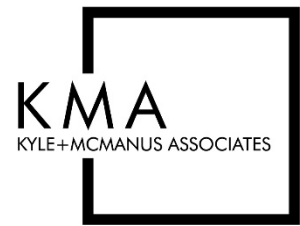


June 14, 2021

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 2 – 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. **Comments have been updated based on revised plans submitted by the applicant dated 5/24/2021. Items noted in bold represent updates to our previous comments contained in our 4/30/2021 review letter and those items struck through are no longer applicable.**

The applicant has submitted seeking preliminary and final subdivision approval to permit the creation of a total of **4 (four)** lots including **1 (one)** commercial lot (32.01), **2 (two)** open space lots (32.02 and 32.03) and one residential lot (32). 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. As project design has progressed, that subdivision would have been rendered moot, and would have required amendment consistent with the subdivision plan currently being presented. **We note the applicant is no longer proposing to create fee simple lots for the 56 townhomes.**

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

- ~~Further subdivision of Lot 32 into 56 individual lots for townhomes, 1 lot (32.05) owned and maintained by the Homeowner's Association and containing a portion of a stormwater management basin and 1 lot (32.18) owned and maintained by the Homeowner's Association but subject to a 1.51 acre open space easement~~
- Construction of 56 three-bedroom townhomes ~~on individual lots~~
- Construction of a 21,998 square foot food market (Lot 32.03)
- Construction of a 5,694 square foot convenience store with 8 gas pumps under a canopy (Lot 32.02)
- Construction of a 2,558 square foot fast food restaurant with drive through (Lot 32.01)
- 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 ~~single~~ 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 on **Lot 32 at the southern end of Clinton Commons Drive**
- ~~Creation of streets within what appears to be right-of-way proposed to be dedicated to the Town of Clinton (see subdivision comment #1 later in this review)~~

This site was the subject of a settlement agreement between the Town of Clinton 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.

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. **The Highlands Council has issued a conditional determination of consistency.** 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 **11.54** acre open space area, designated as **Lots 32.02 and 32.03** on the subdivision plan, encompasses land along the South Branch, wrapping around the south end of the project to Central Avenue. **The applicant also proposes an open space easement on 1.51 acres of Lot 32, which brings total open space to 13.05 acres.**

Recently a bald eagle nesting site was identified in the area. ~~While it does not appear to be located on the subject property, based on our discussions with New Jersey Fish and Wildlife, it does appear a nest buffer will be required, potentially impacting the ultimate configuration of the project. While we do not expect the nest buffer to dramatically impact the current configuration, it is clear changes will be made to the current plans to accommodate the likely required nest buffer. The applicant should update the Board and public on the current status of discussions with NJDEP and NJ Fish and Wildlife and what changes are anticipated to the plan based on the required nest buffer. In addition, the applicant should describe the nature of any additional mitigation likely to be required by NJDEP, NJ Fish and Wildlife or the Highlands Council. This could include restrictions on construction activities to certain times of the year as well as reforestation of the Highlands open water buffer or nesting buffer. We question the logic of presenting the current plans, as it is clear from our discussions with outside agencies that these plans will change. While technically an outside agency approval that the Board would typically require evidence of only as a condition of any approval it may grant, this situation is much different than typical outside agency approval for considerations related to wetlands or highway access, as the project layout is likely to change. Our strong suggestion is the applicant not proceed with Board consideration of plans for the project until the nesting buffer issue is satisfactorily resolved with NJDEP and NJ Fish and Wildlife. Given what we know today, a more efficient and effective means for the Board to conduct project review would be to await revised plans. 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 recommends a similar construction restriction, but also recommends 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 as a condition of consistency determination that these recommendations be followed.~~

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.

~~At the time the ordinance for the MF-1 zone was prepared and adopted, it was uncertain whether the proposed townhomes would be situated on individual fee-simple lots. The current MF-1 ordinance does not provide standards for the creation of fee simple lots as proposed by the applicant. As a result,~~ **In conjunction with proposed subdivision**, the applicant will require bulk variances as follows:

- Preliminary and final major subdivision
 - Bulk variance for minimum lot area, where 15 acres is required and **9.80** acres is proposed for Lot 32
- ~~▪ Preliminary major subdivision~~
 - ~~○ Bulk variances for Lots 32.06 through 32.62, where 15 acres is required and none of the proposed lots meet this minimum requirement~~

The applicant has also identified a bulk variance related to §88-56.1H, which permits decks and patios to extend up to 7' into a required buffer. While not shown on the preliminary site plan, the bulk table notes decks/patios proposed to extend up to 10' into the buffer to homes on Georges Place. With respect to other bulk requirements outlined in §88-56.1G, based on our review of the plans the proposal complies with all internal and tract boundary setbacks **with the exception of the parking setbacks noted below.**

Relative to the ordinance requirements for the C-5 zone, we note the following:

- §88-55.2F(1) requires a 100' side yard setback from the property boundary for principal buildings, however parking is permitted within 50' of the property boundary. The proposed food market appears to be within 100' of the boundary between Lot **32.01** and **32.02** and proposed parking is situated within feet of the same boundary. Variance relief may be required depending on whether "property boundary" is interpreted to be between internal lots or the outside boundary of the entire property.
- ~~▪ §88-55.2F(2) permits parking to be located within 5' of the property boundary along Route 31, but no closer than 30' to the edge of pavement of Route 31. The setback of the parking area for the fast food restaurant to the property boundary is noted as 13.9', however a dimension to the edge of pavement is not provided. The applicant should confirm the 30' setback to the edge of pavement is provided.~~
- §88-55.2F(4) permits buildings to be within 15' of residential uses that are part of the property and parking to be within 10' of the internal commercial to residential boundary of the property. ~~As parking is proposed immediately along the property boundary of Lot~~

~~32.01 (convenience store), a variance is required. The applicant should provide a dimension for the setback of the parking for Lot 32.01 (fast food restaurant) to confirm whether variance relief is required.~~ **While the proposed parking spaces associated with the convenience store are 10' from the internal boundary, the islands separating the parking area are located within 2' of the internal boundary. As such, variance relief is required.**

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).

Subdivision Comments

Our office defers comment on the subdivision design standards to the Board Engineer. Other than comments contained above related to the bulk variances required in connection with the proposed lots, we would note the following:

- ~~1. The settlement agreement between Clinton Moebus 34, LLC and the Town specifically states that all roadways within the development shall be privately maintained, and that the Town shall bear no obligation or responsibility to maintain such, except for any obligations set forth in the Municipal Services Act., N.J.S.A. 40:67-23.2. Based on this provision of the agreement, the areas currently shown as public right of way shall either be included as a separate lot to be owned and maintained by the Homeowner's Association (HOA) or made a part of any other such lot.~~
2. Part of the Board's consideration of the current application is a separate preliminary and final subdivision to create the ~~3~~ commercial lot and the residential and open space tracts. Should the Board grant the preliminary subdivision to create the proposed townhome lots and other HOA-owned lots, the initial subdivision required will need to be perfected as a condition of any preliminary approval the Board may grant.

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. §88-4C sets forth requirements for environmental impact statements. In reviewing the EIS submitted, we note it fails to address the presence of the nesting site in the area. The EIS should be revised to identify this issue, discuss potential impacts of the development on the nesting site and provide discussion on mitigation efforts. ~~Ongoing discussions with NJ Fish and Wildlife related to buffer requirements and mitigation should be included.~~ **Specific discussion of mitigation required by the Highlands Council and USFWS should be included.**
2. §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. This section requires 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. ~~Reviewing the proposed buffer modules, we note that no evergreen trees are proposed. The applicant's landscape architect should provide testimony on how the buffer requirements related to opacity can be met with only deciduous shrubs and trees. We would suggest that evergreens be added to the modules to better address opacity requirements through winter months.~~ **The applicant has revised the proposed buffer modules to include evergreen trees and shrubs in response to our previous comment. The applicant's landscape architect should provide testimony on how the buffer requirements related to opacity are met, and should also highlight the modifications noted for the modules related to corner treatment and "short" condition.**
3. Lot 34 is an existing single-family house within the overall tract that is going to remain and is under separate ownership. Based on the requirements of §88-56.1M, buffering is required around all sides of this existing lot. ~~While such buffering is proposed along the western common boundary, the northern and eastern boundaries of Lot 34 are not proposed to include additional buffering. As there are existing mature deciduous trees, evergreens could be added in certain locations along the southern side of Lancaster Drive to comply with the buffer requirements. Testimony should be provided.~~ **The applicant has revised the landscape plan to include additional American Holly and Rhododendron along the southern side of Lancaster Drive to supplement existing deciduous vegetation. Additional buffering should be considered at the end of Buckingham Drive to better address direct view of the proposed townhomes from Lot 34.**
4. ~~The landscape plans depict no landscaping around the proposed commercial buildings, only at the perimeter of the parking areas. While there are practical issues with providing landscaping in certain areas immediately surrounding the buildings, additional landscape treatment should be provided.~~ **The landscape plans have been revised to show landscaping around the proposed commercial buildings. We would suggest the plantings be varied to eliminate monoculture and provide a more pleasing appearance.**
5. **The applicant should provide additional evergreen buffering on the west side of the proposed food market to better screen the rear of the building and the loading area.**
6. **We note the buffer proposed along the eastern property line in the area of the fast food restaurant relies on preservation of existing vegetation. It appears most of the vegetation**

is deciduous and may need to be supplemented with evergreens in the understory to meet the opacity requirements.

7. As noted in the Highlands Council's consistency determination, the USFWS has recommended native vegetation between the eagle nest and development proposed. The landscape plan should be revised to comply with this recommendation.
8. 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. This will aid in ensuring the public does not disturb the nest site.
9. The applicant should discuss if any outdoor seating is proposed with the convenience store or fast-food restaurant. No details are provided on the preliminary site plan.
10. §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.
11. While a tot lot/play area is proposed, no details are provided. The applicant should discuss the nature of facilities proposed.
12. A total of 3 pylon signs are proposed along the Route 31 project frontage, however no details are provided. Consideration of this signage will likely 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.
13. The parking calculations provided on Sheet 3 of the preliminary site plan set indicate the required number of residential parking spaces is 134 while **250** spaces are provided, including 54 off-street spaces. We question the need for the additional **40** parking spaces provided along Clinton Commons Drive, as they do not bear any relationship to the residential structures. If they are intended to serve the proposed food market, their location is impractical. Regardless of the uses they are intended to serve, 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. **We note the Highlands Council, in Condition#3 of its consistency determination, also makes reference to the apparent excess of parking provided. "Unless an actual demonstrated need for the additional spaces is identified, the applicant should consider reducing the number of spaces to reduced impervious coverage on the site. If a need is demonstrated, the applicant should consider the installation of porous asphalt parking spacing as a green infrastructure practice to offset the inclusion of additional impervious surface beyond regulatory requirements."** The applicant should address this issue in testimony.
14. Parking calculations provided on Sheet 3 of the site plan are not consistent with the parking calculations presented on Sheet 1 and should be revised. We note that while the total parking demand for all commercial development proposed is calculated to be 171 spaces and 194 are provided, only 97 of the 122 spaces required for the food market are provided in reasonable proximity to the use. As all commercial uses are located on a single lot, we don't believe variance relief is necessary. The applicant should discuss the ability of the 97

spaces proposed around the food market to address actual parking demand. Comparison to ITE standards would be instructive.

15. **The parking count labels in the area of the food market need to be updated.**
- ~~16. Only one mail kiosk is proposed for the entire residential project, and it is not centrally located. If more than one mail kiosk cannot be provided for some reason, it should be more centrally located to better serve residents.~~ **The applicant has provided a second mail kiosk in the northeast corner of the residential development area, addressing our previous comment.**
17. With only two dumpster enclosures proposed, some residents will need to walk a great distance to dispose of trash and recycling. An additional enclosure should be considered.
18. §88-62C(1) requires at least one off-street loading space measuring 14'x60'. The width of the two loading zones for the proposed convenience store are 13.3' and 12' respectively, requiring a variance for width. The proposed fast-food restaurant does not have a loading area indicated, requiring a variance.
19. The applicant is reminded that under the settlement agreement, they will only receive certificates of occupancy for the first 28 townhomes. Additional certificates of occupancy can only be obtained upon issuance of certificates of occupancy for the 10 affordable housing units contemplated off-site.
20. 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.
21. 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.

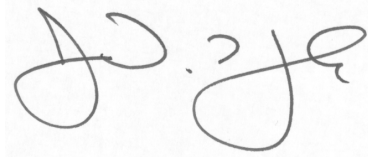
Summary of Variances

1. Preliminary and final major subdivision, bulk variance for minimum lot area, where 15 acres is required and **9.8 acres is proposed for Lot 32.**
- ~~2. Preliminary major subdivision, bulk variances for Lots 32.06 through 32.62, where 15 acres is required and none of the proposed lots meet this minimum requirement.~~
3. Bulk variance from §88-56.1H to permit decks and patios to extend 10' into the required buffer where 7' is permitted.
4. Potential bulk variance from §88-55.2F(1) to permit a side yard setback of less than 100' and parking less than 50' from the property boundary for Lot **32.01** (food market).
- ~~5. Potential bulk variance from §88-55.2F(2) to permit parking within 30' of the edge of pavement of Route 31.~~
6. Bulk variance from §88-55.2F(4) to permit parking within 10' of the internal commercial to residential boundary of the property for Lot **32.01** (convenience store).
- ~~7. Potential bulk variance from §88-55.2F(4) to permit parking within 10' of the internal commercial to residential boundary of the property for Lot 32.01 (fast food restaurant).~~

8. Bulk variance from §88-62C(1) where at least one off-street loading space measuring 14'x60' is required and the width of loading spaces proposed on Lot **32.01** (convenience store) 13.3' and 12'.
9. Bulk variance from §88-62C(1) where at least one off-street loading space measuring 14'x60' is required and Lot 32.01 (fast-food restaurant) does not provide the required loading.

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. Kyle", is positioned above the typed name.

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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