

Minutes of a regular meeting of the Board of Adjustment of the City of Clifton, New Jersey, held on Wednesday, September 6, 2023. Chrmn Mark Zecchino led the entire assembly in the Pledge of Allegiance to the Flag of the United States of America. Pursuant to the “Open Public Meeting Law” all notice requirements were satisfied. Chrmn Zecchino announced the time, place, and form of notice as well as advising all applications that formal action may be taken on the matters set forth on the Agenda. Said opening statement is incorporated herein by reference and made a part hereof.

PRESENT: COMRS. DAVID BRAID, ALESSIA ERAMO, MAUREEN O’CONNOR, ZALMAN GURKOV, SCOTT SOCHON, MICHAEL MOLNER, GEORGE FOUKAS, AND CHRNM MARK ZECCHINO.

ABSENT: VICE-CHRMN GERARD SCORZIELLO.

Chrmn Zecchino advised all applications that the testimony given before the Board was being tape recorded. The applicants were further advised of the right of appeal and the procedure to obtain a stenographic record of the Board.

EXECUTIVE SESSION

Chrmn Zecchino stated that the next order of business would be that the Board would enter into an Executive Session in accordance with Section 8 of the Open Public Meetings Act, P.L. 1975, c. 231 in order to discuss matters pertaining to litigation and attorney client privilege.

Thereafter, at 6:45 p.m. upon motion made by Comr. Scott Sochon, second by Comr. Michael Molner, the Board recessed to Executive Session for consideration of issues dealing with litigation and attorney-client privilege. No formal action was taken. Minutes for the Executive Session may be released to the public after the reasons for non-disclosure no longer exist.

EXECUTIVE SESSION

6:45 p.m. – 7:07 pm

At 7:07 p.m., the Board reconvened in public session upon a Motion by Commissioner Michael Molner and a Second by Comr. Scott Sochon. All members were present following the return to public session.

REMANDED HEARING

1. **JOHN RADER**, 817-825 Clifton Ave., Block 35.06, Lot 16 – B-C – The Application was previously heard and denied by the Board in 2020. Use Variance; Variance; Site Plan Following an appeal to the New Jersey Superior Court, Law Division, Docket No, PAS-L-309-21, the Superior Court reversed the December 2, 2020 decision of the Board and remanded the matter back to the Board for additional proceedings. The Applicant has modified the previously submitted plans. Site plan approval required to remove the existing MOONEY AUTO REPAIR GARAGE, to enlarge the building housing the existing DUNKIN DONUTS building, to create an additional store, two vestibule entrances to the two stores and a drive-in facility. A bulk variance is required to permit the use of lighting other than the ordinance required high-pressure sodium lighting, because it is no longer manufactured. A use variance is required to permit the drive-in window. All other nonconformities are pre-existing and do not require variances. DENIED DECEMBER 2, 2021 – COURT-ORDERED REMAND.

Daniel L. Steinhagen, Esq., of Beattie Padovano LLC, with offices at 200 Market Street, Suite 401, Montvale, New Jersey 07645, appeared on behalf of the applicant. Present on behalf of the applicant, and sworn to give testimony were the following individuals: Gary Kliesch, gk+a Architects, 36 Ames Avenue, Rutherford, New Jersey, an architect; Matthew Seckler of Stonefield Engineering & Design, LLC, 92 Park Avenue, Rutherford, New Jersey 07070, a traffic engineer; and Keenan Hughes, Phillips Preiss, Planning & Real Estate Consultants 70 Hudson Street, Hoboken, New Jersey, a planner.

Dominic Iannarella, Esq., 139 Lakeview Avenue, Clifton, NJ appeared on behalf of interested party, Boys and Girls Club of Clifton, which is the Property across the street.

This Application was previously heard before the Board during its August 19, 2020; September 16, 2020; October 21, 2020; November 18, 2020; and December 2, 2020 meetings. On December 2, 2020, the Board voted to deny the application. The Applicant subsequently appealed the Board's denial to the Superior Court of New Jersey, Law Division under docket number PAS-L-309-21. The Superior Court of New Jersey, Law Division reversed the denial of the Board by Order entered on August 13, 2022 and remanded the Application back to the Board of Adjustment for further proceedings. Following remand, the Application was heard before the Board during its May 3, 2023 meeting.

The Board is in receipt of Remanded Hearing Engineering Review No. 2 dated April 20, 2023 and Revised September 5, 2023 and Remanded Hearing Planning Review dated April 26, 2023 issued by Neglia Engineering.

In advance of tonight's meeting, the Board received a revised site plan and correspondence from Mr. Steinhagen dated August 15, 2023. Such correspondence included updated traffic counts and a report by the Applicant's traffic consultant dated August 4, 2023. Mr. Steinhagen's correspondence advises the Board that the Applicant will stipulate to a condition of the approval, based on the revised site plan. The revised plans eliminate the need for a use variance.

Mr. Kleisch provided testimony regarding the revised plans. Mr. Kleisch stated that the proposed Site Plan contains "bubbles" which identifies the changes. The major change removes the second tenant from the space on the Cloverdale side of the Building. In removing the second tenant, the drivethru lanes could be positioned closer to the building and satisfy certain conditions and variances. This included the curve out and location of the drive aisle. There is 10 feet of the drivethru lane and increased landscaping.

Mr. Kleisch stated that the Clifton Avenue front parking spaces have been removed, which eliminated the need for the variance. Those areas are replaced with landscaping which increases the amount of impervious coverage. The revised site plan also revises the location of the fencing to ensure compliance with the location of the variance. Mr. Kleisch stated that if the Board so required and would be willing to grant a variance the applicant is willing to adopt a fully closed privacy fence for more barriers to the neighboring properties.

Mr. Kleisch stated that the ground sign now complies with the setback requirements and the design requirements comply with the District ordinances. Mr. Kleisch stated that the only variances sought are dealing with the preexisting use and parking location. Mr. Kleisch stated that parking adjacent to Lot 14 (neighboring lot) is approximately 1.5 feet from the property line and there is currently no screening. Along Cloverdale road, the parking location exceeds the lot line. With regard to the newly proposed site plan, the Cloverdale road parking will be angled and will be 5 feet or so from the property line with additional landscaping. In the rear, parking will be 6 feet 7 inches from the rear of the property line with the addition of a fence and landscaping. The rear parking area will be parallel to ensure that parking lights do not face neighboring properties.

Mr. Kleisch stated by removing the second tenant, the number of required parking spots is reduced. There are now only required 13 spaces, which is reduced from the 16 originally required. The applicant is proposing 16 spaces, which Mr. Kleisch states exceeds the amount required.

Mr. Kleisch stated that he has designed over 500 Dunkin Donuts and only 1 has had a drivethru queue of more than 15 cars. He also stated that his understanding is that there is only 1 Dunkin Donuts anywhere with a drivethru queue of 18 cars. He also stated that he was unaware of any location with a drivethru queue of 12 or more spaces that had any issues with excessive queuing.

Mr. Kleisch offered testimony related to the Neglia Review letter received. Mr. Kleisch stated that the existing utilities will be updated or upgraded in compliance with Neglia's comments. The applicant is willing to move the utilities underground if necessary. Mr. Kleisch addressed stormwater runoff and the applicant's proposed grading plan. The building will have down spouts with drainage areas which will pitch across the parking lot and across the sidewalk but will be captured and released through the curbcuts to the County Road.

Mr. Kleisch addressed the length of the parking spaces and the parking diagram. He reviewed the proposed truck turning plan. He stated that trucks will enter through the right side of the parking lot and will circle the property to exit through the left area of the property. He acknowledged an error in the drawings which would be corrected. He stated in his professional opinion a truck could safely and adequately enter and egress from the property.

Chrmn Zecchino asked if truck movement could be accomplished more easily with the removal of the second drive through lane. Mr. Kleisch acknowledged that it could, but that elimination of the second lane would reduce the number of stacking spots. He also testified that deliverables are made more often with a van as opposed to a full box truck. Chrmn Zecchino stated that the existence of 2 drivethrough lanes could be confusing to customers. Mr. Steinhagen stated that the addition of a second lane is in response to input from the Board as part of the 2020 application. Mr. Kleisch stated that this would also impact the queuing requirements imposed by Dunkin Donuts. Mr. Kleisch stated that the removal of the second drive through lane could result in further movement from the rear property line for other parking spaces. Mr. Kleisch stated that the applicant would be willing to accept a condition that the second drivethrough lane be removed.

Comr. Molner asked about deliveries, the timing, and the types of trucks used. Mr. Kleisch stated that there are some products which may be delivered by an 18 wheeler, but that the owners may request that such type of truck be changed.

Comr. Foukas asked about the number of Dunkin Donuts in the area without drive throughs. He expressed concern over the drivethrough and stacks in similar businesses. Comr. Foukas asked about the hours of operation, and Mr. Steinhagen stated that testimony was provided during the prior application but could be provided upon consultation with his operations expert. Comr. Foukas expressed concern over ambient sound to the neighborhood. Mr. Kleisch stated that drivethrough sound has the ability to be reduced and will be sensitive to the time of day.

Mr. Kleisch provided testimony regarding lighting. He stated that the lighting on the outside are accent lights and will not create glare. Mr. Kleisch stated that all other Neglia comments can be complied with or stipulated to.

Mr. Kleisch stated that the applicant has listened to neighbor concerns and will be adding a sidewalk depression and that the applicant will be governed by the County decision regarding placement of a crosswalk. If the Board looks favorably on the application, the applicant will use best efforts to locate a crosswalk and will defer to the County.

Dominic Iannarella, counsel for Interested Party the Boys and Girls, asked Mr. Kleisch about the drivethrough operation and flow and what the width is the drive aisle between the drive through and the parking area. Mr. Kleisch stated he believed 18.2 feet generally and the handicap spots were 16 feet. He stated that the ADA spots are 80 degrees, and the angel spots are 65 degrees. Mr. Iannarella asked about the degree of back up space to prevent interference with the drive lane. Mr. Kleisch stated it is 16 to 18 feet. Mr. Iannarella asked how there is no interference with the drive lane. Mr. Kleisch stated that he does not anticipate there being more than 12 cars in the queue in his professional opinion, even though there is availability and space for more. Mr. Kleisch stated that there could be an issue if the queue was full at 18 spots.

Matthew Seckler of Stonefield Engineering & Design, LLC, provided testimony as a traffic engineer. Mr. Secker stated that he prepared an additional Memorandum. This Memorandum compared the counts made in 2018 and those counts made in May 2023. The day of the counts was a sunny day when school was in session. Counts were done in the morning peak hours. Traffic volumes were nearly the same (down slightly by 2%) when compared to 2018. There was a reduction of 61 cars over the 5 years. He stated that this reduction was expected and reasonable. Based on this minor reduction, it was his opinion that the traffic report of 2018 was still applicable and relevant.

Mr. Seckler stated that he also reviewed transaction data and compared both the 2018 and 2023 reports. There was a reduction of approximately 6 transactions. He stated that the Dunkin operates consistently. He stated that he is confident that his previous opinions would not be changed based on the new information.

Mr. Seckler also provided information regarding other sites. He stated that no other site exceeded a queue of 11 vehicles. He stated that the Van Houten site resulted in traffic flowing into the street after 6 vehicles. He stated that this site is designed differently to prevent this from happening and 11 vehicles could fit appropriately with either a 1 or 2 lane drive through. He stated that the vast majority of traffic in these sites is dependent on the business of the area in which it is located.

Mr. Seckler stated that there was no information to suggest that transaction time has increased from his prior testimony, and on average there is approximately 2.5 minutes to complete an order. He stated time to a window will, on average, be 3 minutes assuming there are cars ahead of you. He stated that there would not be a delay as a result of food not being ready as there are plenty of positions to prevent that from happening. Mr. Seckler also stated that the number of cars during a peak time would be approximately 60 cars. He stated that the 2 lane drivethrough could support 120 customers per hour, and that eliminating one drivethrough lane would support 90 to 100 customers per hour. He stated that the site has been designed to accommodate the level of traffic in the site and that it is unlikely that cars will trickle into the public roadways.

Chrmn Zecchino asked Mr. Seckler if he had ever gone through a drive through and that this site plan sounds perfect, but in his experience, errors and confusion occur. Mr. Seckler stated that in this site, a space could be designated for an individual to pull over and have the issue corrected. He stated that in a Dunkin, orders may be completed much faster and more consistently than other fast food restaurants. Chrmn Zecchino expressed concern about the busyness of Clifton Avenue and not wanting to increase that. Mr. Seckler stated that there is an existing customer base because there is a Dunkin. He stated that some of the issues described currently exist.

Comr. Foukas agreed with Chrmn Zecchino and asked what percentage increase is expected with the drivethrough. Mr. Seckler stated that 10 % new customer increase is expected. He stated that the drivethrough can expedite the process and quicken the time spent by customers on the site. He stated that 50-60% of customers will not likely utilize the drive through.

Mr. Steinhagen stated that a hardship standard is not the applicable standard for reviewing the drive through. Mr. Steinhagen stated that this is not a prohibited use and the traffic generated by this use is contemplated by the zone selected by the governing body. Mr. Steinhagen also clarified that the property is currently operating 24 hours and this would not change.

Comr. Eramo asked about calibration data. Mr. Seckler stated that the number of vehicles that drove in were 69. Sometimes, there are 2 people in the car which are doing separate orders, or people may walk in. This is why the transaction numbers is greater. Comr. Eramo asked about 2023 calibrated data. Mr. Seckler stated that he did conduct that evaluation which determined that there were 12 less cars coming in and 6 less transactions from 2020. Comr. Eramo asked about the times of day prior counts were done. Mr. Seckler stated that counts were done a 2 hour window in 2018 and compared that worst hour and compared that worst hour to 2023.

Comr. Molner asked about hours of operations. Mr. Steinhagen stated that drive thru will be operate 25 hours. Comr. Molner asked how we moderate sound levels from cars idling in the drive through lane.

Comr. Eramo stated that the number of transactions doesn't really matter but the key is the number of cars, which is more in 2023. Mr. Seckler stated that the number of cars did go up, and the transaction data was provided to account for COVID.

At the request of the Board, this matter was scheduled for further proceedings by the Board beginning on the October 4, 2023 meeting of the Board with no further notice required and all other requirements tolled.

CONTINUED HEARINGS

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| 1.
Variances; Use
Variance; Site
Plan | MAIN FOOT
AND ANKLE
LLC
Glenn Peterson,
Esq.
(CONTINUED
TO 09/20/2023) | 1610 Main St. & 80 W. 2 nd St., Block 9.07, Lots 25 and
36 – B-C (Lot 26) and M-2 (Lot 25) – The applicant is
proposing a consolidated subdivision of 1610 Main
Avenue and 80 West 2 nd Street. The applicant further
proposes a 3-story mixed use building for medical
offices and a retail pharmacy. A D1 use variance is
requested in addition to any and all other variances as
may be required. |
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At the request of the attorney for the applicant, the Matter was continued until the September 20, 2023 meeting of the Board.

2. **KANOON** 349 Hazel Street, Block 15.13, Lot 7 – RB1 – Applicant
Variances; Use **RESTAURANT** is proposing a fully enclosed covered patio to be used
variance Dominic for year round seating, a covered walkway as well as a
Iannarella, Esq. 160 sq. ft shipping container which are all an expansion
(CONTINUED of a non-conforming use and require a use variance. A
TO 09/06/2023) parking variance as well as any other variances, waivers,
exceptions, or other relief that may be necessary are also
being requested. (PLANS SENT TO COMRS.)

Dominic Iannarella, Esq., with offices at 139 Lakeview Avenue, Clifton, NJ, appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: Saul Washah, owner of Kanoon Restaurant; Michael Capo, of Michael Capo Architect LLC, with offices at 1046 Rt 46 E., Clifton, New Jersey 07013, an architect.

There were no interested parties or objectors.

The Board is in receipt of: Engineering Review No. 1 from its Engineer, Neglia Engineering Associates, dated August 3, 2023; and Planning Review No. 1 from its Planner, Graviano & Gillis Architects & Planners LLC dated August 15, 2023.

Mr. Iannarella provided an opening statement. Currently, the site is developed with an existing 1 story restaurant with a 1,462 sq ft footprint, a 305 sq ft patio along Hazel street, and a 472 sqft patio along Richmond street. The applicant proposes to construct a 305 sqft addition over the Hazel Street patio and a 160 sq ft shipping container within the existing parking lot adjacent to the NW building corner for cold storage. The applicant also proposes a covered walkway along the W side of the building, and the removal of a tempered glass enclosure along the Richmond St patio.

Mr. Washah provided operational testimony. He stated that the hours of operation will be 12 pm to 10 pm. Six employees will arrive to begin work around 10 am and depart 11 pm 7 days per week. Mr. Washah stated that garbage pick up comes before the restaurant opens at 9 am 3 times a week. Mr. Washah stated that deliveries are made in the morning before the restaurant opens with vans, and either the manager or Mr. Washah are present to receive to deliveries.

Mr. Washah addressed parking. For employees, only 3 employees drive. Mr. Washah stated that there will be 3 areas available for patrons and employees to park. This includes an area across the street and up the street. He has agreements with these areas and owners of these businesses. He stated that neighboring businesses will be closed during the restaurant's busy time to accommodate over flow. Mr. Washah stated that the area is industrial in nature and that the area, other than the restaurant, is usually empty around the restaurant's busy time.

Mr. Washah stated that there will be smokers on the property as the restaurant is a steak house. He stated that he works in coordination with the Health Department to ensure compliance with any and all regulations related to cleaning, etc.

Mr. Washah stated that cold storage is sought on the site. He stated he is willing to comply with any conditions imposed by the Board.

Mr. Washah offered the following exhibits:

Exhibit A-1 – Site Plan Excerpt.

Mr. Washah stated that the enclosed area will be in the front, and the side area along Richmond will be open. Mr. Iannarella stated that the area was previously enclosed and it will be removed as it was encroaching on the right of way.

Chrmn. Zecchino asked about the parking lot and whether it will look like Exhibit A-1. Mr. Iannarella confirmed that it would in compliance with the reports received from the Board's professionals.

Comr. Molner asked if there should be something in writing with the other lots regarding parking agreements. Mr. Iannarella stated that the applicant is willing to do so if it is a condition of approval.

Comr. Eramo asked if any seats will be added to the restaurant by nature of the expansion. Mr. Washah confirmed that it would and that the Architect would provide testimony. Comr. Eramo asked about the loss of parking spaces due to the shipping container. Mr. Washah stated that there will be a loss of two spots. Mr. Iannarella stated that the positioning of the shopping container was moreso to be more visually and practically appealing. Mr. Washah stated that there is no basement on the property which results in the need for the shipping container. Comr. Eramo asked about the number of parking spots when adding the other business areas. Mr. Washah stated that he did not know the exact number, but that parking was more than adequate.

Comr. Sochon asked about the tables within the aluminum enclosure. Mr. Iannarella stated that those tables will be maintained for outdoor dining, but the aluminum has been removed. Mr. Iannarella stated that the ordinance is governed and impacted by Governor Murphy's executive order.

Comr. Foukas asked about a café license. Mr. Iannarella stated that the applicant would be willing to do so. Mr. Iannarella stated that the resolution may need to have language stating that the applicant will be governed by the ordinance in the event that the Executive Order is changed.

Nicholas Graviano, of Graviano & Gillis, the Board's planner asked for clarification on the outdoor patio seating. Mr. Iannarella stated that there are 8 tables. Mr. Washah stated that most of these tables are not usually used. He stated he would like to keep the same number of tables once enclosed. Mr. Graviano asked about landscaping around the storage container to ensure that there is more than just a painted storage container.

Michael Capo provided architectural testimony. He explained that there is a covered walkway along the left side of the building, and an aluminum enclosure being removed. The structure of the building will otherwise remain the same except for the façade to mirror the style of the existing roof. He stated that the addition is designed to be consistent with its prior design.

Comr. Eramo asked about the number of seats being added in the restaurant. Mr. Capo stated that the exterior patio is existing and those tables will be replaced in the same manner that they existed previously.

Anthony Kurus, of Neglia Engineering, the Board’s engineer asked about parking striping to make the area more user friendly. The applicant stated they would be willing to comply.

Mr. Graviano requested that the trash enclosure is solid. The applicant agreed.

Mr. Iannarella offered a closing statement that the proposed use is much more in line with the MLUL and the zone plan, and more beneficial to the public. He stated that the applicant is a good neighbor and is working hard to benefit the community.

As a condition of approving the property, the Board instituted the following stipulations:

1. Striping detail will be added in accordance with comments received by the Board’s professionals;
2. Landscape detail will be added in accordance with comments received by the Board’s professionals;
3. A solid box for a trash enclosure will be utilized;
4. The applicant will secure a written agreement with neighboring properties memorializing parking relationships; and
5. Outdoor seating is currently by the State pursuant to Executive Order and if that changes, the applicant will need to come before the Board in accordance with the City’s resolution.

After a review of the testimony, Comr. Michael Molner moved to approve the application with the noted stipulations and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr. Maureen O’Connor. Voting in favor of the Motion to approve the application were Comrs. Alessia Eramo, Maureen O’Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, and Chrmn Mark Zecchino. By a seven to zero vote, the motion carried and the application was approved in the form as more fully appears at the end of these Minutes.

NEW HEARINGS

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| 1.
Variances, Use
Variances, Site
Plan | LORD AND
SHEPHERD
PROPERTIES
LLC
Lawrence Cutalo,
Esq. | 1500 Main Ave., Block 9.19, Lot 1 – M-3 Special Industrial – The Applicant seeks Preliminary and Final Site Plan Approval and other approvals to fit out, reoccupy and replace the existing first-floor furniture store with an approximately 7,433-square-foot restaurant and approximately 4,243 square feet of self- |
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service self-storage space. The Applicant further seeks to fit out and reoccupy certain vacant fourth floor space with approximately 11,818 square feet of self-service self-storage space. Other alterations are set forth on the site plan and architectural plans and include electric vehicle charging station(s). The Applicant seeks use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) because the proposed self storage use is not permitted in the M-3 zone. The Applicant further seeks use variance relief, N.J.S.A. 40:55D-70(d)(1), insofar as one principal use is permitted where the Application proposes two principal uses (self-storage and restaurant) with other principal uses that are existing and/or previously approved. The Applicant also seeks conditional use variance relief, N.J.S.A. 40:55D-70(d)(3), for the self storage and/or warehouse uses in view of proposed/existing deviations from the conditional standards set forth in §461-36.E(2) (warehouse - frontage for lot within 1/2 mile of public park where not permitted) and §461-36.E(4) (warehouse - height and parking requirements for M-2 zone district not met where such is required). The Applicant further seeks the following bulk, dimensional or other "c" variance relief, N.J.S.A. 40:55D-70(c), to allow among other things: § 461-60.1.A, 100 parking spaces proposed/existing where 259 required; § 461-24.3.F(1) for restaurant use, front yard setback shall be minimized to bring front façade as close to street as possible, where 106.9 ft. front yard setback proposed/existing; § 461-24.3.G(1)(C)[4], compliance with off street parking and screening requirements, where proposed/existing parking lot is unscreened and non-compliant. Applicant seeks to continue the following pre-existing non-conforming, or previously approved, conditions including but not limited to: 35 ft. side yard setback required where 5.2 ft. existing/proposed; 35 ft. rear yard setback required where 5.6 ft. existing/proposed; 250 ft. lot width where 132.2 ft. existing/proposed; 2.05 acre lot area existing/proposed where 2.5 ac. required in M-3 Zone and 5 ac. required in Main Avenue overlay; for restaurants, parking areas screened from front yard where no screening exists/proposed; for restaurants, lot must front Main Avenue where existing/proposed frontage is on West 5th Street. As these nonconformities and/or deviations are already existing, the Applicant submits that no additional variance relief is required, but

to the extent required, the Applicant shall, for above-referenced conditions, seek any variances, waivers, exceptions or other relief as the Board determines to be necessary. In addition to the foregoing, the Applicant seeks without limitation all other approvals, variances, waivers, exceptions, deviations, interpretations, continuations of pre-existing non-conforming conditions and/or submission waivers as set forth in the Application and/or Site Plan Documents and/or as may arise or be deemed necessary by the Board or its professionals, or during the course of the hearings and/or as the result of any requested change to the Site Plan Documents by the Board, the Applicant or any member of the public. (PLANS SENT TO COMRS.)

Lawrence Cutalo, Esq., of O'Toole Scrivo with offices at 14 Village Park Road, Cedar Grove, NJ 07009, appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: Matthew Seckler of Stonefield Engineering & Design, LLC, 92 Park Avenue, Rutherford, New Jersey 07070, an engineer.

There were no interested parties or objectors.

The Board is in receipt of: Engineering Review No. 2 from its Engineer, Neglia Engineering Associates, revised August 24, 2023; and Planning Review No. 1 from its Planner, Graviano & Gillis Architects & Planners LLC dated September 1, 2023.

Mr. Cutalo provided an opening statement. Currently, the site is a 89,139 sq ft lot in the M3 Zoning District and Main Ave Overlay Zone. The site contains a 4 story mixed use building which houses a furniture store, furniture fabrication, fabric warehouse, food store, and other commercial uses. The applicant proposes to replace the furniture store on the first floor with a 7,433 sq ft restaurant and a 4,243 sq ft self storage space. Additionally, the Applicant proposes to occupy the existing 4th floor with an 11,818 sq ft self storage space. This property was the subject of prior variances.

Mr. Cutalo stated that the project requires two d(1) variances. The first variance is required as one principal use per lot is permitted by Ordinance and more than one are existing and proposed, including new self storage and restaurant use. The second variance is required as self-storage is not a permitted use within the zone(s).

Mr. Cutalo explained that the Project also requires a d(3) conditional use approval for a warehouse use. However, based on review of the Board's professionals, such d(3) variance may not be applicable as self-storage and warehouse uses are "distinctive land uses". The Applicant also seeks multiple bulk or (c) variances. Such variances include a parking variance as 259 off street parking spaces are required and 100 are proposed; minimum side yard setback of 35 ft is required and 5.2 is existing and proposed; minimum lot width of 250 ft is required and 132.2 ft is existing and proposed; minimum lot area of 5 acres is required and 2.05 is existing and proposed; and a variance to the requirement that all parking areas be screened from the front yard with landscaping as minimal landscaping is existing.

Matthew Seckler of Stonefield Engineering offered testimony related to architectural plans, engineering, traffic engineering, and planning. Mr. Seckler stated that the building predates both the Zoning laws and the City of Clifton. Mr. Seckler stated that there are a number of pre-existing nonconformities as a result of the site being undersized for the zone. Mr. Seckler stated that there is no defining line between the two properties.

Mr. Seckler explained that this is an existing 4 story building which will remain. There is minimal change to the building. The property was recently repaved and restriped. Mr. Seckler explained that some improvements are being made to add EV spots. Mr. Seckler acknowledged receipt of the Board's professionals reports, particularly with regard to landscaping and acknowledged and agreed to work with the professionals to ensure compliance.

Mr. Seckler explained that the main changes would be made to the Southerly side of the property as there will be new tenants on the ground and fourth floors of the property. Mr. Seckler explained that the site is mixed use currently and the mixed use will continue as it is difficult to find one tenant to utilize a building of this size. On the first floor, there will be a restaurant and self storage area and the fourth floor will be entirely self storage.

Mr. Seckler explained that on the Southerly side of the first floor, the restaurant will be approximately 7000 sq ft with 82 seats. The restaurant will be a sit down and reservation dining facility. There will be four tops, two tops, and bar seating. On the northernly side of the property, there will be self storage. There will be an exterior exit on Main avenue as well as in the rear of the building. Exit from the restaurant is an existing door area on Main Avenue.

Mr. Seckler explained that the fourth floor storage area will occupy approximately 11,000 sq ft. He stated that this zone is a mix of a residential, commercial and industrial area and the community may benefit from having the self storage area.

Mr. Seckler stated that the self storage area will have one employee and is not 24 hours but will operate normal business hours. The restaurant will operate for lunch and dinner and with one additional hour of operation on the weekends.

Mr. Seckler stated that this type of site could easily accommodate this type of use because the uses are opposite times of day. Mr. Seckler stated that he performed parking counts during the day in the work week and during the night on the weekend. He stated that there would be sufficient parking available during these times. Mr. Seckler stated that the impact on traffic is minimal due to the opposite schedules of each use.

Comr Foukas asked if the applicant has a tenant in mind. Mr. Seckler confirmed that there is.

Chrmn Zecchino asked about the full parking lot and whether the applicant has any agreement with another business because that agreement may no longer be able to exist to provide availability for this use. Mr. Cutalo stated that if there are any agreements, the applicant will terminate those agreements.

Comr. Molner asked about the commercial vehicles parked on the south side of the property. Mr. Seckler reviewed the tenants of the building and stated that the applicant will do what is necessary to ensure available parking. Comr. Molner expressed concern about the deficient number of spaces. Mr. Seckler explained that very rarely are all spots used by the multiple uses at the same time. He explained that self storage use will help to reduce the issue are there are minimal people on the site at a time.

Comr. Foukas stated that the storage use might not have been considered when the zones were created. Mr. Seckler explained that the multiple uses have been on this site for a long time,, and that storage use is not considered by the zone. He explained that the storage or warehouse use is the type of use meant to accommodate the needs of the community and is particularly suited for this site.

Nicholas Graviano of Graviano & Gillis, the Board's Planner, stated that the Board is familiar with self storage and requested testimony regarding accessing the area with trucks and vehicles safely and the loading and unloading area. Mr. Seckler stated that there is an exterior door on the rear of the site near the elevator. The positioning is intentional to assist patrons. Mr. Seckler stated that the applciant can indicate where the loading area is and direct patrons to the rear of the property.

Mr. Seckler offered planning testimony. He stated that many of the bulk variances are preexisting nonconformities. The applicant seeks a d1 variance due to 2 uses and the self storage use. Mr. Seckler stated that this is a well suited use, maintaining an 1850s style building, and by having 2 uses the applicant is able to maintain and keep up both the building and the site. Self storage use is a low traffic low occupant use which is suitable for this site. Mr. Seckler stated that this application furthers MLUL as it provides sufficient space, provides appropriate uses, offers commercial spaces for other uses and residents of the area. Mr. Seckler stated that this will promote a visually beneficial environment. Mr. Seckler states that the uses will promote the general health, safety, and welfare.

Mr. Seckler offered testimony that there is no negative impact on the general public. Mr. Seckler stated that this type of use does not negatively impact traffic, lighting, flooding, etc. MR. Seckler stated that this use was not likely contemplated when the MLUL and the Master Plan were adopted. This furthers the purpose of the Master Plan which is rehabbing and readopting older buildings.

Mr. Seckler stated that there are c variances are also requested by the standard for such requests are met and established by the same criteria for the d variances.

Chrmn Zecchino asked if Mr. Seckler had reviewed the Neglia report. Mr. Seckler confirmed he had and would comply with all comments. Mr. Seckler provided additional testimony regarding trash removal and pick up.

As a condition of approving the property, the Board instituted the following stipulations:

1. No loading / unloading self storage in front of the building;
2. A dumpster enclosure of a solid material will be installed;
3. All agreements, if any, with other neighbors regarding use of the site's parking spaces shall be nullified;
4. The applicant will review and comply with the reports of the Board's professionals;
and
5. All future signage will comply with ordinance requirements

After a review of the testimony, Comr. Michael Molner moved to approve the application and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr. George Foukas. Voting in favor of the Motion to approve the application were Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, and Chrmn Mark Zecchino. By a seven to zero vote, the motion carried and the application was approved in the form as more fully appears at the end of these Minutes.

2. **CLIFTON**
Variances, Use **CHEDER INC**
Variance, Site Jason Tuvel, Esq.
Plan

213-224 Barkley Ave., Block 19.10, Lot 1 and Block 19.08 Lot 13 – RB1 and B-D Zone – The Applicant seeks approval to convert the existing house of worship with accessory day care center at the Building Lot into a house of worship with private school, along with related site improvements, including but not limited to landscaping and lighting (the "Proposed Development"). The Applicant also seeks approval to utilize the Parking Lot for vehicular parking ancillary to the Proposed Development. The Applicant seeks use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) for proposing off-site parking associated with the Proposed Development, if deemed necessary. The Applicant seeks conditional use variance relief pursuant to N.J.S.A. 40:55D-70(d)(3) for the Proposed Development for failure to meet the following conditions; (1) minimum lot area (1 acre required; 0.67 acre existing/proposed); (2) number of stories (2 stories permitted; 2.5 stories existing/proposed); (3) maximum impervious coverage (20% permitted; 74.7% existing; 75% proposed); (4) minimum front yard setback (25 ft. required; 9.8 ft. existing/proposed); and (5) minimum side yard setback (25 ft. required; 7.4 ft. existing/proposed). To the extent necessary, and in the alternative, the Applicant seeks use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) for the Proposed Development, if deemed necessary. The Applicant also seeks bulk variance and design waiver/exception relief, including: (1) parking less than required (44 spaces required; 0 spaces existing/proposed on the Building Lot); (2) fence height in front yard and street side yard greater than permitted (4 ft. permitted; 6 ft. proposed); and (3) fence height in side yard greater than permitted (5 ft. permitted; 6 ft. proposed). The Applicant also seeks any additional deviations, exceptions, design waivers, submission waivers, variances, use variances, conditional use variances, interpretations, continuations of any pre-existing non-conforming conditions, modifications of prior imposed conditions and other approvals reflected on the filed plans (as same may be further amended or revised from time to time without further notice) and as may be determined to be necessary during the review and processing of the Application. (PLANS SENT TO COMRS.)

Jason Tuvel, Esq., of Prime & Tuvel LLC, with offices at 1 University Plaza Drive, Suite 500, Hackensack, New Jersey 07601, appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: Rabbi Isaac Kagan, 557 Passaic Avenue, Clifton, head of school; Joseph Staigar, of Dynamic Engineering, 245 Main Street, Suite 110, Chester, NJ, an engineer.

There were no interested parties or objectors.

The Board is in receipt of: Engineering Review No. 1 from its Engineer, Neglia Engineering Associates, dated August 21, 2023; and Planning Review No. 1 from its Planner, Graviano & Gillis Architects & Planners LLC dated September 2, 2023.

Mr. Tuvel provided an opening statement. Currently, the properties are two corner lots with frontage on Barkley Ave and Delaware Street located within the RB1 and BD Zones. Lot 1 is 29,256 sqft and is developed with the Clifton Jewish Center house of worship and daycare center. Lot 13 is 13,647 sq ft and has a paved surface parking lot. The applicant proposes to convert the daycare building located on Lot 1 into a girls' school for 190 students. The applicant currently operates a school on another location in Clifton, but the site was impacted by fire.

The applicant is requesting preliminary and final site plan approval, with related d(3) and d(1) variances. The type of use is a conditional use and some of the conditions are not met. The d1 variance is needed as the Jewish Center is located on the property and is currently figuring out where and how they want to continue to operate. The Jewish Center has agreed with the applicant that they will figure out what they are doing after four years. Mr. Tuvel stated that the applicant is willing to agree to a four year time period on the d1 use variance, or that same be a condition of approval.

Rabbi Kagan offered testimony regarding the schools operations. The school is an all girls school operating K to 8 grades. Currently, there are 30 employees. The program begins with morning religious studies, with afternoon general studies. Separate teachers teach each type of programming and not all employees are on the site at the same time. K through 5 ends at 3:45 /3:50 and Grades 6 through 8 ends slightly later on Monday through Thursday. On Fridays, instruction ends at 12:30 pm. Staff arrives around 8:15 and student drop off begins at 8:30. There will be an organized drop off area monitored by staff, which will direct children as well as flow traffic safely and quickly outside of the property. All staff will park on the property.

Rabbi Kagan provided testimony regarding recess from 10 am to 11 am with 3 15-20 minute slots. During those slots, 3 grades will be grouped and given outdoor access. The same idea will be repeated in the afternoon between 2pm and 3pm. There are no sports teams or theater groups with evening events. The school concludes operations with pick up of students.

Rabbi Kagan stated that in addition to teachers, the faculty will include various other professionals. At any given time, the staff and faculty on site will not exceed 20.

Rabbi Kagan stated that there will be minimal overlap between the school's operations and the Jewish Center's operations. There will be one staff member on the lower floor during the school day. The Jewish Center's primary uses will take place on the weekends, when the school is not operating. The School year runs from September through June, and there is currently no summer programming. Future summer programming is possible, but in a limited capacity.

Rabbi Kagan explained pickup procedure. K through 5 pickup will commence at 3:45 and 6 through 8 will commence at 4:45 pm. There will be no school buses and all drop off pick up is done by parents. By 5 pm the school will be closed. The school will be locked and visitors will be monitored. The school will also have security.

Rabbi Kagan provided testimony regarding deliveries and garbage pickup. He stated that there are smaller deliveries through providers like amazon. He stated that garbage pick up will be done approximately twice per week by a private hauler.

Rabbi Kagan stated that students will bring their lunch and there will be no cooking on the property.

Chrmn Zecchino stated that there is concern about crossing Delaware Avenue during pick up and drop off. Mr. Tuvel stated that staff outside during pick up and drop off as to not permit students and parents to deviate from the pick up and drop off process.

Comr. Molner asked about Friday dismissal. Rabbi Kagan stated that once a week all students will be picked up at the same time.

Joseph Staigar, of Dynamic Engineering, provided engineering testimony. He stated that there are two lots. Lot 1 is 29,256 sqft and is developed with the Clifton Jewish Center house of worship and daycare center. Lot 13 is 13,647 sq ft and has a paved surface parking lot. The site improvements will be made to make the building ADA compliant. The ramp into the building on the Delaware Avenue side will be removed and replaced to improve access in and out of the building. The area in the SW corner of the building will be a grass play area. This area will be fenced in. This is the only change to the site.

Mr. Staigar offered the following exhibits:

Exhibit A-1 – Colorized Version of Sheet 3 of Site Plan.

Mr. Staigar confirmed that the parking area will remain but will be refurbished and restriped. Mr. Staigar also confirmed receiving the Neglia and Graviano reports and that the applicant will comply with any and all comments.

Mr. Staigar also provided traffic testimony. He stated that he personally took queuing and traffic counts at a similar co-ed school location on another site. He stated that the manner of operation is similar to what is proposed at this site. At the existing school, there were 259 students. The counts were prorated based off of a 190student enrollment which is proposed for the current school. The proposed school, using the prorated counts, would generate 61 trips in and 49 trips out

in the morning. The difference in the two is the staff in the morning who are not leaving. When comparing to the current day care use, there are an additional 64 trips versus the current use. The existing use generates 46 trips vs. 110 trips for the proposed school use.

Mr. Staigar provided testimony regarding pick up and drop off. He stated that there will be staff present to assist with flow. He stated that older students are more mobile and require minimal assistance from parents and/or staff. Mr. Staigar stated that there is a walkable area from the car door to the entrance of the school is about 20-22 feet. There will be approximately 4-5 cars discharging at the same time. At any given time, there will be 4 or less cars queued at 95% of the time. The site has the capacity to queue 10 cars. Mr. Staigar stated that 190 students generate 49 cars and will be coming to the site within a 15 to 20 minute period. The pick up times are staggered by an hour as queuing may take longer.

Chrmn Zecchino expressed concern related to comparing another site's process with the site at this location. Mr. Tuvel stated that the applicant and the experts are extremely confident that the counts and the process which will be instituted will ensure the safety and minimal public impact.

Mr. Staigar also provided testimony regarding parking. The ordinance requires one parking space for every staff member. There will be 20 staff members on site at any one time and there will be 44 spaces available.

Comr. Foukas asked if there could be a condition that the parking lot be dedicated for the use of the school. Mr. Tuvel stated that the ordinance requires this. This may be memorialized in an easement.

Comr. Molner asked about using part of the parking lot for parking. Mr. Tuvel stated that there will be no utilization of the parking lot for recess.

At the request of Board, this matter was scheduled for further proceedings by the Board beginning on the September 20, 2023 meeting of the Board with no further notice required.

RESOLUTIONS

Chrmn Zecchino stated that the next order of business would be the adoption of the Resolutions set forth on the Agenda:

1. Upon motion made by Comr. George Foukas, seconded by Vice Chrmn Gerard Scorziello, and affirmed by Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of 522 VALLEY ESTATES LLC for preliminary and final site plan approval, and variances to construct a new residential complex consisting of 6 townhome/multi-family dwelling units along with related site improvements for premises located at 522 Valley Road, Block 32.01, Lot 12, was adopted.
2. Upon motion made by Comr. Michael Molner, seconded by Comr. Maureen O'Connor, and affirmed by Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of GAMAL AL-AMRANY for variances to complete a one family renovation and second floor addition for premises located at 306 East 4th Street, Block 5.17, Lot 15, was adopted.
3. Upon motion made by Comr. George Foukas, seconded by Comr. Scott Sochon, and affirmed by Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of KENNETH KLABOUCH for front yard and side yard setback variances to construct a rear dormer and new front covered entryway for premises located at 64 Lyall Road, Block 56.02, Lot 23, was adopted.
4. Upon motion made by Comr. Scott Sochon, seconded by Comr. Michael Molner, and affirmed by Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of ZORAYA DICKSON for a variance for a 5' solid with 1' lattice top fence surrounding deck on corner lot for premises located at 316 Maplewood Ave, Block 25.06, Lot 12, was adopted.
5. Upon motion made by Comr. Scott Sochon, seconded by Comr. Michael Molner, and affirmed by Comrs. Scott Sochon, Michael Molner, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution DENYING the application of OLGA DELGADO for variances to construct a canopy over front stairs and a new enclosure for basement stairs for premises located at 38 Lincoln Place, Block 4.10, Lot 58, was adopted.
6. Upon motion made by Comr. George Foukas, seconded by Vice Chrmn Gerard Scorziello, and affirmed by Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of WAEL IHMAID for rear yard, side yard, and combined side yard setback variances for an already built expansion, roof and enclosure on a rear deck for premises located at 119 E 5th St., Block 5.22, Lot 6, was adopted.

Thereafter, upon motion made by Comr. Scott Sochon, seconded by Comr. Michael Molner the Minutes of the August 16, 2023 regular meeting were adopted with the unanimous approval of the entire Board.

There being no further business before the Board, Comr. George Foukas moved to adjourn. The motion was seconded by Comr. Scott Sochon with the unanimous approval of the entire Board.

Respectfully submitted,

JACLYN M. MORGESE, ESQ.
COUNSEL SECRETARY

MEETING OF SEPTEMBER 6, 2023.

**RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: KANOON RESTAURANT
for premises known as: 349 Hazel Street, Block 15.13, Lot 7
be and the same is hereby: GRANTED variances to construct a fully enclosed, covered patio, covered walkway, and 160 sq ft shipping container.**

Testimony concerning the aforesaid application was taken by the Board at its meeting on September 6, 2023. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

After a review of the testimony, Comr. Michael Molner moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant is seeking variances to construct a fully enclosed, covered patio, covered walkway, and 160 sq ft shipping container; and

WHEREAS, the Board, after hearing the testimony presented by the applicant, has made the following factual findings:

a. Currently, the site is developed with an existing 1 story restaurant with a 1,462 sq ft footprint, a 305 sq ft patio along Hazel street, and a 472 sqft patio along Richmond street; and

b. The applicant proposes to construct a 305 sqft addition over the Hazel Street patio and a 160 sq ft shipping container within the existing parking lot adjacent to the NW building corner for cold storage; and

c. The applicant also proposes a covered walkway along the W side of the building, and the removal of a tempered glass enclosure along the Richmond St patio; and

d. The restaurant will operate from 12 pm to 10 pm seven days per week. The 6 staff members will arrive one hour prior to opening and depart one hour after closing; and

e. The site has van deliveries made in the morning before the restaurant opens with a manager or the owner present to accept deliveries; and

f. The site has garbage pickup three times per week at 9 am; and

g. To provide for additional parking, the applicant has verbal agreements with neighboring properties to utilize their parking areas to supplement those at the current site. These agreements are in place as the surrounding businesses are closed during the peak restaurant times; and

h. The addition of the shipping container is necessary as the site does not have a basement and the container is necessary for storage; and

i. The applicant seeks a d(2) variance as restaurant uses are not permitted in the RB1 zone and the applicant seeks to expand the current restaurant use.

j. The applicant also seeks (c) variances related to parking lot setbacks, off-street parking spaces, lot width, lot coverage, front yard setbacks, and side yard setbacks; and

k. The applicant provided testimony that many of the bulk variances sought are pre-existing conditions; and

l. The applicant provided testimony that the proposed use and site expansion are particularly suited for the site as it is currently used as a restaurant and is successful within the community; and

m. The applicant provided testimony that the proposed use promotes the general welfare as he will comply with all necessary health code requirements and provides a service needed in the community; and

n. The applicant provided testimony that the operations of the restaurant occur at opposite times of the other businesses in the area, which assists in reducing traffic impacts; and

o. The applicant provided testimony that there is no substantial detriment to the public good; and

p. As a condition of approval, the applicant stipulated to the following:

1. Striping detail will be added in accordance with comments received by the Board's professionals;
2. Landscape detail will be added in accordance with comments received by the Board's professionals;
3. A solid box for a trash enclosure will be utilized;
4. The applicant will secure a written agreement with neighboring properties memorializing parking relationships; and
5. Outdoor seating is currently by the State pursuant to Executive Order and if that changes, the applicant will need to come before the Board to request a café license in accordance with the City's ordinance.

q. The Board deemed the testimony provided as sufficient to establish the required legal standard for the granting of the requested variances; and

r. The benefits of the application outweigh the detriments, if any; and

WHEREAS, the Board finds from the testimony presented that the proposal will be in accord with the intent and purpose of the master plan and the zone ordinance; and

WHEREAS, the Board further finds that there has been no testimony presented to show that the proposed addition will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for variances to construct a fully enclosed, covered patio, covered walkway, and 160 sq ft shipping container for premises located at 349 Hazel Street, Block 15.13, Lot 7, is hereby approved and the variances are hereby granted subject to such further governmental approvals as may be required by law and subject to the following:

1. Compliance with the terms of Neglia Engineering Associates report for the above-referenced project.
2. Submission to Neglia Engineering Associates of all necessary easements and/or cross-access agreements for review and approval by the Board Attorney and the City Engineer prior to filing of same.
3. Entering into a Developer's Agreement with the City of Clifton and payment of a site performance bond to the City of Clifton.
4. Submission of a site inspection escrow deposit for engineering inspection fees and safety and stabilization bond/guarantee in amounts to be determined by the Board Engineer.
5. Payment of all water and sewer connection fees to the Passaic Valley Water Commission and/or the Passaic Valley Sewer Commission, if necessary.
6. Issuance of a road opening permit from the County of Passaic or the Clifton City Engineer, if required.
7. Compliance with the terms of Graviano & Gillis Architects & Planners, LLC report for the above project.
8. Shall maintain adequate escrow funds for all anticipated post-approval reviews.
9. Payment of any other fees due to the City of Clifton related to development or use of this project.
10. Payment of any outstanding taxes due and any outstanding fees to the City of Clifton.
11. Passaic County Planning Board approval or waiver.
12. Hudson Essex Passaic Soil Conservation District approval or waiver.
13. Submittal of approval or waiver of same from any additional agency having jurisdiction, including all applicable City, County, State, and Federal Laws, Ordinances, Regulations, and Directives, including without limitations the requirements of the City Engineering Department, City Fire Official, City Police Department, City Construction Code Official, City Board of Health, City Zoning Officer, and any other governmental authority.
14. Submission of engineering site plan to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of hearing.
15. Submission of architectural plans to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of the hearing.
16. All sewerage, utilities, and other site improvements to be installed and maintained by the applicant at its sole expense.
17. All utilities to be constructed underground.
18. All temporary encroachments into the public right-of-way shall require City Council approval.
19. All construction staging shall be done on-site, unless an encroachment for the same into the public right-of-way shall be approved by City Council.
20. Replacement of damaged streets, curbs, and sidewalks as per the direction of the City Engineer and/or Board Engineer.
21. All oral representations made to the Board by applicant, counsel for applicant, or applicant's witnesses, not specifically contained herein, are incorporated by consent of applicant.
22. Shall, upon final determination of the building and building footprint, submit to the City Tax Assessor, floor plans, elevations and estimated construction costs of the building. These materials will be utilized to determine the applicable COAH residential or non-residential fee. Fee certification forms shall be completed by the applicant or its assignees and the Tax Assessor prior to submitting for a building permit.

23. Building permit applications shall only be submitted upon receipt of all required approvals/waivers. All building permit applications shall be accompanied by the Board Resolution of approval and with documentation that all conditions of approval have been satisfied. No permits are to issue unless and until the final sealed plans reflecting any changes or amendments have been submitted and approved. The Zoning Board shall retain jurisdiction to reconsider, revise, modify, add, and vary the terms of any conditions herein imposed upon any use variance, variances, and/or site plan granted herein.

24. This Resolution, if not acted upon (obtain building permit) within one (1) year of the date of adoption of this Resolution, shall become null and void; except where such variance or conditional use approval is granted in connection with site plan or subdivision approval, in which case the time limit shall be three (3) years from the date the resolution approving the variance or conditional use is adopted.

Resolution moved by:

Seconded by:

Affirmed by:

Comr. MICHAEL MOLNER

Comr. MAUREEN O'CONNOR

**Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov,
Scott Sochon, Michael Molner, George Foukas, and Chrmn
Mark Zecchino.**

MEETING OF SEPTEMBER 6, 2023.

RESOLVED by the **ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.**, that the application of: **LORD AND SHEPHERD PROPERTIES LLC**
for premises known as: **1500 Main Ave., Block 9.19, Lot 1**
be and the same is hereby: **GRANTED preliminary and final site plan approval, use variance relief, and bulk variances to replace an existing furniture store with a restaurant and self storage space.**

Testimony concerning the aforesaid application was taken by the Board at its meeting on September 6, 2023. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

After a review of the testimony, Comr. Michael Molner moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant is seeking preliminary and final site plan approval, use variance relief, and bulk variances to replace an existing furniture store with a restaurant and self storage space; and

WHEREAS, the Board, after hearing the testimony presented by the applicant, has made the following factual findings:

a. Currently, the site is a 89,139 sq ft lot in the M3 Zoning District and Main Ave Overlay Zone. The site contains a 4 story mixed use building which houses a furniture store, furniture fabrication, fabric warehouse, food store, and other commercial uses; and

b. The applicant proposes to replace the furniture store on the first floor with a 7,433 sq ft restaurant and a 4,243 sq ft self storage space. Additionally, the Applicant proposes to occupy the existing 4th floor with an 11,818 sq ft self storage space; and

c. The site is the subject of prior variances granted by the Board; and

d. The only uses to be changed within the 4 story building will be the construction of a restaurant and self-storage area on the first floor and a self storage facility on the fourth floor; and

e. The restaurant will operate for lunch and dinner and with one additional hour of operation on the weekends, while the self storage area will operate via normal business hours; and

f. The applicant provided testimony that the uses proposed will operate at hours different from those uses and hours of operation of other businesses in the area, which will reduce traffic and the need for parking as there will be minimal overlap; and

g. The applicant provided testimony regarding the self storage area and agreed to stipulations regarding loading and unloading in the front of the building. ; and

h. The applicant seeks two d(1) variances. The first variance is required as one principal use per lot is permitted by Ordinance and more than one are existing and proposed, including new self storage and restaurant use. The second variance is required as self-storage is not a permitted use within the zone(s).

i. The applicant also seeks a d(3) conditional use approval for a warehouse use, which may or may not be required as selfstorage and warehouse uses are “distinctive land uses”; and

j. The applicant also seeks (c) or bulk variances related to the number of parking spaces, minimum side yard setback, minimum lot width, minimum lot area, parking area screening, and other bulk requirements for new restaurants; and

k. The applicant provided testimony that the side yard setback, lot width and lot area setbacks are pre-existing conditions which will not be changed.

l. The applicant provided testimony that the proposed use and site expansion are particularly suited for the site as there are minimal changes to be done to the structure of the building, the building has been open and operating since well before the establishment of the current zone plan, the restaurant use will have different operating hours than the other businesses in the area, and the storage use is intended to serve a necessary requirement for the community; and

m. The applicant provided testimony that the proposed use promotes the general welfare as he will comply with all necessary health code requirements and provides a service needed in the community; and

n. The applicant provided testimony offered testimony that there is no negative impact on the general public as this type of use does not negatively impact traffic, lighting, flooding, etc. , and that this use was not likely contemplated when the MLUL and the Master Plan were adopted. This furthers the purpose of the Master Plan which is rehabbing and readopting older buildings; and

o. The applicant provided testimony that there is no substantial detriment to the public good; and

p. As a condition of approval, the applicant stipulated to the following:

1. No loading / unloading self storage in front of the building;
2. A dumpster enclosure of a solid material will be installed;
3. All agreements, if any, with other neighbors regarding use of the site’s parking spaces shall be nullified;
4. The applicant will review and comply with the reports of the Board’s professionals; and

5. All future signage will comply with ordinance requirements

q. The Board deemed the testimony provided as sufficient to establish the required legal standard for the granting of the requested variances as well as preliminary and final site plan approval; and

r. The benefits of the application outweigh the detriments, if any; and

WHEREAS, the Board finds from the testimony presented that the proposal will be in accord with the intent and purpose of the master plan and the zone ordinance; and

WHEREAS, the Board further finds that there has been no testimony presented to show that the proposed uses and alterations will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for preliminary and final site plan approval, use variance relief, and bulk variances to replace an existing furniture store with a restaurant and self storage space for premises located at 1500 Main Ave., Block 9.19, Lot 1, is hereby approved and the variances are hereby granted subject to such further governmental approvals as may be required by law and subject to the following:

1. Compliance with the terms of Neglia Engineering Associates report for the above-referenced project.
2. Payment of all water and sewer connection fees to the Passaic Valley Water Commission and/or the Passaic Valley Sewer Commission, if necessary.
3. Issuance of a road opening permit from the County of Passaic or the Clifton City Engineer, if required.
4. Compliance with the terms of Graviano & Gillis Architects & Planners, LLC report for the above project.
5. Shall maintain adequate escrow funds for all anticipated post-approval reviews.
6. Payment of any other fees due to the City of Clifton related to development or use of this project.
7. Payment of any outstanding taxes due and any outstanding fees to the City of Clifton.
8. Passaic County Planning Board approval or waiver.
9. Hudson Essex Passaic Soil Conservation District approval or waiver.
10. Submittal of approval or waiver of same from any additional agency having jurisdiction, including all applicable City, County, State, and Federal Laws, Ordinances, Regulations, and Directives, including without limitations the requirements of the City Engineering Department, City Fire Official, City Police Department, City Construction Code Official, City Board of Health, City Zoning Officer, and any other governmental authority.
11. Submission of engineering site plan to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of hearing.
12. Submission of architectural plans to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of the hearing.
13. All sewerage, utilities, and other site improvements to be installed and maintained by the applicant at its sole expense.
14. All utilities to be constructed underground.
15. All temporary encroachments into the public right-of-way shall require City Council approval.
16. All construction staging shall be done on-site, unless an encroachment for the same into the public right-of-way shall be approved by City Council.
17. Replacement of damaged streets, curbs, and sidewalks as per the direction of the City Engineer and/or Board Engineer.
18. All oral representations made to the Board by applicant, counsel for applicant, or applicant's witnesses, not specifically contained herein, are incorporated by consent of applicant.

19. Shall, upon final determination of the building and building footprint, submit to the City Tax Assessor, floor plans, elevations and estimated construction costs of the building. These materials will be utilized to determine the applicable COAH residential or non-residential fee. Fee certification forms shall be completed by the applicant or its assignees and the Tax Assessor prior to submitting for a building permit.

20. Building permit applications shall only be submitted upon receipt of all required approvals/waivers. All building permit applications shall be accompanied by the Board Resolution of approval and with documentation that all conditions of approval have been satisfied. No permits are to issue unless and until the final sealed plans reflecting any changes or amendments have been submitted and approved. The Zoning Board shall retain jurisdiction to reconsider, revise, modify, add, and vary the terms of any conditions herein imposed upon any use variance, variances, and/or site plan granted herein.

21. This Resolution, if not acted upon (obtain building permit) within one (1) year of the date of adoption of this Resolution, shall become null and void; except where such variance or conditional use approval is granted in connection with site plan or subdivision approval, in which case the time limit shall be three (3) years from the date the resolution approving the variance or conditional use is adopted.

Resolution moved by:

Seconded by:

Affirmed by:

Comr. MICHAEL MOLNER

Comr. GEORGE FOUKAS

**Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov,
Scott Sochon, Michael Molner, George Foukas, and Chrmn
Mark Zecchino.**