

Variances; Lots 13 and 33 – M-2 & M-3 – 1. Use

Variances variance 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. A resumed public hearing before the Board on this application to allow further consideration of a revised site plan depicting a realigned driveway.

This matter was previously continued to the October 4, 2017, meeting of the Board.

2.	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.

(a/k/a CAPSTONE REALTY GROUP)

NOTE: 06/07/17 REVISED PLAN.

Robert A. Gaccione, Esq., with offices at 524 Union Avenue, Belleville, New Jersey, appeared on behalf of the applicant. Present and sworn were the following: Steven M. Lydon, of Burgis Associates, Inc., applicant's landscape architect 25 Westwood Avenue, Westwood, New Jersey; and Perry E. Frenzel, PE, PP, of Michels & Waldron Associates, LLC, applicant's engineer, 645 Westwood Avenue, River Vale, New Jersey. The following objectors were present, some of whom were sworn to give testimony: Angela and William Swan, 62 Cloverdale Rd. and 165 Sargeant Avenue; Claire Tobia, 51A Elm St.; Jay Tobia, 51A Elm St.; Arnaldo Rodriguez, 73 Cloverdale Rd.; Karen Rodriguez, 73 Cloverdale Rd., Clifton; Boguslaw Swieca, 66 Cloverdale Rd., all of the City of Clifton, New Jersey (names are typed as hand-written on sign-in sheet).

This is a continued matter from the meetings of April 5, 2017, and June 21, 2017.

Mr. Frenzel, the professional engineer, gave testimony concerning changes made by the applicant to the application which included landscaping of the interior parking and buffer screening along the north property line.

Marked into evidence as "A-4" is a landscape plan.

Mr. Frenzel continued to testify as to "Exhibit A-5" which is a site plan along with adjacent properties bordering the site; he responded to issues set forth in the Fire Department report dated June 1, 2017, specifically addressing the location of fire hydrants.

"Exhibit A-6" was offered into evidence, the exhibit indicated access to the adjacent property; details of the adjacent fire apparatus access load, driveway, and parking lanes.

Steven M. Lydon of Burgis Associates testified as to changes made to the site plan, including the increased landscaping, increased parking, increased ingress and egress, elevator added to the building, provision for handicap, and setback of 128

square feet. He further testified to trip generation to the site during the peak hours; and reduction of the height variance to 3½ feet.

Offered into evidence which was marked "A-7" were photographs of sites showing the number of dwelling units and the number of public school children for the following sites: Two Ann Street; 1000 Unicorn Way; 740 Van Houten Ave.; 46 Burgh Avenue; 273 Ackerman Ave.; 270 Ackerman Avenue; and 75 Center Street.

Chrmn Zecchino noted for the record that if the structure was two stories tall, there would be no variance required; that a three-story structure is an economic benefit to the applicant since a full story of 14 units will be eliminated; that no hardship has been proven by the applicant for the height variance requested.

Angela Swan of 62 Cloverdale Road questioned the testimony of Mr. Lydon concerning the number of public school children in multiple buildings.

In summation, Mr. Gaccione stated that the proposed application is less intense than a permitted use; that the applicant has increased landscaping, parking, ingress and egress; that an elevator has been added; that the applicant has provided a 128 square foot setback; that the use is appropriate for the site; that office use does not fit at the site; that there will be no day care center there; that the site is 2½ acres; that the height variance is minimal; that the parking provided is 80 spaces; that a 51,000 square foot office building may be erected at the site.

In objecting to the application, Angela Swan stated that an office use is more preferable since it will be less disruptive to the neighborhood.

Boguslaw Swieca stated that she will be in her back yard looking at the face of a large building; that she is concerned about the density of the number of units and the people who will be there around the clock; that an office use generally has activity from 9 A.M. to 5 P.M. and will not be disruptive to the neighborhood.

Arnaldo Rodriguez was concerning with the parking at the site; he has concerns with the waste disposal; and the reduction of property values to his structure as a result of the multiple dwelling.

After a review of the testimony, Comr Roy Noonburg moved to deny the application, citing the fact that the third floor creates a height problem which is too big for the area. The motion was seconded by Comr George Foukas who stated that the applicant has failed to sustain the burden of proof to show why the premises cannot be used for its zoned purposes. Voting for denial were Comrs Roy Noonburg, George Foukas, and Chrmn Mark Zecchino who stated that whatever arguments advanced by the applicant's experts concerning the benefits of the residential use can also be advanced towards an office use with less interruption of the quality of life for the residents in the neighborhood. Voting against the motion were Comrs Louis DeStefano, Keith LaForgia, Stephen Christopher, and Vice-Chrmn Gerard Scorziello who stated that the application is good for the City. There were three affirmative votes for denial and four votes against denial.

Counsel Pogorelec stated that the application was for a use variance and five affirmative votes were required to approve; that pursuant to N.J.S.A. 40:55D-9(a), the failure of a motion to receive the number of votes required to approve the application for development shall be deemed an action denying the application. The application was denied by operation of law 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.

3. **CLIFTON CHICKEN LLC d/b/a POPEYE'S**
Use **LOUISIANA KITCHEN, 6 Main Avenue,**
Variance; Block 82.06, Lot 15 – P-MU – Use variance
Variances;relief pursuant to N.J.S.A. 40:55D-70d,
Site Plan bulk variance relief pursuant to N.J.S.A.
40:55D-70c and site plan approval.

The property is presently developed
with a one-story commercial structure

(currently unoccupied, previously utilized as a bank with drive-thru lanes) and accessory paved/parking areas.

Per Chapter 461 of the City of Clifton Zoning Ordinance, restaurants with drive-through facilities or counter service is not a permitted use in the zone.

The Applicant proposes to improve the property and utilize the existing structure as a dine-in and drive-thru restaurant. Accessory improvements (inclusive of façade improvements, site lighting, installation of exterior business signage, shrubs/planted areas, fencing repair, and parking area striping) are also proposed.

The applicant seeks the following variance relief from the Board:

- use variance relief for the proposed restaurant and its associated drive-thru use, business signage/memo boards (use not permitted in zone); and bulk variance relief for the proposed front yard setback along Main Avenue (29.1' proposed, 35' required); improved lot coverage (77% proposed, 75% permitted); open space (23% proposed, 25% minimum required); parking setback in corner/side yard (1' proposed, 10' required); and parking setback in rear (2.4' proposed, 5' required). The applicant will also seek any additional variances, waivers, interpretation or relief that may be required by the Board at the time of the public hearing.

This matter was previously continued to the September 20, 2017, meeting of the Board.

4. TFJ KINGSLAND LLC, 1 Blanjen Terrace,
Use Block 82.06, Lot 62, Clifton, NJ and
Variance; 10 Kingsland Road, Nutley, NJ – M-1 –
Variances Use variance required for a self-storage
 warehouse facility. Bulk variances required
 for left side setback (half the height of the
 building, but not less than 15 feet required;
 0 feet proposed); height variance (2 stories
 permitted, 3 stories proposed) and site
 plan approval.

Frank A. Carlet, Esq., with offices at 1135 Clifton Avenue, Clifton, NJ, appeared on behalf of the applicant. Present and sworn on behalf of the applicant were the following: Paul D. Remus, A.I.A. of Remus Architecture, 900 Haddon Avenue, Collingswood, New Jersey, architect; Franz Laki, PE, of SESI Consulting Engineers, 12a Maple Avenue, Pine Brook, New Jersey, project engineer; Craig W. Peregoy, PE, of Dynamic Traffic, 245 Main Street, Chester, New Jersey; and Keenan Hughes, AICP,PP,LEED,AP of Phillips Preiss Grygiel, 33-41 Newark Street, Hoboken, New Jersey, planner.

Mr. Carlet stated that the applicants request use variance approval for premises located at 1 Blanjen Terrace, which premises are located in an M2 general industrial zone; that the property is irregular in shape with frontage along Blanjen Terrace, Baltimore Street, and Kingsland Road; that the applicant proposes to construct a self-storage facility on the property in question; that 5.1 acres of the property are located in Clifton and 2.1 acres of the property are located in Nutley.

Paul D. Remus testified as an architect and stated that the applicant intends to erect a self-storage facility; that the M-2 zone does not permit self-storage facilities, and a use variance is required; that the site in question is irregular in shape.

Offered into evidence were the following exhibits:

“A-1” is a deed to the premises from the New Jersey Department of Environmental Protection Program to Crompton Colors Inc. for the customer Alfred E. III Moffit;

“A-2” is an aerial view of the site;

“A-3” is a proposed site plan.

Franz Laki testified as an engineer, indicating that the premises are located in an M-2 zone; that there are 5.1 acres of the property are located in Clifton; that the applicant will construct a new two-story building with 122,400 square feet of gross area; that the site will include a dumpster enclosure area, signage, curbing, concrete walkways, grading improvements, and rights-of-way improvements; that a side yard variance is required where the ordinance requires 15 feet and 0 feet are proposed; that a parking variance is required since 42 spaces are proposed and 0 spaces are provided on the Clifton site; that the parking stall sizes required are 9- by 19-feet, and the applicant is proposing 9- by 18-feet.

Craig W. Peregoy of Dynamic Traffic testified as a traffic expert and stated that a traffic impact statement was prepared and marked into evidence as “A-4.” Mr. Peregoy testified that he conducted a detailed field inspection to obtain an inventory of the existing roadway; that projections of traffic to be generated were prepared; that an assessment of future traffic impact was also prepared; that points of ingress and egress were inspected for adequacy of design and safety; that site access, circulation, and parking were performed; that based upon the detailed analysis set forth in the report, it is his professional opinion that the adjacent street system of the City of Clifton and the Township of Nutley will not experience any significant degradation in operating conditions with the construction of the project.

Keenan Hughes testified as a planner and stated that the M-2 zone permitted uses are more intense than what the applicant is proposing; that with respect to the positive criteria, the proposed use is a low passive use; that it is compatible with the area; that it will promote the general welfare; that the site is suitable for the proposed use. With regard to the negative criteria, there are no negative impacts;

that parking is satisfactory; that the site is suitable for the proposed use; that the applicant has proposed landscaping to upgrade the premises; that in his opinion, the applicant has satisfied the positive and negative criteria required for the grant of the use variance.

After a review of the testimony, Vice-Chrmn Gerard Scorziello moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution, citing the fact that the applicant has sustained the burden of proof for the use proposed with the stipulation that the applicant comply with the following:

1. All requirements of the Fire Department of the City of Clifton;
2. Compliance with all recommendations by the Neglia Engineering report dated May 23, 2017, and revised August 14, 2017;
3. No campers or recreational vehicles shall be permitted to be stored at the site.

The motion was seconded by Comr George Foukas. 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.

NEW HEARINGS

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| 1.
Variance | JENNIFER & ALEX ORTIZ, 93 Rolling Hills Road, Block 75.03, Lot 9 – RA1 –
Applicant proposes to place a 5’ high solid fence along the side yard facing Le Ster Place where a 4’ high, 50% open fence is permitted. |
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Alex Ortiz of 93 Rolling Hills Road, Clifton, New Jersey, was present and sworn. There were no objectors.

The applicant testified that he requests variance approval to place a 5-foot-high solid fence along the side yard facing Le Ster Place where a 4-foot-high 50% open fence is permitted; that the purpose of the fence is for privacy; that the fence will be installed behind the arbor vitae plantings in the area.

After a review of the testimony, Comr Louis DeStefano moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution for approval of the fence height variance. The motion was seconded by Comr Keith LaForgia. 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.

2. **JAMES & NANNA SESSIONS, 9 Wells**

Variance

Court, Block 63.05, Lot 18 – RA1 –
Applicant proposes to build a pergola over the existing rear yard deck.

The existing deck and proposed pergola have a rear yard setback of 15' where 35' is required. The existing deck was granted a variance on July 16, 2008.

An above ground pool is also proposed in the rear yard with a 0' setback from the deck where 10' is required.

James Sessions, residing at 9 Wells Court, Clifton, New Jersey, was present and sworn. There were no objectors.

The applicant testified that he requests variance approval to build a pergola over the existing rear yard deck; that the existing deck and the proposed pergola have a rear yard setback of 15 feet where 35 feet is required; that the existing deck was granted a variance on July 16, 2008; that an above-ground pool was also proposed in the rear yard with 0 feet setback from the deck where 10 feet is required; that the purchased the property approximately four to five years ago.

After a review of the testimony, Comr Keith LaForgia moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution. 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.

3.	SCHOLARS & LEADERS ACADEMY
Use	(K-12), 558/600 Getty Avenue, Block
Variance	9.04, Lot 22 – M-3/PDO-2 –Applicant
	is a K-12 school and proposes to use
	the premise formerly used by Dover
	Business School as its educational
	facility. The property is uniquely suited
	for this use. Use variance required
	because the PDO-2 zone does not

specifically permit schools as a permitted use; and such other variances as may be required by law.

A. William Sala, Jr., Esq., with offices at 179 Randolph Avenue, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn was Aros Konjhodzic, Ph.D., of 110 Orly Street, Rochelle Park, New Jersey; and George Held, an architect, with offices at Getty Avenue, Clifton, New Jersey. There were no objectors.

Mr. Sala stated that the applicant is seeking use variance approval to conduct a Kindergarten to Grade 12 School at a portion of the premises formerly occupied by Dover Business School as its educational facility; that a use variance is required because the PDO-2 zone does not specifically permit schools as a permitted use; that there is adequate parking at the site.

Mr. Konjhodzic testified that there are approximately 70 students in attendance at the present time; that there are 14 staff members; that school is conducted on the weekdays and sometimes on Saturday and Sunday.

Chrmn Zecchino inquired as to whether the applicant has proof of formation, approval from the State Department of Education, and a brochure describing the operations of the school. Mr. Konjhodzic stated that he would provide this information to the Board.

Mr. Held stated that the proposed school is less intense than the Dover Business School since there are less cars coming to the site.

At this point in the hearing, Chrmn Zecchino stated that a report must be obtained from the Planning Consultant, Gregory Associates, and more information must be furnished by the applicant.

Thereupon, the matter was continued by the Board until the September 20, 2017, meeting of the Board.

4.	PEOPLES BAPTIST CHURCH, INC.,
Use	14 Joyce Lane, Block 66.02, Lot 27
Variance	--RA3 – That the applicant obtain a use variance to permit the existing one (1) family home to be used for Sunday school classes and other Bible classes, youth activities, storage and church offices, as ancillary to the use of the adjacent church property. The applicant will seek such additional variances and/or waivers as may be implicated by its application and the maps and documentation submitted therewith.

Arthur C. Hopkins, Jr., Esq., with offices at 1135 Broad Street, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn were Pastor Michael Dinges of 51 Hepburn Road, Clifton, New Jersey; and Anthony Marucci of Marucci Engineering Associates, 116 Whippany Road, Whippany, New Jersey. There were a number of objectors: Jun B. Ruz, 12 Lockwood Pl.; Dawn and Emil Ihle, 27 Lockwood Pl.; Thomas Valdez, 15 Joyce Ln.; and Erasmo Corniel, 15

Joyce Ln., Clifton, New Jersey (all names are typed as hand-written on sign-in sheet).

Pastor Dinges testified that the Church proposes to use an existing one-family dwelling home for Sunday School classes and other Bible classes, youth activities, storage, and church offices, as ancillary to the use of the adjacent church property; that the premises at 14 Joyce Lane will experience no physical changes to the exterior of the property.

Mr. Marucci testified that the proposed use will have a minimal impact on the neighborhood; that the subject premises is adjacent to the existing parking lot, and the same congregants that presently use the existing Church facility will also use the subject property; that no additional parking will be required, and there will be no additional traffic generated; that the proposed use is an inherently beneficial use; that the site is suitable for the proposed use; that there will be no changes to the structure of the one-family dwelling.

Offered into evidence was "A-1," three photographs, the first the one-family dwelling from the right side; the second, the one-family dwelling from the left side; and the third, photo of the Peoples Baptist Church.

In objecting to the application, Jun B. Ruz stated that he was concerned about the increased traffic generated and the parking of cars and buses.

Emil Ihle stated that he was also concerned with the school buses entering and exiting the site and parking of vehicles.

Dawn Ihle stated that she was concerned with the supervision of children at the site.

Eros Corniel stated that he was also concerned with traffic at the site; that there has been a substantial increase of car traffic and foot traffic which has upset the quality of life of the neighborhood; that the barrier gate was open at the site which caused vehicles to come into the neighborhood and increase traffic and disrupt parking for the residents.

After a review of the testimony, Vice-Chrmn Gerard Scorziello moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution with the stipulation that the gate be closed on Joyce Lane which will alleviate the parking and the traffic issues. The motion was seconded by Comr Louis DeStefano who stated that the Church must practice the good neighbor policy and be concerned about the privacy of the adjacent neighbors. 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 next order of business is the adoption of the Resolutions set forth on the Agenda.

1. Upon motion made by Comr Louis DeStefano, seconded by Comr George Foukas, and affirmed by Comrs Louis DeStefano, George Foukas, and Vice-Chrmn Gerard Scorziello, the Resolution DENYING the application of TRUCARE ADULT MEDICAL DAY CARE LLC for use variance for an adult medical day care center and bulk variances for parking at 1111 Paulison Avenue, Block 19.03, Lot 1, was adopted. M-1

2. Upon motion made by Comr Louis DeStefano, seconded by Comr George Foukas, and affirmed by Comrs Louis DeStefano, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution DISMISSING WITHOUT PREJUDICE the application of KASANG THING to build a rear deck and wheelchair ramp on the rear of the home at 36 Standish Drive, Block 39.09, Lot 17, was adopted. RA2

3. Upon motion made by Comr Roy Noonburg, seconded by Comr Louis DeStefano, and affirmed by Comrs Michael Molner, Louis DeStefano, Stephen Christopher, George Foukas, Roy Noonburg, and Vice-Chrmn Gerard Scorziello, the Resolution GRANTING the application of JOHN TRAIER/MARK PETERSON to erect 6-foot-high left side solid fence and 6-foot-high right side solid fence at 15 East Parkway, Block 58.05, Lot 8, was adopted. RA1

4. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Stephen Christopher, and affirmed by Comrs Louis DeStefano, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of MARIA TERESA DiZENZO for variance approval for a 5-foot-high solid fence along the Lester Place side of the property at 83 Rolling Hills Road, Block 75.04, Lot 1, was adopted. RA1

5. Upon motion made by Comr Louis DeStefano, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Louis DeStefano, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of OLGA MORO for rear yard setback variance for a rear yard deck at 73 Larkspur Lane, Block 40.05, Lot 54, was adopted. RA3

6. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Stephen Christopher, and affirmed by Comrs Louis DeStefano, Stephen Christopher, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of KALMAN FRIEDMAN for rear yard setback to erect a rear deck at 462 South Parkway, Block 58.01, Lot 7, was adopted. RA1

7. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Stephen Christopher, and affirmed by Comrs Louis DeStefano, Stephen Christopher, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of DANIEL AND GILA GEWIRTZ for variances to widen the driveway at 207 Edgewood Avenue, Block 57.08, Lot 1, was adopted. RA3

There being no further business before the Board, Comr Louis DeStefano 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 AUGUST 16, 2017.

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

MOUNT PROSPECT PARK, LLC

(CAPSTONE REALTY GROUP)

for premises known as: 62-66 Mt. Prospect Ave., Block 36.01, Lot 11.01

be and the same is hereby: DENIED use variance for use not permitted in zone, D(6) height variance, bulk variance for number of stories for a 3-story building with 42 residential units.

Testimony concerning the aforesaid application was taken by the Board at its meetings on April 5, 2017, June 21, 2017, and August 16, 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, a motion was made to deny the application, which motion was duly seconded. There were three affirmative votes and four negative votes. The application was for a use variance, and five affirmative votes were required to approve; that pursuant to N.J.S.A. 40:55D-9(a), the failure of a motion to receive the number of votes required to approve the application for development shall be deemed an action denying the application as follows:

WHEREAS, the applicant requests use variance approval to construct a three-story building with 42 residential units at premises located at 62-66 Mt. Prospect Avenue, Block 36.01, Lot 11.01, which premises are located in a B-A zone; and

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

- a. The proposed multi-family residential use is not a permitted use in the B-A zone which permits business and professional office uses;
- b. The applicant presented the testimony of an architect, professional engineer, and planner in support of its application;
- c. There were numerous objectors who are the owners of properties that border immediately adjacent to the rear of the subject premises;

d. The applicant's planner failed to give testimony to satisfy the positive criteria of the statute and, more specifically, that the site is a suitable site for the proposed use and that the site could not be developed for its zoned purposes;

e. All the reasons set forth in the record by applicant's experts may equally apply to the development of the site for its zoned purposes;

f. The applicant's planner failed to provide testimony to satisfy the negative criteria since the objectors clearly indicated that the proposal would be detrimental to their quality of life and further there was no testimony concerning the inherent burden of proof where the applicant must reconcile the omission of the proposed use from the zone ordinance;

g. Based upon the testimony of the objectors, the height of the structure will be detrimental to the neighborhood;

h. None of the applicant's experts provided testimony that the site could not be developed for its zoned purposes—that is, an office building—and in fact, the record shows that there is an admission that a 51,000 square-foot office building could be erected at the site;

i. The applicant failed to sustain the burden of proof required for the grant of the use variance and the height variance and the bulk variance;

(CONTINUED)

(CONTINUED)

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

k. The hardship, if any, that is experienced by the applicant, is an economic hardship which is not a reason for approval of the use variance;

I. There is nothing unique about the property for the proposed use as opposed to a permitted use; and

WHEREAS, the Board finds from the testimony presented by the experts and the objectors that the proposal will not be in accord with the intent and purpose of the master plan and the zoning ordinance since the property may be developed for its zoned use; and

WHEREAS, the Board further finds that the grant of the use variance would substantially impair the intent and purpose of the zone plan and zone ordinance which has zoned the premises for office use, not residential use; and

WHEREAS, the Board further finds that there has been sufficient testimony by the objectors to show that the height of the building, parking, and traffic will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application to construct one 3-story building with 42 residential units at premises located at 62-66 Mt. Prospect Avenue, Block 36.01, Lot 11.01, be and the same is hereby disapproved and the use variance and bulk variances and site plan approval be and the same are hereby denied.

Resolution moved by: Comr ROY NOONBURG.

Seconded by: Comr GEORGE FOUKAS.

Affirmed by: Comrs George Foukas, Roy Noonburg, and Chrmn Mark Zecchino.

MEETING OF AUGUST 16, 2017.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: TFJ KINGSLAND LLC
for premises known as: 1 Blanjen Terrace, Block 82.06, Lot 62
be and the same is hereby: GRANTED use variance for a self-storage warehouse facility, bulk variances for left side yard setback, height variance, and site plan approval.

Testimony concerning the aforesaid application was taken by the Board at its meeting on August 16, 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, Vice-Chrmn Gerard Scorziello moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests use variance and bulk variance approval for a self-storage warehouse facility at premises located at 1 Blanjen Terrace, Block 82.06, Lot 62, Clifton, New Jersey, and 10 Kingsland Road, Nutley, New Jersey, which premises are located in an M-2 zone; and

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

- a. The property in question is located in an M-2 zone, irregular in shape with frontage along Blanjen Terrace, Baltimore Street, and Kingsland Road;
- b. The site in question is currently vacant and formerly housed Atlantic Chemical which operated a former chemical dye business;
- c. The applicant proposes to construct a 122,400-square-foot, three-story self-storage facility on the property with 16 parking spaces;
- d. The site in question is compatible with the uses in the surrounding area and is suitable for the proposed use based upon the applicant's professional planner's testimony;
- e. The proposed use is less intense than those permitted in the M-2 zone;
- f. The applicant has satisfied the positive and negative criteria required for the

grant of a use variance;

g. The applicant has satisfied the hardship requirements required for the grant of the bulk variance;

h. There will be no negative impact as a result of the proposed use;

i. The benefits of the application outweigh the detriments, if any; 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 since the site is presently vacant and the proposed use is suitable for the site; and

WHEREAS, the Board further finds from the testimony presented that based upon the applicant's traffic expert report, the proposal has adequate access to the site designed to provide for safe and efficient movement of vehicles on-site and there is adequate on-site parking to support the proposed use;

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NOW THEREFORE, BE IT RESOLVED that the application for a self-storage facility in an M-2 zone at premises located at 1 Blajen Terrace, Block 82.06, Lot 62, be and the same is hereby approved and the use variance as well as the bulk variances for side yard and number of parking spaces 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 conditions:

1. Compliance with all recommendations of the Fire Department of the City of Clifton dated June 19, 2017.
2. Compliance with all recommendations set forth in the Neglia Engineering report dated May 23, 2017, revised August 14, 2017.
3. That no campers or recreational vehicles be permitted parking at the site
4. 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. 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 VICE-CHRMN GERARD SCORZIELLO.

Seconded by: Comr GEORGE FOUKAS.

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

MEETING OF AUGUST 16, 2017.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: JENNIFER & ALEX ORTIZ for premises known as: 93 ROLLING HILLS ROAD, BLOCK 75.03, LOT 9 be and the same is hereby: GRANTED variance for a 5-foot-high solid fence along the side yard facing LeSter Place.

Testimony concerning the aforesaid application was taken by the Board at its meeting on August 16, 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 approval to place a 5-foot-high solid fence along the side yard facing LeSter Place at premises located at 93 Rolling Hills Road, Block 75.03, Lot 9, 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 applicant proposes a 5-foot-high solid fence along the side yard facing LeSter Place;
- b. A 4-foot-high 50% open fence is permitted;
- c. The purpose of the fence is for privacy and will be installed behind the arbor vitae plantings;
- 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 and the zone ordinance; 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 place a 5-foot-high solid fence as aforesaid at premises located at 93 Rolling Hills Road, Block 75.03, Lot 9, be and the same is hereby approved and the variance be and the same is hereby granted subject to such further governmental approvals as may be required by law.

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, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino.

MEETING OF AUGUST 16, 2017.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: JAMES & NANNA SESSIONS
for premises known as: 9 WELLS COURT, BLOCK 63.05, LOT 18
be and the same is hereby: GRANTED rear yard setback variance to build a pergola over existing rear yard deck and variance for distance between the above-ground pool and the deck.

Testimony concerning the aforesaid application was taken by the Board at its meeting on August 16, 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 variance approval as aforesaid for a rear yard setback variance and variance for distance between deck and pool at premises located at 9 Wells Court, Block 63.05, Lot 18, 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 applicant proposes to build a pergola over the existing rear yard deck which has a rear yard setback of 15 feet where 35 feet is required;
- b. The applicant proposes an above-ground pool in the rear yard with a 0 setback from the deck where 10 feet is required;
- c. The applicant has shown sufficient hardship to justify the grant of the variances requested;
- d. 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 and the zone ordinance; 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 erect a pergola over

the existing deck and erect an above-ground pool at premises located at 9 Wells Court, Block 63.05, Lot 18, be and the same is hereby approved and the variances for rear yard setback and distance from pool to deck be and the same are hereby granted subject to such further governmental approvals as may be required by law.

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 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.

MEETING OF AUGUST 16, 2017.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: PEOPLES BAPTIST CHURCH, INC.
for premises known as: 14 JOYCE LANE, BLOCK 66.02, LOT 27
be and the same is hereby: GRANTED use variance to convert existing one-family home to be used for Sunday School classes, Bible classes, youth activities, storage, and church offices.

Testimony concerning the aforesaid application was taken by the Board at its meeting on August 16, 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, Vice-Chrmn Gerard Scorziello moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests use variance approval to convert an existing one-family dwelling to a use for Sunday School classes, Bible classes, youth activities, storage, and church offices at premises located at 14 Joyce Lane, Block 66.02, Lot 27, which premises are located in a RA3 zone; and

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

- a. The applicant proposes to convert the one-family dwelling to a use for Sunday School classes, Bible classes, youth activities, storage, and church offices;
- b. A use variance is required since the premises are located in an RA3 zone;
- c. The proposed use supports the activities of Peoples Baptist Church, Inc. which is an inherently beneficial use;
- d. Based upon the applicant's planner's testimony, the applicant has satisfied the positive and negative criteria required for the grant of a use variance;
- e. The benefits of the application outweigh the detriments, if any; and

WHEREAS, the Board finds that the proposed use will support an inherently beneficial use and will be in accord with the intent and purpose of the master plan and the zone ordinance; and

WHEREAS, the Board further finds that based upon the testimony of the objectors,

traffic and parking have become an issue in the neighborhood; however, the Board finds that the imposition of a stipulation that the gates on Joyce Lane be closed will promote the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application to convert a one-family dwelling to a facility for Sunday school classes, Bible classes, youth activities, storage, and church offices at premises located at 14 Joyce Lane, Block 66.02, Lot 27, be and the same is hereby approved and the use variance be and the same is hereby granted subject to such further governmental approvals as may be required by law subject to the following conditions:

1. That the gate be closed at all times on Joyce Lane.

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 VICE-CHRMN GERARD SCORZIELLO.

Seconded by: Comr LOUIS DE STEFANO.

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