

**Resolution No.: 6-2024**

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD  
GRANTING USE VARIANCE  
FOR BLOCK 316, LOT 2 (305 W. CLAYTON AVENUE)  
APPLICANT- JONATHAN SPARACIO**

**WHEREAS**, Jonathan Sparacio (the "Applicant"), with an address at 512 Moore Boulevard, Clayton, New Jersey, 08312, 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

**WHEREAS**, the subject property, located at 305 W. Clayton Avenue, also known as Block 316 Lot 2 on the Borough of Clayton Tax Map (the "Property"), is owned by the Applicant; and

**WHEREAS**, located in the "R-B" Medium/ High Density Residential District, the Property is irregular in shape, bordered by residential uses on three sides, and an industrial/ commercial use on the other; and

**WHEREAS**, the Property currently contains a 2 1/2 story multi-family dwelling with three units, a gravel parking lot, and a metal shed; and

**WHEREAS**, in 1987, the Borough of Clayton Zoning Board of Adjustment granted a use variance for the Property, which authorized the applicant to convert the single-family residential structure to a two-unit multi-family dwelling; and

**WHEREAS**, Section 88-11(B) of the Borough Code only permits single-family dwellings, and therefore, the Applicant must seek a use variance to permit use of the third unit; and

**WHEREAS**, the Applicant appeared before the Board on Monday, February 26, 2024 (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**, Robert MacFeeters, Esq., an attorney with Puff Sierzega & MacFeeters L.L.C., presented the application on behalf of the Applicant; and

**WHEREAS**, Jonathan Sparacio, the Applicant and property owner, 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 February 12, 2024; 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 exhibits were marked into evidence during the hearing:

Exhibit A1: Survey of the Property,

Exhibit A2: Photographs of the units, and

Exhibit A3: Proposed parking plan, and

Exhibit A4: Secondary proposed parking plan

Exhibit A5: Resolution of the Zoning Board of Adjustment of the Borough of Clayton; and

**WHEREAS**, Mr. MacFeeters, the Applicant's attorney, presented a brief overview of the use variance application. Mr. MacFeeters also explained that a previous owner renovated the multi-family dwelling to add a third unit, and it was not until after Mr. Sparacio purchased the property in 2020 that he discovered the Property was only approved for two units.; and

**WHEREAS**, Mr. Sparacio testified in support of the Application. When he purchased the Property in 2020, it was marketed as a three-unit dwelling. It was not until after he purchased the Property that he discovered that the Property was only approved for use as a duplex.; and

Mr. Sparacio provided testimony on the Property. The Property is situated on the corner of Atlantic Avenue and West Clayton Avenue, and a large side yard on the west side of the Property separates the dwelling from the nearest residential home. The multi-family dwelling has three units: Unit 1 on the first floor, Unit 2 on the second floor, and Unit 3 occupies a portion of the second floor and the entire third floor. Units 1 and 2 are accessible from the front door, and a rear exterior stairwell provides access to Unit 3, with access on the second floor. The Property has four electric meters, one for each unit, and one for the common areas. It also has three hot water heaters and three boilers. The gravel parking lot, located to the rear of the structure, is about 50 feet by 50 feet.

Mr. Sparacio presented two alternative parking layouts. Exhibit A3, Option One, includes five 9 feet x 18 feet parking stalls facing the dwelling.

Exhibit A4, Option Two, creates two parking spaces facing the rear of the dwelling, and three spots on the west end of the parking lot, next to the existing metal shed.

For both proposed parking layouts, removal of the metal shed would add a sixth parking spot. Mr. Sparacio also proposes removal of the existing trees and shrubs. He plans to install a shrub line to separate the Property from the adjacent vacant property to the rear, and to replace the existing shrubs on the Atlantic Avenue side for aesthetic purposes. Mr. Sparacio also proposes removing the metal shed, and moving the garbage storage closer to the dwelling.

Mr. Sparacio also provided testimony on the positive and negative criteria. He testified that the Property is located in a mixed use neighborhood, and the nearby uses include a railroad, an aerospace commercial property, a recycling plant, and a six-unit residential property. Mr. Sparacio testified that the Property is well-suited for three residential dwelling units as it already has the three separate units, there would be no exterior modifications, with the exception of landscaping, and the large side yard separates the structure from the nearest residential property. He testified that the proposed use would provide adequate light, air, and open space, promote appropriate population densities, and provide for an efficient use of the land, especially when the surrounding neighborhood has several different types of uses.

Mr. Sparacio testified that use of the third unit would not impact the character of the neighborhood. He cited the large lot size, the sizable side yard that separates the structure from the adjacent residential use, the vacancy of the other adjacent lot, and the consistency with other multi-dwelling residential uses in the area. He testified that the additional unit would not be detrimental to the public good, as there would be no increase in traffic, the Property has sufficient off-street parking, and the use would be less intensive than other nearby uses. He also testified that there would be no impairment of the zone plan and zoning ordinance as the Property was previously used as a three-unit residential dwelling before he purchased it in 2020, and the Borough's Zoning Ordinance allows for medium to high density in the zone. Mr. Sparacio believes that positives of the third unit outweigh any potential negative impacts; and

**WHEREAS**, Wayne L. Roorda, Jr., PE, PP, CME, the Board's engineer and planner, reviewed his report. Mr. Roorda testified that the Applicant applied for a (d)(1) use variance, and he agreed with the form of relief sought by the Applicant. Mr. Roorda cited to the Applicant's comprehensive memo submitted with the Application, which included the (d)(1) use variance criteria. Mr. Roorda requested that the Applicant's comprehensive memo be included as part of the hearing record. Based on the Applicant's testimony, Mr. Roorda believed that the Applicant provided sufficient proofs for a use variance. Mr. Roorda raised concerns about two nonconforming setbacks as the 1987 Resolution does not specify if bulk variance was granted. He recommended that the Applicant seek approval of those bulk variances, and the Applicant agreed with Mr. Roorda's recommendation. Mr. Roorda testified that either of the proposed parking layouts would be appropriate, but requested that the Applicant mark the spots with concrete or plastic wheel stops. Mr. Roorda noted that the Applicant may be responsible for one ADA accessible stall, and the Applicant acknowledged that the Applicant is responsible to confirm same with the Borough. He also found the proposed landscaping to be satisfactory, as well as the existing lighting for the Property's off-street parking; and

**WHEREAS**, the meeting was opened to the public, and one member from the public appeared in support of the application:

John Ardecki, 30 North Atlantic Avenue: Mr. Ardecki lives next door to the Property, and testified that he never have any issues with the Property when all three units were occupied.; 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 Applicant seeks a use variance under N.J.S.A. 40:55D-70d(1) to permit the use of the three pre-existing residential dwelling units.
2. In 1987, the Borough of Clayton Zoning Board of Adjustment granted a (d)(1) use variance to convert the existing single-family dwelling into a duplex. Between the Zoning Board's use variance approval in 1987, and the Applicant's purchase of the Property in 2020, a third residential unit was added to the multi-family structure without approval from the Borough. As a result, the Applicant was required to seek a use variance since use as a triplex is not permitted in the zone under Section 88-11(B) of the Borough Code.
3. The Property is located in the "R-B" Medium/ High Density Residential District. It is a corner lot, irregular in shape, bordered by residential uses on three sides, and an industrial/ commercial use on the other. The Property currently contains a 2 1/2 story multi-family dwelling, a gravel parking lot, and a metal shed. The west side of the Property has a large side yard that separates the structure from the nearest residential use, and the backyard includes a 50 feet by 50 feet gravel parking lot that separates the structure from the vacant property to the rear.
4. The residential dwelling has three units: Unit 1 on the first floor, Unit 2 on the second floor, and Unit 3 occupies a portion of the second floor and the entire third floor. Units 1 and 2 are accessible from the front door, and Unit 3 is accessible from a rear exterior stairwell. The Property has four electronic meters, one for each unit, and one for the common areas, three hot water heaters, and three boilers. The gravel parking lot, located to the rear of the structure, is about 50 feet by 50 feet.
5. The Applicant plans to remove the metal shed located in the rear of the Property, and will relocate the garbage storage closer to the dwelling.
6. The Applicant agrees to install shrubs / arborvitaes to provide screening along the proposed parking area as shown on Exhibits A3 and A4.

7. The Applicant proposed two alternatives for the parking lot in the rear of the Property. Option One provides for five parking stalls to face the dwelling, and Option Two provides for two parking spaces to face the rear of the dwelling, and three spots on the west side of the parking lot, or next to the existing metal shed. The parking stalls will be 9' x 18'. Upon removal of the shed, both parking layouts could accommodate an additional parking spot. Both parking layouts also provide for the removal of the existing landscape buffering, and replacement with new shrubs.
8. 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 substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and the zoning ordinance.
9. 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 multi-family residential dwelling with three units promotes the purpose of zoning, as it will provide adequate light, air, and open space, promotes appropriate population densities, provides for an efficient use of the land, especially upon consideration of the mixed uses in the surrounding neighborhood, the previous use as a triplex without issues, the large side yard that separates the structure from the adjacent residential use, and the large existing gravel parking lot located behind the dwelling.
10. The site is also particularly suitable for the proposed use as a three-unit residential dwelling. The dwelling already has three separate units, there would be no exterior modifications with the exception of landscaping, and the large side yard separates the structure from the nearest residential property. Furthermore, the neighborhood has a myriad of uses, which include a railroad on the other side of Atlantic Avenue, an aerospace commercial property, a recycling plant, and a six unit residential property.
11. For the negative criteria, the Board finds that the use as a triplex 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. In addition, there would be no increase in traffic, sufficient off-street parking with the large on-site gravel lot, and the multi-family residential use would be less intense than the surrounding industrial/ commercial uses.
12. Pursuant to Mr. Roorda's recommendation, the Applicant also sought bulk variances for front yard and accessory structure setbacks. The front yard has setbacks of 24.12' and 17.42', where 30' and 20' are required by Section 88-11(C) of the Borough Code. The existing metal shed is located within 5' of the side property line, where accessory structures cannot be located within 5' of a side or rear property line pursuant to Section 88-11(C) of the Borough Code.

13. 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.
14. The Board finds that the Applicant satisfied the positive and negative criteria for the bulk variances for the front yard and accessory structure setbacks. The nonconformities appear to be preexisting, the three separate units already exist, and there would be no exterior modifications with the exception of landscaping. In regards to the accessory use in particular, the Applicant intends to remove the metal shed in the future.
15. The Board also finds that site plan waiver is appropriate since the Applicant intends to use the Property as it currently exists, and proposes very little changes to the existing conditions. Mr. Roorda also expressed his satisfaction with the site plan elements, such as parking, buffering, and lighting.

**WHEREAS**, after deliberation, a motion was made to grant approval of the use variance, bulk variances, 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), bulk variances under N.J.S.A. 40:55D-70c(2), and site plan waiver, as set forth above, and is contingent upon the following conditions:

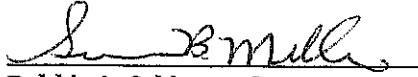
1. The Applicant shall comply in all respects with the review letters submitted by the Board’s professionals, with the exception of waivers and/or variances granted herein.
2. The Applicant shall obtain the necessary approvals of all other governmental agencies having appropriate jurisdiction, including but not limited to, the New Jersey Department of Community Affairs and the Borough Construction Office.
3. The Applicant shall post all performance bonds, if any, 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, March 25, 2024.

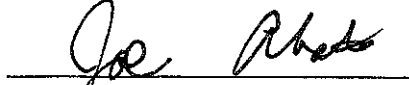
Attest:

Borough of Clayton Combined Planning  
Board and Zoning Board of Adjustment



~~Debbie A. Schlosser, Secretary~~

Susan B. Miller



By: Joe Abate, Chairman

**ROLL CALL VOTE**

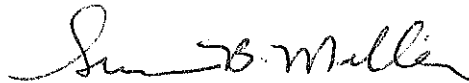
THOSE IN FAVOR \_\_\_\_\_

THOSE OPPOSED \_\_\_\_\_

THOSE ABSTAINED \_\_\_\_\_

**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 March 25, 2024 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 February 26, 2024 meeting and public hearing.



~~Debbie A. Schlosser, Secretary~~

Susan B. Miller

