

FEENEY & DIXON, L.L.C.

COUNSELLORS AT LAW

DAVID C. DIXON†
JOHN F. FEENEY
(1939-2019)
†MEMBER NJ AND DC BAR

620 NEWARK POMPTON TURNPIKE, SUITE TWO
POMPTON PLAINS, NEW JERSEY 07444
(973) 839-5100 FAX (973) 839-4203
E-MAIL: LAWOFFICE@FEENEYDIXON.COM

January 27, 2021

City of Clifton
Zoning Board of Adjustment
Clifton City Hall
900 Clifton Avenue
Clifton, New Jersey 07013

Re: Narrative Summary
Application for Use Variance & Site Plan approvals (revised)
Applicant: Kafil, Johan
Owner(s): Kafil, Johan & Tsungas Petroleum, Inc.
Property(ies): 453-463 Lexington Avenue
Block 7.15, lots 10 & 11

Dear Members of the Zoning Board of Adjustment:

Please accept the following letter memorandum, by way of summary of the within application for Use Variance, bulk variance, and Site Plan approval, for the development of the above-referenced properties for mixed, residential & retail/commercial use, on two contiguous properties (Block 7.15, lots 10 & 11), located at the corner of Lexington Avenue & Clifton Avenue.

The within application represents a substantial change from the previous application, which was denied by this Board. The revised application eliminates both the d(6) use variance (height) & all previously-required bulk variances for parking, lot coverage, and building height, including the elimination of the use of stacked parking.

The properties contain a combined lot area of approximately 19,788 sf, and are presently occupied by a service station (lot 11; currently closed), and a multi-family residence (lot 10, currently vacant and not occupiable, due to a house fire). The present use of lot 10 (multi-family residential), is a pre-existing non-conformance, and both the existing service station, and derelict multi-family residence, will be demolished to accommodate the proposed, mixed-use building.

The property is located within the BC (General Business) zoning district, which permits retail uses, and some residential use, but only in conjunction with owner-occupied professional offices. Mixed-use retail and multi-family residential uses are not permitted. The property is generally surrounded by pre-existing residential uses, including multi-family uses, commercial uses are located across Clifton Avenue (south) from the subject, and a public park (Hird Park), with

surrounding residential & retail uses, is located across Lexington Avenue (east)

Originally, conceptually-designed to accommodate up to sixteen (16) residential units, the prior application proposed the construction of only twelve (12) residential units (eight (8) one-bedroom, and four (4) two-bedroom apartments), on three (3) floors, with retail uses, parking and utilities located on the ground level. Due to high, fixed costs associated with the proposed development, the applicant, at the time of hearing, was not able to come up with an economically-feasible reduction in density, and, in the press of time, proposed, instead, to reduce the overall height of the structure, reduced the total commercial square footage, but kept the number of units the same (12). The Board, in its prior review of the application, determined that the density remained far too great, and the building too high, to warrant the relief sought.

The current, revised plan reduces the overall height of the structure – eliminating the entire third floor - and reduces the total number of units from twelve (12) to nine (9) residential units (seven (7) 2-bedroom & two (2) one-bedroom). The elimination of all of the two-story, two-bedroom units, and the amenities and improvements which had been previously proposed for the third floor of the structure, greatly minimized the estimated, fixed costs for the development, thereby enabling the project to be economically feasible with far fewer units. The reduction of the height, footprint, and the number of units, further resulted in the elimination of many of the “density”-related bulk variances, including the parking variance, and stacked parking – with the application completely bulk-variance-free, and fully conforming. The overall density of the project has been substantially-reduced, while still retaining the aesthetic appeal of the original design – which fits both architecturally and aesthetically into the surrounding residential neighborhood.

ZONING TABLE				
453-463 Lexington Avenue				
BC (General Business Zone)				
	REQUIRED/ PERMITTED	EXISTING	PREVIOUSLY PROPOSED	PROPOSED
<i>Bulk Requirements (Sch. of regulations as to bulk, height and other requirements. BC Zone – Stores and Retail Shops option)</i>				
Min. Lot Area per dwelling unit (density)	N/A	1,666.6 (lot 11)	1,649	2,198.6
Min. Lot Area (sf)	N/A	19,788	NC	NC
Min. Lot Width (ft)	50'	150'	NC	NC
Min. Lot Depth (ft)	N/A	123'	NC	NC
Min. Front Yard (ft)	5'	1.8'(E)	5'	5'
Min. Rear Yard (ft)	10'	16'	20.0'	15.0'
Min. Side Yard (ft)	½ ht. of bldg. but not less than 10' = 15'	53.6' (to res. Zone <20')(E)	To res. Zone – 30'	To res. Zone – 16'
Min. Side Yard – Street Side (Clifton Ave.)(ft)	5'	4'(E)	5'	5'
Max. Lot Cover. (%)	60%	<60%	63.9% (12,643 sf)(V)	60.0% (11,872 sf)
Max. Bldg. Ht. (Adj. to Res.)	2	3(E)	2 1/2 (V)	2

Zone)(sty)				
Max. Bldg. Ht. (Adj. to Res. Zone)(ft)	30'	31(E)'	40' (V)	30'
Off-street parking (Sec. 461-60.1.A.)				
Min. Spaces Required	18 + 11 = 29			
Office: 2 sp./dwelling unit sf	2 x 9 units = 18			
Retail: 1 sp./250 sf	1 sp/250 sf = 11			
Total	29		32 (V)	29
Signage (Sec. 461-55)				
Flat signs	Flat signs which project no more than six (6") inches	2	None – N/A	N/A
Illuminated Flat Signs	Illuminated flat signs which project no more than eleven (11") inches	1	Illuminated bldg. sign (5 @ 30 sf = 150 sf; <11" projection)	Illuminated bldg. sign (5 @ 30 sf = 150 sf; <11" projection)
Ground signs	Ground signs not to exceed twenty (20') feet in height	2	None – N/A	N/A
Roof signs	Attached to roof no less than four (4') feet from façade	None	None – N/A	N/A
Key: (NC) = no change (V) = variance (E) = existing non-conformity N/A = not applicable				

The proposed use is compatible with the surrounding neighborhood, which consists of a mix of commercial (retail) and both single-family and multi-family development, and will thus not result in any substantial detriment to the zone plan, the master plan, or the zoning ordinance. The proposed use satisfies the special reasons standard, and shall promote the public health, safety, morals, and general welfare; provide(s) adequate light, air and open space; promote(s) the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; provide(s) sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; encourages the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight; promote(s) a desirable visual environment through creative development techniques and good civic design and arrangement; encourage(s) coordination of the various public

and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land; and, may satisfy, in part, the pre-credited need of the community for housing which is affordable to low and moderate income households

The proposed development will result in the elimination of an onerous, service station use, and transform an existing non-conforming multi-family residential structure into an efficient and modern design, compatible with the neighborhood – and will represent a smooth transition in development between the business zone (BC) and the residential zone & uses which surround the subject.

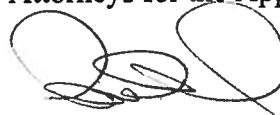
Most-importantly, the revised plan represents a substantial change in the overall impact of the proposed development, by reducing overall density of the development, and elimination of all of the more-onerous aspects of the prior application, including the elimination of the bulk variances, and the elimination of the d(6) use variance required.

The details of the issues relating to the use will be explained in more detail in the applicant's zoning report, to be submitted by the applicant's planning expert, John McDonough, P.P. The applicant respectfully requests that the Board first make a threshold determination as to whether the within application represents a substantial change over the prior application, which had been denied, and that *res judicata*¹ is, therefore, inapplicable to the within matter.

Very truly yours,

FEENEY & DIXON, LLC
Attorneys for the Applicants

BY:



David C. Dixon, Esq.

¹ In order for the doctrine of *res judicata* to be applicable, thus barring a subsequent application, it must be shown that:

- (a) The second application is substantially similar to the first;
- (b) The same parties are involved;
- (c) No substantial change has occurred in the application or conditions surrounding the property;
- (d) There must have been an adjudication on the merits on the first case; and,
- (e) Both applications must involve the same cause of action.

Cox & Koenig, New Jersey Zoning and Land Use Administration (GANN, 2020), §19-3.2, p. 391.

It is within the discretion of the Board to determine whether *res judicata* may be applicable, subject to the foregoing requirements.