

**CLAYTON PLANNING BOARD  
MEETING MINUTES  
MAY 23, 2022**

John Alice swore in new member, Scott Wiseburn

The regular meeting of the Clayton Planning Board was called to order at 7:00 PM. Invocation was given and we had a Salute to the Flag.

**SUNSHINE LAW**

The public notice of this meeting pursuant to the Open Public Meeting Act of 1975 has been properly given in the following manner:

- A. Posting written notice on the Official Bulletin Board in the Municipal Building.
- B. Mailing written notice to the South Jersey Times and the Franklinville Sentinel.
- C. Filing written notices with the Clerk of the Borough of Clayton.

**ROLL CALL**

Ayes: Abate, Cerone, Culver, Miller, Thomas, Wise, Moorhouse, Wiseburn

Absent: Bianco, B. Saban, T. Saban, Vondran

Joe Abate welcomed Scott Wiseburn to the board.

**APPROVAL OF MINUTES**

M/ Miller, S/ Thomas

Regular Meeting, March 28, 2022

Ayes: Abate, Cerone, Culver, Miller, Thomas, Wise, Moorhouse

Abstain: Wiseburn

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

Twin Kiss – 9 S. Delsea Dr. – Block 1211, Lot 21 – Use Variance & Site Plan

John Alice advised that their attorney asked for an adjournment. They will be working with the neighbors and/or have additional conversations with them. They have asked that an announcement be made. With your permission I will be making an announcement. This application, Twin Kiss, has already noticed so there will be no further notice. If you are here tonight for the Twin Kiss application it is not going to be heard as just stated. It is expected to be heard at the next meeting of June 27, 2022 at 7 p.m. if you wish to attend. No one was present at the meeting for the Twin Kiss application.

Brothers Auto, LLC – 600 S. Delsea Dr. – Block 1001, Lot 30 – Use Variance & Minor Site Plan

John Alice, Solicitor, announced that since this is a use variance that the board will be reconstituted as a zoning board of adjustment. John Alice, Solicitor, swore in M. Brian Hall, Esquire, Paul Daroshefski, co-owner of property, Jay Sims, P.E., and P.P. has

served as a professional for twelve years. Katie Daroshefski, P.E. was also sworn in. She has served as a professional in NJ for approximately six months.

Brian Hall, Esquire represents Brothers Auto Center, LLC. They are here for the property known as 600 S. Delsea Dr. There was an application for this property years ago. They are here tonight for a use variance to continue the pre-existing non-conforming use as a used car dealership and also to use the site as a transmission repair shop. The property already has bays in which the vehicles are repaired to sell. They want to be able to use them also to repair transmissions for other customers. Mr. Daroshefsky can testify in that regard. If you remember, the prior application was an intense use trying to get a lot of cars on that small lot as well as connecting it to another lot down the street. There were also issues with loading and unloading vehicles, etc...

This application is less intense. We are only asking for 33 cars with additional spots for customers. They are not using the other lot at all. They worked pretty closely with the professionals and had a DRC meeting at the end of last year and hashed out some issues so that it is not detrimental to the Municipal Land Use Law.

Katie Daroshefski, P.E. advised that the application pertains to Block 1001, Lot 30. It is a .360 lot and is in the commercial/office zone which is not zoned for car dealerships which is what they are asking for. It's been a car dealership for many years. Auto sales and service centers are allowed in the zone just 200' south of this zone. There is another auto repair center about 800 feet from this one so it does fit in the area.

To the north of the property is a pizza place, to the east a car wash, to the south we have a vacant building which is commercial, and west we have residences. On the site currently we have the existing building, a sea box, and a parking lot with parking spaces, and a dumpster. There is a chain link fence which is going to be replaced with another fence. They are proposing to do parking spaces for employees, a stockade fence along the western and southern property lines. Evergreens are also being proposed along the southern property line which will add screening to the residential zone. Parking bumpers will be turned so they impede into the right-of-way. Fencing is also proposed around the dumpster and painting of the employee parking spots. No improvements will be made to the building or any of the facilities that they are not using at this time.

The deliveries will be made by truck or trailer. It depends on the number of vehicles they purchase. Sometimes there may not be any deliveries at all. The delivery trucks will either come in off of Delsea Drive and exit on Jerrys Avenue or come in on Jerrys Avenue and exit on Delsea Drive. There is a curb break on Jerrys Avenue so to prevent people from cutting through we are going to put bollards with a chain link fence.

The typical business hours for the dealership is going to be Monday-Friday 9 a.m. to 7 p.m. and Saturday 9 a.m. to 5 p.m. The transmission repair shop will be Monday-Friday 9 a.m. to 5 p.m. They are closed on weekends. There will be very little to no impact to the municipal services including utilities, air, traffic, pollution. Their waste products which are liquid are properly packaged and stored and a company comes out and removes

it. The trash company comes either before or after business and only comes once every two weeks.

John Alice asked about the sea box. Ms. Daroshefski indicated that it was there before they started the business probably within the last year and it is used for storage. John Alice advised her that they aren't permitted and doesn't know of any towns that do permit them. He also told her that they most likely will have to get rid of it and asked if they weren't looking for an approval to keep it. Ms. Daroshefski indicated that they would like to keep it, if at all possible. They would like to work with the board on that. She advised that it is painted the same color as the building so it blends in.

Stan Bitgood asked what is stored in there. She advised that it's all dry parts and tools. Stan Bitgood advised that it makes him uncomfortable but if they were allowed keep it he recommends that it be anchored down with a foundation at least equivalent to a live in trailer. They are anchored down with cross bracing. The side yard setback would have to be reconfigured to that structure as it will become part of that building. The side yard setbacks would reduce from 7.8 to 2 or less. Ms. Daroshefski responded that they are asking for a variance for that. There will also be a handicapped ramp and they will coordinate with NJDOT for that. Stan asked about the curb.

They will add additional information about the lighting and will add the planters along Delsea Drive. Stan asked if the fence around the trash enclosure will be stockade 6' fence and Ms. Daroshefski responded yes. Landscaping was discussed briefly.

Doc Cerone asked the engineer about the impact of transmission noise. It should be comparable to the existing noise. The transmission side will probably only have a couple per week come in. Not as busy as the dealer side.

John Alice, Solicitor, asked how the cars get delivered to the lot. Some of the vehicles run so they are dropped off at the lot. Others are brought by truck and trailer. They will not be delivered by a big tractor trailer.

Sue Miller asked what direction the deliveries come from. She responded mostly off of Rt. 55 and Delsea Drive. She said they will probably leave down Jerrys Avenue to Rt. 55.

Joe Abate asked about the sea box and didn't believe it was zoned for that and advised that the Zoning Officer was present. Rose Ann Lafferty responded that it was not zoned for that and there were no permits issued for it. She also spoke to Ms. DeShefsky prior to the meeting and told her that she will have to be prepared to address questions at the planning board hearing. She added that trailers are not allowed. Joe Abate indicated that this is a business that is on Delsea Drive which is our main thoroughfare through town and he is not happy about it. Ms. DeShefsky acknowledged that and says that it blends in with the building. John Alice added that this will be the boards call and they will either allow it or not and the applicant will have to go forward accordingly. Joe Abate doesn't like it and doesn't think it adds to the aesthetics of the Delsea Drive businesses. Ms. DeShefsky

mentioned the stockade fence. Joe Abate responded that it has nothing to do with the fence he just doesn't like it. John Alice added that since you are buying the property you have options that you maybe haven't explored. Maybe you will after tonight's hearing.

Joe Abate asked if they purchased this lot and the other lot. Ms. DeShefsky answered yes that they could not be sold separately. Joe Abate asked what the plans were for the other lot and she said as of know it's just a vacant lot. She wasn't sure what their plans were. John Alice advised that if they aren't doing anything with it now then its not part of this application. In the future, if they come back we will see them then. Stan Bitgood, P.E. asked if it is the applicant's position that the prior site plan which was approved and included both lots is now superseded and is now null and void with this application being presented. Mr. Hall answered yes this is a new application. If they decide to do something with the other lot they will be required to do a new application and come back before the board. Rose Ann Lafferty, Zoning Officer, advised that the variance previously stated will now have to include the trailer. John Alice answered that that has been their request.

Paul DeShefsky was called as a witness. He advised the board that he currently rents property in Burlington County and it is two and a half times the size of this lot. On average he has from five to 20 cars at any time. Ten to 15 cars is a pretty consistent on a month to month basis for any transmission or drive by repair. He doesn't do service work and doesn't have waiters. Everything is dropped off/picked up with appointments. As far as egress/ingress when vehicles are purchased, they may come from out of State or from various different locations. The vehicles that are towed in and not under their own power and are by a single car rollback or stated earlier an individual truck and trailer.

There is no consistency to it as some weeks are slower/busier than others. There isn't really any traffic in that regard. I may get two vehicles at the same time. John Alice asked about his hours of operation. He indicated that the transmission shop is Monday-Friday 9 a.m. to 5 p.m. and closed on weekends. Mr. DeShefsky was asked about the noise and was told it's about the same as repairing a vehicle for sales. They only do repairs on vehicles they sell. The transmission work is a specialized repair. It's considered heavy mechanic work. The vehicles are not run for any excessive amount of time. Approximately seventy percent of the time, when the vehicles are towed in they are not able to move under their own power much less be driven. They are usually pushed in, dismantled, repaired, and road tested upon completion. There is no testing inside the bays that require the car to run for any amount of time.

John asked about how many employees. There will be four in the transmission shop and his brother does the sales which will be a total of five employees. All tool/air tool use is inside not outside. Paul DeShefsky spoke briefly about the sea box. He said it was present upon their arrival in which they use for storage. He understands it's frowned upon. They weren't supposed to buy this property now. It was originally a lease with an option to extend and an option to buy down the road. That down the road part was removed from the table by Jesse who has since passed away. They were given the option to either buy it or leave it. They spent the last year building their brand and establishing a

customer base and building a business and felt that they did not want to leave. He pulled his resources together to make an offer to make the purchase and eventually came to an agreement. Currently, the sea box is pretty important to the daily operations of the transmission shop. The building he is coming from is approximately 3,500 sq. ft. and this is about a 1/3 of that excluding the box. The box is fairly important for storage for the transmission shop for it to be able to operate. This will be used as storage for the transmission shop. It does take parts, tools, equipment and specialty equipment beyond the scope of traditional auto repair. We just don't have a place to put it. The purchase was planned but was not a short term deal. We are less than 18 months as being tenants. We were supposed to do a three year lease with the option to purchase at the end or further renew. This got rushed and I understand this is not a long term solution. As you said, we may have other options but we have not explored those yet. He is not opposed to it but he doesn't have an answer for it right now. He is asking for temporary acceptance of the box until they facilitate other arrangements.

Joe Abate asked the professionals if there are other options that they recommend. Stan Bitgood advised that there are other ways to take sea box containers and turn them into other types of buildings, architectural facades, and surfaces on the outside. You may be able to move it away from the building as well and it is a cost. Brief discussion took place. Mr. DeShefsky advised that this would be short term. In regards to a resolution, he would like to be able to make a little bit of money before he did anything. He is not opposed to doing it. He would like the opportunity to make a living for himself first.

John asked if the board would accommodate the applicant and allow them to work with the board professionals and allow the sea box to exist in a more palatable fashion. They are not permitted in the ordinance. Joe Abate asked Mr. Bitgood if they can do something with this sea box or is it better to get rid of it. He answered that it would probably be somewhat better in getting rid of it. However, understanding what the applicant needs and what the Borough needs it can certainly be something that they can work together on. Joe Abate asked if the sea box has been inspected by the Fire Department and the Health Department and anyone else who needs to inspect it. Mr. DeShefsky advised that the Fire Marshall did inspect it. Ms. DeShefsky advised that it was approved along as they put a fire extinguisher in it. The Fire Marshall did come back out and put his tag on the fire extinguisher. Rose Ann Lafferty added that she believes the construction official would have to inspect it as well and approve it. No zoning permit was issued so, therefore, construction would have inspected it as we didn't know it was there. Brian Hall, Esquire indicated that they are willing to work with Stan Bitgood as well as the construction official to work something out so that you don't even know that it's there.

Stan Bitgood indicated that structurally the box is fine and he isn't concerned about that. He said it should be anchored down. A wind that would move it would probably take the whole building down but it still needs to be anchored down. John asked what the boards inclination is. Joe Abate answered personally he is business friendly but wants it done correctly. He doesn't want to look back a year from now and say we made a mistake. Eric Thomas added that they propose to work with the professionals and make sure they

have the proper permits, etc... If he is saying it has to be anchored down, he is saying it for a reason. He appreciates that the Fire Marshall did inspect it, however, it doesn't have any permits. Everything discussed here tonight needs to be done. John Alice thanked Mr. Thomas. Stan added that they are asking for a couple of variances so the sea box could be left temporarily or for a certain amount of time. Or the sea box and other variances we are talking about are actually site issues so the board might consider granting the use variance conditionally on the applicant coming back with a perfected site plan that addresses all of the aesthetics.

Bill Culver asked if there are lights in the sea box and if they have been inspected and he was told yes there are lights but they were already present and not inspected. Joe Abate added that all of the permits and inspections are going to have to be done. Bill Culver asked about the transmission place asking if he has 15 cars at his other place and if he has 15 cars here along with the cars for sale he is going to be over. Mr. DeShefsky answered that he is not going to have 15 cars here. John Alice said there are 33 parking spaces so Bill Culver asked that they never have over 45 vehicles a night. Mr. DeShefsky was asked about how many used cars are for sale and he said about 8 – 15. Doc Cerrone asked how tall is the sea box and he was told eight feet and 40 feet long.

Mr. Hall asked if they could have temporary approval with the understanding that we work with Stan within a set amount of time. The intention today was to do the site and use at the same time. We are just trying to save money and time and get the business up and running. Joe Abate asked what is the set amount of time. Brief discussion took place. Bill Culver suggested by the end of the year. They just don't want to set precedence cause if this is allowed then we would have to allow it for others. Mr. DeShefsky asked if they are putting a time limit on just the cosmetic improvement of the building. Bill Culver said it would be everything, cosmetic, permits, inspections, etc... Stan Bitgood advised that they will need an architect. Everything needs to be done by the end of the year. It's only May and you have time and good weather to do it. If you run into issues, let us know as soon as possible. They do have to go to the DOT.

Jay Sims, P.E., P.P. advised that prior to the board approving a use variance you have to be able to indicate the positive and negative criteria. The positive criteria is that the site is already built and has been used like this since at least 1985. It will continue to be a tax ratable. The existing buffer and fencing will be upgraded to better insulate the adjacent residential uses with adequate light. There will be no impact to the existing utilities or storm sewer which the site fronts Delsea Drive. It will also attract additional customers who may also patronize other Clayton businesses. Within the negative criteria, the site will continue to operate as car sales. The addition of the transmission repair will not impact any of the surrounding properties nor will it damage the character of the neighborhood or constitute a detriment to the public good. As pointed out previously, about 800 feet south there is another existing auto repair shop. It's in another zone but generally in the same area.

This site is particularly suited for the proposed use as the site is already currently built for automotive use and the existing parking, access, and utilities are already in place. The

proposed improvements will bring better order to the display of the vehicles. The new fencing and landscaping will enhance the curb appeal. The site has direct access to Delsea Drive but will have minimal impact on local roads. It also advances the purposes of the Master Plan and zoning as it stabilizes the value of the property, utilizes the existing building and site thereby not contributing to any overcrowding. It is also provides for a safe and secure area with the connection to the existing roadway network. It promotes the health, safety, and general welfare of the public. It's his professional opinion that this application can be approved and granting the requested variances with not present a substantial detriment to the public good and will not impair the intent and the purpose of the Master Plan and zoning.

Paul Brier, P.P. asked if his testimony included not just the use variances but also the bulk requirement variances as a lot of them are existing but not conforming and should be on the record. He also referenced his letter of May 17, 2022. Everything has been covered. He talked about fire and emergency access but he wanted to know about fire suppression system in the garage or work area. There is no fire suppression system in the garage or work area just a fire extinguisher. The Fire Marshall did see it. The nearest fire hydrant is going to be shown on the revised plan and he was told yes. Joe Abate confirmed that the fluids were going to be removed every two weeks. It depends. The recycling and trash will be removed every two weeks. They will have commercial recycling. There is a petroleum company that comes out located in Camden, NJ who he uses. They usually come out every 2-4 weeks depending on how busy we are. The fluids are currently stored in 55 gallon containers and are kept indoors on a pallet. Once they close on this property he is going to purchase a 250 to 300 gallon tote which is heavy duty plastic with a wire cage to retain form to get away from the drums. Joe Abate recommended that as well.

Stan Bitgood referred to his letter of May 16, 2022 and started with the completeness items. He wanted them to testify that there are no open contamination cases with the State. There is nothing open. Stan does have a plan of survey and he has no objection to waiving the environmental report based on the testimony. They agreed to show a grading and lighting plan. The site plan should reference the plan of survey. The dimensions for the new fence and new pavement limit should be shown as there is a five foot distance now between the west property line and the proposed stockade fence. It has to be shown on the plan. Stan asked that the site triangle at the intersection be shown on the plan. Stan also indicated that architectural plans will be necessary. Brief discussion took place about the curb and the employee parking spaces.

Stan asked Mr. Sims if he addressed the justification of the front and side yards. He advised that with the function of the lot there is no other physical way to display vehicles based off the position of the building and the shape of the lot. There is no other way to re-configure the lot. Brief discussion took place. Joe Abate asked where the employees would park. He showed on the plan the four parking spots for employees. There were additional spaces on the other side since they have a total of five employees. Joe also asked about their handicapped parking spot which they showed him. The plan also

included an exhibit with truck turning movements of the delivery truck. For the use that is being requested it will not require or allow larger trucks. They responded yes.

Stan asked Katie DeShefsky to address the exit movements from the site onto Jerrys Avenue to turn back toward Delsea Drive. Stan asked that the utility poles be removed from the parking lot and that a perfected lighting plan be provided with details on the shielding and illumination to the adjacent properties. He asked about hours of illumination. Stan doesn't think it is necessary for them to be lit up like other car lots. Are the lights going to be turned off at the close of business. The lighting can be reduced at the close of business. They don't want it totally dark cause of security purposes. You can also have motion lights on it so if someone walks on the lot at night they will brighten.

Stan mentioned the sidewalks do not look nice. He thinks they touched base on it at the DRC Meeting. They will replace/repair sidewalks where necessary. They will work with the board's professionals on this. Stormwater management does not apply. They already talked about the trash enclosure and fence which will be stockade and matching the rest. Stan asked is it going to be high gloss, flat, white, beige, buff. The board wants it to match the building. In regards to waste, it will be stored inside. Washing of parts is all done inside and is self contained. There is an existing floor drain in the one bay. They do not utilize it as it is plugged. Keeping it plugged is a requirement of the use if they should approve it. Joe Abate added that they want it plugged. Outside agencies are to be addressed and provide copies of. If this is approved, maintenance guarantees and escrow will be needed in accordance with the use law if the board requires it.

Sue Miller added that between the two lots that will be owned by the applicant, there is currently a vacant property in between where there is going to be six apartments. The lighting is going to be critical so we have to make sure that there are no issues or that the lights be adjusted if the neighbors complain. Stan also added that their time condition (by the end of the year) should be included in the resolution.

#### **MOTION TO OPEN TO THE PUBLIC**

M/ B. Saban, S/ Thomas

Ayes: Unanimous

#### **MOTION TO CLOSE TO THE PUBLIC**

M/ Miller, S/ Thomas

Ayes: Unanimous

#### **MOTION TO APPROVE USE VARIANCES W/STIPULATIONS AND THE MINOR SITE PLAN INCLUDING THE SEA BOX**

M/ Abate, S/ Miller

Ayes: Abate, Cerone, Culver, Miller, Thomas, Wise, Moorhouse, Wiseburn



**MOTION TO OPEN TO THE PUBLIC**

M/ Abate, S/ Thomas

Ayes: Unanimous

**MOTION TO CLOSE TO THE PUBLIC**

M/ Abate, S/ Miller

Ayes: Unanimous

**CORRESPONDENCE:**

Letter of Resignation – Jessica Chapes

**DISCUSSION:**

Ordinance #09-2022 – Amending Chapter 88, Unified Development, Article II, Terminology, Section 88-6, Definitions of Clayton

Joe Abate asked if the board had any comments as this is something council is going to approve. Doc Cerone didn't see anything unusual with it. Joe added that it was pretty straight forward. Rose Ann Lafferty, Zoning Officer, requested it so it tightens up the ordinance. A lot of people request home businesses especially with covid. As long as you are not increasing your traffic and your parking. It's transparency so they can see exactly what it is what we consider a home occupation and what our rules and regulations are. We will pass this onto council that we are good with it.

**RESOLUTIONS:**

None

Doc Cerone spoke that he is new and so is Scott Wiseburn and this basically will be on the job training as we go along. He referenced tonight's approval that was met with a lot of conditions. He asked what is the follow up? Stan advised that they have to show us new plans with notes and details which meets the condition of the resolution which I hope to get soon. After that, a recommendation goes back to the planning board secretary with all conditions of the resolution of approval have been satisfied and plans are ready for signature. Doc asked why don't we wait for that. Stan answered that you can't, it's very rare. If you had an undeveloped lot like the one they talked about. If they came in, proposes a use that conforms in the use with no bulk variances or other waivers, it is a by right and you have to approve it. They have to have signed plans to get permits as well.

He was told if they don't meet all conditions that they could take enforcement action or punitive action. Ultimately they are going to need that approval or it will be an illegal business. Stan added that come January 1<sup>st</sup>, if they aren't done that the zoning officer can issue a violation for a non-conforming use and she can issue a summons. John acknowledged that he had an issue in Mantua with a gentleman, he had a \$585,000.00 fine against him. Your ongoing violation is deemed a daily breach. Rose added that she had a case in court and the judge told the defendant he could be facing a fine of 1.36 million dollars for every day that he did not comply which went back a couple of years.

Scott Wiseburn asked if you're not allowed to have a sea box but you know it but it's there and it has electric and you want them to conform and it was inspected by the Fire Marshall isn't that weird. Rose acknowledged it is but they didn't know it was there because it is behind the building. Discussion took place.

**ADJOURNMENT**

M/ Vondran, S/ Miller

Ayes: Unanimous

Submitted by,

A handwritten signature in black ink, appearing to read "Debbie Schlosser". The signature is fluid and cursive, with the first name "Debbie" being more prominent than the last name "Schlosser".

Debbie Schlosser

Planning Board Secretary

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