

Resolution No.: 26-2023

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD
GRANTING BULK VARIANCES AND WAIVERS
FOR BLOCK 1101, LOT 6 (570 EAST CLAYTON AVENUE)
APPLICANT- DAVID CUCINOTTA**

WHEREAS, David Cucinotta (the "Applicant"), owner of 570 East Clayton Avenue, known as Block 1101, Lot 6 on the Borough of Clayton Tax Map (the "Property"), submitted an application for bulk variances and waivers; and

WHEREAS, located in the "R-A" Low/ Medium Density Residential District, the Property is rectangular in shape, with frontage on the southern side of East Clayton Avenue, bordered by residential uses on three sides, and a wooded area on the other; and

WHEREAS, the Applicant appeared before the Clayton Land Use Board (the "Board") on Monday, July 24, 2023 (the "Hearing Date"); and

WHEREAS, the Applicant seeks bulk variance approval under N.J.S.A. 40:55D-70(c)(1) and submission waivers to exceed the maximum permitted impervious coverage for an already-constructed home; and

WHEREAS, the Applicant requests a hardship variance for maximum impervious coverage because the current impervious coverage is 37.5%, when the maximum permitted is 30% under Section 88-9C(1)(j) of the Borough Code; and

WHEREAS, Wayne L. Roorda, Jr., PE, PP, CME, the Board's engineer and planner, was present on the Hearing Date and 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 July 6, 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 hardship variance under N.J.S.A. 40:55D-70(c)(1) for exceeding the impervious coverage. Upon review of the "as-builts", the Board's professionals found that the impervious coverage totaled 37.5%, which exceeded the 30% maximum permitted by the Borough Code. In addition, two additional bulk variances were required for minimum side yard setback and minimum aggregate side yard setback. Mr. DeClement represented that the hardship variances for impervious coverage, minimum side yard setback, and aggregate side yard setback met the positive and negative criteria. For the positive criteria, Mr. DeClement stated that it would be an extraordinary burden to remove the improvements as they are already completed, and were only discovered upon the final survey of the Property. 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 non-conformities only equate to 2.5 inches on each side of the stone area.; and

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

WHEREAS, Mr. Roorda testified that the ten (10) requested completeness waivers would be appropriate. Mr. Roorda also testified that upon his review, two additional bulk variances were required: minimum side yard setback and minimum aggregate side yard setback. Pursuant to Section 88-9C(1)(F), the minimum side yard setback is 15 feet, and the Property has 14.8 feet. Pursuant to Section 88-9C(1)(g), the minimum aggregate side yard setback is 40 feet, and the Property has 39.6 feet. Mr. Roorda testified that the bulk variances for side yard setback and aggregate side yard setback would be appropriate as the non-conformities are only by a few inches; and

WHEREAS, the meeting was opened to the public, and no members of the public spoke on 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. The application was deemed complete subject to the ten (10) submission waivers for items 9, 19, 22, 23, 24, 25, 27, 33, 49, and 50.
2. The Applicant seeks a bulk variance for the already-completed project for exceeding the maximum impervious coverage permitted under Section 88-9C(1)(j). Pursuant to Mr. Roorda's review, the Applicant also seeks bulk variances for minimum side yard

setback, Borough Code § 88-9C(1)(f), and minimum aggregate side yard setback, Borough Code § 88-9C(1)(g).

3. In addition to the three (3) bulk variances, the Applicant seeks the ten (10) submission waivers.
4. The Property is located in the "R-A" Low/ Medium Density Residential District, and is bordered by residential uses on three sides, and a wooded area across the street. The Property was recently developed, and contains a single-family home with associated improvements.
5. Under N.J.S.A. 40:55D-70c(1), a "hardship" variance may be granted if the applicant can satisfy the positive and negative criteria. Positive criteria can be established for a hardship variance "where peculiar and exceptional practical difficulties, or exceptional and undue hardship exist, based on the exceptional narrowness, shallowness or shape of a specific piece of property; exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures existing thereon." N.J.S.A. 40:55D-70c(1).
6. 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 the intent of the zoning plan and zoning ordinance.
7. 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.
8. The Board finds that the Applicant satisfied the positive and negative criteria for the hardship variances for exceeding the maximum impervious coverage, and failing to meet the minimum side yard and aggregate side yard setbacks. For the positive criteria, the Board finds that it would be an extraordinary burden to require the Applicant to remove portions of the already-constructed improvements when the non-conformities were discovered upon review of the final survey. The Applicant also establishes the negative criteria for the same reason, in addition to the non-conformities only being by a few inches.
9. The Board finds that the requested submission waivers are appropriate as the items are either inapplicable to the requested relief, or were addressed in the previous site plan application.

WHEREAS, after deliberation, a motion was made to grant approval of the three (3) bulk variances and submission waivers, subject to certain conditions, as set forth herein, and was approved by a vote of 8 yeases to 0 nays.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Clayton Planning Board, that it hereby approves the application for bulk variances for maximum impervious coverage,

minimum side yard setback, and minimum aggregate yard setback, in addition to the ten (10) submission waivers, contingent upon the following conditions:

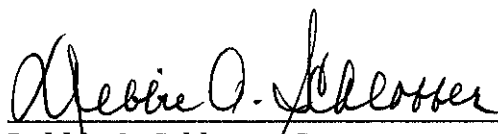
1. The Applicant shall comply in all respects with the review letters submitted by the Board's professionals, with the exception of waivers and/or variances granted.
2. The Applicant shall obtain the necessary approvals of all other governmental agencies having appropriate jurisdiction.
3. The Applicant 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, August 28, 2023.

Attest:

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


Debbie A. Schlosser, Secretary

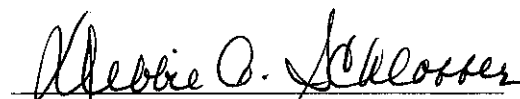

By: Joe Abate, Chairman

ROLL CALL VOTE

THOSE IN FAVOR	<u>10</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 August 28, 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 July 24, 2023 meeting and public hearing.


Debbie A. Schlosser, Secretary