



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: Planning Review #3
Main Foot and Ankle LLC
1610 Main Avenue
Block 9.07, Lots 25, 25.01 & 26

DATE: September 17, 2023

This review is based on the revised plans submitted by the applicant. New comments of note are highlighted in yellow.

- Architectural Plan consisting of four (4) sheets entitled "Proposed Addition, Existing Building, 1610 Main Avenue, City of Clifton, County of Passaic, New Jersey, Lot 25, 25.01 & 26, Block 9.07," prepared by Nassir Almukhtar, RA of Heritage Madison Architecture, LLC, dated 2022, last revised August 24, 2023;
- Engineering Plans consisting of eight (8) sheets entitled "Preliminary & Final Site Plan for Lot Nos. 25, 25.01 & 26 –Block 9.07, City of Clifton, County of Passaic," prepared by Thomas E. Donohue, P.E., dated June 5, 2023, last revised August 30, 2023;

Project Summary

1. The applicant, Main Foot and Ankle, LLC, is requesting preliminary and final site plan approval with associated "d(1)" and "c" variances for the construction of a first and second story addition as well as an expanded parking lot.
2. The properties are located at 1610 Main Avenue and 80 W. 2nd Street in the B-C – Main Avenue Overlay District and the M-2 District.
3. The lots encompasses 20,953 sq. ft. The proposed building will have 3,378 sq. ft. on the first floor and 4,423 sq. ft. on the second floor for a total of 7,801 sq. ft. The initial submission proposed 4,605 sq. ft. on the first floor and 4,052 sq. ft. on the second floor for a total of 8,657 sq. ft. Therefore, the applicant has reduced the total square footage by 856 sq. ft. from the initial submission.
4. The applicant requires "d(1)" use variance for proposing parking for an office use in the M-2 District.



5. In this iteration, the applicant seeks to retain the existing access onto Main Avenue to address the neighbors' concerns about traffic patterns from the site.
6. The applicant reduced the height of the building by 1 foot to eliminate the height variance.

Relief Required

The project will require the following variances from the Board:

1. **“d(1)” Variances:**

From **City of Clifton Code Section 461-13.1.N(1)** in that office uses are not permitted in the M-2 District. Note that this variance applies to the parking lot, located in the M-2 District, of the main building that is located in the B-C District and is a permitted use.

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.”¹ *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.

2. “c” Variances:

- From **City of Clifton Code Section 461-60.F** in that off-street parking or loading spaces, parking aisles or maneuvering areas shall not be located within 10 feet of any corner side lot line, within 10 feet of any rear lot line abutting a street or within five feet of any other lot line. All setback areas shall be adequately landscaped.

The existing and extended parking lot are less than 5 feet from the property line.

- From **City of Clifton Code Section 461-60N** in that 620 sq. ft. of interior parking lot landscaping is required and 112 sq. ft. is proposed.
- From **City of Clifton Code Section 461 Attachment 2** in that a street side yard setback of 5 feet is required and 4.9 ft. is proposed for the second floor addition.
- From **City of Clifton Code Section 461-60.1A** in that 35 off-street parking spaces are required after the EV parking credit and 31 off-street parking spaces are proposed.

“c” Variance Proofs:

There are two kinds of "c" variances; "c(1)" and "c(2)"; both must apply to a specific piece of property.

A "c(1)" variance is sometimes called "the hardship variance". The applicant must prove hardship as outlined in the MLUL 40:55D-70c (1) where:

- (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or;
- (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or;
- (c) by reason of an extraordinary situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act (40:55D-62 et seq.) would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such a property, grant, upon an



application or an appeal relating to such a property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship.

If hardship is proven, the applicant must also show that such relief from the zoning ordinance will not be substantially detrimental to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. This second criteria is called the negative criteria.

For a "c(2)" variance, (see 40:55D-70c(2)), proof of hardship is not necessary. Two things must be proven to receive approval for a c(2) variance:

- (1) An applicant must show that the purposes of the MLUL (40:55D-2) would be advanced by a deviation from the zoning ordinance requirement and
- (2) that the variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance (negative criteria).

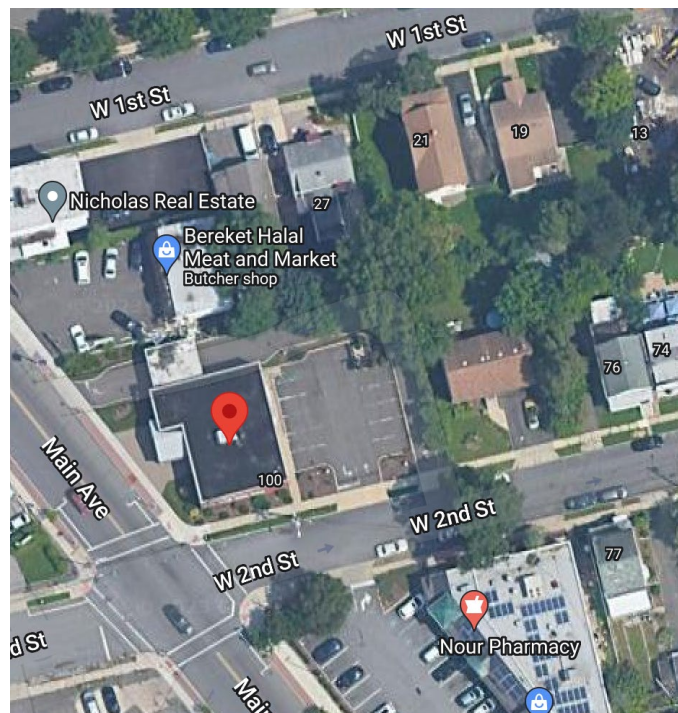
General Comments

1. Our office has no remaining major concerns with this application. If approved, a condition of approval shall be working with our office on elevations that are befitting of the Main Avenue Overlay District.
2. The applicant shall provide testimony on the operational characteristics of the proposed facility, including: hours of operation; number of employees; delivery details; and trash and recycling details.
3. The applicant should provide testimony conformance with the Main Avenue Overlay requirements. Relief should be requested for any condition that the applicant cannot meet.
4. The applicant provided details for a proposed freestanding sign that meets the size requirement. The applicant should provide the sign with a decorative base that matches the brick of the building.
5. Any future building signage shall meet the requirements of the Main Avenue Overlay District. No window string or band lighting shall be permitted.
6. The applicant should provide additional brick between the windows on the second floor to provide a more downtown appearance and less of an office park appearance. This is a goal of the Main Avenue Overlay District.
7. The applicant shall be responsible for any fee required in **City of Clifton Code Section 233**.
8. If applicable, the applicant shall be responsible for any non-residential fee required for COAH as per **City of Clifton Code Section 461-24.2**.



9. The applicant should provide testimony on conformance with **City of Clifton Code Section 433 – Article V (Tree Removal)**.
10. The applicant shall detail all required outside agency approvals. Future construction shall conform to all required approvals from the City of Clifton departments and outside agencies.

Site Aerial



Source: Google



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

Site Photos – Taken by Graviano & Gillis on 6/21/23 at 1:34PM



Main Avenue Frontage



Rear of Building/Parking Lot



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long branch, nj 07740

tel: 732.816.4151

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80 W. 2nd St. -Single-Family Dwelling to be Demolished

Please contact our office with any questions.

Thank you,

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