

April 28, 2022

Town of Clinton Land Use Board (via e-mail)  
43 Leigh Street  
Clinton, NJ 08809



**Re:    Ansuya Riverbend, LLC  
      Amended Preliminary for Phases 2 and 3  
      Final Site Plan Approval for Phase 3  
      Use Variance Approval for Phase 2 (Fast Food Restaurant)  
      Block 17, Lot 2 and Block 17.01, Lot 2.03 (f/k/a Block 18, Lots 2.03, 2.04 and 6)  
      Town of Clinton – OB-4 Office Research District**

Dear Board Members:

Pursuant to the Board’s request, we have reviewed the above captioned matter for compliance with the Land Use Ordinance of the Town of Clinton. The materials reviewed, as supplied by the applicant, included those listed below. Please note that while the applicant provided a substantial amount of information related to sewer and water agreements, geotechnical testing and stormwater management studies, we defer review of that information to the Board Engineer.

1. Transmittal letter from Kara A. Kaczynski, Esq., dated March 4, 2021.
2. Application for Final Site Plan Approval under transmittal dated October 2, 2018 from Kara A. Kaczynski, Esq.
3. Application for Amended Preliminary Site Plan Approval, undated.
4. Town of Clinton Variance Application, undated.
5. Amended Preliminary Phase 2 Site Plan and Amended Preliminary & Final Phase 3 Site Plan for Ansuya Enterprise of Clinton, LLC and Ansuya Riverbend, LLC, prepared by Wayne J. Ingram, PE, of Engineering and Land Planning Associates, Inc., dated 6/11/2021, consisting of 16 sheets.
6. Architectural plans prepared by Kamlesh Shah Designs, consisting of 6 sheets, dated 6/25/2020.

As part of approval granted in 2019, the applicant received amended preliminary approval and phased the project, with the existing Marriott hotel comprising Phase 1, a restaurant Phase 2 and an office building Phase 3. Final approval was granted for Phase 1 at that time. The applicant is seeking amended preliminary approval for Phases 2 and 3 and final site plan approval for Phase 3 and is also proposing different uses from those previously approved for Phases 2 and 3. Phase 2 is proposed to include a 2,540 square foot fast food restaurant with drive through and Phase 3 is proposed to include a 3-story mixed-use building containing a bar/restaurant and meeting space on the first floor and 26 hotel rooms on the second and third floors. Also proposed in Phase 3 is a 1,200 square foot 1-story meeting and event space.

**Zoning**

The property is located in the OB-4 Office Building District, where hotels are a permitted use. Other permitted uses include office buildings, scientific and research laboratories, data processing facilities, medical and dental labs and clinics, nursery schools and child care centers, funeral homes, studios for art, dancing, music, languages and photography, restaurants, cafes and taverns in which patrons are seated at tables or counters and are served food and drink by waiters and waitresses for consumption on the premises and wireless telecommunications towers. As the proposed fast food restaurant is not permitted in the OB-4 District, a d(1) use variance is required.

Attachment 1 in the Land Use Ordinance, Part I and Part II, set forth the schedule of zoning requirements. These are noted on the table below along with those conditions proposed with development of the property as depicted on the amended plans. We would note the proposal complies with all bulk requirements of the OB-4 District or was previously granted appropriate variance relief with one exception. §88-60K(2) requires accessory buildings in nonresidential districts to meet the requirements applicable to principal buildings. As the proposed trash enclosures are within the required front and side yards, bulk variances are required. The applicant’s engineer should provide the setback dimensions of the trash enclosures to quantify the relief needed.

	<b>Permitted</b>	<b>Proposed (tract)</b>
Minimum Lot Area	217,000 s.f.	596,395
Maximum depth of measurement	600’	723.86’ (ENC)
Minimum Lot Width at Street	350’	545.63’
Minimum Lot Width at Building Line	350’	1,032.19’
Minimum Front Yard Setback	100’	AIN
Minimum Side Yard Setback	50’	AIN
Minimum Side Yard Setback (both)	100’	AIN
Minimum Rear Yard Setback	100’	373.09’
Maximum Building Height	40’	46.88’*
Maximum Floor Area Ratio	15%	14.75%
Maximum Impervious Surface Coverage	50%	26.09%

*\*Denotes variance previously granted.*

*(ENC) Denotes existing nonconforming condition.*

*AIN Denotes additional information needed.*

**Consideration of the Use Variance**

Since the applicant is proposing a principal use not permitted in the OB-4 Office Building District, a d(1) use variance is required. The applicant is required to demonstrate both the positive and negative criteria, and the Board is required to make specific findings with respect to same.

To meet the positive criteria, the applicant must demonstrate the public welfare is promoted because the site is particularly suited to the proposed use. The Court has found that it must be shown that compliance with the underlying zoning would be less beneficial to the general welfare. Here a comparison of the proposed fast food use to the previously approved restaurant would be useful, and the applicant should highlight the similarities and differences related to physical form and height, proximity to adjacent residential uses, traffic impacts and impact on water and sewer usage. Note that under the New Jersey Supreme Court's 2013 decision in Larry Price v. Himeji, LLC & Union City Zoning Bd. of Adjustment (A-46-11) (068971), the applicant is not required to demonstrate there are no other sites suitable for the use, but rather that the characteristics of the particular site in question make it appropriate for the use. The applicant must also demonstrate the positive criteria through special reasons, generally derived from the purposes of the Municipal Land Use Law.

For the negative criteria, there are two prongs that must be demonstrated. First, it must be found the variance can be granted without substantial detriment to the public good, which refers to the impact of the proposal on properties immediately surrounding the subject site. Note the term substantial, which comes directly from the statute, and is important for the Board's deliberation. Any variance requested for a use not permitted in the zone is going to have some impact on the area. The question is whether the impact rises to such a level that it will cause irreparable harm to the neighborhood or forever change the character envisioned with the zone standards put in place. Here the context of the proposal is important, particularly as it relates to the previously approved restaurant use. Attention should be paid to traffic, including both passenger vehicles and trucks, noise, lighting impacts, visual impacts of the proposed structure and overall site activity; particular focus should be to the single family homes just north of the site. While residential uses are proposed for the Clinton Commons site immediately to the south, those townhomes will be separated from this project by commercial buildings along Route 31, one of which is proposed to be a fast food restaurant. Any mitigating factors designed to reduce any detrimental effects should also be given consideration in the Board's deliberation. Testimony should be provided indicating the hours of operation and days of the week when operations will occur, total number of employees, the number and type of deliveries.

The second prong of the negative criteria requires demonstration by the applicant and findings by the Board that the variance can be granted without substantial impairment to the intent and purpose of the zone plan (master plan) and zoning ordinance. In accordance with case law established in Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987), the applicant is required to demonstrate an "enhanced quality of proof" with respect to this prong of the negative criteria, proof that shows the variance is not inconsistent with the intent and purpose of the zone plan and zoning ordinance and reconciles the governing body's omission of the use as one permitted in the zone district in the first place. To aid the Board's consideration of the negative criteria, relevant land use goals and objectives from the 2008 Master Plan are provided below. While the 2018 Reexamination Report recommended comprehensive review of the goals and objectives in 2019, the Board has yet to undertake that process, therefore what is indicated below represents current thinking. The 2008 Master Plan does discuss the OB-4 District, although not in much detail. One important paragraph potentially relevant to the proposal at hand reads as follows:

*“Spanning approximately 27 acres, the OB-4 Office Building District is located in the northeastern corner of the Town. The district allows office buildings for business, professional, executive and administrative purposes; scientific or research laboratories; data processing facilities; medical and dental clinics and laboratories; nursery schools and child-care centers; funeral homes; studios for art, dancing music, languages and photography; hotels, restaurants, cafes and taverns. Similar to the Industrial district, the OB-4 zone requires a minimum area of 217,000 square feet (4.98 acres). In addition, the OB-4 zone permits a maximum height of 40 feet, a maximum floor area ratio of .15, and a maximum impervious surface cover of 50%. No changes are recommended for this district.”*

## **LAND USE**

GOAL: Achieve a proper balance in the distribution and spatial relationships among the various land uses to provide a varied and healthful environment for the Town’s residents and to retain the small town residential and historical character of the community.

Objective: Encourage the proper use and reuse of land, particularly the remaining vacant parcels, to meet the needs of the current and future residents.

Objective: Channel commercial uses into the existing commercial and office zones and discourage conversion of residential dwellings in residential zones to nonresidential commercial and office uses.

Objective: Prohibit residential development on the north side of Route 31 that would require the transportation of school children across the highway to the Clinton Public School.

Objective: Encourage uses that generate low and off peak traffic and very limited truck traffic.

Objective: Promote development designs that reflect, enhance and preserve the Town’s architectural and historical character.

Objective: Develop plans for the rejuvenation of Old route 22, with new urban design, and relating existing and new development to the historic center of town.

Objective: Adopt an historic district ordinance to provide standards for historic preservation.

In addition to the goals and objectives of the master plan, the ordinance itself contains a purpose statement that is relevant to the Board’s consideration of the negative criteria. The purpose of the land use ordinance, which generally mirrors the purpose of the Municipal Land Use Law, is as follows:

- A. To encourage municipal action to guide the appropriate use or development of all lands in the Town in a manner which will promote the public health, safety, morals and general welfare.
- B. To secure safety from fire, flood, panic and other natural and man-made disasters.
- C. To provide adequate light, air and open space.
- D. To ensure that the development of the Town does not conflict with the development and general welfare of neighboring municipalities, the county and the state as a whole.

E. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods and the Town and the preservation of the environment.

F. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.

G. To provide sufficient space in appropriate locations for a variety of residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements, in order to meet the needs of all Town citizens.

H. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight.

I. To promote a desirable visual environment through creative development techniques and good civic design and arrangements.

J. To promote the conservation of open space, valuable natural resources and historic preservation and to prevent urban sprawl and degradation of the environment through improper use of land.

K. To encourage planned developments which incorporate the best features of design and relate the type, design and layout of development to the particular site.

L. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land.

### **Site Plan Comments**

Our understanding is that the applicant currently does not have a specific tenant for the proposed fast food restaurant and they seek only preliminary approval for Phase 2 at this time. As no details are provided on signage, review of that particular issue will need to be deferred to final site plan approval.

Below is a summary of our comments on the site plan, with any variances and/or waivers required noted. While we largely defer comment on stormwater management and circulation to the Board Engineer, we have provided a few comments we feel are worth consideration.

### **Signage**

1. §88-64 in the zoning regulations set forth standards governing signage in the Town of Clinton. The applicant requires (or may require) relief for the proposed signage as follows:
  - a) §88-64B(5)(a) prohibits internally illuminated signs. The applicant previously received bulk variance approval for internally illuminated signs. We assume the additional signage proposed for the mixed-use building will be internally illuminated, requiring variance relief, but this should be clarified.
  - b) §88-64B(5)(b) prohibits the use of neon and LED tube lighting. The applicant was previously granted variance relief to utilize LED tube lighting for internal illumination. Details of internal illumination will need to be provided. A bulk variance may be required.

- c) §88-64B(5)(g) requires all sign illumination be shut off by 11:00 pm, unless the business the sign advertises is still open, in which case the illumination shall be shut off within 0.5 hour of the closing of the business. The applicant should clarify the hours of operation for the hotel in order to determine compliance with this section.
- d) §88-64J(2)(a) permits a maximum of one wall sign on each building wall that faces a public street or has public access to the establishment which it advertises. As the applicant proposes a second wall sign facing Route 31, a bulk variance is required.
- e) §88-64J(2)(c) states that "Sign area shall not exceed 100 square feet or 10% of the gross area of the building wall, including window and door area, to which it is attached, whichever is less." The two proposed wall signs total 45 square feet in area.
- f) §88-64J(3)(g) requires ground signs to have plantings entirely surrounding the base of the sign at a ratio of two square feet of planting for every one square foot of sign area. A condition of the prior approval was to work with our office to comply with this requirement. The landscape plan will need to be revised to reflect the required plantings.

### **Parking, Loading, Lighting and Landscaping**

1. With respect to parking, §88-62A sets forth applicable standards. The applicant calculates parking demand for Phases 2 and 3 in the Parking Schedule Calculations on sheet 3 of the site plan and notes 100 spaces are required where 157 are provided. We note a discrepancy in the number of hotel rooms, where the site plan states there are 26 hotel rooms proposed but only 20 are noted on the table. While the applicant will not likely require relief as to the number of parking spaces provided, the table should be updated.
2. With respect to loading, §88-62C(1) requires a loading space of 14'x60' for each Phase. The applicant originally received approval for a 12'x30' loading space for both the hotel and office buildings and was granted a variance for a 10'x30' loading area for the hotel. As the applicant proposes a 10' wide loading space for the proposed mixed-use building and no loading space for the fast food restaurant, a variance is required.
3. §88-44B(1)(j)[3] requires aisle width of 25' where parking stalls are less than 20' in length. As the applicant proposes 9'x18' parking stalls across the entire site and a drive aisle of less than 25' in Phases 2 and 3, a waiver is required.
4. §88-44B(1)(g) sets forth standards for lighting and light intensity and a 0.3 footcandle minimum is required anywhere and illumination shall average a minimum of 0.5 footcandle over the entire area. The applicant proposes a combination of 15' pole mounted LED fixtures and 3.5' bollard LED lights and a minimum of 0.3 footcandle is provided in developed areas. The lighting plan should be revised to specify the minimum and an average value should also be provided. We note that the requirement is a minimum and there is no maximum specified.
5. §88-44B(1)(g)[5] states that light intensity shall not exceed 0.5 footcandle along any property line or 0.3 footcandle in the case of a residential property line. While it appears that light levels at residential property lines to the north are 0.0 footcandle, one value along the eastern property line appear to be greater than 0.5 footcandle. As this lighting plan is "new", a waiver is required but we note similar relief was already granted in 2019.
6. §88-44B(1)(g)[7] requires a reduction in light intensity to the minimum needed for security when the facility is not in operation. The applicant should specify the hours of operation for all proposed uses so that appropriate reductions in light intensity can be determined.

7. §88-58.2E requires a buffer along any common property line with a residential zone with a minimum depth of 75'. Landscaping is required to provide year-round screening with a minimum opacity of 85% within three growing seasons for the first 10' of elevation of any building or improvement and deciduous screening with 25% opacity within the first five growing seasons for the second 10' of elevation of any building or improvement. The applicant has installed the buffering as required in accordance with the site plan approved in 2019.
8. The site plan should be revised to provide handicap accessible parking in the area of the proposed meeting space.

### **Consideration of Bulk Variances**

As noted, the applicant is requesting bulk variance relief related to aisle width, loading areas and setback for the proposed trash enclosures. The Board has the power to grant c(1) or hardship variances "(a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property." The Board may also consider the grant of c(2) variances where the purposes of the New Jersey Municipal Land Use Law would be advanced and the benefits of the deviation would substantially outweigh any detriment. In either case, the Board cannot grant "c" or bulk variances unless the negative criteria are satisfied, or that there is no substantial impact to surrounding properties (first prong) and the grant of the variance will not cause substantial impairment to the zone plan (master plan) or zoning ordinance (second prong).

With respect to the negative criteria for the sign variances, the purpose of the sign standards are provided below for reference.

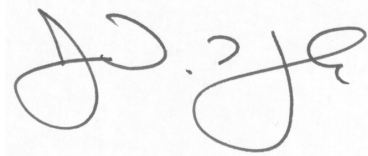
**§88-64A. Purpose, intent and scope.** It is the purpose of this section to promote the public health, safety and general welfare through reasonable, consistent and nondiscriminatory sign standards. The sign regulations in this section are not intended to censor speech or to regulate viewpoints, but instead are intended to regulate the secondary effects of speech, and especially insofar as those secondary effects may adversely affect aesthetics and traffic and pedestrian safety. In order to preserve and enhance the Town as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance. The regulation of signs within the Town is a highly contributive means by which to achieve this desired end. These sign regulations have been prepared with the intent of enhancing the visual environment of the Town and promoting its continued well-being, and are intended to:

- (1) Promote the free flow of traffic and protect pedestrians, bicyclists and motorists from injury and property damage caused by, or which may be fully or partially attributable to, cluttered, distracting or illegible signs.
- (2) Promote the use of signs that are aesthetically pleasing and of appropriate scale to the building(s) to which they relate.

- (3) Promote the use of signs that are integrated with the surrounding buildings and landscape.
- (4) Promote the use of signs that are compatible with the Town's historic character.
- (5) Provide functional flexibility, encourage variety and create an incentive to relate signage to basic principles of good design.
- (6) Lessen the visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height and excessive size (area) of signs which compete for the attention of pedestrian and vehicular traffic.
- (7) Allow signs that are compatible with their surroundings and aid orientation, while precluding the placement of signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or signs.
- (8) Encourage and allow signs that are appropriate to the zoning district in which they are located and consistent with the category of use and function to which they pertain.
- (9) Categorize signs based upon the function that they serve and tailor the regulation of signs based upon their function.
- (10) Preclude signs from conflicting with the principal permitted use of the site and adjoining sites.
- (11) Preserve, conserve, protect and enhance the aesthetic quality and scenic beauty of all districts of the Town.
- (12) Protect property values by precluding, to the maximum extent possible, sign types that create a nuisance to the occupancy or use of other properties as a result of their size, height, illumination, brightness or movement.
- (13) Protect property values by ensuring that sign types, as well as the number of signs, are in harmony with buildings, neighborhoods and conforming signs in the area.
- (14) Preserve and enhance the rural and historic character of the Town.

We look forward to the applicant's presentation at the May 3<sup>rd</sup> meeting and reserve the right to provide additional comment pending discussion of the points contained in this review memorandum. Should you wish to discuss this or any other matter, please feel free to contact me via e-mail at [jkyle@kylemcmannus.com](mailto:jkyle@kylemcmannus.com) or by phone at 609-257-6706.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Kyle', written in a cursive style.

James T. Kyle, PP/AICP  
Town Planner



Cc: All Board members (via e-mail)  
Allison Witt, Board Secretary (via e-mail)  
Bob Clerico, PE, Board Engineer (via e-mail)  
Katie Razin, Esq, Board Attorney (via e-mail)  
Kara Kaczynski, Esq, Applicant's Attorney (via e-mail)  
Wayne Ingram, PE, Applicant's Engineer (via e-mail)  
Edward Confair, LLA, Applicant's Landscape Architect (via e-mail)