

Board of Adjustment  
Minutes  
March 16<sup>th</sup>, 2016

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, March 16, 2016. 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 PAUL GRAUPE, DANIEL TRENK, LOUIS DE STEFANO, KEITH LA FORGIA, STEPHEN CHRISTOPHER, GEORGE FOUKAS, VICE-CHRMN GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.

ABSENT: COMR ROY NOONBURG.

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 Louis DeStefano, seconded by Comr George Foukas, the Minutes of the March 2, 2016, regular meeting were adopted with the unanimous approval of the entire Board.

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.

This matter was continued to a special meeting to be held on April 13, 2016.

2.

Amended Site Plan

CLIFTON CENTRE COMMERCE III,  
65 Industrial South and 35 Bloomfield Ave.,  
Block 56.08, Lots 4 and 13 – M-1 – Amended  
site plan approval required to permit  
relocation and increase of existing and  
proposed loading docks as shown on  
Amended Site Plan.

At the request of the attorney for the applicant, and after discussion by the Board, this matter was continued to the May 18, 2016, meeting of the Board. The Board stated that there would be no further adjournments of this matter.

3.

Variances

VINCENT SAURO, 37 Harding Avenue,  
(1150 Main Avenue), Block 12.05, Lot 1  
– B-C – Variances required to convert  
existing tenant space into a comedy club/

restaurant use. 1. Comedy Club not listed as permitted use-use variance required. 2. Applicant space requires 45 parking spaces plus parking for two other tenant areas within the building no on-site parking provided. 3. Existing nonconforming building setback and lot coverage.

This matter was previously continued to the April 6, 2016, meeting of the Board.

|          |                                                                                                                                                                                                                                 |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.       | NOURI PROPERTY MANAGEMENT, LLC,                                                                                                                                                                                                 |
| Use      | 180 Getty Avenue, Block 11.03, Lot 49 and                                                                                                                                                                                       |
| Variance | Block 11.22, Lot 1 – M-2 – Use variance required to permit second floor office space as a principal use within an M-2 zone; use variance required for more than one principal use on one lot. Parking provided on adjacent lot. |

Bennett Wasserstrum, Esq., with offices at Three Botany Village Square West, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn were Jimi Nouri of Cedar Park, New York, the owner; Nassar Almkhtar of 1172 Madison Avenue, Paterson, New Jersey; and Frank D. Mileto, architect and planner, of 14 Beaver Brook Road, Long Valley, New Jersey. Present were the following objectors: Amer Hamad, Mousa Hamad, and Adla Hamad, all of 18 Union Avenue, Clifton, New Jersey.

This is a continued hearing from the meeting of March 2, 2016.

Mr. Wasserstrum made a statement that the application is not barred by the doctrine of res judicata because it is substantially different from the prior application that was heard before the Board on November 18, 2015, since they were withdrawing the use variance pertaining to the bus company.

The Board members disagreed; that because of the withdrawal of the bus portion of the use variance application, it was a minor change and not substantially

different from the prior application—for example, other uses, such as the lack of parking—are not addressed in the present application. Therefore, the majority of the Board felt that it was a minor change from the original application and that the doctrine of res judicata should be invoked.

After a review of the testimony, Vice-Chrmn Gerard Scorziello moved not to hear the matter since the applicant has not overcome the doctrine of res judicata. Vice-Chrmn Scorziello instructed the Counsel Secretary to prepare the proper Resolution denying the application. The motion was seconded by Comr Keith LaForgia. Voting for the motion were Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, and Vice-Chrmn Gerard Scorziello. Voting against the motion were Comrs Daniel Trenk, George Foukas, and Chrmn Mark Zecchino. By a four to three vote, the motion carried, and the matter was denied on the basis of *res judicata* 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.

|          |                                                                                                                                                                                                                                                                                                                                                                                                      |
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| 5.       | <b>NOURI PROPERTY MANAGEMENT, LLC,</b>                                                                                                                                                                                                                                                                                                                                                               |
| Use      | 180 Getty Avenue, Block 11.03, Lot 49 and                                                                                                                                                                                                                                                                                                                                                            |
| Variance | Block 11.22, Lot 1 – M-2 – Use variance<br>required for proposed School Bus company.<br>Parking and storage of buses outside and<br>light maintenance (cleaning) of buses proposed<br>inside the building. Use variance required for<br>more than one principal use on lot.<br>Application was previously heard on 11/18/2015.<br>Applicant has made changes that will be<br>explained to the Board. |

At the request of Bennett Wasserstrum, Esq., the attorney for the applicant, and upon motion made by Comr Louis DeStefano, seconded by Comr Keith LaForgia, with the unanimous approval of the entire Board, this matter was dismissed without prejudice 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.

NEW HEARINGS

1.
- MOHAMED ALY, 113 East 6<sup>th</sup> Street,  
Block 1.25, Lot 5 – RB1 – Applicant  
proposes a new two-family house to  
replace the two-family house destroyed  
by fire. The following variances are  
required: 1. Minimum lot width is 75’  
and 50’ is provided; 2. Minimum lot area  
is 7500 sq.ft. and 5000 sq.ft. is  
provided; 3. Driveway proposed at 0’  
from left side lot line where a 5’ setback  
is required; 4. Curb cut proposed at 16’  
where a maximum of 12’ is permitted.
- Variances

Chrmn Zecchino announced that the public notice in the newspaper was defective in that the wrong street was published; that a correct notice must be published. The matter was unanimously continued to the April 6, 2016, meeting of the Board.

2.
- JLM CHESTNUT STREET, LLC,  
22 and 36 Chestnut Street, Block 15.12,  
Lot 16 – M-1 – A use variance to amend  
the use variance and site plan approval  
previously granted by the Board on  
June 17, 2015, to permit the removal of  
a 22’ x 18.5’ (470 sq. ft.) concrete block  
building and make it a parking and  
maneuvering area, enclose a presently  
covered area 36’ x 18’ (648 sq. ft. area),  
to permit the subdivision from the
- Use  
Variance;  
Site Plan  
Approval.

property of a 50' x 100' area of vacant land (100' x 100' area required) and to permit the construction of a one-family house thereon, together with a bulk variance for the 50' wide lot (100' required), and site plan approval.

Frank A. Carlet, Esq., with offices at 1135 Clifton Avenue, Suite 104, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant was Louis Avolio, the Manager, of 573 Valley Road, Wayne, New Jersey; Charles Olivo, engineer, with offices at 75 Orient Way, Rutherford, New Jersey.

Mr. Carlet stated that this property was approved June 17, 2015, by the Board for use for storage of landscaping materials and vehicles; the applicant proposes to remove a 22- by 18.5-foot (407 sq. ft) concrete block building and make it a parking and maneuvering area and to enclose the presently covered area, which is a 36- by 18-foot (648 sq. ft.) area which requires an extension of the previously granted use variance and revised site plan approval; that the remainder of the property, as it presently exists, contains a 50- by 100-foot area of vacant land which is separated from the remainder of the property by a wall. The applicant seeks to subdivide that property from the remainder of the property and to construct a one-family house thereon. Since the property is zoned M-1, a use variance will be required; and, since the zone requires a minimum width for lots of 100 feet, a bulk variance is required for minimum lot width and size. The proposed house will otherwise meet all of the requirements of the abutting RB-1 zone.

Mr. Carlet continued in stating that the variances and site plan approvals can be granted without any substantial detriment to the public good or the Clifton Zone Plan because the proposed demolition of the existing concrete block building and the enclosure of a presently covered area further from the road, which will meet the existing building on the property, is a de minimus exchange which betters the area because it is further back from the road; that the construction of the one-family house and the use variance required for that will substantially improve, not be a detriment to, the public good or zone plan because it will create a buffer from the remainder of the properties on Chestnut Street, which are all residential.

The Board members were dismayed because the area that would be subdivided for the home was supposed to serve as an actual buffer for the industrial use, and the Board members deferred back to the hearing on June 17, 2015, where it was expressly represented that it would serve as a buffer. The Board members were disappointed that it was now being slated for a residential home.

After a review of the testimony, Comr George Foukas moved to deny the application and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr Stephen Christopher. Voting for denial were Comrs Daniel Trenk, Louis DeStefano, Keith LaForgia, Stephen Christopher, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino. By a seven to zero vote, the motion carried, and the application was denied 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 Mark 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 Keith LaForgia, seconded by Comr Daniel Trenk, and affirmed by Comrs Daniel Trenk, Louis DeStefano, Keith LaForgia, Stephen Christopher, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of AGNIESZKA PIETRAS for front yard setback variance to build a roof over the existing front porch at 92 Mountainside Terrace, Block 22.03, Lot 12, was adopted.

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

Respectfully submitted,

JOHN D. POGORELEC  
COUNSEL SECRETARY

MEETING OF MARCH 16, 2016.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.,  
that the application of: NOURI PROPERTY MANAGEMENT, LLC  
for premises known as: 180 Getty Avenue, Block 11.03, Lot 49 and  
Block 11.22, Lot 1,  
be and the same is hereby: DENIED on the grounds of *res judicata* for a  
use variance to permit second floor office space and parking.

Testimony concerning the aforesaid application was taken by the Board at its  
meetings on November 18, 2015, and March 16, 2016. 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, Vice-Chrmn Gerard Scorziello moved to  
deny the application on the grounds of *res judicata* as follows:

WHEREAS, the applicant requests use variance approval to permit second  
floor office space as a principal use at premises and parking variance located at  
180 Getty Avenue, Block 11.03, Lot 49, and Block 11.22, Lot 1, which premises  
are located in a M-2 zone; and

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

- a. The first application was presented and denied on November 18, 2015;
- b. The second application is substantially similar to the first application;
- c. The same parties are involved;
- d. There are no substantial changes in the application or conditions  
surrounding the property;
- e. The substantial change proposed by the applicant, i.e. the withdrawal of  
the bus company, is a minor de minimus change in the opinion of the Board;
- f. The applicant still has not addressed the major issue of lack of parking at  
the site;
- g. The matter was adjudicated on the merits on November 18, 2015;
- h. Both the present application and the prior application which was denied  
involve the same relief requested by the applicant—i.e. a use variance for

proposed second floor office use as a principle use at the site and parking; and

WHEREAS, the findings set forth in the previous Resolution dated November 18, 2015, are incorporated herein by reference and made a part hereof;

NOW THEREFORE, BE IT RESOLVED that the application for a use variance to permit the second floor office use as a principal use and parking at premises located at 180 Getty Avenue, Block 11.03, Lot 49, and Block 11.22, Lot 1, be and the same is hereby disapproved and the use variance be and the same is hereby denied on the grounds of *res judicata*.

Resolution moved by: Comr VICE-CHRMN GERARD SCORZIELLO.

Seconded by: Comr KEITH LA FORGIA.

Affirmed by: Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, and Vice-Chrmn Gerard Scorziello.

MEETING OF MARCH 16, 2016.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.,  
that the application of: NOURI PROPERTY MANAGEMENT, LLC  
for premises known as: 180 Getty Avenue, Block 11.03, Lot 49 and  
Block 11.22, Lot 1  
be and the same is hereby: DISMISSED WITHOUT PREJUDICE for a use  
variance for a proposed school bus company.

The attorney for the applicant was present and requested that this matter be  
dismissed without prejudice;

Thereupon, Comr Louis DeStefano moved to dismiss without prejudice the  
application on the basis of the following Resolution:

WHEREAS, the applicant requests use variance approval for a proposed  
school bus company at premises located at 180 Getty Avenue, Block 11.03, Lot  
49, and Block 11.22, Lot 1, which premises are located in a M-2 zone;

NOW THEREFORE, BE IT RESOLVED that the application for a use  
variance for a proposed school bus company at premises located at 180 Getty  
Avenue, Block 11.03, Lot 49, and Block 11.22, Lot 1, be and the same is  
hereby dismissed without prejudice.

Resolution moved by: Comr LOUIS DE STEFANO.

Seconded by: Comr KEITH LA FORGIA.

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

MEETING OF MARCH 16, 2016.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.,  
that the application of: JLM CHESTNUT STREET, LLC  
for premises known as: 22 and 36 Chestnut Street, Block 15.12, Lot 16  
be and the same is hereby: DENIED amended use variance and site plan  
approval.

Testimony concerning the aforesaid application was taken by the Board at its  
meetings on June 17, 2015, and March 16, 2016. 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 George Foukas moved to deny the  
application on the basis of the following Resolution:

WHEREAS, the applicant requests amended use variance and site plan  
approval at premises located at 22 and 36 Chestnut Street, Block 15.12, Lot 16,  
which premises are located in a M-1 zone; and

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

- a. The applicant was previously granted approval on June 17, 2015, for a  
use variance to permit the use of property for storage and maintenance of  
landscaping equipment;
- b. The area where the within application is proposing to erect a one-family  
home was expressly represented to the Board to serve as a buffer between the  
storage and maintenance of landscaping equipment use and the residential use  
in the previously approved application.
- c. The changes proposed by the within application represent a gross  
overuse of the premises;
- d. The applicant has not shown any negative criteria required for the grant  
of a use variance
- e. The detriments of the application outweigh the benefits, if any; and

WHEREAS, the Board finds from the testimony presented that the proposal

will not be in accord with the intent and purpose of the master plan and the zone ordinance; and

WHEREAS, the Board further finds 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 amend use variance and site plan approval at premises located at 22 and 36 Chestnut Street, Block 15.12, Lot 16, be and the same is hereby disapproved and the amended use variance and site plan approval be and the same are hereby denied.

Resolution moved by: Comr GEORGE FOUKAS.

Seconded by: Comr STEPHEN CHRISTOPHER.

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