

Resolution No.: 19-2023

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD
GRANTING MINOR SUBDIVISION, BULK VARIANCE, AND WAIVERS
FOR BLOCK 601, LOT 23 (COYLE ROAD)
APPLICANT- JOSEPH CUCINOTTA**

WHEREAS, Joseph Cucinotta (the "Applicant"), owner of a lot located on Coyle Road, known as Block 601, Lot 23 on the Borough of Clayton Tax Map (the "Property"), submitted an application for minor subdivision approval with a bulk variance and waivers; and

WHEREAS, located in the "R-B" Medium/ High Density Residential District, the Property is rectangular in shape, bordered by residential uses to the South, North, and East, with an active farm field to the West; and

WHEREAS, the Applicant appeared before the Clayton Land Use Board (the "Board") on Monday, June 26, 2023 (the "Hearing Date"); and

WHEREAS, the Applicant seeks minor subdivision approval with a bulk variance and waivers to divide the Property into two lots, which would include one conforming lot, and one non-conforming lot; and

WHEREAS, the Applicant requests a bulk variance for the non-conforming lot because the proposed lot width is 76 feet, when the minimum lot width is 80 feet under Section 88-11C(1a)[3] of the Borough Code; and

WHEREAS, Edward F. Farrell III, PE, CME, of Bryson & Yates Consulting Engineers, attended the hearing on behalf of the Board's engineer and planner, Wayne L. Roorda, Jr., PE, PP, CME, and was duly sworn; and

WHEREAS, David M. DeClement, Esq., presented the application on behalf of the Applicant; and

WHEREAS, the Applicant was present, and duly sworn to testify on behalf of 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 were prepared by the Board's professionals, and considered by the Board:

Memorandum of the Board's planner and engineer Wayne L. Roorda, Jr., PE, PP, CME dated May 22, 2023; 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, no exhibits were marked into evidence during the hearing; and

WHEREAS, Mr. DeClement presented the application, which sought a minor subdivision of the Property. Since the subdivision would create one conforming lot, and one non-conforming lot, the Applicant sought a "flexible c" variance for lot width. The ordinance requires a lot width of 80 feet, and the Applicant proposes a width of 76 feet for the non-conforming lot. Mr. DeClement represented that the requested "flexible c" for lot width meets the positive and negative criteria. For the positive criteria, Mr. DeClement stated that the benefits substantially outweigh the detriments as the lot width deviation is *de minimis*, and the nonconformity will allow for greater utility of the land. For the negative criteria, Mr. DeClement specified that there would be no substantial detriment to the public good, or impairment of the zone plan and zoning ordinance, as the Applicant's intent is to create buildable lots with the potential for decent sized homes on each of the two lots.

WHEREAS, Edward F. Farrell III, PE, CME, of Bryson & Yates Consulting Engineers, reviewed the report of Board's engineer and planner, Wayne L. Roorda, Jr., PE, PP, CME; and

WHEREAS, Mr. Farrell testified that the eight (8) requested completeness waivers would be appropriate, and even with the requested bulk variance for lot width, a building envelope of greater than 50 feet remains for each lot; and

WHEREAS, the meeting was opened to the public, and Dennis Morgan of 490 Coyle Road spoke during the public comment portion of the hearing. Mr. Morgan lives next to the Property, and discussed his concerns about the close proximity of any future structures to his home; 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 the eight (8) submission waivers for items 19, 22, 23, 24, 25, 36, 50, and 57.
2. The Applicant seeks a minor subdivision approval and a bulk variance to create two lots, one conforming and the other non-conforming due to a lot width deviation. The Applicant also seeks the eight (8) submission waivers.
3. The Property is located in the "R-B" Medium/ High Density Residential District, and is bordered by residential uses on three sides, and an active farm field across the street. The Property is currently a vacant lot.

4. A planning board's review of a proposed minor subdivision is limited. A planning board must determine whether the proposed subdivision conforms with the zoning requirements and subdivision ordinance.
5. Under N.J.S.A. 40:55D-70c(2), a "flexible c" variance may be granted if the applicant can satisfy the positive and negative criteria. Positive criteria requires the applicant to establish that the benefits of the requested variance substantially outweigh the detriments. The 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.
6. Waivers may be granted when literal enforcement of an ordinance would be impracticable, or will impose an undue hardship because of peculiar conditions on the land in question.
7. The Board finds that the Applicant satisfied the relevant criteria for minor subdivision approval, as the proposal conforms to the minor subdivision ordinance, Section 88-77 of the Borough Code, and conforms to the "R-B" Medium/ High Density Residential District, Section 88-11 of the Borough Code, with the necessary bulk variance; and
8. The Board also finds that the Applicant satisfied the positive and negative criteria for the "flexible c" variance for minimum lot width of the non-conforming lot. For the positive criteria, the benefits of granting the bulk variance substantially outweigh the detriments because the four (4)-foot deviation in lot width is minimal, and will allow for two (2) buildable lots on a currently vacant property. The Applicant also established the negative criteria for the same reasons; and
9. The Board finds that the requested submission waivers are appropriate as the items are either inapplicable to the requested relief, or will be addressed in any future site plan application.

WHEREAS, after deliberation, a motion was made to grant approval of the minor subdivision, bulk variance, and submission waivers, subject to certain conditions, as set forth herein, and was approved by a vote of **6** yeases to **1** no.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Clayton Planning Board, that it hereby approves the application for minor subdivision approval, the bulk variance for lot width, and the eight (8) submission waivers, contingent upon the following conditions:

1. The conforming lot shall be adjacent to Block 601, Lot 24. Therefore, proposed Lot 23.01 shall be the conforming lot, and proposed Lot 23 shall be the non-conforming lot.
2. 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.
3. The Applicant shall obtain the necessary approvals of all other governmental agencies having appropriate jurisdiction.

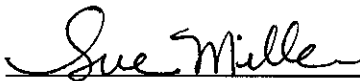
4. The Applicant shall post all performance bonds and inspection escrows and pay in full all review escrows prior to the approvals taking effect.

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.

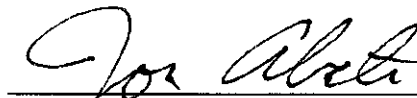
THIS RESOLUTION DULY ADOPTED at a regular meeting of the Borough of Clayton Planning Board held on Monday, July 24, 2023.

Attest:

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



~~Debbie A. Schlosser, Secretary~~



By: Joe Abate, Chairman

ROLL CALL VOTE

THOSE IN FAVOR

6

THOSE OPPOSED

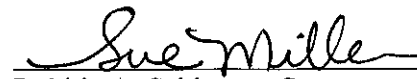
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THOSE ABSTAINED

2

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 July 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 June 26, 2023 meeting and public hearing.



~~Debbie A. Schlosser, Secretary~~