



TO: City of Clifton Zoning Board of Adjustment  
c/o Mark Zecchino, Chairman  
900 Clifton Blvd.  
Clifton, NJ 07013

FROM: Nicholas A. Graviano, PP, AICP, JD

RE: Mark Lasky  
822 Passaic Avenue  
Block 81.01, Lot 6

DATE: 1<sup>st</sup> Review– 2 January 2023

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### **Project Summary**

1. The subject property is located at 822 Passaic Avenue in the PD-HC District.
2. The applicant seeks to construct a building for vehicle storage. The property measures 4,151 sq. ft.
3. Vehicle storage buildings are not a permitted principal use in the PD-HC District. Consequently, the applicant requires a “d(1)” use variance from the Board.

### **Approvals Requested**

#### **“d(1)” use variance**

The applicant is requesting the “d(1)” use variance from **City of Clifton Code Section 461-13.1.AA** to construct a vehicle storage building on the site.

#### **“d(1)” Variance Proofs:**

The Board has the power to grant “d(1)” variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70(1) “in particular cases and for special reasons.” This is the so-called positive criteria of a “D(1)” variance.

The promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of “special reasons.”<sup>1</sup> *Medici v. BPR Co.*, 107 N.J. 1 (1987).



The benefit to the general welfare from a typical non-inherently beneficial use, however, derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed.

In a typical non-inherently beneficial use application, the standard the Board must employ to determine whether special reasons have been proven is whether the proposed use will promote the general welfare and whether the development of the property is particularly suited for the very use proposed.

Proof that a site is particularly suited for a proposed use does not require a demonstration that there are no other viable locations for the project.

The Board may not exercise its power to grant a “d(1)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means master plan. *Medici v. BPR Co.*, 107 N.J. 1, 4, 21 (1987). Comment: As to the zone plan and zoning ordinance, the *Medici* court held that the applicant must prove and the Board must find by an “enhanced quality or proof” that there will be no substantial impairment. The applicant must “reconcile” the use proposed with the ordinance’s omission of the use from those permitted in the zone.

#### “c” Variances

The applicant requires the following “c” variances:

- From **City of Clifton Code Section 461-13.V(5)(a)** in that a minimum lot size of 40,000 sq. ft. is required and 4,151 sq. ft. is existing and proposed.
- From **City of Clifton Code Section 461-13.V(5)(b)** in that a minimum lot width of 200 feet is required and 43.04 feet is existing and proposed.
- From **City of Clifton Code Section 461-13.V(5)(c)** in that a minimum lot depth of 200 feet is required and 100 feet is existing and proposed.
- From **City of Clifton Code Section 461-13.V(5)(d)** in that a minimum front yard setback of 50 feet is required and 45 feet is proposed.
- From **City of Clifton Code Section 461-13.V(5)(e)** in that a minimum side yard setback of 25 feet is required and 5 & 8.1 feet are proposed.

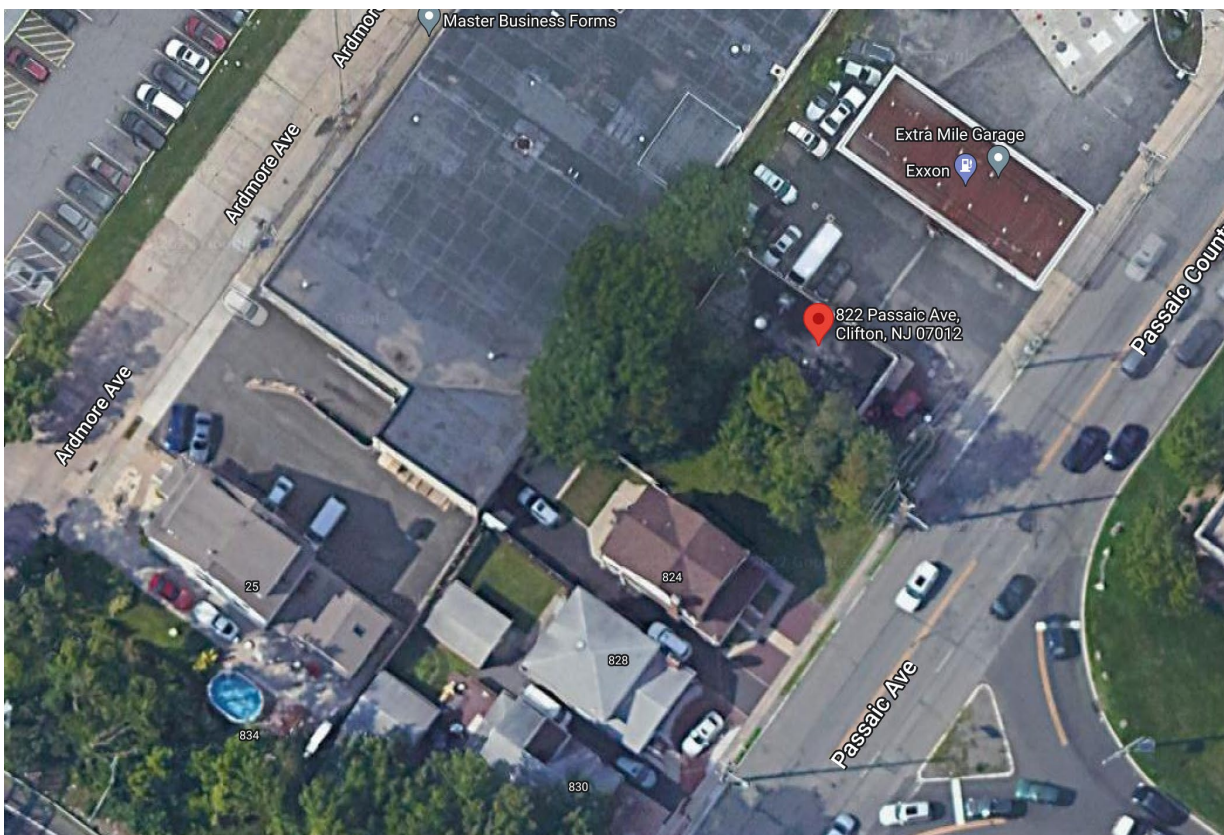


- From **City of Clifton Code Section 461-13.V(5)(f)** in that a minimum rear yard setback of 50 feet is required and 5 feet is proposed.
- From **City of Clifton Code Section 461-60.F.** in that off-street parking areas shall be located 5 feet from side property lines and less than 5 feet is proposed.

### General Comments

1. The applicant's proposal would be permitted as an accessory use in the PD-HC District.
2. The applicant should discuss how the building will be used.
3. The applicant should indicate if any signage is proposed.
4. The applicant indicates that the building is for vehicle storage and should indicate if any repairs or maintenance will be performed on-site.

### Site Conditions – Google Earth





graviano & gillis architects & planners, llc  
p.o. box 3341  
long branch, nj 07740  
tel: 732.816.4151  
web: <http://graviano.com>

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Please contact our office with any questions.

Thank you,

Nicholas A. Graviano, PP, AICP, JD  
Graviano & Gillis Architects & Planners, LLC