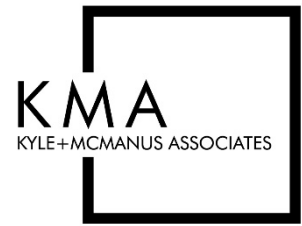


February 26, 2021

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



POLICY
PLANNING
DESIGN

**Re: Puleo International, LLC
D(1) Use Variance, D(4) Floor Area Ratio Variance, Bulk Variances
Preliminary and Final Site Plan
Block 18, Lot 5 – 13 Moebus Place
Town of Clinton – OB-4 Office Building 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 and reports and the exhibits submitted in advance of the hearing and posted to the Town's website for public review.

The applicant has submitted seeking preliminary and site plan approval along with d(1) use variance relief, d(4) floor area ratio relief and other bulk relief to permit the following:

- Construction of a 100,000 square foot warehouse, which includes an additional 10,000 square feet of office and showroom space for a total of 110,000 square feet of floor area
- 15 direct access loading docks along the north side of the building
- 150 passenger vehicle parking spaces, with 54 to be constructed and 96 proposed to be "banked" for possible future construction
- Signage, lighting and landscaping improvements
- Stormwater management consisting of a single detention basin along the northern portion of the property
- Limited annual retail sales

This site was the subject of an approval granted by the Planning Board in 2007 which permitted construction of two office buildings 40' in height totaling 98,930 square feet and providing almost 500 parking spaces. Access was depicted from both Route 31 and Moebus Place with parking areas surrounding the two buildings. Based on conversations with the Board Engineer and Board Secretary, it appears that approval is still valid and could be constructed.

Subject Property

The property is located at the corner of Moebus Place and Route 31 north and totals 13.166 acres. Sloping down from Route 31, the property is characterized by a drop of 58' from the southeast corner of the site near the driveway to a point approximately in the middle of the northern property line. An existing swale at the low point connects to a headwall on the adjacent property and drains the site. At present, the site has a mix of early successional vegetation including a cedar and small deciduous trees. The site is subject to an easement in the northwest

corner that contains water facilities owned by the Town of Clinton as well as a waterline easement that meanders through the northern 1/3 of the property. Surrounding uses include single family homes to the north in Clinton Township, office and business uses to the west, single family residential to the south in the Town of Clinton and vacant property to the east in Clinton Township owned by the Board of Education. Grayrock Road lies beyond the site to the east, however there is no access from the subject property. A drone photo of the site is shown below, taken on February 25th.



Zoning

The site lies within the OB-4 Office Building District, which permits office buildings, scientific and research laboratories, data processing facilities, medical and dental labs, nursery schools and child-care centers, funeral homes, studios for art, dancing, music, languages and photography, hotels, restaurants, cafes and taverns and wireless telecommunications towers. As the applicant is proposing warehouse with limited retail sales, a d(1) use variance is sought in accordance with the requirements of the New Jersey Municipal Land Use Law, 40:55D-70d(1) to permit a “a use or principal structure in a district restricted against such use or principal structure”. In addition, the applicant requires the following variances and waivers:

- D(4) floor area ratio variance, where 15% is permitted and 19.18% is proposed
- Bulk variance for building height, where 40’ is permitted and 42’ is proposed
- Bulk variance for the number of parking spaces – while the applicant shows the required number of parking spaces on the site plan, only 54 of the required 150 spaces will be constructed and the remaining 96 will be banked
- Bulk variance for the proposed wall sign, where 100 square feet is permitted and 150 square feet is proposed
- Waiver from §88-42C(8), which requires street trees be installed in the right-of-way in accordance with the requirements of the Shade Tree Commission

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 project to the previously approved office use is helpful, and the applicant should highlight the similarities and differences related to physical form and height, proximity to adjacent residential uses, traffic impacts (including truck traffic) and impact on water and sewer capacity. 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 office project. 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 as well as those south of Route 31. 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 of trucks that will arrive and depart the site on a daily basis during peak operating times and potential sources of noise on site.

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 also 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.

Consideration of the d(4) Use Variance

The applicant is requesting d(4) use variance relief in accordance with the requirements of the New Jersey Municipal Land Use Law. While technically use variances, d(4) floor area ratio variances are treated differently than d(1) use variance requests to allow a use or principal structure not permitted in the OB-4 district. The Board should be guided by the case Randolph Town Center v. Tp. of Randolph, 324 N.J. Super at 416 as well as the case Coventry Square v. Westwood Board of Adjustment, 138 N.J. 285, 298-299 (1994). In its decision in the Randolph case, the Court held the standards in Coventry are applicable to the Board's consideration of d(4) variance relief rather than the strict standards for a d(1) use variance as outlined in Medici v. BPR Co. The applicant must show the site can accommodate the problems associated with an increase in permitted floor area; they need not show the site is particularly suited to more intense development.

On the negative criteria, the Board's focus on the first prong is the affect the increase in floor area will have on adjacent properties. Typical impacts from an increase in floor area generally relate to increases in traffic and the potential for increased visual impact from intensification of development. The applicant should provide a comparison of traffic from the approved office

buildings to the likely traffic from the proposed development. Here it should be considered whether conditions can be imposed to ensure the increase in floor area sought will not cause substantial detriment to the public good (surrounding properties). As to the second prong of the negative criteria and consideration of whether the grant of the variances will cause substantial detriment to the intent and purpose of the zone plan and zoning ordinance, the Board must be satisfied that the applicant's proposal is reconcilable with the intent of the governing body relative to imposition of the floor area limitation in the first place. We note the proposed floor area ratio is 4.18% over the maximum of 15% permitted, which equates to approximately 23,972 square feet of additional floor area. We should also note that the 15% floor area maximum is imposed relative to the permitted uses in the OB-4 district, which does not include warehouse. The demands placed on the area from additional floor area for office use are likely very different than those from a warehouse use, and comparison is important relative to consideration of the governing body's intent behind the standard.

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).

Considering the height variance requested, the Board should take into account the visual impact an increase in height will have, particularly on the single family homes located north of the site and south of the site across Route 31. We also note that no additional landscape buffering is proposed along the Route 31 frontage to address the appearance of the structure from the south. A row of tall deciduous trees exists along the common property line, although many of those are proposed to be removed to accommodate the detention basin. There also appears to be a row of large evergreens on the adjacent residential lots. The photo on the following page depicts existing vegetation along the northern boundary of the property, and the two houses in the lower right quadrant of the photo are on Lots 5 and 6 in Block 71.02. The second photo depicts the view of adjacent residential homes from approximately 50' off the ground in the area of the proposed building, giving some sense of the potential visibility of the structure, although we should note the building is proposed to be 42' in height. Consideration should be given to modifying the basin to retain as many of the mature deciduous trees as possible, as this would greatly aid in buffering the site as viewed from the north in spring and summer months and aid

in meeting the specific buffering requirements of §88-58.2E. While the applicant proposes additional landscape buffering along the northern boundary of the detention basin, supplemental buffering may be required.



As to the required parking variance, as noted, the applicant is banking 96 of the required 150 spaces. Testimony should be provided regarding parking demand, but we note the application materials state there will be a maximum of 40 employees in this facility, including both warehouse and office staff. The number of typical customer visits should be discussed, as well as anticipated parking for the annual retail sales event. Given the proposed banking of spaces, the potential negative criteria considerations are greatly reduced in our view, as the Board can place appropriate conditions in any approval they may grant to trigger construction of the spaces to address any increase in parking demand.

The applicant also seeks relief related to the proposed wall sign, which exceeds the 100 square foot maximum permitted by 50 square feet. Testimony should be provided on the potential impacts of a larger sign including visibility from single family homes south of Route 31. It should be noted that internally illuminated signs are not permitted, although no details are provided for either sign to determine if and how they will be illuminated. Relative to the negative criteria for the sign variance, the Board should consider the intent and purpose of the sign requirements, which is noted below.

§88-64. Signs.

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.

Consideration of Waivers

As part of its application for site plan approval, the applicant has requested a waiver from the design standards applicable to site plan review related to the provision of street trees in the right-of-way in accordance with §88-42C(8). In consideration of the requested design waiver, the New Jersey Municipal Land Use Law, N.J.S.A 40:55D-51b permits the Land Use Board to “...*grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.*” The Court, in Garofalo v. Burlington Tp., 212 N.J. Super. 458 (Law Div. 1985) noted a waiver is simply an acknowledgement the proposal is satisfactory relative to the site plan requirements. Waivers must be considered reasonable under the facts.

The applicant should provide appropriate testimony to support the design waiver requested. We would note there are street trees existing along Moebus Place, and much of the vegetation along the western side of the project will be retained. While no significant grading is proposed along Route 31, much of this area does not contain any significant vegetation. We have suggested that additional buffering be provided along Route 31 to address the view of the site from homes on the south side of the highway, so shade trees could likely be incorporated to meet the ordinance requirement. The Board may wish to consider the waiver on the basis of not providing the required shade trees in the right-of-way, as there are overhead utility lines running along Route 31. A better approach would be to include shade trees just outside the right-of-way to provide adequate room for them to mature without having to be constantly trimmed by the utility company.

Site Plan Comments

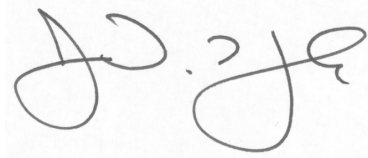
While we have undertaken review of the entirety of the ordinance, comments provided below do not address all site plan requirements. We largely defer to the Board Engineer for a more detailed review of the site plan standards and comments on lighting, drainage and other proposed site improvements. Our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

1. Testimony should be provided regarding the architectural design of the proposed warehouse. The applicant should consider providing a color rendering of the structure to better highlight the architectural features. These details are particularly important in light of the requested use and height variances.
2. The applicant should detail the location of any mechanical equipment proposed. As the site plan does not depict any such equipment on the ground surrounding the building, we assume much of it will be on the roof. Visibility of rooftop equipment from adjacent residential homes should be discussed and screening may be necessary.
3. §88-58.2E requires a 75' buffer along the residential zones to the north and south of the property, which shall contain berms and landscaping that will provide evergreen screening with a minimum 85% opacity 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. As to the northern buffer, the applicant should consider reshaping the detention basin to accommodate retention of existing mature deciduous trees along the property line, as many are proposed to be removed. We would note the top of the berm along the back of the basin is as high as 7' on the west side but tapers down to meet existing grades at the eastern edge, reducing its height as you move east. As to the southern buffer, given the topography, berms will not achieve any substantial benefit, but buffering should be added in this area. With respect to the requirements of this section, the applicant should be prepared to address compliance and provide detail about potential visibility of the proposed warehouse from adjacent homes.
4. §88-60Q prohibits outdoor storage in office building districts. The applicant should confirm that no outdoor storage of any kind is proposed or seek appropriate relief.
5. Details were not provided regarding how the proposed signs will be illuminated. Given the homes facing the site on the south side of Route 31 and recent experience with the impact of internal illumination of signage for the hotel, external downlighting for signage should be required. The applicant should also discuss whether illumination can be turned off during evening hours to further reduce impacts.
6. The White Pines proposed along the northern property boundary should be reconsidered, as over time they lose their lower branching and no longer provide effective screening. We would suggest a more comprehensive landscape screen consisting of a mix of spruce, cedar, arborvitae and additional deciduous trees be provided. Taller plantings may be necessary to meet the opacity requirements of the ordinance, and trees may need to be planted closer together to ensure sufficient screening in the first three growing seasons. The site itself is a significant source of native cedar, many of which could likely be transplanted into buffer areas.
7. We note the dumpster enclosure is on the north side of the building, approximately 260' from the residential boundary. While this is some distance, the applicant should discuss trash pickup and provide assurance that it will occur during normal business hours.
8. The site plan indicates a "No Truck Traffic" sign at the driveway leading to Moebus Place. There is a 6 ton weight limit on Moebus Place, so trucks will not be permitted to travel through the residential neighborhood to the north to get to Grayrock Road.

9. Testimony should be provided confirming the proposed use can meet the requirements of the State Noise Code. This is particularly important given the proximity of residential uses to the north and the fact that all truck loading will occur on that side of the building.
10. The applicant is subject to §88-85 which requires payment of a 2.5% nonresidential development fee. Collection procedures are set forth in §88-86 and compliance should be a condition of any approval the Board may grant.

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@kylemcmannus.com or by phone at 609-257-6706.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kyle", written over a light gray rectangular background.

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)
Kara Kaczynski, Esq, Applicant's Attorney (Kara@mykl-law.com)
Wayne Ingram, PE, Applicant's Engineer (wayne@elp-inc.com)
John T. Chadwick IV, PP, Applicant's Planner (jtcivplan@comcast.net)