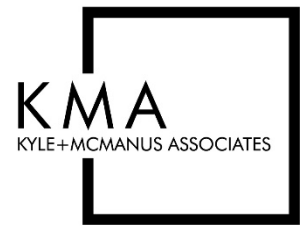


April 30, 2021

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



POLICY
PLANNING
DESIGN

**Re: QA Real Estate Development, LLC
Waiver of Site Plan
Block 11, Lot 20 – 9-11 Old Highway 22
Town of Clinton – C-1 Downtown Commercial 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 application seeking waiver of minor site plan approval to locate a roofing and siding contracting business at the above property. As described in the “Addendum to Applications for Waiver from Site Plan Review and Variance Approval” the proposed use is a “sales office” for Deegan Brothers roofing and siding business, with a maximum of 2 employees and no customer visits intended. In conjunction with the proposed use, the applicant would park a maximum of 6 of its business vehicles in the existing parking area, with no modifications proposed to the site.

Subject Property

The property is located at the northwest corner of Leigh Street and Old Highway 22, Block 11, Lot 20 with a street address of 9-11 Old Highway 22. While not provided on the survey, the property appears to be approximately 6,534 square feet in size and is irregular in shape. At present the site contains a 1-story masonry structure formerly home to Bill’s Garage. The site is almost entirely impervious pavement or building, with an existing parking area located in front of the building along both Leigh Street and Old Highway 22, with access points provided from both roadways.

Zoning

The site lies within the C-1 Downtown Commercial District. As per §88-53B, this zone permits the following principal uses, conducted within the confines of a building:

- (1) Stores and shops for retail business, provided that any process of manufacture, assembly, treatment or conversion involves a product or service intended to be sold or provided to the ultimate consumer and further provided that not more than five employees are involved in any such process. The foregoing shall not be deemed to include laundries or dry-cleaning establishments.
- (2) Offices for business, executive, professional and administrative purposes.

- (3) Restaurants, cafes and taverns in which patrons are seated at tables or counters and are served food and drink by waiters or waitresses for consumption on the premises.
- (4) Studios for art, dancing, music, language, photography, and similar activities.
- (5) Museums.
- (6) Municipal buildings and municipal uses, but not including municipal garages and storage and maintenance yards.
- (7) Apartments, provided that no such apartment shall be located on the first floor.
- (8) Beauty salon, barbershop, day spa.
- (9) Federal reserve banks, commercial banks, savings institutions, credit unions, lending and financing offices, securities brokerage services, portfolio management companies, insurance carrying companies, insurance advisory companies, insurance fund managers, estate management services and similar activities, except drive-up windows for vehicles are not permitted in any such uses.

According to §88-53C, the following accessory uses are permitted:

- (1) Off-street parking in accordance with § 88-62.
- (2) Signs in accordance with § 88-64.
- (3) Wireless telecommunications antennas in accordance with § 88-60Z.
- (4) Other accessory uses customarily incident to the uses listed in Subsection B.

In consulting with the Zoning Officer, the use proposed is considered a business office and is therefore permitted. While off-street parking is permitted as an accessory use, the applicant requires variance relief as follows related to parking and storage of commercial vehicles in the C-1 district:

- §88-62E(2) limits parked or stored vehicles to properly striped parking spaces not less than 75' from a public right-of-way, including sidewalks. As parking is proposed within 75' of the right-of-way of both Leigh Street and Old Highway 22, a bulk variance is necessary.
- §88-62E(6) limits the parking or storage of a vehicle containing or having displayed upon it advertising intended to promote the interest of any business unless it is parked in a side or rear yard not fronting a public street. As the applicant proposes parking of business vehicles that contains advertising matter within the front yard, a bulk variance is necessary.

Consideration of Bulk Variances

As noted above, 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 the Addendum, the applicant cites a practical difficulty in complying with the ordinance requirements noted above based on the existing configuration of the property and the fact they have two front yards. They also cite the fact that any lettering on their vehicles is required to comply with the Consumer Fraud Act and is not merely for the purposes of advertising. While demonstration of the positive criteria relative to a hardship related to the configuration of the property is fairly straightforward, the Board still needs to consider the negative criteria related to the number and size of vehicles to be parked on-site and the governing body’s intent behind the regulation. Should the Board determine that minor site plan approval is required, we would suggest consideration of the variance relief be deferred until a site plan is submitted. This will give the Board a better picture of where vehicles are proposed to be parked on-site and what impact they may have on adjacent properties.

Site Plan Waiver Request

As pointed out in the Addendum, §88-39 discusses filing procedures and requirements prior to the issuance of building permits or certificates of occupancy. There are two relevant portions of this section for the Board to consider with respect to the request for site plan waiver. First, this section states **“Site plan approval shall be required for any new building, any addition to an existing building, any change in use of an existing building, any off-street parking area or alteration of said parking area and any other improvements involving land disturbance, including excavation, soil removal, land filling or site clearance; except that subdivision of individual lot applications for detached one- and two-family dwelling unit buildings shall be exempt from site plan review and approval.”** Second, this section further states **“In addition, the Land Use Board may exempt from site plan approval any application for a change in use, provided that the said change in use involves no building construction, land disturbance, change in off-street parking, or other improvement that would require a minor site plan application. The Land Use Board may require the submission of such information as will make it possible to determine whether or not such exemption should be granted.”**

The Addendum notes the applicant intends only internal improvement to the existing building along with residing of the masonry structure and addition of 2 windows. They further note they do not intend to change the number or location of existing parking on the property or existing striping. Site inspection on April 30, 2021 revealed the following (photos are included at the end of this report):

- The site is almost entirely covered by pavement and building, with no landscaping with the exception of grass area in the northeast corner and behind the building
- no striping exists in the parking area, so we are unable to determine the current number of parking stalls available on-site

- there are currently 2 light fixtures on the property, one arm-mounted fixture and one spotlight mounted on the building
- there is a foundation for what appears to have been a third light fixture along the Leigh Street side of the property
- the concrete and paved areas of the site are in poor condition and there are gaps where pavement and concrete meet, creating potential safety concerns
- building cladding consisting of brick veneer attached to plywood attached to the masonry is in poor condition, much of it pulling away from the building
- the former glass-pane garage doors have been replaced with what appear to be aluminum garage doors with windows located at the top
- the roof has been replaced
- all downspouts and gutters have been removed from the building

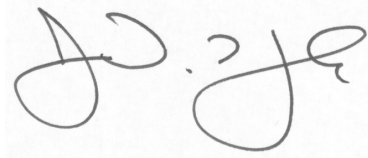
We also note that in the past, portions of the property within the right-of-way of Old Highway 22 were utilized for parking and storage of vehicles associated with the former repair garage use, which should not be continued. This means the applicant will need to delineate appropriately sized parking stalls outside the right-of-way. With pedestrian traffic (including children walking to and from school) focused on the north side of Old Highway 22 due to the lack of sidewalk on the south side of the roadway, keeping the right-of-way free of parked vehicles is an important safety consideration.

Our interpretation of §88-39 is that it provides the Board the ability to waive the requirement for site plan for a change of use where conditions on-site are suitable for immediate reuse. Given the issues identified above, we would recommend the applicant prepare a minor site plan for consideration by the Board to at a minimum address parking configuration and lighting. This will provide the opportunity to address parking requirements related to the proposed use, eliminate the potential for parking within the right-of-way and to provide improvement to the general appearance of the site by removing unnecessary paving. Addition of landscaping to the site should also be considered.

While not located in the Clinton Historic District, the site immediately abuts the district to the north and south. The site is also a prominent corner for those traveling Old Highway 22 and is a gateway to Main Street. Should the Board require submission of a site plan, we suggest the applicant detail the proposed exterior modifications to the building and consult with the Historic Preservation Commission prior to Board review.

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,



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)





