

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. 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. 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" – Driscoll); and Ira E. Weiner, Esq., with offices at 50 Chestnut Ridge Road, Montvale, New Jersey, appeared on behalf of MMSR Realty, LLC (Steve Rich), Delawanna Realty (Richard Jenny), and Glen Mills, Inc.

This is a continued hearing from the meetings of May 18, 2016, June 15, 2016, July 20, 2016, November 16, 2016, January 4, 2017, February 1, 2017, and March 8, 2017.

Present and sworn were Gregg A. Hardi, Esq., Vice-President and General Counsel of Driscoll Foods. Mr. Hardi testified that he has worked with Driscoll Foods for the past nine years; that he is familiar with the operations between 10 P.M. and 7 A.M.; that he is not in charge of the warehouse operation; that the Driscoll Foods employs 93 employees between 6 P.M. and 7 A.M. on a daily basis; that trucks jockey in and out of loading docks to be loaded; that there are back truck as well as 18 wheeler trucks; that trucks are loaded by forklift trucks which carry the pallets onto the truck; that the drivers generally come in at 5 A.M. in the morning and leave for their destinations by 7 A.M.; that there are short

delivery drivers also employed; that the drivers have routes to deliver; that during the day, Driscoll employs 200 employees; that Driscoll is a food distributor and has approximately 125 trucks loaded when required; that the new plant in Wayne was needed due to the expansion of the business; that there will be new refrigeration equipment in the Wayne facility.

On cross-examination by Mr. Tombalakian, Mr. Hardi testified that he was unaware of any upgrades in the equipment; that the move to Wayne will be done gradually; that he is unaware of a newspaper article which was marked "A-X4" dated January 16, 2017, wherein the title of the article was "Residents Want Delivery Trucks Off Delawanna Avenue."

Present and sworn on behalf of the objectors was Jon P. Brody of 293 Eisenhower Parkway, Livingston, New Jersey, a real estate appraiser and consultant. Mr. Brody testified that he has been in practice for 52 years; that he prepared a memorandum dated April 19, 2017, which addressed the economic impact on the subject property by the 80-unit proposed mid-rise residential development. Said report was marked as "O-9."

Mr. Brody summarized the economic impact on the 9.7 acre land which is located in an M-3 zone; that empirical data was submitted to show the rental lots for refrigerated and non-refrigerated warehouses; that the market value of warehouse space with combined refrigerated and non-refrigerated use presently at the site is \$33,920,000; that the market value of the property with a non-refrigerated use is approximately \$17,452,000 resulting in a reduction in value of \$16,468,000; that the hypothetical elimination of the refrigerated component from the warehouse because of the noise will have a serious impact on the property's marketability and its market value; that the noise factor could also impact on the use, utility, and value of any industrial use of the property within close proximity of the proposed 80-unit multi-family dwelling.

At this point in the hearing, Chrmn Mark Zecchino continued the matter until the meeting of the Board on June 7, 2017, at which time the cross-examination of Mr. Brody will be conducted.

2. 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.

This matter was previously continued by the Board to a special meeting on May 10, 2017.

3.	PASSAIC CLIFTON COMMUNITY KOLLEL
Use	CONGREGATION, 411 Main Avenue, Block
Variance;	59.03, Lot 17 – B-B – Applicant proposes to
Variances	convert an existing chiropractor's office to a
	Rabbinical Study/School Center. The lot also
	contains an attached two-family structure.
	Following variances are required:
	1) Conditional use variance for School (Existing
	lot does not meet bulk requirements).
	2) Use variance required for more than one use
	on a lot (school and residential use, prior use
	was a two family house and an office).
	3) 9 parking spaces supplied and 16 required
	(1 staff, 11 student, 4 residential).
	4) Lot coverage proposed at 27.52 where a
	maximum of 20% is permitted.
	5) Parking spaces proposed at 9' x 18' where
	9' x 19' are required.
	6) Site plan approval required.
	7) Such other variances as may be required.

Thomas P. DeVita, Esq., with offices at 452 Clifton Avenue, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant were the following: Rabbi Chaim Krause of 147 Marietta Avenue, Passaic, New Jersey; and Frank D. Mileto of 14 Beaver Brook Drive, Long Valley,

New Jersey. There was one interested party in favor of the application: Menachem Augellu, 171 Howard Ave. There were a number of objectors: Mary Sadrakula, Dwas Line Rd.; Lois Doremus; George Putykewycz, 289 South Parkway; Donald Chappa, 314 South Parkway; H. Cholewczynski, Phyllis Pl.; and Kelly Eckert, Edgewood Ave. (all information typed as handwritten on sign-in sheet).

This is a continued hearing from the March 15, 2017, meeting of the Board.

The Board reviewed the following reports: the report of Planning Consultant Gregory Associates dated March 13, 2017, revised April 14, 2017; the report of Neglia Engineering dated April 13, 2017; the report of the Fire Department dated April 17, 2017.

Mr. DeVita offered into evidence which was marked "A-1" a copy of a Resolution adopted by the Zoning Board of Adjustment of the City of Clifton dated September 17, 2003, granting a use variance to permit a Rabbinical Research Institute at 270 Rutherford Boulevard, Clifton, New Jersey.

The comments set forth in the report of Neglia engineering were addressed by Mr. Mileto and he further testified that a comment response letter will be prepared and submitted addressing the comments and recommendations set forth in the Neglia report; that access to and egress from the site will be right-turn in and right-turn out; that the applicant will comply with all recommendations in the Neglia report concerning grading, drainage, utilities, landscape, and lighting; that the applicant will make an application to the Passaic County Planning Board as required; that the proposal is not considered a school, it is a study area where participants between the age of 25 and 35 will attend, and there will never be more than 15 participants; that there are no employees that park on the site.

In response to questions raised by objector Mary Sadrakula, Mr. Mileto testified that the driveway on the south side will be eliminated; that 11 parking spaces are provided, 4 for the residents and 7 for the site; that the size of the parking spaces will be 9- by 19-feet; that a variance is required for the parking aisle width; that the proposal is not a self-created hardship; that garbage will be collected by the City as required; that the applicant will stipulate that this is a Rabbinical Study Program;

that there will be no social events conducted at the site and there will be no food being served within the facility.

In response to questions raised by objector Donald Chappa, Rabbi Chaim testified that there will be no social events conducted at the site.

In response to questions raised by objector Henry Cholewczynski, Rabbi Chaim testified that the proposal is a Rabbinical Study Facility; that there will be 15 participants; that there are two bathrooms at the site; that the hours of operation will be from 9:15 A.M. to 1:15 P.M. and 2 P.M. to 6:15 P.M.; that there will be no children during study hours at the facility.

In closing, Lois Doremus stated that there is inadequate parking at the site; Henry Cholewczynski testified that there is an overuse of the property, inadequate parking, and that the lot coverage is exceeded.

Mary Sadrakula stated that there are no parking standards for the type of facility proposed; that the aisle parking width is deficient; that in addition to the proposed use, there is a two-family dwelling; that the proposal represents a gross overuse of the property; that the applicant has failed to show any hardship; that the proposal is a self-created hardship; that any stipulations imposed by the Board are difficult to enforce; that the proposal is more intense than a doctor's office which previously was at the site; that the proposal does not promote the health, safety, and general welfare of the neighborhood.

In summation, Mr. DeVita stated that the proposal is a less intense use than a permitted use; that the Zoning Board, on September 17, 2003, granted a use variance for a similar use at 270 Rutherford Boulevard; that the applicant has stipulated to the number of participants at no more than 15, and the hours of operation from 9:15 A.M. to 1:15 P.M. and 2 P.M. to 6:16 P.M.

After a review of the testimony, Comr Louis DeStefano moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution, citing the fact that the proposal is an inherently beneficial use and is less intense than a permitted use at the site subject to the following conditions:

1. Approval from the Passaic County Planning Board;

2. Compliance with all recommendations set forth in the report of Neglia Engineering dated April 13, 2017, and the report of Gregory Associates dated March 13, 2017, revised April 14, 2017; and the report of the Clifton Fire Department dated April 17, 2017.

3. Subject to the hours of operation from 9:15 A.M. to 1:15 P.M. and 2 P.M. to 6:15 P.M.

4. That there will be no one at the premises before 9 A.M. and after 6:30 P.M. on a daily basis.

5. That the number of participants shall be limited to 13, plus the Rabbi.

6. The garbage must be collected in accordance with the Clifton Ordinance;

7. There will be no social events conducted at the site;

8. The facility is not a school.

9. The removal of the rear bump attached to the one-story masonry addition.

The motion was seconded by Comr Keith LaForgia. Voting in the affirmative were Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino. Voting in the negative was Comr Roy Noonburg, stating that the applicant has failed to provide adequate off street parking at the site. By a six to one 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.

4.	MOUNT PROSPECT PARK, LLC,
Use	62-66 Mt. Prospect Avenue, Block 36.01,
Variance;	Lot 11.01 – B-A – Preliminary and final

Variances site plan approval and variances. This application is to demolish the existing one (1) story building and remove all concrete curbing, concrete sidewalks, fencing, asphalt, and fencing and to permit construction of a three (3) story residential building consisting of one (1) bedroom units, and an additional three (3) story residential building consisting of one (1) bedroom and two (2) bedroom units. Applicant proposes associated site improvements consisting of asphalt parking areas, concrete curbing, concrete sidewalks, ADA curb ramps, concrete patios, walls, drainage, utilities, landscaping, and lighting. In addition, the applicant proposed two (2) shared parking easements and one (1) water utility easement. An application has been filed for the following variances in regard to this matter:

- Use – applicant proposes a residential use in the B-A zone, where such uses are not listed as being permitted;
- Rear Yard Setback – 10.83 feet proposed, whereas 30 feet is required;
- Building Height – 3 stories/38.8 feet is proposed whereas 2 stories/30 feet is permitted;
- Parking – applicant’s plan proposes parking spaces for the proposed residences not in compliance with the minimum required by the City’s Code;
- and any or all other variances and/or waivers as may be deemed necessary by the Zoning Board for the processing of this application;

-Parking Lot Landscaping – applicant cannot meet the Code requirement of 20 square feet of interior parking lot landscaping for each parking space.

This matter was previously continued by the Board to the May 3, 2017, meeting.

RESOLUTIONS

Chrmn Zecchino announced that the next order of business is the adoption of the Resolutions set forth on the Agenda.

1. Upon motion made by Comr Keith LaForgia, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of JAN KIEDZIUCH for a driveway extension of 3 feet in front of the house in an area not serving a garage at 180 Doherty Drive, Block 53.03, Lot 2, was adopted. RA2

2. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Stephen Christopher, and affirmed by Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of LYLLY BEAUTY AND NAIL SALON LLC/ANALILIA ESPEJO for a use variance to

convert the first floor commercial space from a Herb-A-Life store to a nail salon at 1 Madison Avenue, Block 8.01, Lot 13, was adopted. RB1

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

Respectfully submitted,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF APRIL 19, 2017.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: PASSAIC CLIFTON COMMUNITY KOLLEL CONGREGATION

for premises known as: 411 Main Avenue, Block 59.03, Lot 17

be and the same is hereby: GRANTED use variance to permit a Rabbinical Study Facility, use variance for more than one use on the lot, parking space variance, lot coverage variance, and preliminary and final site plan approval.

Testimony concerning the aforesaid application was taken by the Board at its meetings on March 15, 2017, and April 19, 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 Louis DeStefano moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests use variance approval for a Rabbinical Study Facility and use variance for two uses on the site, i.e. the facility and the two-family dwelling; and variances for number of parking spaces, lot coverage, preliminary and final site plan approval at premises located at 411 Main Avenue, Block 59.03, Lot 17, which premises are located in a B-B zone; and

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

- a. The applicant proposes a Rabbinical Study Facility at the premises in question;
- b. The site was previously a chiropractor's office and has been vacant;
- c. The proposed use is an inherently beneficial use;
- d. The applicant has satisfied the positive criteria since the use is inherently beneficial;
- e. The applicant has satisfied the negative criteria by agreeing to the stipulations set forth herein limiting the use of the premises;
- f. The facility is not a school, and no social events will be conducted at the site;
- g. The proposed use is less intense than the previous use at the site and any other uses permitted in the zone;

h. The applicant has shown sufficient hardship to justify the grant of the bulk variances requested;

i. The benefits of the application outweigh the detriments, if any;

j. The applicant has agreed to comply with all recommendations set forth in the report of Neglia Engineering dated April 13, 2017; Gregory Associates dated March 13, 2017, revised April 14, 2017; and report of the Clifton Fire Department dated April 17, 2017;

k. The Board previously granted a use variance to permit a Rabbinical Research Institute similar to what the applicant is requesting at 270 Rutherford Boulevard; and

WHEREAS, the Board finds from the testimony presented that the proposed use will be in accord with the intent and purpose of the master plan and the zone ordinance since it is an inherently beneficial use; and

(CONTINUED)

(CONTINUED)

WHEREAS, the Board further finds that although there was testimony presented by the objectors concerning overuse of the premises, lack of parking, and a more intense use of the premises, that the applicant has agreed to stipulations which will help promote the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for a Rabbinical Study

Facility at premises located at 411 Main Avenue, Block 59.03, Lot 17, be and the same is hereby approved and the use variances and variances for parking spaces, lot coverage, and preliminary and final site plan approval be and the same are hereby granted subject to such further governmental approvals as may be required by law and further subject to the following stipulations:

1. That the premises is not a school;
2. The hours of operation will from 9:15 A.M. to 1:15 P.M. and 2 P.M. to 6:15 P.M.;
3. That no one shall be at the premises before 9 A.M. and after 6:30 P.M.;
4. There shall be no more than 13 participants, plus the Rabbi;
5. The garbage must be collected in accordance with the Clifton Ordinance;
6. There will be no social events and no food served at the site;
7. Subject to Passaic County Planning Board approval;
8. Subject to removal of the rear portion, or the bump;
9. Subject to all recommendations set forth in the report of Neglia Engineering dated April 13, 2017, and the report of Gregory Associates dated March 13, 2017, revised April 14, 2017; and the report of the Clifton Fire Department dated April 17, 2017.
10. Subject to receipt of a comment letter to be submitted to Neglia Engineering concerning the recommendations set forth in the report.

NO PERMITS ARE TO ISSUE UNLESS AND UNTIL THE FINAL SEALED PLANS REFLECTING ANY CHANGES OR AMENDMENTS HAVE BEEN SUBMITTED AND APPROVED. THE ZONING BOARD SHALL RETAIN JURISDICTION TO RECONSIDER, REVISE, MODIFY, ADD, AND VARY THE TERMS OF ANY CONDITIONS HEREIN IMPOSED UPON ANY USE VARIANCE, VARIANCES, AND/OR SITE PLAN GRANTED HEREIN.

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 LOUIS DE STEFANO.

Seconded by: Comr KEITH LA FORGIA.

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