

**RESOLUTION OF THE CLAYTON PLANNING BOARD
GRANTING USE VARIANCE AND BULK VARIANCE RELIEF TO STEPHEN
BOORAS
Block 1404, Lots 28 & 29
(123 W. Academy Street at Delsea Drive [Route 47])**

WHEREAS, the Applicant, Stephen Booras, submitted an application for Use Variance and Bulk Variance Relief to the Clayton Planning Board to be considered at the meeting of November 18, 2019; and

WHEREAS, the Applicant was represented by Marla Gaglione, Esq. at the hearing conducted on November 18, 2019 with Dale Taylor, Esq. having originally filed the Application and Notices on behalf of Applicant; and

WHEREAS, Tiffany Morrissey, P.P. appeared and sworn in on behalf of Applicant in her capacity as a Professional Planner, as was Gregory Simonds who was sworn in as Applicant's professional engineer;

WHEREAS, the subject property is located at 123 W. Academy Street at Delsea Drive (Route 47) and known as Block 1404, Lots 28 & 29, which is located in the R-C High Density Residential District codified within Section 88-12 of the Zoning Code; and

WHEREAS, the Applicant is seeking the following relief from the Board: Use Variance to permit the construction of two (2) tri-plex (3 units) upon the subject properties; and bulk variance relief to permit the pre-existing frontage of 11.64' where 30' is required under the zoning code; and

WHEREAS, Applicant has elected to defer site plan approval and bifurcate the application by seeking only use variance approval from the Board pursuant to N.J.S.A 40:55D-76(b), along with bulk variance relief for lot frontage; and

SUBJECT APPLICATION

1. John Booras appeared on behalf Applicant and was represented by Marla Gaglione, Esq. (Dale Taylor, Esq. originally filed the application and Notices and appeared before the Board on October 21, 2019) and the following witnesses appeared and gave testimony in support of the application: Tiffany Morrissey, P.P.; Gregory Simonds, P.E.;
2. The following Exhibits were included as part of the record: Application for use variance approval; Variance Plan prepared by GS Engineering revised to 9/15/19; Existing Conditions Survey prepared by Ewing Associates dated 10/7/19; Driveway Plan prepared by GS Engineering dated November 15, 2019; Title Policy issued by Land Transfer Services, LLC dated January 17, 2017; Tax Payment Certification; Affidavit of Service and Publication; Review letters from Board Planner, Douglas Akin, P.P. dated July 30 and October 10, 2019; Review letters from Board Engineer, Stan M. Bitgood, P.E. dated July 24, 2019 and October 10, 2019; Property owner consent from Anthony Colosi, who is the owner of the adjacent property located at 125 W. Academy Street (Block 1404, Lot 30);
3. The Planning Board determined that the Application was complete and that the Board has jurisdiction to hear the matter after having determined that the Application; Notice to Property Owners; Notice of Publication; and Affidavits were

in proper form for applicant to move forward with testimony, which commenced at the meeting conducted on October 21, 2019 and was subsequently adjourned by Applicant until the November 18, 2020 hearing;

4. The Planning Board has jurisdiction to hear and determine that the application for use variance and bulk variance relief in accordance with the provisions of the Borough of Clayton Zoning Ordinance and that notice of the application to the public and surrounding property owners has been certified by affidavit in accordance with the New Jersey Municipal Land Use Law;
5. The property is located within the R-C High Density Residential District and applicant proposes to construct two (2) tri-plex (3 units each building) buildings upon the subject lots, which requires use variance approval from the Board, in addition to bulk variance relief for lot frontage. Applicant has elected to bifurcate the approval by seeking the use variance and defer site plan approval to a later date, which is permissible under N.J.S.A. 40:55D-76(b);
6. The property is located on Academy Street and Delsea Drive (Route 47) and applicant requires use variance approval to permit the tri-plex units, which use is not recognized as a permitted use in the R-C High Density Residential District as the zone only permits single-family dwellings and duplexes;
7. Testimony by applicant's attorney confirmed that applicant is the owner of the subject properties under this application and that he intends to construct two (2) tri-plex units upon the properties, which will be three bedroom units serviced by a shared driveway to the buildings;
8. Greg Simonds, P.E. testified that a common driveway is proposed to be improved for the tri-plex units, which will be paved, along with a portion of the adjacent Lot 30 to maintain a minimum driveway aisle width of 20' (total minimum easement

width to be 30.6') with curbing, sidewalk, and bollard lighting on one side of the proposed driveway;

9. Mr. Simonds testified that although site plan approval is being deferred, applicant shall improve the site with parking, sidewalks; landscaping; buffering; and storm water management facilities all to be shown on engineered site plans to be reviewed and approved by the Board at a later date;
10. Mr. Simonds testified that an easement will be secured from the owner of Lot 30 for the shared driveway proposed by applicant. Applicant agreed that any approval by the Board would be subject to and conditioned upon applicant securing the necessary easement from the owner of Lot 30 to have a minimum paved driveway width of 20' with an overall access/easement area of 30.6'. Applicant also agreed, through the testimony of Mr. Simonds, to relocate the lighting and sidewalk to the opposite side of the paved driveway adjacent to Lot 27;
11. Tiffany Morrissey provided extensive testimony in support of the use variance to permit the two (2) tri-plex units to be constructed by applicant, and further confirmed that the zoning ordinance only permits single-family residential dwellings and duplexes. Ms. Morrissey explained that the property is unique in that it is a flag lot with limited street frontage, which technically requires bulk variance approval for this pre-existing condition. Applicant is merely adding an additional bedroom to each unit as the zoning ordinance only permits duplexes and applicant seeks to have a tri-plex on each lot. Ms. Morrissey pointed out that both Lot 27 and Lot are tri-plex units, which do not conform to the current zoning ordinance;
12. Ms. Morrissey provided testimony to support both the positive and negative criteria, in addition to testimony describing the bulk standards of the subject property in relation to the adjacent tri-plex units on Lots 27 & 30, respectively. In summary,

Ms. Morrissey testified that the triplex units are particularly suited for the property and provide appropriate population densities for the Borough, which coupled with the substantial site improvements proposed by Applicant will greatly enhance and improve the property and that of the surrounding neighborhood. Ms. Morrissey also testified that there would be no substantial detriment to the zone plan or zoning ordinance if the use variance were granted as there are tri-plex units adjacent to the subject properties and that there will be significant site improvements constructed upon the property;

- 13.** In accordance with the recommendations of the Board Engineer and Board Planner, the Board deemed the application complete;
- 14.** The applicant requires use variance approval for the two (2) tri-plex (3 units) buildings sought by applicant, in addition to bulk variance relief for lot frontage to permit 11.64’;
- 15.** The Board finds that the positive and negative criteria have been established to support use variance approval as the properties are particularly suited for the two (2) tri-plex units proposed by Applicant, and that the use variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance given the substantial improvements proposed by applicant;
- 16.** The Board concludes that the use variance should be granted and that special reasons exist for the proposed tri-plex use that promotes appropriate population densities for the neighborhood. In addition to the use variance, the Board grants bulk variance relief for the pre-existing lot frontage of 11.64’.
- 17.** The Board further concludes that the granting of the use variance will not be a substantial detriment to the public good and again will not substantially impair the

intent and purpose of the zone plan and zoning ordinance of the Borough of Clayton;

18. The Board specifically conditions the use variance upon Applicant securing site plan approval from the Board, which is further subject to the conditions and recommendations of the Board Engineer and Board Planner review letters referenced hereinabove that were agreed to by Applicant;
19. As a further condition of approval, Applicant agreed to provide “private” trash hauling and receptacles to service each building, which shall be reviewed and approved by the Board at the time of site plan approval;
20. The Board approval granted herein is further subject to applicant complying with the following conditions, which are specifically made a condition of the use variance granted by the Board: site plan approval to address, at a minimum, site lighting, parking, landscaping, storm water management, trash enclosure(s), curbing and sidewalk on site and along the shared driveway aisle, which shall be adjacent to Lot 27 and shall include a “maintenance plan” approved by the Board Professionals for the shared driveway, trash enclosure, and storm water basin(s); Applicant shall also submit architecturals and elevations with the site plan; all sight triangles shall comply with Section 88-44 of the Code, as well as the site triangles required by the County; Applicant shall provide proof at the time of site plan approval that there are no underground storage tanks on the property; Applicant shall secure an easement from the owner of Lot 30 to ensure a minimum shared driveway aisle width of 30.6’ with a paved drive aisle of at least 20’ as referenced on the “Driveway Plan” prepared by GS Engineering; subject to the Board Professionals and Solicitor reviewing and verification of all corrected legal descriptions, deeds, as well as the tax map to correct and update the deficiencies noted within the Board Professional

reports, which shall include County approval of such documents; subject to the Board Solicitor reviewing and approving all cross easements required by the Board for this project, which shall be submitted at the time of site plan approval; water and sewer approval shall be secured by Applicant prior to the site plan being approved by the Board;

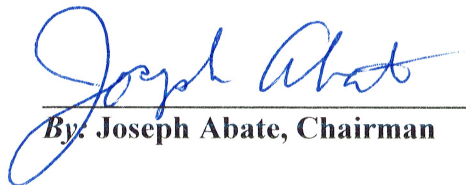
- 21.** The use variance is further subject to and conditioned upon any and all outside agency approval by any entity having jurisdiction of the application, as well as any affordable housing obligation required by the Borough of Clayton Code.

NOW, THEREFORE, BE IT RESOLVED, by the Borough of Clayton Planning Board that it does hereby grant the bifurcated use variance approval sought by Applicant for two (2) tri-plex (3 units) buildings, and bulk variance approval for lot frontage to Stephen Booras, subject to and specifically conditioned upon the terms and conditions imposed above.


BE IT FURTHER RESOLVED, this Resolution was approved by the Borough of Clayton Planning Board by a 6 *Yes* vote to 1 *No* vote.

THIS RESOLUTION DULY ADOPTED at a regular meeting of the Clayton Planning Board held on Monday, May 18, 2020.

Borough of Clayton Planning Board


By: Joseph Abate, Chairman

Attest:


Debbie Schlosser, Secretary