

Resolution No.: 9-2023

**RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD
GRANTING MINOR SITE PLAN, WAIVERS, AND A BULK VARIANCE
FOR BLOCK 1902, LOTS 18, 19, 26 & 33 (836-838 North Delsea Drive)
APPLICANT- NOVELIS CORPORATION**

WHEREAS, the Novelis Corporation (the “Applicant”), located at 836-838 North Delsea Drive, Clayton, New Jersey, 08312, submitted an application for minor site plan approval and associated waivers to complete site improvements, and the Applicant appeared before the Clayton Land Use Board (the “Board”) on Monday, February 27, 2023 (the “Hearing Date”); and

WHEREAS, the subject property, Block 1902, Lots 18, 19, 26, and 33, more commonly known as 836-838 North Delsea Drive, is owned by Novelis ALR Rolled Products, Inc. (the “Property”). Located on the west side of North Delsea Drive, the Property is bordered by a small surveying company to the north, mixed use residential, St. Michael the Archangel School, and a power substation to the south, wooded areas to the west and north, and a railroad that runs adjacent to the rear/ west property line. The Property contains a large industrial structure, set back approximately 1,325 feet from the roadway, as well as four accessory buildings, parking and loading areas, a stormwater basin, and a driveway that connects to Delsea Drive. About 150 feet of the front of the Property is located in the highway Business Commercial (HB) zone, and the remainder is within the Industrial (I) Zone; and

WHEREAS, the Applicant sought Minor Site Plan approval and associated waivers to reconfigure a portion of the main access driveway, upgrade and pave a side access road, repave and reconfigure an employee parking lot, install a security shack near the entrance with five parking spaces, install security fencing and barrier arms, and add/upgrade site lighting; and

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

WHEREAS, Beth L. Marlin, Esq., an attorney with Brown & Connery, LLP, presented the application on behalf of the Applicant; and

WHEREAS, Applicant Novelis Corporation, represented by Matthew Welding (“Mr. Welding”), was present and duly sworn to testify on behalf of the application; and

WHEREAS, Applicant’s engineers, Brian Spray, P.E. (“Mr. Spray”), and Erasmo Rizo (“Mr. Rizo”), were both present and duly sworn to testify on behalf of the application; 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 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 prepared by the Board's professionals were considered by the Board:

1. Memorandum of the Board's planner, Paul D. Breier, P.E., P.P., dated September 19, 2022;
2. Memorandum of the Board's engineer, Stan M. Bitgood, P.E., dated September 20, 2022; and
3. Memorandum of the Board's engineer, Stan M. Bitgood, P.E., dated January 4, 2023.

WHEREAS, no exhibits were marked into evidence during the Hearing; and

WHEREAS, Mr. Welding, the representative for the Applicant, testified that Novelis Corporation, LLC produced stock quantities of aluminum. Mr. Welding testified that the proposed improvements would have no impact on production or employee operations. The number of employees will remain at 108, and the operations will continue to operate 24 hours a day, seven days a week. The two 12 hour shifts, and an additional day shift for administrative personnel will also remain the same. In regards to the truck traffic, Mr. Welding testified that each day, approximately 3 to 5 tractor trailers enter, and 4 to 6 leave the facility; and

WHEREAS, Mr. Rizo, one of Applicant's engineers, provided the majority of testimony in support of the application. Mr. Rizo, an engineer from West Virginia, testified that he is not licensed in New Jersey, but has 20 years of engineering experience. Mr. Spray, a licensed New Jersey engineer, was present and confirmed that Mr. Rizo's testimony was accurate under the relevant New Jersey engineering standards. The Board accepted Mr. Rizo as an expert in civil engineering.

Mr. Rizo testified that all of the proposed improvements are safety/security-orientated. The proposed improvements include a 24 hours a day, 7 days a week guard shack, where all vehicles will stop upon entrance to the facility. The Applicant will maintain a ledger of visitors, while employees will have a swipe card to access the Property. The guard shack will not have utilities. Mr. Rizo testified that the plans include down lighting around the guard shack, consistent with ordinance requirements.

Mr. Rizo testified that the improvements to the access road include installation of a small wedge of asphalt pavement and repaving specific portions. The proposed improvements also include additional parking spaces for maintenance personnel, and resurfacing of the northern staging area. The employee parking lot has already been resurfaced and restriped, signs have been installed, and curb stops for each parking spot have been added. For all proposed improvements, the total impervious surface would increase by 6,000 feet. Mr. Rizo testified that this increase would cause the stormwater basin to rise less than one inch in a one hundred year storm, a minimal and non-significant impact.

Mr. Rizo testified to the requested relief, which included landscaping and curbing waivers. Borough Ordinance § 88-33 requires screening and interior landscaping for certain parking lots. In support of the landscaping waiver, Mr. Rizo testified to the distance of the main parking lot, new access drive, and new side driveway from Delsea Drive: the main parking lot is about 1,200 feet; the parking spaces on the reconfigured access drive are about 700 to 800 feet; and the new side driveway is about 1,300 feet. These distances, in addition to the “s” shaped curve in the driveway to the facility, and the wooded areas surrounding the property screen the parking areas from Delsea Drive. In regards to the curbing, Borough Ordinance § 88-29 requires curbing for all nonresidential streets, parking lots, and on-site drives or roads. Mr. Rizo testified that the purposes of curbs are to separate pedestrians from traffic, convey stormwater, and provide separation of roads and sidewalks. Curbs are also installed for aesthetic purposes. The Property does not have curbing now, so granting the curbing waiver will allow the drainage to remain the same. Mr. Rizo also testified that the driveways do not have sidewalks, so separating the road from the sidewalk would not be a concern. In addition, since none of the improvements would be visible from the street or neighboring properties, the aesthetic benefits of curbing would not be a factor.

Mr. Welding addressed the concerns presented by the Borough’s Fire Chief. He testified that the guard booth will be staffed 24 hours a day, 7 days a week. He also agreed to upfitting of the fire hydrants to comply with Borough standards. He also agreed to work with the Borough’s Fire Chief to address the other outstanding concerns.

Mr. Rizo testified to the existing non-conforming lot width present on Lot 18. Borough Ordinance § 88-21.C requires lot widths to be at least 150 feet; Lot 18 has an irregular shape with a narrow stem reaching out to Delsea Drive and stem area has a width of 142 feet. Mr. Rizo testified that the Applicant was unable to determine whether prior variances were granted by the Board for this discrepancy. None of the improvements are proposed in the area of the Property that does not meet the width requirement. Mr. Rizo also testified that the proposed improvements will not change the facility’s operations, nor will it impact municipal utilities; and

WHEREAS, Mr. Spray, one of Applicant’s two engineers, also provided testimony in support of the application. Mr. Spray is a licensed New Jersey engineer who has been practicing in the state since 2006. He has appeared before numerous New Jersey land use boards. The Board accepted Mr. Spray as an expert in civil engineering.

Mr. Spray testified that he operates as a quality manager for his engineering firm. Mr. Spray was present for the entire hearing, and he confirmed that the testimony and conclusions provided by Mr. Rizo were appropriate and accurate; and

WHEREAS, the Board’s engineer and planner, Wayne Roorda, Jr., PE, PP, CME, reviewed the engineering and planning reports drafted by his firm with the Board. Mr. Roorda testified that the Applicant addressed all the concerns from the engineering and planning reports. He testified that since there was no evidence of a prior bulk variance for lot width, a variance would necessary for the stem on the north end of the Property. Mr. Roorda testified that the nonconforming lot width may have predated zoning. Mr. Roorda testified that the Applicant addressed the concerns about traffic since there will be no change in the operations of the facility as the proposed improvements are solely cosmetic or safety/security-oriented. The Applicant also

testified that the trailer parking was temporary, rather than long term. Mr. Roorda testified that he was comfortable with the calculation of stormwater increase from the additional impervious surface, which did not amount to a substantial increase; and

WHEREAS, one member of the public spoke during the public comment portion of the hearing, and asked a question about the coating used at the facility; and

WHEREAS, the Board has considered and incorporates herein the three review letters submitted by Board engineer Stan M. Bitgood, P.E., and planner Paul D. Breier, P.E., P.P., 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 Property, located at 836-838 North Delsea Drive, contains a large industrial structure, four accessory buildings, parking and loading areas, a stormwater basin, and a driveway. Novelis ALR Rolled Products, Inc. owns the Property, located at Block 1902, Lots 18, 19, 26, and 33 on the Tax Map of the Borough of Clayton. The Property is largely surrounded by woods, and borders a small surveying company, mixed use residential, St. Michael the Archangel School, a power substation, and a railroad that runs adjacent to the rear property line. The primary structure is setback approximately 1,325 feet from Delsea Drive. Most of the Property is within the Industrial (I) Zone, while a small portion at the front of the Property is located in the Highway Business Commercial (HB) Zone. The Applicant sought minor site plan approval and associated waivers for the proposed improvements. The proposed improvements included reconfiguring a portion of the main access driveway, upgrading and paving a side access road, repaving and reconfiguring an employee parking lot, installing a security shack near the entrance with five parking spaces, installing security fencing and barrier arms, and adding/upgrading site lighting. As a result of the Board planner's review letter raised the nonconforming lot width for Lot 19, the Applicant also sought a bulk variance under N.J.S.A. 40:55D-70c.
2. 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. 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 is question. A "flexible c" variance under N.J.S.A. 40:55D-70c(2) may be granted if the applicant can satisfy the positive and negative criteria. Positive criteria require an applicant to establish that the benefits 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 zone plan and zoning ordinance.
3. The Board finds that the Applicant satisfied the relevant criteria for minor site plan approval, and the landscape and curbing waivers. The Board finds that the proposed improvements conform to the zoning ordinance for the Industrial (I) and Highway Business Commercial (HB) Zones, and conforms to the minor site plan ordinance,

Borough Ordinance § 88-77. The Board finds that the proposed improvements increase the safety/security of the site, with little to no impact on the surrounding area as the facility's operations will remain unchanged. For the landscaping waiver, the Board finds that requiring the Applicant to install interior landscaping and screening would impose an unnecessary hardship since the proposed improvements are not visible from the street due to the primary structure's 1,325 feet setback, the significant distance of the main parking lot and new driveways from the street, the "s" shaped driveway from Delsea Drive and the wooded area surrounding the Property. The Board finds that the curbing waiver is also appropriate because the site already does not have curbing, the employee parking lot has curb stops in each spot, installation of curbs would alter the drainage on the site, the driveways do not have sidewalks to separate from the street, and any curbs would not be visible from adjacent properties or Delsea Drive.

4. The Board also finds that the Applicant satisfied the positive and negative criteria for the "flexible c" variance for the nonconforming lot width for Lot 18. For the positive criteria, the benefits of granting the bulk variance substantially outweigh the detriment because the nonconforming lots likely predate the implementation of the zoning no improvements are proposed in that area of the Property, and the proposed improvements will strengthen the safety and security of the Property. The Applicant also established the negative criteria for the same reason; and

WHEREAS, after deliberation, a motion was made to grant approval of the Relief Requested, subject to certain conditions, as set forth herein, and was approved by a 6 yes to 0 no vote.

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

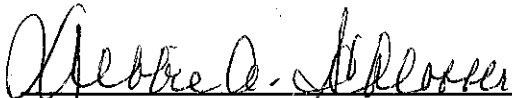
1. Applicant must address the outstanding issues raised by the Borough Fire Chief, to the satisfaction of the Fire Chief.
2. The facility's trailer parking shall not convert to permanent storage.
3. Applicant shall install reflectors on the stop sign post at the access point on Delsea Drive, and provide additional signage to notify drivers leaving the facility of the impending stop sign.
4. 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.
5. The Applicant shall obtain the approvals of all other necessary governmental agencies having appropriate jurisdiction.
6. 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 Applicants, 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 27, 2023.

Attest:

Borough of Clayton Combined Planning Board and Zoning Board of Adjustment


Debbie A. Schlosser, Secretary

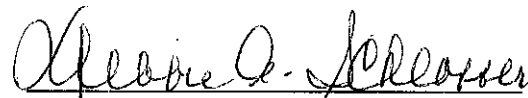

By: Joe Abate, Chairman

ROLL CALL VOTE

THOSE IN FAVOR	<u>7</u>
THOSE OPPOSED	<u>0</u>
THOSE ABSTAINED	<u>3</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 March 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 February 27, 2023 meeting and public hearing.


Debbie A. Schlosser, Secretary