

Resolution No.: 9-2024

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD
GRANTING MINOR SITE PLAN, BULK VARIANCES, AND WAIVERS
FOR BLOCK 1601, LOTS 11 & 11.01
(949 & 941 N. DELSEA DRIVE)
APPLICANT- MOTORMAX, LLC**

WHEREAS, MotorMax, LLC (the “Applicant”), located at 112 South Delsea Drive, Glassboro, New Jersey, 08028, submitted an application to the Clayton Land Use Board (the “Board”) for minor site plan approval to reconfigure the site for car sales and limited car repairs, and other site plan elements; and

WHEREAS, the subject property, located at 949 & 941 North Delsea Drive, also known as Block 1601, Lots 11 & 11.01 on the Borough of Clayton Tax Map (the “Property”), is owned by Pinto Homes, LLC; and

WHEREAS, Anthony Pinto owns both MotorMax, LLC and Pinto Homes, LLC; and

WHEREAS, located in the “HB” Highway Business Commercial District, the Property is rectangular in shape, with frontages on North Delsea Drive and Louis Drive, and bordered by commercial uses on two sides and residential uses on two sides; and

WHEREAS, the Property is currently used as a vehicle repair shop, with a one-story building, detached garage, parking lot, and other site improvements; and

WHEREAS, by way of Clayton Planning Board Resolution 03-12, a previous owner of the Property received conditional use, use variance, and site plan approval for the construction and use as a used car lot; and

WHEREAS, as a result of the previous approval as a used car lot, the Applicant only sought minor site plan approval for the proposed use; and

WHEREAS, the Applicant appeared before the Board on Monday, March 25, 2024 (the “Hearing Date”); and

WHEREAS, the Board’s engineer and planner, Wayne Roorda, Jr., PE, PP, CME, was present and duly sworn; and

WHEREAS, M. Brian Hall, Esq., an attorney with Ward Shindle & Hall, presented the application on behalf of the Applicant; and

WHEREAS, Roberta Hare a representative from the office of John J. Hare, R.A., P.E., P.P., the Applicant’s engineer, was present and duly sworn to testify on behalf of the application; and

WHEREAS, Anthony Pinto, owner of MotorMax, LLC, 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 March 18, 2024; 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 following exhibits were marked into evidence during the Hearing:

Exhibit A: Lighting Plan,

Exhibit B: Site Survey,

Exhibit C: Site Circulation Plan,

Exhibit D: March 22, 2024 Letter from Mr. Hall.; and

WHEREAS, Mr. Hall, the Applicant's attorney, presented a brief overview of the application. He explained that the Property was originally used as a vehicle repair shop, and the Applicant now proposes a used car dealership. Pursuant to Planning Board Resolution 03-12, the Property was previously approved for car sales, which permitted the Applicant to seek just minor site plan approval. Based on Mr. Roorda's recommendations from his March 18, 2024 review letter, the Applicant also sought several bulk variances for pre-existing non-conformities. In addition to the site plan improvements, the Applicant also proposed a small addition to the existing structure for two small offices for his support staff.; and

WHEREAS, Ms. Hare, representative of the Applicant's engineer, provided testimony on the proposed site improvements, which included the lighting plan, site survey, and site circulation plan. For the lighting plan, Ms. Hare specified that "v" represents vehicles, "s" represents shadows, and the readings were marked in foot candles. For the site survey, she explained that customer parking would be along the building, available cars would be parked around the perimeter facing the street, the garage would remain on the north side of the structure, and the Applicant will use "EP Henry" blocks for hardscaping around the edge of the Property. For site circulation, she testified that the plans provide wide access isles, appropriate space for turning radiuses, and the rear of the Property will be used for storage, accessible through a large gate. Ms. Hare also explained that the current signage will remain in the same location, and the railroad ties that delineate the parking spots will be replaced with parking bumpers.; and

WHEREAS, Mr. Pinto, the owner of MotorMax, LLC, provided detailed testimony on the site's operations and proposed site improvements. Mr. Pinto testified that he plans to display 35 vehicles on the lot, with an additional 5-10 vehicles in the rear of the Property, for a total of 45-50 vehicles on site. Even though it will reduce the number of spots, the vehicles will be displayed on angles along the perimeter of the Property for a more aesthetically pleasing look. Repairs will be limited to customers who purchased vehicles from the Applicant, and for cars that need maintenance prior to being made available for sale.

The existing structure will remain an office for the salesmen, office attendant, and Mr. Pinto. Vehicle deliveries will be on the Property by single vehicle trailers, so that the delivery trucks can pull in and out within the confines of the Property. Mr. Pinto testified that he will replace the existing railroad ties with hardscaping around the perimeter of the Property with grey or brown "EP Henry" standard blocks, that will be approximately 12 inches tall. Wheel stops will be installed for the parking spots, and anchored into the ground. In the future, Mr. Pinto also intends to replace the chain-link fence with white PVC, and add accents to the building.

Mr. Pinto testified that there will be no collection of junk items since old tires will go to a tire shop, old parts will be placed in the dumpster, and bigger parts will be retrieved by a contractor. The Property also has an oil holding tank located behind the garage, which will be used for disposal of motor oil. Mr. Pinto also agreed to replace the damaged curbing on Louis Drive.

Mr. Pinto specified that the dumpster will be shielded with a PVC enclosure, and two metal gates. For the minor addition to the existing structure, the exterior will match the existing structure, and utilize the same materials. For the signage, the footprint will remain the same, and Mr. Pinto will replace the insert. The parking lot lighting will be on from dusk to dawn, and will likely only utilize both tiers during the winter months.

In response to Mr. Roorda's comments on completeness, the Applicant provided testimony on the following items: Item 22, no easements or deed restrictions exist or are proposed; Item 23, no public easements exist or are proposed; Item 49, the Applicant understands that he is responsible for any ADA access compliance; and Item 54, there will be no change in utilities.; and

WHEREAS, Wayne L. Roorda, Jr., PE, PP, CME, the Board's engineer and planner, reviewed his report. The Applicant agreed to comply with the following completeness items: Items 1, 3, 6, 8, 15, 17, 19, 21, 25, 32, 33, and 54. As mentioned above, the Applicant provided testimony on the following completeness items: Items 22, 23, 49, and 54. The Applicant sought waivers for the following completeness items: Items 4, 24, 34, 36, 61, and 65. Mr. Roorda had no objection to the requested completeness waivers.

Mr. Roorda reviewed the remaining portion of his letter, and the Applicant responded to his remaining concerns. The Applicant agreed to comply with Mr. Roorda's March 18, 2024 review letter.

Among the items discussed during Mr. Roorda's review, Mr. Roorda specified that the three sets of bulk variances were pre-existing non-conformities, and that approval of the bulk

variances would be appropriate as the Applicant proposes very minor changes to the site. In response to Mr. Roorda's general comments, the Applicant confirmed that site plan will be updated to clearly mark what will be removed, there will be no changes to grading, so runoff will remain the same, the parking lot will be seal coated, and there will be very little, if any, asphalt removal and replacement. The Applicant also agreed to mark the customer parking spots in some fashion.; and

WHEREAS, the meeting was opened to the public, and no member from the public appeared in support 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. The Applicant submitted an application for minor site plan approval to reconfigure the Property for car sales and customer-only repairs. The proposed improvements include reconfiguration of the parking lot, resurfacing the parking lot, a small addition to the existing structure, hardscaping around the perimeter, and other site plan elements.
2. While car sales are not permitted by right in the "HB" Highway Business Commercial District, a previous owner received conditional use, use variance, and site plan approval for a used car lot by way of Planning Board Resolution 03-12. As a result, the Applicant was required to seek minor site plan approval for the proposed use and improvements.
3. The Property is rectangular in shape, with frontages on North Delsea Drive and Louis Drive, and bordered by commercial uses on two sides and residential uses on two sides. The Property is currently used as a vehicle repair shop, with a one-story building, detached garage, parking lot, and other site improvements.
4. The Applicant plans to reconfigure the Property to display about 35 vehicles by way of angled parking around the perimeter. He also plans to store about 5-10 cars in the rear of the Property, for a total of 45-50 vehicles on site. The Property will also utilize the existing detached garage for limited repairs. Repairs will be limited to customers who purchased vehicles from the Applicant, and maintenance for cars prior to sale.
5. The existing structure will remain an office space for the salesmen, office attendant, and Mr. Pinto. The Applicant also proposes a small addition to the existing structure to create two small offices for his support staff. Even though there will be a small addition, the utilities will remain the same, and it will match the existing structure, and utilize the same materials.

6. The Applicant proposes to seal coat the asphalt, reconfigure and repaint the parking lot, replace the existing railroad ties with hardscaping around the perimeter of the Property, and install anchored plastic wheel stops.
7. There will be no collection of junk items, old parts will be placed in the dumpster, and bigger parts will be retrieved by a contractor. The dumpster will be shielded with a PVC enclosure with two metal gates. The Property also has an oil holding tank located behind the garage, which will be used for disposal of motor oil. In the future, Mr. Pinto also intends to replace the chain-link fence with white PVC, and add accents to the building.
8. Pursuant to Mr. Roorda's recommendations, the Applicant also sought three sets of variances for pre-existing non-conformities. The variances include parking setbacks (§ 88-30.B(6) of the Borough Code), bulk standards (§ 88-17 of the Borough Code), and hardscaping in lieu of landscaping (§ 88-17.D of the Borough Code).
9. The Applicant agreed to comply with the following completeness items: Items 1, 3, 6, 8, 15, 17, 19, 21, 25, 32, 33, and 54. As mentioned above, the Applicant provided testimony on the following completeness items: Items 22, 23, 49, and 54. The Applicant sought waivers for the following completeness items: Items 4, 24, 34, 36, 61, and 65. Mr. Roorda had no objection to the requested completeness waivers. The Board determined the Application to be complete, subject to the six waivers.
10. 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. Subject to bulk variances and waivers, the Board finds that the Applicant satisfied the relevant criteria for minor site plan approval, and that the proposed improvements conform to the requirements of the "HB" Highway Business Commercial Zone.
11. 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. 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.
12. The Board finds that the Applicant satisfied the positive and negative criteria for the three sets of variances, which included parking setbacks, bulk standards, and hardscaping in lieu of landscaping. All of the non-conformities appear to be preexisting, and there will be very few changes to site. In addition, the proposed improvements will enhance the site. The Applicant also established the negative criteria for the same reason.
13. 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.

14. The Board also finds that the requested waivers are appropriate as the site will generally remain the same.

WHEREAS, after deliberation, a motion was made to grant minor site plan approval, bulk variances, and waivers, subject to certain conditions, as set forth herein, and was approved by a vote of **9** yeases to **0** noes.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Clayton Land Use Board, that it hereby approves the application for minor site plan approval, bulk variances, and waivers for the proposed site improvements, contingent upon the following conditions:

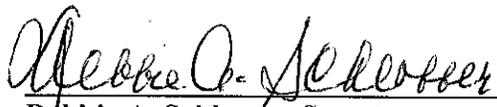
1. The Applicant shall replace the damaged curb along the property line adjacent to Louis Drive.
2. The Applicant shall mark the customer parking spots with signage, color-coded lines, or other reasonable means.
3. The Applicant shall comply in all respects with the review letters submitted by the Board's professionals with the exception of waivers and/or variances granted herein.
4. The Applicant shall obtain the approvals of all other necessary governmental agencies having appropriate jurisdiction.
5. The Applicant shall post all required 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, April 22, 2024.

Attest:

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


Debbie A. Schlosser, Secretary

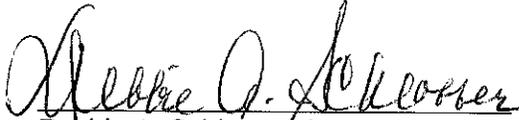

By: Joe Abate, Chairman

ROLL CALL VOTE

THOSE IN FAVOR	<u>9</u>
THOSE OPPOSED	<u>0</u>
THOSE ABSTAINED	<u>1</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 April 22, 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 March 25, 2024 meeting and public hearing.


Debbie A. Schlosser, Secretary