borough ordinance for this approval. The Board also finds and concludes that the applicant has demonstrated through the testimony of the project architect, the review of the plans submitted, and the additional testimony of the architect and Mr. Decker that variance relief for the signage proposed in this case should be allowed as the applicant has satisfied the requirements for C-2 variance relief for the sign improvements proposed. The Board concludes that the signage proposed, although it requires variance relief, is reasonably necessary for the proper location of and promotion of the presence of the applicant's restaurant business on the property. The Board believes the applicant's business will benefit from this new signage and the other façade work

proposed related to same. The Board believes and concludes that the limited variance relief needed in this case for the signage to be installed can be properly issued by the Board due to the positive benefits to and advantages for the applicant's business to be located for its customers. The Board also finding no significant negative impact or detriment associated with the signage proposed thereby meeting the legal requirements for variance relief to issue to the applicant as requested.

3. The Board finally finds and concludes that since the site plan checklist waivers, variances for signage requested, and overall improvements in the applicant's restaurant business as to the interior configuration and façade improvements proposed in the plans submitted which will allow for the continued effective and productive use of this property for the applicant's restaurant business, thereby makes site plan checklist waivers, variance relief, and site plan approval to now issue from the Board fully consistent with the goals and purposes of both the Land Development Ordinance and the Master Plan for the Borough of Chatham.

NOW, THEREFORE, be it resolved that, that the request of the applicant in this case for preliminary and final site plan approval with waivers and variance relief for the signage shown and to be undertaken in accordance with the site plan, in accordance with the plans, evidence, and testimony before the Board in this case **BE AND HEREBY ARE GRANTED AND APPROVED**. This resolution and the applicant's further use of the property are subject to the following terms, conditions, and requirements:

1. That the site plan approval of the Board is issued in accordance with architectural plans consisting of three sheets prepared by Brian Siegel, Architect, dated July 2, 2021 with revisions through June 9, 2022. As discussed with the applicant during this hearing, the applicant's architect shall further amend the plans to include the required signature legends, these plans to be submitted for the approval of the Board Engineer; and

2. That all construction work for the restaurant both inside and out shall comply with the plans, evidence, and testimony before the Board during this hearing; and

3. That prior to any work for the installation of the new signage on the building or property, the applicant shall present the appropriate application to the Sign and Façade Committee of the Borough of Chatham for approval of the details of the signage and for appropriate permits to issue allowing for the installation of same; and

4. That the applicant shall fully comply with the lighting ordinance and requirements in the Borough of Chatham as to any lighting to be added to the property; and

5. That as discussed with the applicant during this hearing, the applicant is to arrange for a site visit with the Zoning Officer for the Borough to review the outdoor dining area in front of the restaurant for a better alignment or arrangement of the outdoor seating so that the sidewalk area is not obstructed and for proper circulation in this area by pedestrians; and

6. That prior to any work at the property the applicant is to obtain necessary permit or permits for the work now allowed in this resolution in accordance with the ordinances for the Borough of Chatham; and

7. That the applicant shall pay, satisfy, and deposit any and all payment amounts, fees, or other charges necessary or related to any of the work to be undertaken at the property, including but not limited to any development review fee or assessment, in accordance with the ordinances and regulations of the Borough of Chatham; and

8. That at all times all work at the property shall be subject to the reasonable review, requirements, and approval of the Borough Engineer and the Building Department for the Borough of Chatham.

BOROUGH OF CHATHAM PLANNING BOARD

BY: _____
SUSAN FAVATE, Chair

Date signed: _____

Witnessed by:

**ELIZABETH HOLLER, Recording Secretary
Borough of Chatham Planning Board**

VOTE ON RESOLUTION

On motion of:

Seconded by:

The vote on the Resolution was as follows:

AYES:

NAYS:

ABSENT:

Adopted and Approved
December 7, 2022
BOROUGH OF CHATHAM PLANNING
BOARD

Elizabeth Holler, Recording Secretary

Dated: December 7, 2022

Prepared by: Vincent K. Loughlin, Esq.