

**Resolution No.: 13-2023**

**RESOLUTION OF THE BOROUGH OF CLAYTON COMBINED  
PLANNING/ZONING BOARD**

**GRANTING USE VARIANCE, MINOR SITE PLAN, BULK VARIANCES AND  
WAIVERS**

**FOR BLOCK 1102.05, LOT 93 (435 S. Delsea Drive)**

**APPLICANT- CLAYTON FOOD & GAS, LLC**

**WHEREAS**, Clayton Food & Gas, LLC (the “Applicant”), located at 2729 Doral Street, Vineland, New Jersey, 08361, submitted an application for D.2 use variance, minor site plan approval with bulk variances and waivers to complete site improvements, and the Applicant appeared before the Clayton Land Use Board (the “Board”) on Monday, April 24, 2023 (the “Hearing Date”); and

**WHEREAS**, the subject property, Block 1102.05, Lot 93, more commonly known as 435 S. Delsea Drive, is owned by Clayton Food & Gas, LLC (the “Property”). The property currently contains a gas station and convenience store. The property is located in the CO Commercial Office Zoning District; and

**WHEREAS**, the Applicant seeks a D.2 use variance, Minor Site Plan approval with bulk variances and waivers to replace the existing convenience store with a new building approximately twice the size of the present building, reconfigure parking and installation of elevated concrete pad (walkway) 5 feet wide around the perimeter of the building and replacement of existing subsurface fuel tanks. Neither of the uses (gas station and convenience store) are principal permitted uses per Section 88-16.B and this constitutes an expansion of a pre-existing non-conforming use; and

**WHEREAS**, the Board’s engineer and planner, Wayne L. Roorda, Jr., PE, PP, CME and the zoning officer Rose Ann Lafferty were present and duly sworn; and

**WHEREAS**, Dante B. Parenti, Esq., an attorney with Hoffman DiMuzio, presented the application on behalf of the Applicant; and

**WHEREAS**, Applicant was represented by Rattan Singh and Kaun Kamal, who were duly sworn to testify on behalf of the application; and

**WHEREAS**, Applicant’s engineer, Gregory J. Simonds, P.E. was present and duly sworn to testify on behalf of the application; Mr. Simonds testified to his educational training, background and work experience and was admitted as an expert in the field of civil engineering; and

**WHEREAS**, Applicant’s planner, Tiffany Morrissey, AICP, PP was present and duly sworn to testify on behalf of the application; Ms. Morrissey was previously admitted by the Board as an expert in the field of professional planning and was again admitted as an expert in the field of professional planning; and

**WHEREAS**, during the public hearing, the Applicant was given the opportunity to present testimony and legal argument, and the Board's professional 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 professional was considered by the Board:

Correspondence of the Board's planner and engineer Wayne L. Roorda, Jr., PE, PP, CME dated April 18, 2023; and

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

**WHEREAS**, Mr. Simonds oriented the Board to the site plan. The new building will be 24' x 20'. As to operation and site circulation, the fuel tanker truck arrives after midnight and does not come into contact with customers. As for circulation, the fuel tanker truck is intended to arrive via Robbins Avenue and exit onto Delsea Drive. The gas station will be closed for one (1) month when the underground fuel tanks are replaced. The replacement of tanks is required by the NJ Department of Environmental Protection (NJDEP). The hours of operation are 6am to 9:30pm, daily; and

**WHEREAS**, Mr. Singh testified that deliveries to the store are by van and not truck. Fuel arrives around 2 am by a fuel tanker truck. Traffic flow to and from the site is intended to remain the same. The Applicant has been at the site for approximately 30 years and there have been no environmental spills during that time; and

**WHEREAS**, Mr. Simonds reviewed the variance relief requested:

D-2 variance for convenience store and gas station as they are not principal permitted uses and this will be an expansion of a pre-existing non-conforming use.

C-1 variances for:

Minimum lot area of 10,880.68 sf (pre-existing non-conformity) where 15,000 sf is required per Section 88-16C

Maximum impervious coverage of 93.84% (pre-existing non-conformity) where a maximum of 70% is allowed per Section 88-16C

Minimum front yard setback of 45.7 feet along Delsea Drive (pre-existing non-conformity) where 50 feet is required per Section 88-16.C

Minimum front yard setback of 34.2 feet along Roberts Avenue (34.4 feet is pre-existing non-conformity) where 50 feet is required per Section 88-16.C as two (2) front yards exist on a corner lot.

Parking variance to allow four (4) parking spaces where six (6) parking spaces are required per Section 88-30.

To allow parking in front yard setback along Roberts Avenue per Section 88-16.D.1

From the provision of buffers and landscaping per Section 88-33 (pre-existing condition). However a PVC fence shall be provided.

Waiver from Section 88-30.B to allow a 23.4 feet two-way aisle width where 24 feet is required; and

**WHEREAS**, the application was deemed complete subject to compliance with submission items 22, 25, 27 and 32 and a waiver of submission items 39, 41 & 61; and

**WHEREAS**, Ms. Morrissey testified to the variance criteria. There will be benefits for this expanding non-conforming use. The facilities will be upgraded and the site will be ADA accessible. The function will stay the same, but there will be more room inside the building. There is sufficient space and location for a variety of uses. There is adequate light, air and open space. The building setbacks are about the same. The gas station provides a service to the Borough. There is no detriment to the public good. This project promotes development and redevelopment of existing commercial area in the downtown. The application makes good use of an undersized property. There is no impairment to the Master Plan as the site has existed as a gas station and convenience store for many years. The new design will be an improvement as kerosene tanks will be removed. The improvements advance purpose of zoning and benefits outweigh detriments; 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 no one from the public appeared in support of or against the application; 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. First, the Board voted and the application was deemed complete subject to compliance with submission items 22, 25, 27 and 32 and a waiver of submission items 39, 41 & 61.
2. The Applicant seeks a D.2 use variance, Minor Site Plan approval with bulk variances and waivers to replace the existing convenience store with a new building approximately twice the size of the present building, reconfigure parking and installation of elevated concrete pad (walkway) five feet (5') wide around the perimeter of the building and replacement of existing subsurface fuel tanks. Neither

of the uses (gas station and convenience store) are principal permitted uses per Section 88-16.B and this constitutes an expansion of a pre-existing non-conforming use.

3. The new building will be 24' x 20'. As to operation and site circulation, the fuel tanker truck arrives after midnight and does not come into contact with customers. As for circulation, the fuel tanker truck is intended to arrive via Robbins Avenue and exit onto Delsea Drive. The gas station will be closed for one (1) month when the underground fuel tanks are replaced. The replacement of tanks is required by the NJ Department of Environmental Protection (NJDEP). The hours of operation are 6am to 9:30pm, daily.
4. Deliveries to the store are by van and not by truck. Fuel arrives around 2 am by fuel truck truck. Traffic flow to and from the site is intended to remain the same. The Applicant has been at the site for approximately 30 years and there have been no environmental spills during that time.
5. There will be benefits for this expanding non-conforming use. The facilities will be upgraded and the site will be ADA accessible. The function will stay the same, but there will be more room inside the building. There is sufficient space and location for a variety of uses. There is adequate light, air and open space. The building setbacks are about the same. The gas station provides a service to the Borough. There is no detriment to the public good. This project promotes development and redevelopment of existing commercial area in the downtown. The application makes good use of an undersized property. There is no impairment to the Master Plan as the site has existed as a gas station and convenience store for many years. The new design will be an improvement as kerosene tanks will be removed. The improvements advance purpose of zoning and benefits outweigh detriments.
6. Applicant needs a D(2) variance to permit the expansion of a non-conforming use and must demonstrate that the Applicant satisfies both the negative and positive criteria pursuant to N.J.S.A. 40:55D-70(d)(2). There is an enhanced burden of proof for the D(2) variance here because the master plan does not address the use variance sought. The Applicant has the burden of demonstrating "special reasons" for granting the use variance and demonstrating that the requested relief can be granted without detriment to the public good and will not impair the intent and purpose of the zone plan and the zoning ordinance.
7. 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.

8. The Board finds that the Applicant satisfied the relevant criteria for a D.2 use variance, minor site plan approval, and the variances and waivers as set forth above. The Board finds that the proposed improvements conform to the zoning ordinance for the CO- Commercial Office Zoning District, 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.
9. The Board finds that the Applicant satisfied the positive and negative criteria for the D.2 use variance due to the prior non-conformities. For the positive criteria, the benefits of granting the use variance substantially outweigh the detriment as the nonconforming use likely predates the implementation of the zoning and the proposed improvements will enhance the Property. The Applicant also established the negative criteria for the same reason.
10. The Board also finds that the Applicant satisfied the positive and negative criteria for the hardship variances due to the prior non-conformities. For the positive criteria, the benefits of granting the bulk variances substantially outweigh the detriment as the nonconforming lot likely predates 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 D.2 use variance, as set forth herein, and was approved by a **8 yes to 0 no vote**.

**WHEREAS**, after further deliberation a motion was made to grant approval of Minor Site Plan, seven (7) bulk variances and waivers, subject to certain conditions, as set forth herein, and was approved by a **8 yes to 0 no vote**.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Clayton Combined Planning/Zoning Board, that it hereby approves the application for a D.2 use variance, minor site plan approval and the seven (7) bulk variances and waivers as set forth above and is contingent upon the following conditions:

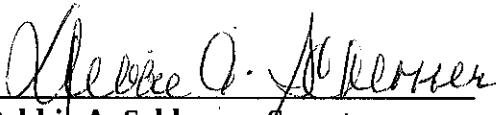
1. The Applicant shall provide a truck turning template for trucks coming in from Delsea Drive and leaving by Roberts Avenue. If the truck turning movement is not possible, the Applicant shall provide signage depicting no truck entrance to the site from Delsea Drive.
2. Notes shall be added the plans to indicate delivery at night or off hours and confirm the details of the site circulation.

3. The sidewalk shall be replaced along Delsea Drive and Roberts Avenue wherever it is deteriorated. Notes shall be added to the plans to this effect.
4. There shall be no light spillage onto any adjacent properties and the proposed fixtures shall use light shields where applicable.
5. The Applicant shall replace the deteriorating wood fence with a solid PVC fence to minimize light spillage onto neighboring properties.
6. All affordable housing non-residential development fees must be paid.
7. The Applicant shall comply in all respects with the review letter submitted by the Board's professional with the exception of waivers and/or variances granted.
8. The Applicant shall obtain the approvals of all other necessary governmental agencies having appropriate jurisdiction.
9. The Applicant shall post all performance bonds and inspection escrows and pay in full all review escrows prior to the approvals taking effect.

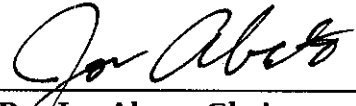
**BE IT FURTHER RESOLVED**, that certified copies of this Resolution shall be forwarded to the Applicant, Borough Clerk, Borough Construction Official, Borough Tax Assessor, and the Borough Zoning Officer.

**THIS RESOLUTION DULY ADOPTED** at a regular meeting of the Borough of Clayton Planning Board held on Monday, May 22, 2023.

**Attest:**

  
**Debbie A. Schlosser, Secretary**

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

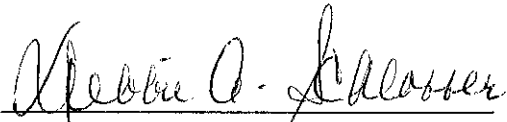
  
**By: Joe Abate, Chairman**

**ROLL CALL VOTE**

THOSE IN FAVOR	<u>7</u>
THOSE OPPOSED	<u>0</u>
THOSE ABSTAINED	<u>2</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 May 22, 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 April 24, 2023 meeting and public hearing.

  
Debbie A. Schlosser, Secretary

4881-0650-6338, v. 2