

Board of Adjustment

Minutes

January 4th, 2017

Minutes of a regular meeting of the Board of Adjustment of the City of Clifton, New Jersey, held at the Council Chambers, City Hall, Clifton, New Jersey, on Wednesday, January 4, 2017. 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 applicants 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 DANIEL TRENK, LOUIS DE STEFANO, KEITH LA FORGIA, STEPHEN CHRISTOPHER, ROY NOONBURG, GEORGE FOUKAS, VICE-CHRMN GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.

ABSENT: COMRS PAUL GRAUPE.

Chrmn Zecchino advised all applicants 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.

Upon motion made by Comr Keith LaForgia, seconded by Comr Louis DeStefano, the Minutes of the December 21, 2016, regular meeting was adopted with the unanimous approval of the entire Board.

REORGANIZATION MEETING

At the reorganization meeting conducted by the Board, Comr Gerard Scorziello nominated Comr Mark Zecchino for the position of Chairman. The motion was seconded by Comr Louis DeStefano. There were no other nominations. Chrmn Zecchino accepted the nomination, and he was unanimously elected as Chairman of the Zoning Board of Adjustment for the calendar year 2017 for a one-year term.

For the position of Vice-Chairman, Comr Louis DeStefano nominated Comr Gerard Scorziello. The motion was seconded by Comr Roy Noonburg. There were no other nominations for the position. Vice-Chrmn Scorziello accepted the nomination, and he was unanimously elected as Vice-Chairman of the Zoning Board of Adjustment for the calendar year 2017 for a one-year term.

CONTINUED HEARINGS

1. YESHIVA KTANA OF PASSAIC, INC.,
Variances; 288, 292, 296, 300 & 304 South
Use Parkway, Block 59.01, Lots 8, 11,
Variance 13, 15 & 17 – R-B2 – Appeal or
application for a use variance required
to permit the demolition of the
existing houses on the lots listed
above and the construction of a
parking lot thereon to service the
abutting Yeshiva Ktana school in
the City of Passaic; and bulk
variances required for front yard setback
(25 feet required, 6 feet proposed),
side yard setbacks (20 feet
required, 6 feet proposed), rear
yard setback (35 feet required,
0 feet proposed), fence height and
open space (4 feet 50% open fence
permitted maximum, 4 foot high solid
wall with 6 foot high 50% open fence
in front of wall proposed), parking and
maneuvering in front yard, parking
within 10 feet of the rear line and
failure to provide interior lot landscaping,
and any other variances that may be
determined by the Board to be required.

AS PUBLISHED AND UPDATED BY APPLICANT:

The Property (approximately 0.737 acres) is located within the R-B2 Residential Zone District ("R-B2 Zone") and is currently improved with 5 residential dwellings, 4 of which are owned by the Applicant and 1 of which is under contract of sale with the Applicant. Applicant seeks Preliminary and Final Site Plan Approval with associated conditional and/or use variance and other related waiver and variance relief for the construction and use of a parking area consisting of 73 +/- spaces, together with associated landscaping, fencing and other site enhancements, all accessory to the Applicant's school facility, which is located in the City of Passaic and is adjacent to the Subject Property. All vehicular ingress and egress is proposed to be through the Applicant's Property in Passaic, other than a 20' "clear" opening gate for emergency access from South Parkway (southwestern corner of property) for use by and as requested the Clifton Fire Department for emergency personnel. Certain other plan amendments have been made at the request of the Fire Department, including but not limited to installation of a new hydrant on school property, addition of a 4' wide swing gate in the southeastern corner of the property for emergency responder access (non-vehicular), provision for Knox paddocks for Fire Department perimeter area access and creation/labeling of a "fire lane – no parking" areas. The following additional variances are required for the proposed parking area, which is accessory to the inherently beneficial religious and educational school:

1. §461-47: fence along front and side property lines to rear of main structure to be no more than 4' height and to be 50% open – proposed:

fence 6' height board-on-board construction with 50% open along side (note no building on Property), inclusive of the fencing and gates to be installed in two locations along the South Parkway frontage, as requested in location and design by the Clifton Fire Department;

2. §461-60(E): no parking to be located within front yard – proposed: parking within front yard setback;

3. §461-60(F): no parking to be located within 10' of rear line – proposed: parking within rear yard setback;

4. §461-60(J): no parking or standing of automobiles within front, rear or side yards in residential districts – proposed: parking within front yard setback;

5. §461-60(N): parking lots in excess of 10,000 sf to provide interior landscaping (20 sf/space) – proposed: no interior landscaping but significant side and front perimeter buffer.

In addition to the foregoing described approvals, the Applicant will also seek approval for any and all variances, exceptions, waivers, and other incidental relief that may be required or deemed necessary by the Zoning Board of Adjustment after or during its continued review of this Application, together with any further relief that may be deemed necessary by the Applicant during the hearing process, including that which may be generated by way of revised plans and submission of same. Measurements, percentages and other calculations provided in this notice are in accordance with the development plans filed with the Application. Please note that to the extent plan and/or Application revisions are made during the hearing process, these measurements, percentages and other calculations

will likely change, as may the associated relief required per the City Code. The Applicant reserves the right to amend its application accordingly.

This matter was continued without date.

2.
- 206 CLIFTON PARTNERS LLC,
- Use206 Delawanna Avenue, Block 60.14,
- Variances; Lots 13 and 33 – M-2 & M-3 – 1. Use
- Variancesvariance under N.J.S.A. 40:55D-70d(1) to permit multi-family residential uses in the M-2 and M-3 zones whereas residential uses are not permitted in these zones and a use variance under N.J.S.A. 40:55D-70d(6) to permit a building height of 46.33 feet whereas only 40 feet is permitted; 2. Preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 to allow a four (4) story, eighty (80) unit apartment building consisting of sixty-six (66) one-bedroom apartment units and eight (8) two-bedroom apartment units with a total of 146 off-street parking spaces (as required by and conforming with the Residential Site Improvement Standards); 3. In addition, applicant seeks bulk/dimensional variances under N.J.S.A. 40:55D-70c for the following:
- (1) to permit a lot area of 4.3 acres for buildings 41 to 80 feet in height within the M-3 zone whereas a minimum of 5 acres is required;
- (2) to permit a lot width of 125.5 feet whereas a minimum of 250 feet is

required;

(3) to permit a monument sign to be installed fifteen (15) feet from the front property line and within the front yard setback, whereas signs are required to have a 30 foot front yard setback;

(4) to permit lighting levels in off-street parking areas to exceed 0.0 foot-candles at the property line;

(5) to allow LED lighting for exterior lighting fixtures instead of the required high pressure sodium lighting;

(6) to provide internal parking lot landscaping less than the required 20 square feet for each proposed parking space; and

(7) to provide trees of 2 inch to 2.5 inch caliper which is less than the minimum 4 inch to 4.5 inch caliper required.

The applicant may also apply for such variance relief, exceptions, waivers, permits, approvals or licenses that are deemed necessary or appropriate by the applicant or the Board, and which may arise during the course of the hearing process. A public hearing on this application was held by the Zoning Board of Adjustment ("Board") on May 18, 2016. [& June 15, 2016 and July 20, 2016]. A resumed public hearing before the Board on this application to allow further consideration of a revised site plan depicting a realigned driveway.

Steven R. Tombalakian, Esq., with offices at 629 Parsippany Road, Parsippany, New Jersey, appeared on behalf of the applicant. Frank A. Carlet, Esq., with offices at 1135 Clifton Avenue, Clifton, New Jersey; Glenn S. Pantel, Esq., with offices at 600 Campus Drive, Florham Park, New Jersey, appeared on behalf of the objector, 6W BP Opportunity LLC ("Stro"); and Ira E. Weiner, Esq., with offices

at 50 Chestnut Ridge Road, Montvale, New Jersey, appeared on behalf of MMSR Realty, LLC, Delawanna Realty, and Glen Mills, Inc.

This is a continued hearing from the meeting of November 16, 2016.

Present and sworn on behalf of the objectors was Hal Simoff of 2 Shunpike Road, Madison, New Jersey, traffic engineer; and A. Brook Crossan of 505 Main Street, Metuchen, New Jersey, environmental engineer.

Mr. Pantel reviewed the testimony of traffic expert Hal Simoff given at the hearing on November 16, 2016, and cited legal precedents for the denial of the proposed application.

Mr. Simoff, in response to questions raised, indicated that, in his opinion, there was inadequate distance between driveways; there was a lack of site distance; that from a traffic standpoint, there is no safe access to and egress from the site.

A. Brook Crossan was qualified and testified as a noise expert. Mr. Crossan testified that in the hours of 10 P.M. to 7 A.M., the decibel limit of 50 dba is acceptable; that during the day, the decibel level of 65 is an acceptable level; that as an example, a vacuum cleaner in a room would create a decibel of 65; that the noise levels are based upon use, not upon zoning; that measurement of noise is taken at the property line during the day, and in the evening, measurement is made to the exterior wall of a dwelling unit.

At the request of the Board, Mr. Crossan stated that he will produce examples of noise producing items at the next meeting of the Board.

Thereupon, the matter was continued by the Board until the February 1, 2017, meeting of the Board. Mr. Tombalakian, on behalf of his client, did extend the time within which the Board is required to render a decision in the matter.

3. eCUBe 237 LLC, 237 Dayton Avenue,

Use	Block 4.23, Lot 1.00 – PD1 – Application
Variance;	for the construction of a building
Minor Sub.	containing: Commercial and seven residential units, minor subdivision, use variance required for residential use in a PD1 zone and such other variances as may be required.

Bennett Wasserstrum, Esq., with offices at 3 Botany Village Square West, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn were Frank D. Mileto of 14 Beaver Brook Drive, Long Valley, New Jersey; and Neal Tanis of 12 Botany Village West, Clifton, New Jersey. There were no objectors.

This is a continued hearing from the meeting of November 16, 2016.

Mr. Mileto testified as a planning expert and stated that the construction of a building containing commercial and seven residential units is in accordance with the existing master plan of the City of Clifton; that it is also in accordance with the PUD-1 Zone; that the proposal will provide needed housing; that the proposal will enhance the aesthetic and commercial appearance of Botany Village; that the applicant proposes commercial on the first floor with one residential unit and six residential units on the upper floors; that the site is particularly suited for the proposed use; that the applicant requires a use variance and height variance; that if the applicant reduced the height to 30 feet instead of 40 feet, it would result in a loss of two units, decreasing the request from seven to five units; that the proposed plan satisfies the positive and negative criteria.

Chrmn Zecchino stated that in his opinion, the proposal of commercial on the first floor and residential on the upper floors is acceptable, however, the number of units requested by the applicant, i.e. seven units, seems excessive and requires the height variance; that if the proposal was reduced to five units, then the height variance would be eliminated.

At this point in the hearing, Chrmn Zecchino continued the matter until the February 1, 2017, meeting of the Board in order to receive the report from the Police Department and Fire Department of the City of Clifton.

4. CLIFTON CHEDER, INC., 1333 Broad Street,
Use Block 76.01, Lot 5 – B-A – Variances required
Variance; for religious elementary school: 1) Conditional
Variances use variance required. 2) Existing lot width is
133’ where 150’ is required. 3) Existing lot
coverage is 24.74% where 20% is required.
4) Existing left side yard is 18.87’ where 20’
is required. 5) Site plan approval required.
6) Any other variances deemed necessary
by the Board.

Gerald G. Friend, Esq., with offices at 1000 Clifton Avenue, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn were Isaac Kagan of 577 Passaic Avenue, Clifton, New Jersey; and Joseph Golden of DMC Associates Engineers of Sparta, New Jersey. There were two interested parties, Mitchell W. Abrahams, Esq., of 25 Main Street, Hackensack, New Jersey, representing Bankers Financial Corp. of 1339 Broad Street, Clifton, New Jersey; and Gerald Zecker of 55 McCosh Road, Clifton, New Jersey.

Present in favor of the application were the following: Charka Kagan and Isaac Kagan, 557 Passaic Ave.; Gary Klotzkin, 43 Hampton Road; Adam Buckstein, 56 Amsterdam Ave.; Shaal Feinsod, 119 Amsterdam Ave.; Aaron Rosenfeld, 85 Crescent Ave.; Alexander Vinnik, 17 Dawson Ave., Passaic; Michael Schlager, 450 Passaic Ave., Passaic; Warren Litman, Ravona Ave.; Elchonon Eridiger, 96 Brook; Mark Fashan, 61 The Circle, Passaic; Johah Lazar, 8 Solond Rd., Monsey, NY; Debra Goldberg, 18 Edgemont Rd., W. Orange; Ephraim Rudolp, 60 Annabelle Ave.; Jonathan Rothenberg, 70 Patricia Place; Nechama Gelb, 40 Lafayette Ave., Passaic; Elchsnon Gelb, 40 Lafayette Ave., Passaic; and Bina Zarkhin, 61 The Circle, Passaic; all of the City of Clifton, except as noted.

Mr. Friend stated that the applicant is requesting conditional use variance approval for a religious elementary school at the subject premises; that the applicant does not satisfy several conditions, to wit: lot width, required at 150 and the applicant is providing 133 feet; the existing lot coverage permitted is 20 percent, and 24.74 percent exists; that the left side yard setback requirement is 20 feet, and the applicant is providing 18.87 feet; that the applicant is also seeking site plan approval.

Isaac Kagan testified as the administrator of the Clifton Cheder school and stated that presently, there are 170 students with 50 pre-K students; that there are 40 employees, 24 full-time and 16 part-time; that the hours of operation of the school are from 7:40 A.M. to 5 P.M., Monday through Thursday; that dismissal from Monday through Thursday is at 3 P.M. with approximately 50 students leaving the site; that 4 P.M., 80 students leaving the site; that 5 P.M. approximately 40 students leaving the site; that at the 3 P.M. hour, there would be approximately 17 vehicles coming to the site; that at 4 P.M., there will be approximately 27 vehicles coming to the site; that at 5 P.M., there will be 13 vehicles coming to the site; that on Fridays, there is dismissal at 12:30 P.M.; that there is no school on Saturday, but there are classes on Sunday; that ingress and egress will be from behind the building; that the maximum number of students that may accommodate the proposed facility is 288; that the applicant is presently leasing with intent to purchase.

Joseph Golden of Sparta, New Jersey, described the access and egress to the site; that the issues raised in the Fire Department report dated December 30, 2016, were also addressed; that the garbage dumpster will be relocated.

Mr. Golden began to respond to the issues raised in the Neglia Engineering report dated December 7, 2016. At this point in the hearing, Chrmn Zecchino indicated that a representative from Neglia Engineering should be present to explain the report and further that an independent traffic report should be conducted by Neglia Engineering concerning traffic conditions at the site. In addition, Chrmn Zecchino requested a report from the Police Department indicating accidents which occurred at or near the site for a period of three years.

Thereupon, the matter was continued by the Board until the February 1, 2017, meeting of the Board.

NEW HEARING

1. TAHIR KHAN, 640 Grove Street, Block 52.05,
Variance Lot 14 – RA1 – Applicant proposes to remove
 the existing house and garage and construct
 a new home. The following variance is

required: 1) Front yard proposed at 20' where 35' is required.

The applicant, residing at 640 Grove Street, Clifton, New Jersey, was present and sworn. There were no objectors.

The applicant testified that he proposes to remove the existing house and garage at the subject premises and construct a new home; that he is seeking a front yard setback variance where 35 feet is required and he is proposing 20 feet; that the purpose is to increase the back yard; that the previous setback in the rear was 3 feet, and it will now become 10 feet; that the home will be aesthetically pleasing to the neighborhood.

After a review of the testimony, Comr Keith LaForgia moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution for approval of the variance requested. The motion was seconded by Vice-Chrmn Gerard Scorziello. Voting in the affirmative were Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino. By a seven to zero vote, the motion carried, and the application was granted in the form as more fully appears at the end of these Minutes.

The Minutes as stated is the complete testimony presented to the Board and upon which this decision is based.

RESOLUTIONS

Chrmn Zecchino announced that the Board would act upon the Resolutions set forth on the Agenda.

1. Upon motion made by Comr Louis DeStefano, seconded by Comr Keith LaForgia, and affirmed by Comrs Daniel Trenk, Louis DeStefano, Keith LaForgia, Stephen Christopher, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of DAVID JANUSZ for left side yard setback variance to install an air-conditioning unit at 47 Orchard Drive, Block 68.12, Lot 33, was adopted. RA3

There being no further business before the Board, Comr Keith LaForgia moved to adjourn. The motion was seconded by Comr Louis DeStefano with the unanimous approval of the entire Board.

Respectfully submitted,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF JANUARY 4, 2017.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: TAHIR KHAN
for premises known as: 640 Grove Street, Block 52.05, Lot 14
be and the same is hereby: GRANTED front yard setback variance to construct a new home.

Testimony concerning the aforesaid application was taken by the Board at its meeting on January 4, 2017. 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 Keith LaForgia moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests front yard setback variance approval to remove an existing house and garage and construct a new home at premises located at 640 Grove Street, Block 52.05, Lot 14, which premises are located in a RA1 zone; and

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

- a. The premises presently contains an existing dwelling and garage which will be removed by the applicant;
- b. The applicant proposes to construct a new dwelling with a front yard proposed at 20 feet where 35 feet is required;
- c. The purpose of the variance is to increase the rear yard of the existing dwelling from 3 feet to 10 feet;
- d. The applicant has shown sufficient hardship to justify the grant of the variance requested;
- e. 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 since the structure will be a one-family dwelling which is permitted in an RA1 zone; and

WHEREAS, the Board further finds that there has been no testimony presented to

show that the proposal will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application to remove an existing house and garage and construct a new house at premises located at 640 Grove Street, Block 52.05, Lot 14, be and the same is hereby approved and the front yard setback variance be and the same is hereby granted subject to such further governmental approvals as may be required by law and further subject to Passaic County Planning Board approval.

NO PERMITS ARE TO ISSUE UNLESS AND UNTIL THE FINAL SEALED PLANS REFLECTING ANY CHANGES OR AMENDMENTS HAVE BEEN SUBMITTED AND APPROVED.

THIS RESOLUTION, IF NOT ACTED UPON (OBTAIN A BUILDING PERMIT) WITHIN ONE (1) YEAR OF THE DATE OF ADOPTION OF THIS RESOLUTION, SHALL BECOME NULL AND VOID, OR AS AMENDED.

NO BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY WILL BE ISSUED UNLESS THE REQUIRED COUNCIL ON AFFORDABLE HOUSING (COAH) FEE AS DETERMINED BY THE REQUIRED MUNICIPAL OFFICIALS AND THE MUNICIPAL HOUSING LIASON IS PAID. THIS WILL APPLY TO EITHER THE APPLICANT OR THE OWNER UPON SUBMISSION OF REQUIRED PLANS FOR BUILDING PERMITS.

Resolution moved by: Comr KEITH LA FORGIA.

Seconded by: Comr VICE-CHRMN GERARD SCORZIELLO.

Affirmed by: Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino.