

Resolution No.: 2016-8

**RESOLUTION OF THE BOROUGH OF CLAYTON COMBINED LAND USE
BOARD GRANTING BULK VARIANCE RELIEF TO
MICHIGAS DEVELOPMENT, LLC FOR
BLOCK 702, LOT 9.01
(364 North Broad Street)**

WHEREAS, the Applicant, Michigas Development, LLC, of 38 Shadybrook Drive, Langhorne, Pennsylvania, submitted an application seeking the grant of a bulk variance relief; and

WHEREAS, since bulk variance relief was requested the Land Use Board reconstituted itself as a Zoning Board of Adjustment to hear the instant application; and

WHEREAS, the property in question is shown on the Tax Map of the Borough of Clayton as Block 702, Lot 9.01 known as 364 North Broad Street and approximately 6,013 square feet and located within the R-C – High Density Residential Development Zoning District; and

WHEREAS, the Applicant was represented by William A. Slover, Esquire before the Borough of Clayton Planning Board at May 16, 2016 hearing; and

WHEREAS, the Applicant is a developer who owns the subject property which received minor subdivision approval in 2004 memorialized at Resolution 04 – 18 creating Lot 9.01 for the purpose of constructing a single family dwelling; and

WHEREAS, Nathan Kleeman as the Applicant's representative appeared before the Borough of Clayton Planning Board on May 16, 2016 and offered testimony in support of this application; and

WHEREAS, Mr. Kleeman testified that he and two other investors purchased through the Michigas LLC 3 of 4 lots created by the 2004 subdivision and ran into financial difficulties while building the dwelling on the subject Lot 9.01 when the economy faltered beginning in 2008; and

WHEREAS, the Applicant had a mostly completed dwelling on the subject lots for a number of years and is now prepared to complete and sell the finished dwelling, but discovered bulk variance deviations that needed to be addressed and necessitated the filing of this application for relief; and

WHEREAS, the Applicant is seeking the following relief: 1. Lot Depth where 100 feet is required and 83.18 feet is proposed and 2. Individual Side Yard setback where 6 feet is required and 5.81 feet is proposed; and

WHEREAS, in support of this application the Applicant submitted a Survey of Premises dated September 15, 2015 signed and sealed by Bruce A. Ewing of Ewing Associates located at 900B North Delsea Drive, Clayton, New Jersey; and

WHEREAS, it would be a hardship to require the Applicant or owner to demolish or alter the dwelling which was constructed approximately 2 inches into the required side yard setback which is a *de minimis* encroachment and the Applicant offered an explanation as to how the encroachment came to exist and that it was certainly not intentional; and

WHEREAS, the requested lot depth relief should have been addressed during the subdivision application, but apparently was missed so the Board now grants the requested lot depth relief which honors the prior Board's grant of subdivision approval; and

WHEREAS, the Board was satisfied that the Applicant may be granted the requested bulk variance relief without impairing the intent and purpose of the zone plan and zoning ordinance nor substantial detriment to the public good; and

WHEREAS, members of the public were permitted to speak on the application at the regularly scheduled Planning Board Meeting held on May 16, 2016 and Bruce Brown of 206 West Academy Street appeared to be heard. There was an extended discussion between Mr. Brown, the Board and the Applicant wherein it was revealed that: **1.** Bruce Brown purchased his home in 2009 and is a neighboring lot to the subject property, **2.** Bruce Brown entered into a written Agreement with the Applicant dated October 18, 2007 which was produced at the hearing and a copy was made part of this application as Brown – 1 and is

incorporated herein, **3.** This Agreement permitted the Applicant to do a certain amount of regrading of the Brown property in exchange for certain enumerated benefits, **4.** Mr. Brown agreed that the Applicant does not have to give him a new driveway or board his dogs, **5.** The Applicant shall replant four trees selected by Mr. Brown who is leaning to a Bradford Pear and "...replace cracked, broken, and disfigured sidewalk slabs located along the front (Academy St.) and the side (Broad St.) of our house.", and **6.** The Applicant shall honor the rest of the Agreement excepting the driveway and dog boarding as above-noted; and

WHEREAS, there was discussion between the Board and the Applicant and it was agreed that: **1.** The Board engineer shall walk the Applicant's property and the Brown property to ensure that the Applicant has satisfactorily met its obligations under Brown-1 excepting the driveway and dog boarding before a Certificate of Occupancy may be issued, **2.** Drainage has been an issue for this area and the Board requires as a condition of approval that the Owner of the subject lot shall be responsible for the site drainage system in perpetuity and there shall be language included in the deed to reflect this obligation and in addition there must be a drainage easement that addresses the needs of each of the four lots that are affected by this development, **3.** The Applicant shall grant a drainage easement in perpetuity from subject Lot 9.01 to Lots 9, 10, and 9.02, **4.** The Applicant shall replace all deteriorated curbs and/or sidewalks along the frontage of the subject lot and remains a condition for Lots 9.02 and 9.03 as well, **5.** The significant amount of debris must be removed that has accumulated in and adjacent to the swale on the west side of lot 9.03, and **6.** The Applicant agrees to comply with the Board professional review letters of Federici & Akin dated May 16, 2016; and

WHEREAS, the Board after due consideration submits that the Applicant has met his burden and that the benefits of the grant of the variance will outweigh the detriments and that there would be no substantial detriment to the public or impairment of the zone plan; and

WHEREAS, the Board has carefully considered all the documents submitted and the testimony of the witnesses and members of the public;

NOW, THEREFORE, BE IT RESOLVED that the application for the grant of bulk variance relief as hereinbefore stated to permit a Lot Depth 83.18 feet where 100 feet is required and an Individual Side Yard setback of 5.81 feet where 6 feet is required as hereinbefore stated is **GRANTED**.


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 Combined Planning Board and Zoning Board of Adjustment held on Monday, June 20, 2016.

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


By: Kevin Nesko, Chairman

Attest:

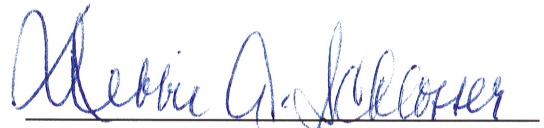

Debbie A. Schlosser, Secretary

ROLL CALL VOTE

THOSE IN FAVOR	<u>7</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 June 20, 2016 at the Borough of Clayton Municipal Building, 125 Delsea Drive, Clayton, New Jersey 08312 at 7:30 p.m. and memorializes the decision reached by said Board on the herein application at the Board's May 16, 2016 meeting and public hearing.


Debbie A. Schlosser, Secretary

PUBLIC NOTICE

**NOTICE OF DECISIONS
CLAYTON BOROUGH PLANNING/ZONING OF ADJUSTMENT**

PLEASE TAKE NOTICE that at the regular meeting of the Borough of Clayton Planning/Zoning Board of Adjustment held on June 20, 2016 at 7:30 PM, time prevailing, the following resolutions were adopted in the matters set forth herein:

APPLICANT: Michigas Development, LLC
PROPERTY: Block 702, Lot 9.01
ACTION TAKEN: Granting Bulk Variance Relief

Copies of the aforementioned resolutions are available for public inspection in the Office of the Planning Board Secretary, Borough of Clayton Municipal Building, 125 North Delsea Drive, Clayton, NJ 08312 (856-881-2882 ext. 123) during regular business hours or by appointment, holidays and weekends excluded.

**BY ORDER OF CLAYTON BOROUGH
COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT**

DEBBIE SCHLOSSER, Secretary