

Resolution No.: ~~24~~-2023

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD
GRANTING USE VARIANCE AND SITE PLAN WAIVER
FOR BLOCK 807, LOT 13 (272 W. CLAYTON AVENUE)
APPLICANT- JOHN B. & BONNIE L. NIKITUK**

WHEREAS, John B. and Bonnie L. Nikituk (the "Applicant"), with an address of P.O. Box 5921 Deptford, New Jersey, 08096, submitted an application to the Clayton Land Use Board (the "Board") for a use variance under N.J.S.A. 40:55D-70d(1), and site plan waiver; and

WHEREAS, the subject property, located at 272 W. Clayton Avenue, also known as Block 807, Lot 13 on the Borough of Clayton Tax Map (the "Property"), is currently owned by Sil-Con, Inc.; and

WHEREAS, located in the "RIO-1" Restricted Industrial/ Office-1 District, the Property is rectangular in shape, with frontage on West Clayton Avenue and Cedar Avenue, and bordered by residential uses on three sides, and the Conrail rail line on the other; and

WHEREAS, the Property is currently developed as a concrete plant, with associated improvements, such as material stockpile areas, accessory buildings, concrete pads, and a stone driveway; and

WHEREAS, the current use as a concrete plant is a preexisting non-conforming use; and

WHEREAS, the Applicant proposes a recycling-type facility, where materials, such as concrete, metal, and cardboard, would be temporarily stored until they could be transported to the appropriate disposal location; and

WHEREAS, the Applicant must seek a use variance since the proposed recycling facility is not permitted by Section 88-19(B) of the Borough Code; and

WHEREAS, the Applicant also seeks site plan waiver; and

WHEREAS, the current owner, Sil-Con, Inc., authorized the Applicant to bring this application before the Board; and

WHEREAS, the Board heard the application on Monday, October 23, 2023 (the "Hearing Date"); and

WHEREAS, pursuant to N.J.S.A. 40:55D-25c, the Board heard the use variance application as a seven-member Zoning Board of Adjustment; 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, Dale T. Taylor, Esq., presented the application on behalf of the Applicant; and

WHEREAS, John B. and Bonnie L. Nikituk were present, and Mr. Nikituk was 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 October 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, the following exhibit was marked into evidence during the hearing:

Exhibit A: Photograph of site from entrance.

WHEREAS, Mr. Taylor, the Applicant's attorney, presented an overview of the Property and use variance application. Mr. Taylor explained that the Property has been used as a concrete facility since the 1950s. The Property is currently vacant, and on the real estate market as a concrete facility. The use as a concrete facility is a preexisting non-conforming use.

Mr. Taylor stated that the proposed use, a recycling facility, is not a permitted use in the RIO-1 Zone. The Applicant's business will temporarily park trucks and containers for recyclable materials on the Property. The materials will then be transported to the final disposal location, such as a recycling facility or landfill. Mr. Nikituk will sort the materials onsite, primarily by hand. Mr. Taylor explained that the site will not be open to the public, as Mr. Nikituk's business is primarily client-based. There will be no odors, explosives, or chemicals onsite. The access gate will be locked at all times, and unlocked when a truck or container arrives or departs.

Mr. Taylor also provided a summary of the positive and negative criteria. Referencing his written summary submitted with the application, Mr. Taylor explained that the positive criteria are satisfied because the location is well-suited for the proposed use. The negative criteria are also satisfied as the proposed use is significantly less intensive than the existing concrete facility and the permitted uses in the zone.

Mr. Taylor argued that site plan waiver is appropriate because the Applicant intends on using the Property as it currently exists.; and

WHEREAS, Mr. Nikituk testified that he is the owner of East Coast Recycling since its inception in 2005. East Coast Recycling is licensed by the New Jersey Department of

Environmental Protection ("NJDEP"). His company recycles cardboard, metal, wood, concrete, and does not handle curb-type garbage, commercial construction debris, or demolition materials.

Mr. Nikituk testified to the operations of the proposed facility. One section of the Property will have trucks and another will have containers. Mr. Nikituk or his employees will pick up the containers or other recyclable items from clients, and bring them back to the facility. At the facility, Mr. Nikituk will sort the materials at the rear of the Property, normally by hand. Mr. Nikituk owns a "Bobcat," but rarely uses it. The materials will then be temporarily stored at the facility until market conditions permit, at which point the materials will be transported to the appropriate facility for disposal. About 3 to 10 trucks per day will enter or exit the facility, between 8 a.m. and 6 p.m., Monday through Saturday. On occasion, Mr. Nikituk will come to the facility on a Sunday. No employees will be working onsite.

Mr. Nikituk testified that the building located at the front of the Property will be a workshop when necessary, and will act as a garage for diesel trucks, especially during the winter months. The Property is enclosed by an existing fence, and has concrete blocks along the frontage to block the public's view. Mr. Nikituk owns about 50 containers, but will hopefully only have around 25 stored at the facility. Mr. Nikituk testified that he will not wash containers onsite.

A portion of the Property is leased from Conrail, and said lease will transfer from the current owner to the Applicant upon purchase.; and

WHEREAS, Wayne L. Roorda, Jr., PE, PP, CME, the Board's engineer and planner, reviewed his report. Mr. Roorda testified that the proposed use is less intensive from a traffic standpoint. Mr. Roorda sought testimony from the Applicant, based on his report, which included the following: (1) the Applicant's treatment of drywall versus asbestos shingles, (2) noise from the diesel trucks and backup alarms, and (3) loose trash on the Property. Mr. Roorda also expressed concerns about the Applicant's request for site plan waiver, since the Applicant proposes to abandon the existing use and dismantle the concrete plant's infrastructure over time. Mr. Roorda explained his site plan concerns, including buffering, circulation, parking, lighting, and stormwater runoff; and

WHEREAS, Mr. Nikituk testified to Mr. Roorda's concerns involving treatment of asbestos shingles and loose trash. Mr. Nikituk testified that he does not handle asbestos shingles and has no intent on bringing it to the Property. He also testified that loose trash will not be an issue as all dumpsters are tarped prior to arrival onsite. Mr. Taylor also addressed Mr. Roorda's concerns. Mr. Taylor explained that truck noise will likely not be an issue since there will only be intermittent beeping when trucks are in reverse; and

WHEREAS, in regards to the site plan waiver request, the Applicant agreed to a condition of approval that Mr. Roorda will visit the site to evaluate site plan waiver elements, including, but not limited to, buffering, circulation, parking, lighting, and stormwater. Any approval would be conditioned upon Mr. Roorda's letter of compliance that addresses any and all site plan concerns; and

WHEREAS, the meeting was opened to the public, and the following individual was duly sworn and provided the following testimony:

Harry Simpson, 110 Cedar Avenue: Mr. Simpson voiced concerns about debris being left in the recycling containers, such as hydraulic oils. He was also concerned about stormwater since Cedar Avenue has flooding issues.

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 Applicant seeks a use variance under N.J.S.A. 40:55D-70d(1) to operate a recycling facility on the Property. The Applicant also seeks site plan waiver.
2. Since the proposed use is not permitted by Section 88-19(B) of the Borough Code, the Applicant was required to seek said use variance.
3. The Property is located in the "RIO-1" Restricted Industrial/ Office-1 District. It is rectangular in shape, with frontage on West Clayton Avenue and Cedar Avenue, and bordered by residential uses on three sides, and the Conrail rail line on the other. The Property includes material stockpile areas, accessory buildings, concrete pads, and a stone driveway. The Property is currently vacant, but has been used as a concrete plant since in the 1950s. The current use as a concrete plant is a preexisting nonconforming use.
4. The Applicant seeks to operate a recycling facility on the Property, where recyclable materials would be brought to the site, temporally stored, and then transported for appropriate disposal. The Applicant's company, East Coast Recycling, is licensed by the NJDEP, and recycles cardboard, metal, wood, and concrete. The Applicant's company does not handle curb-type garbage, commercial construction debris, or demolition materials. The facility will not be open to the public.
5. The proposed facility will store trucks and about 25 containers. The facility will generate about 3 to 10 trucks per day, between 8 a.m. and 6 p.m., Monday through Saturday, and rarely on Sundays. The Applicant will sort the materials onsite, typically by hand, and he will be the only employee onsite. Containers will not be washed onsite. The Applicant intends to use the front building as a workshop when necessary, and will act as a garage for diesel trucks, especially during the winter months.
6. The Property is enclosed by an existing fence, and has concrete blocks along the frontage to block the public's view. The front gate will remain locked at all times, and unlocked when necessary. A portion of the Property is leased from Conrail, and said lease will transfer to the Applicant upon purchase.

7. An applicant requesting a use variance under subsection "d" of N.J.S.A. 40:55D-70 must prove that it has satisfied the positive and negative criteria. 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.
8. The Board finds that the Applicant satisfied the positive and negative criteria for a use variance under N.J.S.A. 40:55D-70d(1). For the positive criteria, the Board finds that the proposed use as a recycling facility promotes the purposes of zoning and the general welfare since the project proposes a less intensive use than the current nonconforming preexisting use. The proposed use provides for the efficient use of underutilized land. The site itself, and the proximity to state highways, is ideal for a commercial use like the one proposed.
9. For the negative criteria, the Board finds that the use as a recycling facility would not cause a substantial detriment to the public good or substantially impair the intent and purpose of the master plan and zone for the same reasons provided for the positive criteria.
10. The Board also finds that site plan waiver is appropriate since the Applicant intends on using the site as it currently exists, and proposes very little changes to the existing conditions. Any site plan concerns, such as buffering, circulation, parking, lighting, and stormwater, will be addressed by way of Mr. Roorda's review and recommendations. Mr. Roorda will issue a letter of compliance so long as site plan elements are satisfied. If the Applicant fails to comply with Mr. Roorda's review and recommendations, the Applicant will need site plan approval from the Board.

WHEREAS, after deliberation, a motion was made to grant approval of the use variance and site plan waiver, subject to certain conditions, as set forth herein, and was approved by a vote of 7 yeases to 0 noes.

NOW, THEREFORE, BE IT RESOLVED based upon the foregoing findings of fact and conclusions of law, the Borough of Clayton Land Use Board, acting in its capacity as a Zoning Board of Adjustment, hereby approves the application for a use variance under N.J.S.A. 40:55D-70d(1), and site plan waiver, as set forth above, and is contingent upon the following conditions:

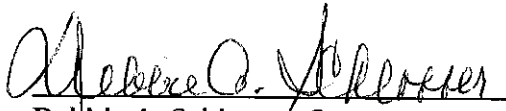
1. Mr. Roorda, the Board's Planner and Engineer, will conduct an onsite visit to discuss and address site plan elements, including, but not limited to, buffering, circulation, parking, lighting, and stormwater. Site plan waiver is conditioned upon a letter of compliance issued by Mr. Roorda. If the Applicant fails to comply with Mr. Roorda's review and recommendations, the Applicant must seek site plan approval from the Board.

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.

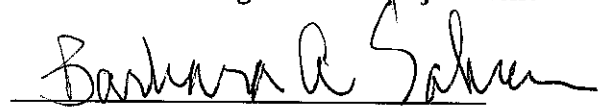
BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be forwarded to the Applicant, Borough Clerk, Borough Construction Official, Borough Tax Assessor, and the Borough Zoning Officer.

THIS RESOLUTION DULY ADOPTED at a regular meeting of the Borough of Clayton Planning Board held on Monday, November 27, 2023.

Attest:


 Debbie A. Schlosser, Secretary

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

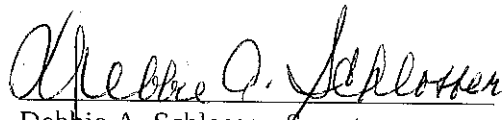

 By: ~~Joe Abate, Chairman~~
 Barbara Saban, Vice Chair

ROLL CALL VOTE

THOSE IN FAVOR	<u>4</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 November 27, 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 October 23, 2023 meeting and public hearing.


Debbie A. Schlosser, Secretary