

*Borough of Chester Heights, PA
Sunday, December 13, 2020*

Chapter 185. Zoning

Article XII. B Business Districts

§ 185-73. Area, height and special regulations.

- A. Lot area and lot width. Every lot shall have a lot area of not less than 10,000 square feet and such lot shall be not less than 50 feet in width at the building line.
- B. Building area. Not more than 50% of the area of each lot may be occupied by buildings.
- C. Front yard. There shall be a setback on each street on which a lot abuts which shall be not less than 35 feet in depth.
- D. Side yard. Side yards shall be provided on every lot as follows:
 - (1) For every detached building there shall be two side yards neither of which shall be less than 12 feet in width.
 - (2) Where a side yard is immediately contiguous to a residence district, the width of the side yard shall be equal to the side yard requirements in such residence district.
- E. Rear yard. There shall be a rear yard, the depth of which shall be at least 25 feet or 20% of the lot depth, whichever is greater.
- F. Height. Buildings used for a life care development shall not exceed four stories or 45 feet in height. No other buildings shall exceed three stories or 35 feet in height.
[Amended 10-6-2014 by Ord. No. 198]
- G. Special regulations.
 - (1) Every use other than parking facilities shall be completely enclosed within a building.
 - (2) No restaurant or similar use shall be conducted as a drive-in providing service directly to customers in motor vehicles, or food for immediate consumption outside the building.
 - (3) Along each side or rear yard property line which directly abuts a residence district in the municipality or a similar district in an adjoining municipality, a buffer planting strip as defined in § 185-4 not less than 15 feet in width shall be provided.
 - (4) With the exception of living plants, no storage or display of merchandise, articles, equipment or vending machines shall be permitted outside of a building unless by special exception, in which case no goods, articles or equipment shall be stored, displayed or offered for sale beyond the front lines of a building. In the case of a gasoline station, there shall be at least a twenty-foot setback from the front property line for placement of pumps and service islands.
 - (5) The off-street parking, off-street loading and special provisions relating to highway frontage prescribed in Article XVII shall apply in B Districts.

(6) Design standards prescribed in § **185-74E** shall apply.



pennsylvania
DEPARTMENT OF TRANSPORTATION

Date: 10/30/2020
Subject: Highway Occupancy Permit Application No. 224695, Cycle No.1 - Returned For Revisions
To: DJ Car Wash I, LLC
22 Oakmont Circle
Glen Mills, PA 19342
From: PennDOT Engineering District 6-0
7000 Geerdes Boulevard
King of Prussia, PA 19406

Dear Applicant,

PennDOT has reviewed your application for completeness, consistency and compliance with applicable Department Regulations. This review has identified issues that must be addressed in order for our review to continue.

The Department's review comments are attached.

Once the comments have been addressed, please resubmit the application and associated material for further review.

Upon resubmission, the applicant's engineer should put together a letter that describes how each comment has been addressed and where each can be found. This will help expedite the review. For guidance on HOP applications refer to 67 PA Code, Chapter 441, Chapter 459 and PennDOT Publication 282, "Highway Occupancy Permit Guidelines". Additional comments may follow upon review of the resubmitted application.

If you have any questions regarding this matter, you may contact Andrew J. Parker, PE, PTOE, at (610) 640-3500.

Response Comments

Date: 10/30/2020

Application Number: 224695, Cycle No.1

Form Letter Notes

(1) * Upon resubmission, the applicant's engineer should put together a letter that describes how each comment has been addressed and where each can be found in the plan set. A copy of these comments and any previously submitted plans should also be provided.

* Additional comments may follow upon review of the resubmitted application. If you have any questions pertaining to the technical aspects of this review, please contact the Department's representative, Andrew J. Parker, P.E., PTOE of McCormick Taylor, Inc. at 610-640-3500 or ajparker@mccormicktaylor.com. Please reference the HOP Application number in all correspondence.

* For guidance on Highway Occupancy Permit applications refer to PA Code Title 67, Chapter 441, Chapter 459 and PennDOT Publication 282. This will help expedite the review.

General

- (1) The Department requires written evidence, prior to the issuance of a permit, that Chester Heights Borough is aware of the project and has had the opportunity to comment. Provide written evidence (e.g. municipal engineering review, council or planning commission meeting minutes, executed TE-160, etc.), which is less than one year old, to satisfy this requirement. In addition, please provide the email address(es) for the appropriate individual(s) at the municipality (i.e. Township Manager, Borough Manager, Mayor, etc.) on the Application Information screen so that a copy of the Department's review letter can be forwarded. (PA Code, Title 67, Chapter 441.3(j)).
- (2) PLEASE SUBMIT A CHECK FOR \$50.00 MADE PAYABLE TO PENNDOT-ATTN: MARY ELLEN CULHANE, PERMITS SUPERVISOR, 7000 GEERDES BLVD. KING OF PRUSSIA, PA. 19406. PLEASE INCLUDE THE APPLICATION NUMBER ON THE CHECK FOR OUR REFERENCE.
- (3) APPLICANT MUST APPLY FOR A BUSINESS PARTNER ID (BPID). THE BPID IS TO BE USED IN THE ESTABLISHMENT OF A BILLING ACCOUNT FOR THE INVOICING OF INSPECTION COSTS. FOR INFORMATION ON OBTAINING A BPID, PLEASE VISIT: [HTTPS://WWW.DOT14.STATE.PA.US/EPS/HOME/MANAGEBPREGISTRATION.JSP](https://www.dot14.state.pa.us/eps/home/managebpreregistration.jsp) (PLEASE MAKE SURE THAT YOU FOLLOW THE INSTRUCTIONS THAT ARE IN THE

PINK AREA).

AFTER A BPID IS OBTAINED AND ACTIVATED BY YOUR SYSTEM ADMINISTRATOR (THIS IS A 2 STEP PROCESS THAT MUST BE DONE IN ORDER FOR PENNDOT TO BILL FOR PERMIT INSPECTION COSTS AT A LATER DATE), PLEASE PROVIDE THE FOLLOWING INFORMATION IN THE APPLICANT CONTACT AREA.

-BPID

-CONTACT INFORMATION (NAME/TITLE/PHONE/EMAIL) FOR A GENERAL CONTACT PERSON (PERSON THAT TYPICALLY DEALS WITH THE HIGHWAY OCCUPANCY PERMIT APPLICATION PROCESS).

-CONTACT INFORMATION (NAME/TITLE/PHONE/EMAIL) FOR A BILLING CONTACT PERSON (PERSON THAT TYPICALLY DEALS WITH THE HIGHWAY OCCUPANCY PERMIT INVOICING PROCESS).

- (4) Comments for this review are only associated with the plans and documents attached for this cycle. Additional comments may follow upon review of the updated plans and documents of the resubmitted application.

Application

- (1) Please be advised: the Department is now requiring a cost estimate be entered into EPS prior to HOP issuance. This cost estimate must include all work proposed within the Departments Right-of-Way including signal equipment, all roadway work, pavement markings and signage plus a 15% contingency to be entered into the Fee information & Estimate Construction Cost section in the Application setup box. Further, this section requires the cost estimate to be broken down into site frontage costs and off site improvements costs. Please enter this information in the manner required. This cost estimate will be the basis for the value of the Letter of Credit the Department will require as security prior to the start of actual construction.

Transportation Impact Study/Transportation Impact Assessment

- (1) The following comments pertain to the Transportation Impact Assessment (TIA) submitted by McMahon Associates, Inc., dated September 28, 2020:
- a. Conduct a gap study for traffic exiting the site driveway onto Valleybrook Road (SR 3029).
 - b. Due to queuing on northbound Valleybrook Road at the traffic signal, install "Do Not Block" signing and pavement markings on northbound Valleybrook Road at the site driveway. Note that a condition will be placed on the HOP requiring perpetual maintenance of the "Do Not Block"

markings.

c. Provide signage within the site directing motorists to exit via Valleybrook Road if they want to travel south on Baltimore Pike (SR 0001).

Plan Presentation

- (1) When preparing HOP plans for future submissions, please show all dimensions of the driveways including width, radius, and offset from the State Route centerlines on all plan sheets that show the site access. In addition, dimension all points of curvature, tangent and other break points on the construction or geometry plan sheet.
- (2) When preparing HOP plans for future submissions, provide a signature and seal of a Pennsylvania licensed Professional Engineer on the Highway Occupancy Permit Plans. If the project involves the dedication of right-of-way, a Pennsylvania licensed Professional Land Surveyor must also sign and seal the plans.

Access Configuration/Profile- Driveways/Local Roads

- (1) Truck turning templates must be provided to ensure that each driveway intersection can safely accommodate a SU-30 design vehicle. If the largest permitted vehicle type to utilize the proposed site access is smaller than the SU-30, then a note must be included on the plans indicating the vehicle size and the truck turning templates for that vehicle size must be provided; the largest permitted vehicle size for each driveway will become a condition of the permit. If the largest vehicle type to utilize the site access is larger than SU-30, the truck turning templates must be provided for that size vehicle.

Right-Of-Way (Design Manual Part III, Chapter 3)

- (1) Please note that if this project will involve dedication of right-of-way, the horizontal project control must be tied to the Pennsylvania State Plane Coordinate System which is based on the North American Datum of 1983 (NAD 83) and the vertical project control must be based on the North American Vertical Datum of 1988 (NAVD 88). Reference PennDOT Publication 122M for further guidance.

IN RE: Application OF DJ CAR WASH I LLC : BOROUGH OF CHESTER HEIGHTS
Property Address: : ZONING HEARING BOARD
104-106 Baltimore Pike, : FOLIO NO: 06-000001400
Chester Heights, PA :

DECISION AND ORDER

I. BACKGROUND

This matter concerns an Application for Special Exception and potentially any other such variance and relief as maybe required with the respect to the property located at 104-106 Baltimore Pike (Southwest corner of intersection of Baltimore Pike/S.R.0001 (U.S. Route 1) and Valleybrook Road which is a State Road 3029, Chester Heights, Pennsylvania (Folio No: 06-0000014-00) located in the B Business District. The Applicant seeks a Special Exception for the construction of a new, state of the art, environmentally friendly, extreme express car wash with free vacuums to be known as Wave Car Wash.

The Application was filed with the Chester Heights Borough office on August 11, 2020. Pursuant to public notice, a public hearing by the Zoning Hearing Board on the Application was scheduled, duly advertised, and held on September 29, 2020. The Applicant was represented at the hearing by John A. Jaros, Esq. The Board received the following Exhibits on behalf of the Applicant:

- A-1 AGREEMENT OF SALE DATED JULY 17, 2020/PARTIALLY REDACTED
- A-2 AERIAL PHOTOGRAPH – EXISTING FEATURES PREPARED BY CHESTER VALLEY ENGINEERS DATED SEPTEMBER 24, 2020
- A-3 SPECIAL EXCEPTION PLAN PREPARED BY CHESTER VALLEY ENGINEERS
- A-4 APPLICANT'S BUSINESS PLAN FOR PROPOSED CAR WASH

- A-5 AUGUST 25, 2020 VACCUTECH SOUND STUDY PROJECTIONS FOR PROPOSED CAR WASH
- A-6 LIGHTING PLANS PREPARED BY G&G INDUSTRIAL LIGHTING DATED AUGUST 27, 2020
- A-7 TRAFFIC IMPACT STUDY PREPARED BY NICOLE KLINE, TRAFFIC ENGINEER OF MCMAHON ASSOCIATES.
- A-8 LETTER OF DETERMINATION FROM RICHARD JENSEN, BOROUGH ZONING OFFICER, DATED AUGUST 14, 2020
- A-9 CV OF NICOLE KLINE OF MCMAHON ASSOCIATES
- A-10 CV OF JEREMY MAZIARZ OF CHESTER VALLEY ENGINEERS
- A-11 WB-62 TURNING TEMPLATE PLAN PREPARED BY CHESTER VALLEY ENGINEERS
- A-12 SOUND COMPARISON CHART
- A-13 MEMORANDUM OF LAW
- A-14 PHOTOGRAPH OF WAWA ON BALTIMORE PIKE

The Board also made part of the record the following exhibits:

1. Application
2. Affidavit of Posting
3. Affidavit of Publication with attached Notification of Public Hearing, Delaware County Daily Times
4. Mailing List for Hearing – Residents and Businesses
5. Entry of Appearance of Trish Williams
6. Entry of Appearance of Lorianne Ellis
7. Entry of Appearance of Bernard Miller

The initial hearing commenced on September 29, 2020 and was continued until Wednesday, October 14, 2020. At that hearing the Curriculum Vitae of Albert Frederico and Matthew Houtmann PE, Borough Engineer were introduced into evidence by the Borough as Exhibits "B-1" and "B-2" respectively.

The hearing was concluded with the record being closed and adjourned on October 14, 2020.

II. FINDINGS OF FACT

1. The property, which is the subject of the Application is located at 104-106 Baltimore Pike -US Route 1 (S.R.0001), Chester Heights, Pennsylvania 19017.
2. The property is presently owned by Glen Mills Land LL, LLC. The Applicant, DJ Car Wash I LLC, has entered into an agreement of sale for the purchase of said property. Said Agreement is dated July 17, 2020 (Exhibit A-1).
3. The property is approximately 4.2 acres.
4. The property previously has been used as a gas station and automobile repair shop. At present, the property is vacant, has no building structures thereon and has a partially paved lot.
5. The zoning classification of the property is B-Business District.
6. The Applicant, at the September 29th hearing, entered the testimony of Darin Kapanjie, an Associate Professor of Statistics at the Fox School of Business at Temple University and Co-founder and President of Car Wash University, Co-founder with National Car Wash Solutions, purportedly one of the largest car wash chains and operators in the country. Mr. Kapanjie testified that the Applicant proposes to construct a building and to operate a new state of the art, environmentally friendly extreme express car wash with free vacuum service to be known as Wave Car Wash. 9/29/20 p. 12-13.
7. Mr. Kapanjie testified that the property is located in a B Business District of the Borough and that a car wash facility is not permitted.

8. Mr. Kapanjie testified that the Applicant is relying on the letter of Richard J. Jensen, BCO and Zoning Officer for the Borough of Chester Heights, dated August 14, 2020. Same was admitted into evidence as Exhibit "A-8".

9. In Exhibit "A-8" Mr. Jensen writes that he has reviewed the plot plan and sketch of the proposed improvements for the property. He has also reviewed the zoning ordinance governing the area. Mr. Jensen in his letter set forth as follows:

"From your email request, in general a car wash is not permitted in the B Business District on the surface as a use by right. However, I agree that the proposed use could be viewed as a similar use to uses permitted by special exception under §185-72 H (1) of the Borough Zoning Code."

10. Mr. Kapanjie testified that of importance would be the use of a free vacuum service and were to contain up to thirty (30) free vacuum stations on the premises for both paying customers and non-paying customers. 9/29/20, Pg. 15.

11. Mr. Kapanjie further testified that the intended days and hours of operation for this car wash would be seven days a week from 7:00 A.M. to 8:00 P.M. with no less than three employees on site at any given time.

12. Mr. Kapanjie testified that the operation of the business will have three pay stations. One pay station will be dedicated to monthly members who will gain entrance by license plate recognition technology only.

13. Mr. Kapanjie also testified as to the impact of sound that the use of the vacuums could create, also lighting conditions as well as proposed water and sewer service for the facility itself.

14. Of further note, Mr. Kapanjie represented that ninety-seven (97%) percent of the water used would be 100% biodegradable and would be recycled. The remaining three (3%) percent would be stored, pumped, and hauled.

15. In closing, Mr. Kapanjie acknowledged that the facility was not simply going to be in the business of washing cars. "The number one reason why people get their car washed is it makes them feel good. And we want to, you know, take on that feel good mentality and make the community a better place". 9/29/20 Pg. 23.

16. Zoning Ordinance §185-73 G. (1) sets forth that other than parking facilities, every other use shall be enclosed within a building. The car wash itself will be enclosed, but the vacuum area (30 in number) will not be. Mr. Kapanjie visited over two hundred (200) extreme car washes and not one had a central vacuum system inside a building.

17. Mr. Kapanjie did acknowledge that at times the vacuums are under canopies, but they are never enclosed inside the building. 9/29/20 Pg. 25.

18. Under examination by the Chester Heights Borough Engineer, Mr. Kapanjie acknowledged that the business may wash anywhere between one hundred twenty (120) to one hundred fifty (150) cars in an hour. And further, on a good day, they service anywhere from seven hundred (700) to seven hundred and fifty (750) cars. 9/29/20 Pg. 31.

19. Mr. Kapanjie testified that it would take a vehicle no more than three minutes to get through the entire car wash tunnel. 9/29/20 Pg. 36.

20. At each vacuum station there will be a trash receptacle, air guns and mat racks.

21. Mr. Kapanjie acknowledged that on the busiest days, their busiest times will be the rush hour periods of 4:00 P.M. and 6:00 P.M. on Route 1 (S.R. 0001).

22. On redirect testimony, Mr. Kapanjie indicated that on an average day they would anticipate anywhere from three to four hundred cars. 9/29/20 Pg. 44.

23. Applicant called Jeremy Maziarz, P.E., a licensed Civil Engineer and introduced same as an expert.

24. Reviewing Exhibit A-2, Mr. Maziarz confirmed that the property was bordered by commercial retail use to the west; apartment complex use to the south; residential use to the east and a townhouse community on the north side of Route 1.

25. Mr. Maziarz, with the use of Exhibit "A-3", described an access driveway to the site on Route 1 that is right in and right out. There will be two driveways that circle around with the second driveway exiting onto Valleybrook Road. The entrance onto Valleybrook Road is to be a dual access driveway.

26. The site circulation goes counterclockwise. On proceeding through the site, you can make a left onto a two-way area where vacuums and visitor parking spaces are located or continue north into the stacking lanes to enter the pay stations for the car wash.

27. Mr. Maziarz indicated that pursuant to Zoning Ordinance §185-73.A.-G., a lot area required is ten thousand (10,000) square feet. The Applicant is proposing a hundred and eighty-five thousand (185,000) square feet lot area which is approximately the 4.25 acres.

28. The required lot width is fifty (50) feet and the Applicant is proposing three hundred sixty (360) foot lot width.

29. The building and impervious coverage allowed is fifty (50%) percent max and the Applicant is proposing five thousand (5,000) square feet which equates to approximately two point seven (2.7%) percent.

30. The maximum building height under §185-73 F. is thirty-five (35) feet or three stories. The proposed structure will be less than thirty-five (35) feet.

31. Mr. Maziarz confirmed that he had never seen a car wash facility with vacuums inside a building.

32. Another criteria is that the side and rear property line directly abuts a residential district, and hence a buffer planting strip is required of no less than a fifteen (15) feet width. This will apply to the southern property line of the property where the apartment complex is located. The applicant can provide that fifteen (15) foot buffer.
9/29/20 Pg. 53.

33. Mr. Maziarz further testified, in reference to Ordinance §185-104 D, that the Applicant is proposing off street loading and unloading on the eastern corner of the building just south of the proposed exit of the car wash onto Valleybrook Road. Deliveries of product materials and chemicals to the site will be made by panel trucks and no semi-tractors or anything of that size will need ingress/egress to the site.
9/29/20 Pg. 54.

34. Mr. Maziarz referenced ordinance §185-123 wherein if the special exception were granted, the exception would have a six-month life and then expire. However, with the attempt of obtaining a zoning or building permit, that is not a feasible time frame and thus Applicant is seeking an extension of time within which to comply with that section. 9/29/20 Pg. 55.

35. The civil engineer further went on to testify that proposed lighting on the premises would be compliant with Ordinance §185-106. The specific design thereof would be submitted as part of the land development application. 9/29/20 Pg. 56.

36. Mr. Maziarz testified that upon his review of Ordinance §185-108 §§A.(1) through (7), the proposed use would not constitute a nuisance in regard to any of those areas as set forth through §A-(1) through (7).

37. Under cross examination by the Chester Heights Borough engineer, Mr. Maziarz could not give an opinion regarding grading, stating that they had not gotten "too far with their detailed grading". He went on to describe the various retaining walls along the entrance drive and a retaining wall on the south driveway. It was his belief that it could limit grading with their proposed retaining walls.

38. For the record, Mr. Maziarz went through subsections of §185-108, reviewing nuisances that could arise. Specifically #(7), will not create any other objectional condition in the adjoining area which will endanger public health and safety or be detrimental to the proper use of the surrounding areas.

39. On direct and cross examination, Mr. Maziarz discussed specimen trees and the preservation of same. The expert did not see any limitation with regards to the removal of specimen trees.

40. The Applicant next called as a witness, Nicole Kline, a licensed engineer in the field of Traffic Engineering employed by McMahon Associates of Exton, Pennsylvania.

41. Ms. Kline was offered as an expert in the field of traffic engineering.

42. Ms. Kline prepared a Traffic Impact Study marked as Exhibit "A-7". Same was prepared with the consent of the Borough Engineer, Matt Houtmann. 9/29/20 Pg. 66.

43. Ms. Kline acknowledged that the Traffic Impact Study because both highways, Baltimore Pike/S.R.0001 and Valleybrook Road (S.R.3029) are both state owned highways, the application will not only be subject to a land development approval process through the Borough, but requires PennDOT Highway Occupancy Permits for both access points.

44. The scoping application prepared by Ms. Kline was submitted to the Borough and PennDOT on August 31, 2020. 9/29/20 Pg. 67.

45. Ms. Kline testified that peak traffic periods are during the weekday afternoon from 4:00 P.M. to 6:00 P.M. as well as Saturday mid-day conditions. 9/29/20 Pg. 68.

46. Peak traffic periods reflect the highest hourly traffic volume for the property, but also when the adjacent roadways generate their highest volumes.

47. Ms. Kline indicated that by the nature of the business, to wit a car wash, that this would create ancillary stop for travelers on other trips such as traveling to and from work, dropping children off at school or activities.

48. Ms. Kline opined that the site would generate some new traffic, but will by and large take its clients from the existing traffic on the adjacent highways. 9/29/20 Pg. 69.

49. Due to the present pandemic conditions, Ms. Kline took traffic volume information from pre-Covid conditions from the fall of 2019. 9/29/20 Pg. 70.

50. Ms. Kline represented that the assumptions used by her as to generation estimates based on industry standards were reviewed and preliminarily approved by PennDOT. 9/29/20 Pg. 70.

51. Ms. Kline testified that at the peak hours in a sixty minute period, the site will generate approximately seventy-one (71) trips, which is about thirty-six (36) vehicles both entering and exiting the facility during those sixty (60) minutes. 9/29/20 Pg. 70.

52. The expert further testified that on Saturday, trips are significantly higher and that approximately seventy-six (76) vehicles (152 trips) will be exiting and entering the facility during the one hour peak period.

53. Ms. Kline confirmed that on Baltimore Pike the ingress and egress would be a right in and a right out onto Baltimore Pike. 9/29/20 Pg. 71.

54. As to the access to Valleybrook Road, the proposal is that there will be a full movement access. The expert confirmed that there were concerns certainly by the Borough Engineer about how far the queues extend back from the signal at Route 1 on Valleybrook Road (S.R.3029).

55. The expert indicated that with the operations at the Route 1 and Valleybrook Road signal, in her opinion, the added trips from the development would have no traffic impact in terms of PennDOT criteria. 9/29/20 Pg. 72.

56. Apparently, in PennDOT's review of the Baltimore Pike existing right turn lane, comment was made that on that the lane was narrower than preferred and that PennDOT wanted a fourteen (14) foot wide lane. 9/29/20 Pg. 73.

57. Based on operational analysis and the traffic study, Ms. Kline indicated that there were brief periods where the queues extend beyond the driveway from the signalized intersection of Baltimore Pike and Valleybrook Road. 9/29/20 Pg. 73.

58. Ms. Kline confirmed the fact that the access onto Valleybrook Road from the site is at its furthest south possible demonstrating sound access management principles. 9/29/20 Pg. 74.

59. Ms. Kline testified that the traffic study, which had been completed and submitted to the Borough, likewise, had just been submitted to PennDOT that week and thus the Applicant would have to await PennDOT's full review. 9/29/20 Pg. 74.

60. Apparently, PennDOT in their scoping review, indicated that the deceleration lane along Valleybrook Road (S.R.3029) for traveling south to enter the site was not in conformance with PennDOT requirements in terms of length (taper area) where the lane opens up to transitioning traffic into it. 9/29/20 Pg. 75.

61. It was noted by Ms. Kline based on her communications with PennDOT and Mr. Houtmann the radius at the intersection of Route 1 and Valleybrook Road traffic travelling northbound on Route 1 and making a right hand turn south onto Valleybrook Road would have to be addressed. According to PennDOT regulations, because they are two state roadways involved, a radius of WB-62 is required. That is not in existence at the present time.

62. Ms. Kline concluded her direct testimony by offering an opinion that the use for the property was suitable with respect to traffic and highways in the area and that adequate access was being offered and provided to protect the streets and highways from undue congestion and hazard. 9/29/20 Pg. 78.

63. Ms. Kline acknowledged that at times the backup in the right hand turn lane traveling on Baltimore Pike Route 1 North will back up beyond the access entrance and exit to the property.

64. The expert acknowledged that the Applicant can maintain a fourteen (14) foot side shoulder and right turn lane in the area all the way from the intersection back along the property frontage to the adjacent driveway. That is all the Applicant can do as it has no control as to the adjacent property driveway for the abutting property. 9/29/20 Pg. 82-83.

65. Ms. Kline testified that because it is a right in-right out driveway from the property onto northbound Baltimore Pike, an operator only has to look in their left direction. The sight distance criteria as set forth in Exhibit "A-7" purportedly exceeds PennDOT's strictest criteria and it was her belief that is satisfied PennDOT's criteria to insure the sight distance. 9/29/20 Pg. 84.

66. In response to an inquiry by Mr. Houtmann, the expert testified that the existing left-hand turn lane on Valleybrook Road is one that extends about hundred twenty-five (125) feet beyond where the proposed access to the site is. Even though there may be a creation of backup behind a car attempting to make a left into the property from Valleybrook Road, it was her belief that even when the light was red or green on Valleybrook Road and that the left turn at the signal starts to queue back the length and times of the cycle the traffic conditions should be able to continue to flow.

67. It was the expert's belief that with no traffic or very little traffic coming across from Walnut Hill Boulevard south on Valleybrook Road, the condition would be of

no impediments when the light was red on Route 1 and green on Valleybrook Road/Walnut Hill Boulevard. 9/29/20 Pg. 87

68. Ms. Kline opined that traffic traveling north on Vallebrook Road, seeing that a car was waiting to make a left hand turn into the site access, would be able to continue straight towards the intersection of Baltimore Pike and Valleybrook Road and then moving into the left turn lane after the site access.

69. Ms. Kline testified further that upon a traffic study review done by PennDOT, PennDOT will issue a review letter. That is the first step in a highway occupancy permit process. Should the traffic study be approved, PennDOT designs a detailed study process to which Chester Heights Borough is a party and will have the opportunity to review all those applications.

70. Trish Williams of 116 Logtown Road, Chester Heights, Pennsylvania entered her appearance as a party.

71. Ms. Williams' property is a residence at the corner of Logtown Road and Valleybrook Road. 9/29/20 Pg. 98.

72. In response to the Applicant's counsel's inquiry, Ms. Williams' concerns with her property include traffic indicating that traffic backs up from the intersection of Baltimore Pike and Valleybrook Road past her Logtown Road street entrance onto Valleybrook. It is jammed packed traffic every single hour except maybe midnight until 4:00 A.M. 9/29/20 Pg. 98.

73. Ms. Williams testified as to her experiences with a number of accidents that occurred at that intersection. She further was concerned about the lighting

conditions that would be on the site during the various seasons and more specifically during the fall and winter when there are no leaves on trees.

74. Lastly, her comments were as to noise issues wherein she compared the level attributed to anticipated use of vacuums, but the traffic is noisy, the radios, vocal calls among drivers stuck in traffic. She is concerned about the noise of the portion attributed to the washing of the cars itself operating beginning at 7:00 A.M. until 9:00 P.M. at night (sic). 9/29/20 Pg. 101.

75. In response to Ms. Williams areas of concern, the Applicant and his expert responded to her questions. The vast majority and the issues raised will be more fully addressed during the land development process should the exception be granted. 9/29/20 Pg. 105.

76. As to Ms. Williams concern of the potential impact to her well water on her property, the Applicant, through counsel, indicated that the site will have public water and that through the land development plan and county regulations will have to be reviewed and approved so that there is no impact on surrounding wells. 9/29/20 Pg. 108.

77. Gloriann Ellis also became a party to the action. She is a resident at 146 Logtown Road, Chester Heights, Pennsylvania.

78. Ms. Ellis has been a resident of Chester Heights for a period of forty-five (45) years. She indicated that traffic on Valleybrook between 4:00 P.M. and 6:00 P.M., the peak hours as testified to by Ms. Kline, on Valleybrook Road can be backed up to Smithbridge Road and is not necessarily because of the impact of St. Thomas Elementary School located on Valleybrook. It is pure traffic.

79. Ms. Ellis has testified as to the fact that cars entering and leaving Logtown Road during critical times of traffic, have to be extremely careful with cars on Valleybrook trying to go through the straight line onto Baltimore Pike or making a right thereon to head north.

80. Ms. Ellis also discussed the carcinogenic potentiality effect on her well water.

81. In specific response to the potentiality of water from the site, permeating her well, the Applicant and its engineer reiterated the fact that all water for the car wash system will be self-contained. A very low percentage may go into the septic system, but that is something that will be approved by the county and the Borough as well. All proposed cleaning fluid will be biodegradable. 9/29/20 Pg. 114.

82. As far as traffic north bound on Valleybrook Road, the two existing lanes will stay as they are. The southbound lane will be widened for traffic to turn right into the site, so it isn't impeding traffic continuing southbound on Valleybrook. 9/29/20 Pg. 115.

83. At the continued hearing on this matter held on October 14, 2020, Bernard Miller of 1730 Walnut Hill Boulevard of Chester Heights Borough moved to become a party to this action. No objection was raised by the Applicant.

84. Mr. Miller, who had been residing at that intersection for over twenty-two (22) years, was concerned with the potential traffic issues and the accidents that have been occurring at that particular intersection. Mr. Miller indicated that traffic heading south on Baltimore Pike who intended to make a left onto Valleybrook does turn onto

Walnut Hill Boulevard to do a U-turn and come back out from Walnut Hill Boulevard crossing over Baltimore Pike heading south on Valleybrook. 10/14/20 Pg. 4.

85. Mr. Miller also voiced a concern over lighting when the business would be open. He had been previously concerned with a development for a proposed business on Walnut Hill Boulevard across from where he lives, but that had been changed to a residential development.

86. The Borough of Chester Heights representative introduced as testimony of its Township Engineer, Matthew R. Houtmann. Based on Mr. Houtmann's experience, the Applicant voiced no objection to his qualifications to be an expert witness. 10/14/20 Pg. 9.

87. Mr. Houtmann testified as to his review of Exhibit "A-3" and prepared the area of the vacuum stall area in relationship to its size as compared to the total impervious coverage. Based on the scale copy of the plan available to him (A-3) he determined that impervious coverage of all areas would be fifty-four thousand eight hundred (54,800) square feet. The vacuum stall area was twelve thousand four hundred eight (12,408) square feet of that. Hence, twenty-two-point six (22.6%) percent of the developed area. 10/14/20 Pg. 10.

88. Pursuant to Ordinance §185-73 of the Borough Ordinances, any building area cannot be more than fifty (50%) percent of each lot. Although Mr. Houtmann had not calculated the total impervious coverage as it related to the 4.2 acres, he acknowledged that upon visual inspection the proposed building and other impervious areas would meet that criteria pursuant to Borough Ordinance §185-73(g)1.

89. The Borough next called Albert Federico, a traffic engineer. He was offered as an expert in his field and the Applicant had no objection to same. See Exhibit "B-1".

90. Mr. Federico testified that he had reviewed Exhibit "A-7" prepared by Nicole Kline and in his opinion that the exit driveways for the site were not at a safe and efficient distance from the intersection. 10/14/20 Pg. 19.

91. According to Mr. Federico's review of the presentation by the Applicant, the safe distance from the traffic exiting to Valleybrook Road and looking left, is only two hundred and seventy-five (275) feet. The minimum acceptable sight distance to make such a maneuver from the premises is three hundred ten (310) feet. As a result, it was Mr. Federico's opinion that the vehicles exiting the proposed car wash driveway and making a left onto Valleybrook or making any turn out of the access driveway would be insufficient. 10/14/20 Pg. 20.

92. In reference to Table 3 of the Applicant's Traffic Report, the sight distance for vehicles leaving the Baltimore Pike driveway and making a right therefrom, does exceed the minimum sight distance, but does not meet what PennDOT would consider its desirable sight distance.

93. Because of the collision history at the intersection, Mr. Federico recommended that it would be desirable, if feasible and permitted by PennDOT, that the Valleybrook Road driveway access should be moved so that it meets PennDOT's desirable sight distance. 10/14/20 Pg. 21.

94. Further based on Mr. Federico's review of the collision information provided by the Applicant's Traffic Engineer, over one third of the accidents on US

Route 1 North were based on the vehicles traveling too fast for conditions. Hence, the desirable sight difference would be more appropriate standard here as a safety condition. Overall Mr. Federico's recommendation was that, subject to PennDOT approval, he would recommend that the Valleybrook Road access be at a minimum of the sight distance and that the US Route 1 Baltimore Pike access to be the desirable sight difference as set forth by PennDOT. Mr. Federico's opinion was given within a high degree of probability that the exit driveways as proposed would affect the safety of the public in general. 10/14/20 Pg. 23.

95. Upon further review of the traffic study done by the Applicant's Traffic Engineer, the analysis and conclusion that the project would not result in undue congestion and that it met applicable PennDOT standards partially assumed that the traffic signal of Valleybrook and US Route 1 would be retimed. As a result Mr. Federico recommended that consideration be given to and the Applicant to fund the retiming of the signal.

96. Under cross examination, Mr. Federico indicated that PennDOT does determine the allowing of the driveways and construction of associated with them, but also PennDOT does defer to more local ordinances for safety reasons. He also opined that as a condition of the special exception, there should be something reflecting the location of the driveways to assist PennDOT in its permitting process.

97. Mr. Federico acknowledged that he was aware of the SEPTA Train Station that was going in just north of this intersection as well as the townhouse development that was being built abutting the SEPTA Train Station development. As a result, traffic was going to increase. 10/14/20 Pg. 30.

98. The Applicant then recalled Nicole Kline, its Traffic Expert, who indicated that some of the issues raised by Mr. Federico in all probability would be addressed in a more detailed sight distance evaluation completed during the engineering of the property as the driveway grades come into play etc. 10/14/20, Pgs. 35 – 36.

99. Ms. Kline then commented on the traffic coming from Baltimore Pike onto Valleybrook Road and the sight distancing access as presently designed. She acknowledged that although speeds do play a factor, the Applicant would be able to demonstrate during detailed engineering presentation that they would be able to satisfy the minimum safe stopping site distance for the posted speed limit at that time. She then opined that traffic coming across from Walnut Hill Boulevard due to the geometry of the roadway will make it nearly impossible to reach the speed of thirty (35) mph as you are coming through Route 1 intersection.

100. Ms. Kline then commented on the retiming issue as discussed by Mr. Federico. She indicated that PennDOT requires that retiming assumption in the calculations, but PennDOT does not allow that as a mitigation process and as an improvement.

101. On further testimony, Ms. Kline under cross examination acknowledged that her scoping presentation was in error in that she was not fully aware how close a school and local Borough park were to the intersection in question.

102. In her report to PennDOT, Ms. Kline represented that the closest school to the site was Delaware County Technical High School in Aston which was located one point seven (1.7) miles southwest of the site. 10/14/20, Pg. 39. Also see Exhibit A-7.

103. Ms. Kline acknowledged that she was not familiar with the St. Thomas Apostle School which is south of Valleybrook less than a quarter of a mile from the site. Likewise, she was unfamiliar with the fact that a school zone is posted.

104. In addition in her scoping report, Ms. Kline indicated that the closest community park was that of Concord Township located at 725 Smithbridge Road. She did not list specifically in her scoping application that the Chester Heights Borough Park is less than a half mile from the site traveling south on Vallebrook Road. 10/14/20, Pg. 40-41.

105. Ms. Kline indicated that Item 16 Section J of her report, a crash analysis was not proposed as this time. She indicated that as part of a scoping presentation they were not required to do that analysis. However, the Borough and PennDOT during the next leg of the process could ask them to make a study.

106. Further testimony from Ms. Kline addressed the issue of the speeds along Walnut Hill Boulevard crossing the intersection of Baltimore Pike and continuing south on Valleybrook Road. It was her opinion that it would be very very difficult to attain the speed of 35 mph because of the sloping aspects of Walnut Hill Boulevard as it meets the intersection of Baltimore Pike. 10/14/20, Pgs. 42-44.

III. CONCLUSIONS OF LAW

1. The Applicant has standing.
2. The Applicant has the burden to show that its proposal complies with the terms and conditions of standards for its requested special exception in accordance with Chester Heights Borough Ordinances §185-124 A-I.

3. The BCO and Zoning Officer Richard J. Jensen concluded that the projected use could qualify as one of a similar nature of those allowed by the Ordinance for a special exception and no evidence was presented to the contrary.

4. Once an applicant brings itself within the provisions of the ordinance and has made a prima facie case for the remedy sought, an application must be granted unless the protestants or the municipality presents sufficient evidence that the use would present a substantial threat to a community.

5. Although there may be anticipated increase in traffic with a proposed project, that increase must be shown by the protestants or the municipality that said increase must be of such a nature and character that bears a substantial relation to the health and safety of the community. See Bailey v. Upper Southampton Twp., 690 A.2d 1324 (Cmwlth. Ct. 1996).

6. Subject to the conformity with the plans and testimony presented and subject with compliance with the conditions hereinafter set forth, the Applicant has met its burden of proof necessary to meet the threshold requirements of the granting of special exception. See Perkasie v. Molten Builders, Inc., 850 A.2d 778 (Pa. Cmwlth. 2004), Broussard v. Zoning Bd. of Adjustment of the City of Pittsburgh, 831 A.2d 764 (Pa. Cmwlth. 2003).

7. Neither the protestants nor the Chester Heights Borough met the burden by creating a record that any abnormal traffic created by the operation of the Applicant's proposed business threatens the community safety. Although there was evidence of traffic counts and a reference to accident records, there was no expert evidence

presented that any possible abnormal traffic increase actually threatened the safety of the community.

8. The Borough of Chester Heights Council retains jurisdiction of the anticipated land development plan of the Applicant.

9. The Applicants grant of special exception shall be conditioned as set forth in the following Order of the Zoning Hearing Board pursuant to Ordinance §185.124(H.).

10. The special exception is expressly conditioned upon the Applicant meeting and agreeing to the conditions that have been set forth in this Opinion and Order.

IV. ORDER

AND NOW this 25TH day of November, 2020, on the basis of the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

1. The Applicant must comply with all applicable ordinances of the Borough of Chester Heights.

2. Applicant must comply with the testimony and exhibits presented at the hearings on this matter except as hereinafter set forth in the additional conditions set forth herein.

3. Based on the conclusions of the BCO and Zoning Officer, Richard J. Jensen and testimony presented, it is hereby approved that Applicant, DJ Car Wash I LLC, is authorized to pursue the establishment of a new, state of art and environmentally friendly, express car wash.

4. Based on the argument presented, and in accordance with Ordinance §185-123, said special exception approval will continue beyond the six month period set forth therein upon consideration of the present constraints of the COVID 19 – Virus and

the obtaining of the appropriate land development approval and other aspects, that said exception will be open for a period of one year from the date of this Order. Applicant has the right to request a further extension from the Zoning Hearing Board if necessary.

5. Further, pursuant to Chester Heights Borough Ordinance §185-73 G.1. wherein every use other than parking facilities should be completely enclosed within a building, the Applicant will cover with roofing the area as set forth in its special exception spec plan A-3 for those areas that have vacuums to be used by individuals for the purpose of cleaning and vacuuming the interior of the automobiles anticipated to be present during operational hours.

6. Said roof covering will be attached to the building in a similar fashion that is consistent with other business operations within the Borough. The Zoning Hearing Board will defer to Borough Council during the land development process as to any parameters hereunder as to the roof covering aspect and will be subject to any waivers granted by Council.

7. The Applicant will preclude any traffic coming through its property by the use of the appropriate security gates or other access closure devices during non-hours of operation.

8. At present, the exit for the property proposed from Baltimore Pike and returning back onto Baltimore Pike, although within minimum site distance as set forth by the Pennsylvania Department of Transportation (PennDOT), does not meet PennDOT's desirable required site distance. The Board has major concerns about this safety issue and Borough Council and PennDOT should require Applicant to have its


access meet the desirable sight distance for this exit as opposed to the minimum standard.

9. At present, the proposed access and exit onto Valleybrook Road (S.R. 3029) created a concern for the Zoning Hearing Board as to the safety of traffic north and south bound on Valleybrook Road as well general traffic congestion. The proposed sight distance is thirty-five (35) feet short of the minimum required by PennDOT for such access. The Board requires that the Applicant place the location of said ingress and egress further south on its property so that such access meets no less than the minimum sight distance required of three hundred and ten (310) feet.

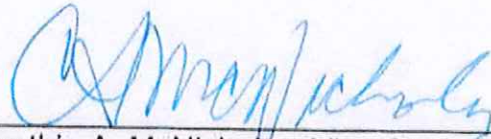
10. The Zoning Hearing Board, because of major safety concerns about this particular exit onto a road that has experienced excessive backups during certain times of the day, urges PennDOT and Borough Council to reach an accord for said use and time of operation. The Board requires that left hand turns from the property be limited to certain hours during the course of the day and specifically no left hand turns on to Valleybrook Road should be allowed between 7:00 A.M. to 10:00 A.M. and 3:00 P.M. to 6:00 P.M. daily Monday through Sunday.

11. The Board requests that Borough Council, upon reviewing the preliminary and/or final land development plan to be submitted along with the receipt input from the Pennsylvania Department of Transportation as to its issuance of a highway occupancy permit consult with representatives of PennDOT to accomplish the goals, directives and address the concerns of the Zoning Hearing Board in its findings of facts and Order.

Chester Heights Borough Zoning Hearing Board



H. Fred Hamel, Chairperson



Cynthia A. McNicholas, Vice Chairperson



Glenn Mon, Recording Secretary