

Resolution No.: 10-2023

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD
GRANTING MINOR SITE PLAN AND BULK VARIANCES
FOR BLOCK 807, LOT 9 (100 South Broad Street)
APPLICANT- JBS ALL PHASE CONSTRUCTION**

WHEREAS, the JBS All Phase Construction (the “Applicant”), located at 100 South Broad Street, Clayton, New Jersey, 08312, submitted an application for minor site plan approval with bulk variances to complete site improvements, and the Applicant appeared before the Clayton Land Use Board (the “Board”) on Monday, March 27, 2023 (the “Hearing Date”); and

WHEREAS, the subject property, Block 807, Lot 9, more commonly known as 100 South Broad Street, is owned by JBS All Phase Construction (the “Property”) located on the corner of West Linden Avenue and South Broad Street. The property contains a single story warehouse building, asphalt parking lot, grass lawn and unimproved dirt driveway to a single vehicle garage. The property is located in the RIO-1 Restricted Industrial Office zone. The property is bordered by a residential use and vacant lot; and

WHEREAS, the Applicant seeks Minor Site Plan approval and variances to construct a 2,400 square foot addition to an existing one story warehouse building; and

WHEREAS, the Board’s engineer and planner, Wayne L. Roorda, Jr., PE, PP, CME, was present and duly sworn; and

WHEREAS, Emily Givens, Esq., an attorney with Maley Givens, presented the application on behalf of the Applicant; and

WHEREAS, Applicant was represented by John Booras, who was duly sworn to testify on behalf of the application; and

WHEREAS, Applicant’s engineers, Scott Brown, P.E. was present and duly sworn to testify on behalf of the application; and

WHEREAS, during the public hearing, the Applicant was given the opportunity to present testimony and legal argument, and the Board’s professionals and members of the public were given an opportunity to comment on the application; and

WHEREAS, the Applicant met all jurisdictional requirements enabling the Board to hear and act on the application, and appeared before the Board on the Hearing Date, as specified above; and

WHEREAS, the following reports prepared by the Board’s professionals were considered by the Board:

Memorandum of the Board’s planner and engineer Wayne L. Roorda, Jr., PE, PP, CME dated March 20, 2023; and

WHEREAS, no exhibits were marked into evidence during the Hearing; and

WHEREAS, Mr. Booras, the representative for the Applicant, testified that the addition will be used for storage of construction materials such as menu boards that need to be stored inside. The Applicant builds restaurants so various restaurant equipment would be stored in the addition. There will be no odors. There may be some noise from loading and unloading typically during 7 a.m. to 2:30 p.m. There is no evening work on site. The latest would be 4 p.m. to 4:30 p.m. There will be no bathroom facilities in the addition. All existing utilities and bathroom facilities will come from the main building; and

WHEREAS, Mr. Brown went over his educational background and experience and was accepted by the Board as an expert in civil engineering.

Mr. Brown went over the site plan. The applicant is proposing a 40'x60' addition. The Applicant will also be adding a ramp to access the overhead doors. The Applicant will be putting in curbing along West Linden. They are also proposing lighting and a solid fence to screen the neighbors. It will be a 6' vinyl fence. The Applicant proposes to install a business sign with a flag pole. The parking lot will be ADA compliant.

Mr. Brown went over the variance relief requested:

C-1 variances for:

Minimum lot width of 0.8 acres (pre-existing non-conformity) where 2 acres is required per Section 819.C.1

Minimum lot depth of 226.5 feet (pre-existing non-conformity) where 250 feet is required per Section 88-19.C.3

Minimum front yard setback of 31.5 feet along South Broad Street (pre-existing non-conformity) where 100 feet is required per Section 88-19.C.4

Minimum front yard setback of 35.2 feet along West Linden Street (pre-existing non-conformity) where 100 feet is required per Section 88-19.C.4 as 2 front yards exist on a corner lot.

C-2 variances for:

Relief from Section 88-40.C.2 to allow the sign 5-6 feet from the ROW line where 15 feet is required; and

WHEREAS, the Board's engineer and planner, Wayne L. Roorda, Jr., PE, PP, CME, reviewed his engineering and planning reports with the Board; and

WHEREAS, the meeting was opened to the public and Thomas Burke of 225 West Chestnut Street spoke during the public comment portion of the hearing, and was concerned regarding the storage containers and trash on top of the containers; and

WHEREAS, the Board has considered and incorporates herein the review letter submitted by Board engineer and planner Wayne L. Roorda, Jr., P.E., P.P., C.M.E., and the Board has carefully considered all the documents submitted and the testimony of all the witnesses; and

WHEREAS, the Board has made the following findings of fact and conclusions of law:

1. The application was deemed complete subject to compliance with submission items 25 and 49 and a waiver of submission item 33.
2. The Applicant seeks Minor Site Plan approval and variances to construct a 2,400 square foot addition to an existing one-story warehouse building.
3. The property contains a single story warehouse building, asphalt parking lot, grass lawn and unimproved dirt driveway to a single vehicle garage. The property is located in the RIO-1 Restricted Industrial Office zone. The property is bordered by a residential use and a vacant lot.
4. A planning board's review of a proposed site plan is limited to determining whether the proposed development conforms with the zoning ordinance and the applicable provisions of the site plan ordinance. Waivers may be granted when the strict enforcement of an ordinance is impracticable or will impose an undue hardship because of peculiar conditions on the land in question. A "flexible c" variance under N.J.S.A. 40:55D-70c(2) and a hardship variances under N.J.S.A. 40:55D-70c(1) may be granted if the applicant can satisfy the positive and negative criteria. Positive criteria require an applicant to establish that the benefits substantially outweigh the detriments. An applicant can satisfy the negative criteria when granting the variance does not cause a substantial detriment to the public good, and does not substantially impair of the zoning plan and zoning ordinance.
5. The Board finds that the Applicant satisfied the relevant criteria for minor site plan approval, and the variances. The Board finds that the proposed improvements conform to the zoning ordinance for the RIO-1 Restricted Industrial/Office-1 zone, and conforms to the minor site plan ordinance, Borough Ordinance § 88-77. The Board finds that the proposed improvements will enhance the site, with little to no impact on the surrounding area as the facility's operations will remain unchanged.
6. The Board also finds that the Applicant satisfied the positive and negative criteria for the hardship variances due to the prior non-conformities and the "flexible c" variance. For the positive criteria, the benefits of granting the bulk variances substantially outweigh the detriment because the nonconforming lots likely predate the implementation of the zoning and the proposed improvements will enhance the Property. The Applicant also established the negative criteria for the same reason; and

WHEREAS, after deliberation, a motion was made to grant approval of the Minor Site Plan and Relief Requested, subject to certain conditions, as set forth herein, and was approved by a 9 yes to 0 no vote.

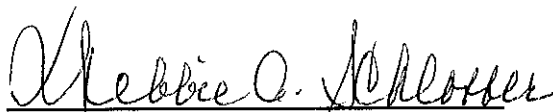
NOW, THEREFORE, BE IT RESOLVED by the Borough of Clayton Planning Board, that it hereby approves the application for minor site plan approval and the five (5) bulk variances set forth above is contingent upon the following conditions:

1. In order to avoid light spillage onto any adjacent property, a building mounted light shall be installed.
2. Curbing shall be installed on West Linden Street and all pot holes in the gravel roadway shall be fixed.
3. All storage containers must be removed from the property within 6 months of the completion of the building addition.
4. All affordable housing non-residential development fees must be paid.
5. The Applicant shall comply in all respects with the review letters submitted by the Board's professionals with the exception of waivers and/or variances granted.
6. The Applicant shall obtain the approvals of all other necessary governmental agencies having appropriate jurisdiction.
7. The Applicant shall post all performance bonds and inspection escrows and pay in full all review escrows prior to the approvals taking effect.

BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be forwarded to the Applicant, Borough Clerk, Borough Construction Official, Borough Tax Assessor, and the Borough Zoning Officer.

THIS RESOLUTION DULY ADOPTED at a regular meeting of the Borough of Clayton Planning Board held on Monday, April 24, 2023.

Attest:


Debbie A. Schlosser, Secretary

**Borough of Clayton Combined Planning
Board and Zoning Board of Adjustment**

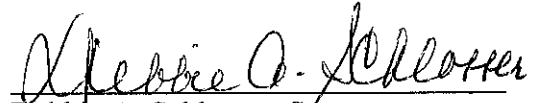

By: Joe Abate, Chairman

ROLL CALL VOTE

THOSE IN FAVOR	<u>8</u>
THOSE OPPOSED	<u>0</u>
THOSE ABSTAINED	<u>0</u>

CERTIFICATION

I hereby certify that the foregoing Resolution is a true copy of a Resolution adopted by the Borough of Clayton Combined Planning Board and Zoning Board of Adjustment at a regularly scheduled meeting of the Board held on April 24, 2023 at the Borough of Clayton Municipal Building, 125 Delsea Drive, Clayton, New Jersey 08312 at 7:00 p.m. and memorializes the decision reached by said Board on the herein application at the Board's March 27, 2023 meeting and public hearing.


Debbie A. Schlosser, Secretary