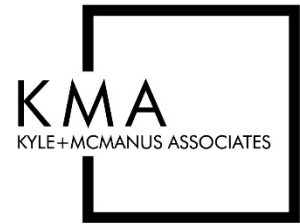


June 16, 2023

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



POLICY
PLANNING
DESIGN

**Re: Clinton Commons
Preliminary and Final Major Subdivision and Preliminary Site Plan
Block 14, Lot 32 – Route 31
Town of Clinton – C-5 Route 31 Commercial District and
MF-1 Multifamily Housing District**

Dear Board Members:

Pursuant to the Board's request, we have reviewed the above captioned matter for compliance with the Town's Land Use Ordinance. These comments are based on the material submitted by the applicant, including all plans, reports and the exhibits submitted in advance of the hearing and posted to the Town's website for public review. We have also reviewed the application and compared it to the terms of the Town's settlement agreement with Clinton Moebus 34, LLC (CM34).

The applicant is seeking preliminary and final major subdivision approval to permit the creation of a total of 3 (three) lots including one commercial lot (32.01) totaling 7.39 acres, one residential lot (32.02) totaling 9.10 acres and one open space lot (32.03) totaling 11.57 acres. This represents the initial subdivision required of the developer in accordance with the terms of the settlement agreement. If you recall, the applicant previously received approval of a similar subdivision, but failed to file the map in a timely manner, resulting in the approval expiring.

Under the terms of the settlement agreement, CM34 and the Town of Clinton and Land Use Board agreed to the following relative to the subdivision:

- Creation of a commercial lot fronting Route 31, not to exceed 13 acres
- Creation of a residential lot, not to exceed 16 acres
- Creation of an open space lot, to include remaining lands not part of the commercial or residential lot
- The subdivision plan may vary up to 50 feet from the concept plan attached as Exhibit A to the settlement agreement

Based on our review of the subdivision plan, it appears the applicant complies with the terms of the settlement agreement related to the subdivision. The applicant will need to confirm the subdivision plan does not vary more than 50 feet from the concept in the settlement agreement, as this is difficult to determine with the information provided. We note both the residential and commercial lots proposed are well under the thresholds required in the settlement agreement, resulting in a significantly larger open space lot than contemplated in the settlement agreement.

Also sought is preliminary major site plan approval to permit the following:

- Construction of 56 three-bedroom townhomes
- Construction of a 21,998 square foot food market
- Construction of a 5,700 square foot convenience store with 8 gas pumps under a canopy
- Construction of a 2,558 square foot fast food restaurant with drive through
- 3 individual pylon signs for the 3 commercial uses along Route 31 (no details provided)
- Construction of two access points to Route 31, the main access being directly opposite the driveway for the hotel across Route 31 to the north and secondary access provided along the eastern end of the Route 31 frontage near the proposed fast-food restaurant
- Emergency access only to Central Avenue
- Construction of a stormwater management basin with outfall to the South Branch of the Raritan River along with a smaller stormwater feature north of the proposed food market
- Construction of 5 dumpster enclosures, 2 for the residential portion of the project and 1 each for the proposed convenience store, fast-food restaurant and food market
- Two mail kiosks, one at the end of Clinton Commons drive on the southern end of the proposed townhomes and a second at the intersection of Plymouth Drive and Buckingham Drive
- A tot lot/play area at the southern end of Clinton Commons Drive

This site was the subject of a settlement agreement between the Town and Clinton Moebus 34, LLC, an intervenor in the Town's declaratory judgment action and affordable housing settlement process with Fair Share Housing Center. While settlement includes the provision of affordable housing, the 10 (ten) units that will ultimately be constructed will be off-site, either at the former Music Hall property or in conjunction with redevelopment of the Global Agway site. As outlined in the Town's Housing Plan, there is an agreement in place between the two developers to address construction of the required affordable housing setaside for the Clinton Commons project off-site.

Subject Property

The property is located just east of the South Branch of the Raritan River, south of State Route 31, west of Georges Place and north of Center Street. Totalling 28.06 acres, the site has approximately 1,350' of frontage on Route 31 and also has access to Central Avenue, located to the south of the site and connecting to Center Street. The site has been farmed continuously for some time and contains cultivated fields over most of the site with wooded areas along the fringes, particularly along the South Branch. Sloping from north to southwest and west, the entire site drains towards the river. Any areas of critical slopes are isolated to areas of the site not proposed to be developed.

As the site is located within the Highlands Planning Area and the Town has opted in and will conform to the requirements of the Highlands Regional Master Plan, the project is subject to approval by the New Jersey Highlands Council. While the Town has adopted a Highlands referral ordinance, it has not yet adopted the Highlands land use ordinance implementing the specific land use controls within our local ordinance, therefore Highlands staff conducts review of the project for compliance with any Highlands requirements. Upon their review of the project, the

Highlands Council issued a determination of conditional consistency, which was later supplemented in January of 2022 to note that all conditions had been met. We would note that one of the key requirements of the Highlands rules is the provision of a 300' open water buffer for the South Branch of the Raritan River. Regardless of Highlands applicability for the Planning Area, as the South Branch is a Category One waterway, this buffer would be required under permitting necessary from the New Jersey Department of Environmental Protection. When the Town negotiated settlement with Clinton Moebus 34, LLC, part of that settlement was designation of the area contained within the 300' open water buffer as restricted open space. This 11.57 acre open space area, designated as Lot 32.03 on the subdivision plan, encompasses land along the South Branch, wrapping around the south end of the project and abutting Central Avenue. While pedestrian access through Central Avenue to the open space lot will be provided, vehicular access cannot be accommodated.

A bald eagle nesting site was identified in the area. The plans have been revised to reorient the food market building so it is farther from the nest site, and approximately 515' of separation is provided. The applicant has received their wetlands and flood hazard area permit from NJDEP, and the permit restricts construction activity within 1,000' of the nest from January 1st to July 31st. In its review of the project, the US Fish and Wildlife Service recommended a similar construction restriction, but also recommended fencing be installed at the boundary of the Highlands Open Water Protection Area to limit pedestrian access near the nesting site, relocation of the food market (already addressed) and planting of native vegetation between the nest site and planned development. While these are recommendations, the Highlands Council has required these recommendations be followed as a condition of their consistency determination. As noted previously, the Highlands has issued correspondence indicating that all conditions have been met.

Zoning

The site lies within both the C-5 Route 31 Commercial Zone and the MF-1 Multifamily Housing Zone. The C-5 zone permits stores and shops for retail business, convenience stores with or without the sale of gasoline, food markets and grocery stores, fast-food restaurants with drive through, banks and financial institutions including drive throughs and ATM's, indoor theaters, health and fitness centers, beauty salons, barber shops and day spas, office for business, executive, professional and administrative purposes, restaurants, cafes and taverns, studios for art, dancing, music, language, photography and similar activities and municipal buildings and municipal uses. The MF-1 zone permits attached single-family townhomes in a row of three or more such attached units where no unit is over another unit and each unit has its own front and rear access to the outside. In addition, attached single-family townhomes with two or more attached units are permitted, provided no more than two such units are proposed in any development project. All uses proposed with the current plan are permitted under the above ordinance provisions.

We have reviewed all bulk requirements for both the C-5 and MF-1 districts and find the project complies with the exception of minimum lot area for the residential tract. §88-56.1B requires a minimum lot area of 15 acres where 9.10 acres is proposed.

Preliminary Site Plan Comments

While we have undertaken review of the entirety of the ordinance, comments provided below do not address all site plan requirements. We largely defer to the Board Engineer for a more detailed review of site plan design standards and comments on lighting, drainage and other proposed site improvements. Our review is focused on the planning issues as noted below.

1. §88-55.2G and §88-56.1M require landscape buffers along the eastern edge of the property to address screening of existing homes on Georges Place as well as the existing single family home on Lot 34. These sections require screening with a minimum of 85% opacity within three growing seasons for the first 10 feet of elevation of any building or improvement and seasonal (deciduous) screening with 25% opacity within the first five growing seasons for the second 10 feet of elevation of any building or improvement. While an appropriate buffer is provided in most places, the area between Lancaster Drive and Lot 34 to the south may not comply. It appears the existing vegetation in this area will be retained, but it may need to be supplemented with understory plantings to meet the requirements of this section.
2. The site plan should be revised to indicate split rail fencing along the required 300' Highlands Open Water Buffer consistent with the USFWS's recommendation. While fencing is depicted on the landscape plan, it should also be shown on the site plan.
3. The applicant should discuss if any outdoor seating is proposed for the convenience store or fast-food restaurant. No details are provided on the preliminary site plan.
4. §88-56.1K requires an overall design theme and architectural mode be provided. The applicant has provided a color elevation of the proposed townhome structures, however testimony should be provided to demonstrate compliance with this section.
5. While a tot lot/play area is proposed, no details are provided. The applicant should discuss the nature of facilities proposed.
6. A total of 3 pylon signs are proposed along the Route 31 project frontage, however no details are provided. Consideration of this signage will need to be deferred to final site plan approval along with any proposed building mounted signage, as the applicant may not have specific tenants at this point. The applicant must comply with the requirements for signs in the C-3 zone, as outlined in §88-64E, except that ground signs may be 80 square feet up to 15' high and 8' in width. As §88-64E(6) permits only one ground sign on a lot, bulk variance relief is required to allow the three signs proposed. Additionally, the ordinance does not contemplate signage for fast-food drive throughs, which would be considered ground signs.
7. No details on the building-mounted signage for the proposed fast-food use have been provided. §88-64E(2) limits walls signs to building walls that face a street or has a public entrance. Additional information is required to determine compliance.
8. §88-64E(6)(e) requires ground signs to be at least 10' from a street right-of-way or property line. As the proposed pylon signs are 8.8', 2.1' and 3.2' from the property line along Route 31, bulk variances are required.
9. §88-64E(6)(g) requires plantings surrounding the base of ground signs. As the landscape plan does not depict the required planting, bulk variances are required.
10. The parking calculations provided on Sheet 3 of the preliminary site plan set indicate the required number of residential parking spaces is 134 while 223 spaces are provided, including 27 off-street spaces. We question the need for the additional parking spaces provided along Clinton Commons Drive; locating spaces along the main access drive creates a potential safety

concern, as cars pulling into and out of these spaces could impede traffic flow on the main access to the residential portion of the project. Given the excess of parking proposed, the applicant should consider removing these spaces, which do not appear to be necessary.

11. We note that while the total parking demand for all commercial development proposed is calculated to be 177 spaces and 216 are provided (176 proposed and 40 banked). As the banked spaces will not be constructed, the applicant would need a variance unless 1 banked space is removed. As only 104 of the 122 spaces required for the food market are provided in reasonable proximity to the use, the applicant should discuss the ability of the 104 spaces proposed around the food market to address actual parking demand. Comparison to ITE standards would be instructive.
12. The applicant is reminded that under the settlement agreement, they will only receive certificates of occupancy for the first 28 townhomes while the phasing plan on Sheet 3 notes 30 townhomes in the first phase. Additional certificates of occupancy can only be obtained upon issuance of certificates of occupancy for the 10 affordable housing units contemplated off-site.
13. Testimony should be provided confirming the proposed nonresidential uses can meet the requirements of the State Noise Code. This is particularly important given the proximity of residential uses to the east and the townhome units within the project itself.
14. The applicant is subject to §88-85 which requires payment of a 2.5% nonresidential development fee for the 3 commercial pad sites. As the developer is providing affordable housing units off-site, a residential development fee for the townhome units is not required. Collection procedures are set forth in §88-86 and compliance should be a condition of any approval the Board may grant.

Summary of Variances

1. Bulk variance from §88-56.1B for minimum lot area, where 15 acres is required and 9.10 acres is proposed for Lot 32.02
2. Bulk variance from §88-62A where 177 parking spaces are required for the nonresidential uses and 176 are proposed.
3. Bulk variance from §88-62C(1) where at least one off-street loading space measuring 14'x60' is required and the width of the loading space proposed for the convenience store is 13.3'.
4. Bulk variance from §88-62C(1) where at least one off-street loading space measuring 14'x60' is required and not provided for the proposed fast-food restaurant.
5. Bulk variance from §88-64E(6) to permit more than one ground sign, as three or more are proposed.
6. Bulk variance from §88-64E(6)(e) to permit ground signs closer than 10' to the property line along Route 31.
7. Bulk variance from §88-64E(6)(g) for lack of plantings at the base of the proposed ground signs.

Consideration of Bulk Variances

As noted, the applicant is requesting bulk variance relief. 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 intent and purpose of the zone plan (master plan) or zoning ordinance (second prong).

In analyzing the negative criteria for the bulk variances required, the Board needs to be mindful of the intent and purpose of the zone plan and zoning ordinance. While there is no relevant discussion in the master plan useful in consideration of the specific bulk relief required, §88-2 sets forth general purposes in the zoning ordinance. They include:

- 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.

With respect to the sign variances required, §88-64A sets forth the purpose, intent and scope of the sign requirements, which will be useful in analyzing the negative criteria.

A. 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.

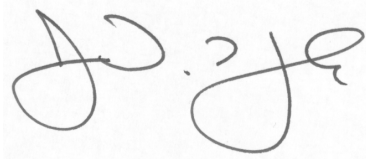
(12) Protect property values by precluding, to the maximum extent possible, sign types that create a nuisance to the occupancy or use of other properties as a result of their size, height, illumination, brightness or movement.

(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 and reserve the right to provide additional comment pending discussion of the comments contained in this review memorandum and the Board's discussion. Should you wish to discuss this or any other matter, please feel free to contact us via e-mail at jkyle@kylemcmanus.com or by phone at 609-257-6706.

Sincerely,

A handwritten signature in black ink, appearing to read "J. T. Kyle". The signature is written in a cursive style with a large initial "J" and "K".

James T. Kyle, PP/AICP
Town Planner

Cc: Allison Witt, Board Secretary (via e-mail)
Bob Clerico, PE, Board Engineer (via e-mail)
Katie Razin, Esq, Board Attorney (via e-mail)
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