

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, April 18, 2018. 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 SCOTT SOCHON, DANIEL TRENK, MICHAEL MOLNER, LOUIS DE STEFANO, KEITH LA FORGIA, GEORGE FOUKAS, ROY NOONBURG, VICE-CHRMN GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.

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 Vice-Chrmn Gerard Scorziello, the Minutes of the March 28, 2018, special meeting were adopted with the unanimous approval of the entire Board.

Upon motion made by Comr Louis DeStefano, seconded by Comr George Foukas, the Minutes of the April 4, 2018, regular meeting were adopted with the unanimous approval of the entire Board.

CONTINUED HEARINGS

1. 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.

NOTE: REVISED PLAN ON FILE

This matter was previously continued by the Board to the June 6, 2018, meeting.

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| 2. | CARLOS SUAREZ & NELY ALTAMIRANO, |
| Use | 42 Paterson Avenue, Block 82.02, Lot 64 |
| Variance | -- RA3 – Applicant proposes a rear addition on to an existing nonconforming two-family home. A use variance is required for the expansion of a nonconforming use. A new detached garage is also proposed at 440 sq. ft. where a maximum of 300 sq. ft. is permitted. |

This matter was continued to the May 16, 2018, meeting of the Board.

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| 3. | 299 ROUTE 3 EAST, LLC, 299 Route 3 East, |
| Use | Block 83.01, Lot 2.01 – M-3 or P-MU option – |
| Variance | A use variance to permit two (2) principal uses on the same lot being the existing gas station and conversion of the existing automobile service building into a coffee shop. |

Frank A. Carlet, Esq., with offices at 1135 Clifton Avenue, Clifton, New Jersey, appeared on behalf of the applicant.

This is a continued hearing from the November 15, 2017, and January 3, 2018, meetings of the Board.

There was no testimony taken.

Mr. Carlet stated that on behalf of his client, he communicated with the New Jersey Department of Transportation concerning the issuance of a modified Route 3 NJDOT access permit because of the potential for increased traffic as a result of the use of the premises for a Dunkin Donuts as well as a gasoline service station; that a response was received indicating that as long as the proposed Dunkin Donuts is used as a convenience with the gasoline service station, it is acceptable to the New Jersey Department of Transportation; however, if a drive-thru is permitted, then it will not qualify for a access permit designated as a LONJ.

Offered into evidence were the following exhibits:

“A-1” is an e-mail from Larry D. Cotton, Principal Engineer and Manager of the Office of Major Access Permits to Hal Simoff.

“A-2” is an e-mail from Larry D. Cotton to Hal Simoff dated March 15, 2018.

“A-3” is a written communication dated March 19, 2018, from Simoff Engineering Associates to Larry D. Cotton supplying all the requirements for submission to obtain approvals from the New Jersey Department of Transportation.

Mr. Carlet stated that this was the only outstanding item which the Board requested, and he has no further testimony to present.

After a review of the testimony, Comr Roy Noonburg moved to deny the application, citing the fact that the proposed two uses on one lot are objectionable and that the applicant has failed to satisfy the site suitability criteria. The motion was seconded by Comr George Foukas who stated that the applicant has failed to

satisfy the positive and negative criteria required for the grant of a use variance; that the number of parking spaces is deficient for the two proposed uses. Voting for denial were Comrs Roy Noonburg, George Foukas, and Vice-Chrmn Gerard Scorziello who stated that there were too many unanswered questions, and there was a concern about the location of the Dunkin Donuts and the gasoline service station on the Highway directly adjacent to the LaQuinta Inns and Suites and the sharing of the site driveway with this facility. Voting against denial were Comrs Daniel Trenk, Louis DeStefano, Keith LaForgia, and Chrmn Mark Zecchino who stated that the gasoline service station and the proposed Dunkin Donuts are at an appropriate location on the Highway. There were three affirmative votes and four negative votes.

Counsel Pogorelec ruled that pursuant to the statute in question, the applicant has failed to obtain the required number of votes for a use variance, which is five, and therefore, the application is 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.

4. **YESHIVA KTANA OF PASSAIC, INC.**
- Variances 288, 292, 296, 300 & 304 South Parkway,
Block 59.01, Lots 8, 11, 13, 15 & 17
-- RB2 – Preliminary and Final Site Plan
Approval with associated conditional
and/or use variance and other related
waiver and variance relief, property
approximately 0.745 acres 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.
The Applicant seeks to demolish the homes and
construct and utilize a parking area consisting

73 spaces, together with associated landscaping, fencing and other site enhancements, all to be accessory to the Applicant's inherently beneficial religious and educational school facility, which is located in the City of Passaic and which is adjacent to the Property. All vehicular ingress and egress is proposed to be through the Applicant's property in Passaic, other than a 20' "clear" opening gate solely for emergency access from South Parkway (southwestern corner of property) for use by emergency personnel as requested by the Clifton Fire Department. 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 padlocks for Fire Department perimeter area access and creation/labeling of "fire lane – no parking" areas.

The Applicant requests relief from the following Code provisions for the accessory parking:

(1) §461-47A(1) – 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 (no building on Property);

(2) §461-47A(2) – fence erected along the side lines from the rear line of the main structure to the rear property line and along said rear property line shall not exceed 5' and may be

solid or in the nature of stockade or basket

weave construction –

proposed: 6' board-on-board fence with 50% open

space proposed along side property lines;

(3) §461-60(E) – no parking to be located within

front yard –

proposed: parking within front yard setback;

(4) §461-60(F) – no parking to be located within

10' of rear line –

proposed: parking within rear yard setback;

(5) §461-60(J) – no parking or standing of

automobiles within front, rear or side yards in

residential districts –

proposed: parking within front yard setback;

(6) §461-60(N) – parking lot in excess of 10,000

sf to provide interior landscaping (20 sf/space)-

proposed: no interior landscaping but

significant side and front perimeter buffer;

(7) §461-29; §461-27A – minimum lot size 1 acre

for conditional school use –

proposed: minimum lot size 34.456 sf in Clifton

(compliant with split municipal boundary

consideration);

(8) §461-29; §461-27-A – minimum lot depth 150' –

proposed: minimum lot depth 118.03' in Clifton

(compliant with split municipal boundary

consideration).

In addition to the foregoing described relief,

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 Board after or during its review

of this Application, together with any further

relief that may be deemed necessary by the

Applicant during the hearing process, including

feet proposed), -maximum lot coverage (27% permitted, 52.5% proposed for Lot 1.02 and 50.4% proposed for Lot 1.01), -maximum building height (2 stories/30 feet permitted, 3 stories/31.92 feet proposed), -rear yard setback (40 feet required, 38.5 feet proposed).

NOTE: REVISED PLAN ON FILE

This matter was continued by the Board to the May 16, 2018, meeting at the request of the attorney for the applicant who cited the fact that his witness was unavailable due to illness.

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| 6. | PARKWAY IRON & METAL, INC., |
| Interpre- | 613-639 Route 46 East, Block 19.01, |
| tation; or | Lot 1 – M-3 – To request the |
| Use | following relief: |
| Variance; | (i) An interpretation from the Board |
| Variances | of Section 289-14 of the City of Clifton |
| | Code that would authorize the Zoning |
| | Officer of the City of Clifton to issue a |
| | zoning permit under 40:55D-70(b), |
| | 40:55D-4 and 40:55D-18 approving the |
| | height and composition of the perimeter |
| | wall enclosure that currently exists at |
| | the subject property; alternatively, |
| | (ii) For the Board to grant a use variance |
| | to permit the existing perimeter wall to |
| | remain at the subject property pursuant |
| | to 40:55D-70(d)(1) and (2) and/or for a |
| | bulk variance as to the height and |
| | composition of the perimeter wall |
| | pursuant to 40:55D-70(c)(2); and |
| | (iii) For any other variances and/or |
| | waivers as may be determined by the |

Board.

Stuart Reiser, Esq., with offices at 411 Hackensack Avenue, Hackensack, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant were the following: Peter Steck of 80 Maple Avenue, Maplewood, New Jersey, a planner; Andrew Missey of 12 Route 17 North, Suite 230, Paramus, New Jersey, engineer; and Paul Beck of 12 Kulick Road, Fairfield, New Jersey, a structural engineer.

Mr. Reiser stated that the applicant is the operator of a scrap metal recycling facility located at 613 Route 46; that the property in question is located in the M-3 special industrial zone, irregular in shape with a frontage along Route 46; that the applicant is requesting an interpretation from the Board of Section 289-14 of the City of Clifton Code that would authorize the Zoning Officer of the City of Clifton to issue a zoning permit under N.J.S.A. 40:55D-70(b), *et seq.* approving the height and composition of the perimeter wall enclosure that currently exists at the subject premises; or, in the alternative, for the Board to grant a use variance to permit the existing perimeter wall to remain at the subject property pursuant to the requirements of a D-2 use variance and for a bulk variance as to the height and composition of the perimeter wall for a bulk variance under section (c) (2) of 40:55D-70(c).

Mr. Reiser offered into evidence the following exhibits:

“A-1” which is a Board Resolution dated October 21, 1992, where the applicant was granted a use variance to expand a non-conforming use and site plan approval;

“A-2” Site plan of the premises.

Mr. Reiser further stated that there is a conflict between two ordinances of the City of Clifton, one referred to as the Junkyard Ordinance and the second ordinance referred to as the Zoning Ordinance Section 461-47.

Andrew Missey testified as a consulting engineer and land surveyor and stated that he prepared the survey of the premises; gave testimony as to the identification of the property and stated that since 1982, a perimeter wall enclosure comprised of steel containers that have been welded together was installed along the easterly, westerly, and southerly boundaries of the site; that the wall varies in height from 8 feet to 24 feet; that the site is 6.70 acres in total; that the high point of the site is Route 46 in elevation; that he has reviewed the report of Neglia Engineering Associates dated January 19, 2018, and that the applicant will comply with all recommendations set forth in said report; that the applicant proposes to have a uniform color to complement the surrounding background; that the applicant is requesting approval for the issuance of the zoning permit for the existing use which is not specifically permitted within the M-2 zone and further requests the granting of bulk variances with respect to the existing perimeter wall height and composition which is currently constructed.

Paul Beck testified as a structural engineer and stated that he wrote a report dated December 19, 2016, concerning his visual examination of the installation of the steel shipping containers creating a fence around a majority of the property; that the shipping containers were stacked at either three high, two high, or one high, depending on the location, in an effort to deflect sound that is generated by equipment inside the operating yard; that his report also determined whether or not assembled containers are adequate to resist the wind requirements of the building code of the City of Clifton; that in his opinion, the current wall is designed to deflect sound that is generated by equipment inside the operating yard; that there will be no detriment to the surrounding premises.

Peter Steck testified as a planner and stated that as previously testified, a use variance and site plan approval were granted by the Board in 1992; that the containers were installed by a prior operator; that some containers are stacked as high as three units, with the height of each container being 8.5 feet; therefore, the tallest height is 25.5 feet for three stacked containers; that the site is adjacent to the Cambridge Crossing multi-family development; that the site is located in an M-3 zone, and the Clifton Master Plan re-affirmed in 2008 Re-Examination Report which, essentially, approved of the uses in said zone, including the applicant's use; that the City of Clifton has two Ordinances, one a Junkyard Ordinance and the second, a Zoning Ordinance which regulates junkyards; that there is a conflict between the two ordinances in that

the Zoning Ordinance permits a fence 8 feet in height and 50 percent open at the site, and the Junkyard Ordinance requires that the fence be solid with no height restriction; that in his opinion, the proposed application should be simply for a fence height variance and not a D-2 use variance as stated by the Zoning Board Attorney, John D. Pogorelec, Esq.; that the placement of the shipping containers does not constitute an expansion of a non-conforming use; that if the Board considers this a D-2 use variance, then the Board should grant the same since the public benefits substantially outweigh any potential detriments and that the use variance and site plan approval may be granted to retain the current shielding without any substantial detriment to the public good and without any substantial impairment to the zone plan and zone ordinance.

Chrmn Mark Zecchino requested an opinion from Counsel Pogorelec concerning what action is to be taken by the Board. Counsel Pogorelec stated that the applicant is seeking an interpretation from the Board concerning Section 289-14 of the City of Clifton Code—namely, the Junkyard Ordinance and whether there is a use variance instead of a height variance required for the existing wall enclosures. If the Board determines that the installation of the existing containers at the site fall within the Junkyard Ordinance provisions, then a fence height variance, or a C-2 variance must be acted upon; that if the Board determines that the provisions of the Zoning Code apply, then a D-2 expansion of a non-conforming use with respect to the containers must be acted upon.

Chrmn Zecchino requested that the Board be polled to determine whether a C-2 variance is required or a D-2 use variance is required. The members of the Board were polled, and it was unanimous that the proposal submitted by the applicant requires a D-2 use variance due to the expansion of a non-conforming use because junkyards are not a permitted use, notwithstanding that a use variance was granted by the Board in 1992.

After a review of the testimony, Comr George Foukas moved to grant approval of the D-2 use variance as well as the bulk variances with respect to the wall setback and instructed the Counsel Secretary to prepare the proper Resolution for approval of the application with the stipulation that the applicant comply with all recommendations set forth in the report of Neglia Engineering dated January 19, 2018, and that the color of the shipping containers be a uniform bronze color to complement the existing

landscape in the area. The motion was seconded by Vice-Chrmn Gerard Scorziello. Voting in the affirmative were Comrs Daniel Trenk, Louis DeStefano, Keith LaForgia, 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.

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| 7. | LEVIN MANAGEMENT CORP., |
| Use | 1010 Route 46 a/k/a Route 46 West |
| Variance; | and Van Houten Avenue, Block 39.01, |
| Variances | Lot 23 – B-D – Amended simultaneous preliminary and final site plan approval and sign variances, for colors, size, location, height over roof line, number of signs and signs on a new façade, parking space size, location and number, and a conditional use variance to permit the operation of a Restaurant/Café in a proposed new supermarket, all specifically as otherwise provided in the City’s Ordinances and any other applicable variances from the requirements of the land use development ordinances for the City of Clifton or waivers and/or exceptions that may be required so as to permit operation of a 16,060 sq. ft. supermarket with a Restaurant/Café with approximately 88 seats in the mall known as Clifton Plaza. |

This matter was previously continued by the Board to the May 16, 2018, meeting of the Board.

8. WIESLAW SERAFIN, 420 Highland Avenue,
Use Block 21.02, Lot 65 – RB2 – Applicant
Variance proposes to use the basement of an
existing condo unit for living space and a
three-fixture bathroom. Use variance
required for the three-fixture bathroom.
Zoning Board resolution dated April 20,
1988 has a stipulation stating “The basement
to be used for storage purposes only.”
Applicant requests this stipulation be
removed. And such other variances as
required by law.

This matter was previously continued to the May 2, 2018, meeting of the Board.

NEW HEARINGS

1. MOUSTAFA MOHAMMED, 16 Helen Place,
Variances Block 31.01, Lot 59 – RB1 – Variances
required for a rear yard gazebo already
built: 1) Left side yard proposed at 2.5’ where
5’ is required. 2) Rear yard setback proposed
at 2’ where 5’ is required.

The applicant, residing at 16 Helen Place, Clifton, New Jersey, was present and sworn. There were two interested parties, both neighbors of the applicant, Olga Santillan and Robert Menendez.

Mr. Mohammed testified that he requests variances for a rear yard gazebo already built at the subject premises; that the left side yard setback requirement is 5 feet, and the gazebo is set at 2.5 feet; that the rear yard setback requirement is 5 feet, and the gazebo is set at 2 feet; that the location of the gazebo is not detrimental to the neighborhood; that there is no noise generated by the use of the gazebo.

Vice-Chrmn Gerard Scorziello inquired as why the gazebo could not be moved over 2 to 3 feet; that the Board has to take into consideration any hardship that the applicant has incurred concerning the requirements of the side yard and rear yard setback of the zone ordinance. Mr. Mohammed stated that his two neighbors have no objections to the location of the gazebo.

Present and sworn were both Olga Santillan and Robert Menendez who both stated that they have lived at their respective sites since the early part of the year 2000, and they have no objections to the location of the gazebo at its present site.

After a review of the testimony, Comr Roy Noonburg moved to grant the application, stating that the benefits of the application outweigh the detriments, if any, and cited the testimony of both neighbors indicating no objection to the location of the gazebo. Comr Noonburg further instructed the Counsel Secretary to prepare the proper Resolution for approval. The motion was seconded by Comr Keith LaForgia. Voting for denial were Comrs Louis DeStefano, George Foukas, and Vice-Chrmn Gerard Scorziello who stated that the applicant has shown no hardship to justify the grant of the variances requested. Voting for the motion were Comrs Daniel Trenk, Keith LaForgia, Roy Noonburg, and Chrmn Mark Zecchino who stated that the neighbors who are most directly affected have no objections to the location of the gazebo. By a four to three 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.

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| 2. | SIDEOUT SPORTS, LLC, 356-362 Getty |
| Use | Avenue, Block 10.10, Lot 1 & 3 –M-2 – |
| Variance | Preliminary and final site plan approval
and a use variance required to permit the
expansion of existing buildings at the
subject property for use as an indoor |

volleyball center and such other approvals
as may be determined to be required.

Frank A. Carlet, Esq., with offices at 1135 Clifton Avenue, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn were the following: Jeff Gogates of 26 Law Drive, Fairfield, New Jersey; David Beesley of 82 Golf Road, Bloomfield, New Jersey; and Steven Lazarus of 16 Highwood Avenue, Englewood, New Jersey. There were no objectors.

Mr. Gogates testified that the applicant is seeking use variance approval to construct an indoor volleyball court facility at 356-362 Getty Avenue, which premises are located in an M-2 zone; that the proposal is to combine existing Buildings No. 1 and No. 8 with a proposed Building No. 9 to create an indoor six-court volleyball facility with a lounge and office conference room and men's and women's bathrooms; that 90% of the applicant's clients are 18 years and under, and approximately 90% of those clients are female; that because of their ages, most clients will not drive so that parking will not be a problem; that the hours of operation are from 3 P.M. to 10 P.M., Monday through Friday, and on weekends, the teams will play in tournaments at which spectators are permitted with approximately 100 people attending the tournament.

Steven Lazarus testified as an architect and stated that he prepared the plans for the proposed application. Offered into evidence were the following exhibits:

"A-1" a photograph of the site before the proposal;

"A-2" another photograph of the site before the proposal;

"A-3" is a photograph of the interior of the site;

"A-4" is a photograph of the exterior after approval;

"A-5" is another view of the exterior of the premises; and

"A-6" is a rendering of the exterior of the premises.

Mr. Lazarus continued to testify that existing Buildings No. 1 and No. 8 on the site plan will be combined and proposed Building No. 9 will be added to create the facility; that the applicant conducts a similar operation at 26 Law Drive in Fairfield, New Jersey, which facility will be moved to the Clifton location if approved by the Board because the Clifton location will provide a higher ceiling which is more conducive to playing volleyball.

David Beesley testified as an engineer and planner and stated that the site in question is located in an M-2 zone and is approximately 4.74 acres in size; that the site contains several buildings containing several businesses; that the surrounding area contains a mix of uses, including one- and two-family dwellings, multi-family residential, office, retail, and industrial uses; that parking for the site is approximately 160 spaces; that the site attracts light traffic; that the proposal satisfies several goals of the master plan; that it is particularly well-suited for the site; that the parking demand for the area is 64 parking spaces and there are a total of 160 parking spaces; that there will be the required number of handicap parking spaces in compliance with the ADA requirements; that the special reasons for the application is that it provides a service to the community; that it promotes the general welfare; that it is particularly suited because of the location of the site; that there will be no negative impacts; that the dumpster will be located in an area that will not be visual to the general public; that the applicant has entered into a 5 year lease with a 5 year option to renew.

John Inglese, Jr., a manager of 356 Getty Avenue, Clifton, New Jersey, testified that the dumpster will be located out of the sight of the public.

After a review of the testimony, Comr Roy Noonburg moved to grant the application, citing the fact that the applicant has satisfied the positive and negative criteria required for the grant of a use variance and instructed the Counsel Secretary to prepare the proper Resolution for approval of the use variance with the stipulation that the dumpster be included in the rear of the premises and out of the sight to the general public. The motion was seconded by Comr Daniel Trenk. Voting in the affirmative were Comrs Daniel Trenk, Louis DeStefano, Keith LaForgia, 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 Mark Zecchino stated that the Board would act upon the Resolutions set forth on the Agenda:

1. Upon motion made by Comr Louis DeStefano, seconded by Comr George Foukas, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, Keith LaForgia, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution DISMISSING WITHOUT PREJUDICE the application of CLIFTON CHEDER for an elementary school in the B-A district at 1333 Broad Street, Block 76.01, Lot 5, for lack of jurisdiction was adopted. B-A

2. Upon motion made by Comr Louis DeStefano, seconded by Comr George Foukas, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution DISMISSING WITHOUT PREJUDICE the application of UNITED AMERICAN MUSLIM ASSOCIATION to eliminate one apartment and create a study area for cultural and enrichment programs for young students at 492 Clifton Avenue, Block 12.01, Lot 24, was adopted. BC

3. Upon motion made by Comr Roy Noonburg, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and

Chrmn Mark Zecchino, the Resolution GRANTING the application of 354 ALLWOOD REALTY, LLC for use variance together with preliminary and final site plan approval to permit the outdoor storage of new motor vehicles and the indoor storage for repair and service of motor vehicles at 354 Allwood Road, Block 69.01, Lot 14, was adopted. M-2

4. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Scott Sochon, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of GHOST HAWK BREWING COMPANY LLC for use variances to operate a microbrewery and more than one principal use on the lot at 321 River Road, Block 73.03, Lot 54, was adopted. B-C

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Chrmn Zecchino also polled the Board to determine the date to be scheduled for a special hearing on the application of CLIFTON CHEDER, 1333 Broad Street, Block 76.01, Lot 5, and the date of May 9, 2018, was scheduled for a special hearing with notice to be served by the applicant on all parties within 200 feet of the subject premises as well as all utilities and the Commissioner of Transportation.

Chrmn Zecchino also stated that approval is being sought to change the date of the regular meeting of June 20th to June 27th due to the unavailability of the Counsel Secretary and his alternate, John D. Pogorelec, Jr., Esq., at the June 20th meeting. The change of date was approved.

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 APRIL 18, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: 299 ROUTE 3 EAST, LLC
for premises known as: 299 Route 3 East, Block 83.01, Lot 2.01
be and the same is hereby: DENIED a use variance to permit two principal uses on the same lot being the existing gasoline service station and the conversion of the automobile service building into a coffee shop.

Testimony concerning the aforesaid application was taken by the Board at its meetings on November 15, 2017, January 3, 2018, and April 18, 2018. 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 and four negative votes. This application is for a use variance, and five affirmative votes are required to approve. 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 permit two principal uses on the same lot being the existing gasoline station and conversion of the existing automobile service building into a Dunkin Donuts shop at premises located at 299 Route 3 East, Block 83.01, Lot 2.01, which premises are located in an M-2 or P-MU zone; and

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

- a. The applicant proposes two uses at the site with a gasoline service station and the elimination of an auto repair building and renovation of same into a Dunkin Donuts shop;
- b. The site in question is a gasoline service station and a previous auto repair building which the applicant proposes to convert to a Dunkin Donuts shop;

- c. The applicant has failed to sustain the burden of proof to justify the grant of the use variance in that the planner gave no testimony to satisfy the purposes set forth in N.J.S.A. 40:55D-2;
- d. That there is no testimony presented to show that the repair shop and service station could not continue to operate as they have in the past;
- e. The site is not particularly suitable since the site driveways share access to LaQuinta Inns and Suites;
- f. The anticipated increase in traffic associated with the second principal use may be detrimental to the health, safety, and general welfare of the neighborhood;
- g. There is nothing unique about the site, and there are other gasoline service stations and Dunkin Donuts facilities located on Route 3;
- h. The applicant has failed to demonstrate that there is a need for the second principal use at the site which is immediately adjacent to LaQuinta Inns and Suites which has the availability of coffee, donuts, and other products which the Dunkin Donuts would serve and is a short distance from the gasoline service station;
- i. There were too many unanswered questions, and the applicant failed to provide the necessary information required by the Board members;
- j. The applicant has failed to reconcile the existence of two uses as required by the Medici decision;

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- k. The applicant has shown no hardship to justify the grant of the parking variance required;

- l. The detriments of the application outweigh the benefits, if any;
- m. The proposal represents an overuse of the premises due to the conduct of the proposed two principal uses; 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 since there has been no testimony presented by the applicant's planner who stated that the proposal will represent an economic benefit which is not a reason to grant the use variance; and

WHEREAS, the Board further finds that due to the location of the site and the access to and egress from the site onto a heavily-traveled highway and the anticipated increase in traffic will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for a use variance to permit two principal uses on the same lot at premises located at 299 Route 3 East, Block 83.01, Lot 2.01, be and the same is hereby disapproved and the use variance be and the same is hereby denied.

Resolution moved by: Comr ROY NOONBURG.

Seconded by: Comr GEORGE FOUKAS.

Affirmed by: Comrs George Foukas, Roy Noonburg, and Vice-Chrmn Gerard Scorziello.

MEETING OF APRIL 18, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: PARKWAY IRON & METAL, INC.
for premises known as: 613-639 Route 46 East, Block 19.01, Lot 1
be and the same is hereby: GRANTED a use variance to permit the existing perimeter wall to remain and for a bulk variance as to the height and composition of the perimeter wall.

Testimony concerning the aforesaid application was taken by the Board at its meeting on April 18, 2018. 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 grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests an interpretation of the ordinances of the City of Clifton concerning junkyards and the erection of a perimeter wall enclosure at the subject premises located at 613-639 Route 46 East, Block 19.01, Lot 1, which premises are located in an M-3 zone; and

WHEREAS, in the alternative, the applicant is requesting use variance approval to permit the existing perimeter wall to remain at the subject premises and for a bulk variance as to the height and composition of the perimeter wall; and

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

- a. The applicant presently conducts a junkyard and a scrap metal facility at the site in question since the 1930's and is subject to the provisions of the Junkyards and Junkshops Ordinance and the Zoning Ordinance of the City of Clifton;
- b. The applicant has installed a perimeter fence comprised of steel containers that have been welded together along the perimeter of the property with the Zoning Ordinance requiring that it be at least 50% open, but the Junkyard Ordinance requiring that it be a solid board fence, thereby creating a conflict between the two ordinances;

c. The Board has interpreted that the Zoning Ordinance supersedes the Junkyard Ordinance and that a D-2 expansion of an existing, non-conforming use variance is required instead of a height variance for a fence;

d. Based upon the testimony of the applicant's planner, the fence does shield the site in question from noise and dust and pollution which benefits the public and substantially outweighs any potential detriments;

e. Based upon the testimony of the applicant's structural engineer, the individual container units are stable, properly welded together to ensure that there is adequate weld to transfer the loads;

f. The applicant has satisfied the positive and negative criteria required for the grant of an expansion of a use variance;

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

WHEREAS, the Board finds that the public benefits substantially outweigh any potential detriments and that the use variance and site plan approval may be granted to retain the current shielding without any substantial detriment to the public good and without any substantial impairment to the zone plan and the zone ordinance; and

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WHEREAS, the Board finds that the use of the current shielding promotes the public welfare and satisfies the negative criteria for the grant of both the use variance and the bulk variances;

NOW THEREFORE, BE IT RESOLVED that the application as aforesaid to permit the existing perimeter wall to remain at the subject premises and for setbacks and

height as presently existing at premises located at 613-639 Route 46 East, Block 19.01, Lot 1, be and the same is hereby approved and the use variance and bulk variances be and the same are hereby granted subject to such further governmental approvals as may be required by law subject to the following:

1. The exterior of the steel containers to be of a uniform color approved by Neglia Engineering Associates.

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 GEORGE FOUKAS.

Seconded by: Comr VICE-CHRMN GERARD SCORZIELLO.

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

MEETING OF APRIL 18, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: MOUSTAFA MOHAMMED
for premises known as: 16 Helen Place, Block 31.01, Lot 59
be and the same is hereby: GRANTED left side yard setback and rear yard setback variances for a rear yard gazebo.

Testimony concerning the aforesaid application was taken by the Board at its meeting on April 18, 2018. 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 Roy Noonburg moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests rear yard and left side yard variances for a rear yard gazebo at premises located at 16 Helen Place, Block 31.01, Lot 59, which premises are located in a RB1 zone; and

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

- a. The applicant has erected the gazebo at the subject premises without obtaining the necessary permits;
- b. Based upon the testimony of the applicant's neighbors, both to the right and left of the premises, there is no objection to the placement of the gazebo;
- 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 based upon the testimony of the applicant's two neighbors, that there will be no detriment to the health, safety, and general welfare

at the site;

NOW THEREFORE, BE IT RESOLVED that the application for a rear yard gazebo at premises located at 16 Helen Place, Block 31.01, Lot 59, be and the same is hereby approved and the left side yard setback variance and rear yard setback variance 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 ROY NOONBURG.

Seconded by: Comr KEITH LA FORGIA.

Affirmed by: Comrs Daniel Trenk, Keith LaForgia, Roy Noonburg, and Chrmn Mark Zecchino.

MEETING OF APRIL 18, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: SIDEOUT SPORTS, LLC
for premises known as: 356-362 Getty Avenue, Block 10.10, Lot 1 and 3
be and the same is hereby: GRANTED preliminary and final site plan approval and use variance to permit expansion of existing buildings at the subject property for use as an indoor volleyball center.

Testimony concerning the aforesaid application was taken by the Board at its meeting on April 18, 2018. 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 Roy Noonburg moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests use variance, preliminary and final site plan approval for an indoor volleyball center at premises located at 356-362 Getty Avenue, Block 10.10, Lot 1 and 3, 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 applicant proposes to construct an additional building between Building Nos. 1 and 9 to construct an indoor volleyball court facility consisting of six volleyball courts at the subject premises;
- b. Approximately 90% of the applicant's clients are 18 years and under and approximately 90% of the clients are female who, because of their ages, will not drive so that parking is not a problem;
- c. The hours of operation are from 3 P.M. to 10 P.M., Monday through Friday and on weekends tournaments will be conducted;
- d. Based upon the testimony of the applicant's planner, a total of 160 parking spaces are provided at the site with approximately 64 spaces being utilized;
- e. The site in question is particularly suited;
- f. That the application satisfies the special reasons set forth in N.J.S.A. 40:55D-2

by providing a service to the community and promoting the general welfare;

g. The applicant's proofs satisfy the negative criteria since the site use does promote the general welfare;

h. The applicant has shown sufficient hardship to justify the grant of the bulk variances of front yard setback and rear yard setback;

i. 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 it satisfies several goals of the master plan; and

WHEREAS, the Board further finds that there is more than sufficient parking at the site which will help promote the health, safety, and general welfare of the neighborhood;

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NOW THEREFORE, BE IT RESOLVED that the application to permit the expansion of an existing building for an indoor volleyball center at premises located at 356-362 Getty Avenue, Block 10.10, Lot 1 and 3, be and the same is hereby approved and the use variance, front yard setback variance, rear yard setback variance, 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 subject to location of the dumpster at the rear of the premises.

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 ROY NOONBURG.

Seconded by: Comr DANIEL TRENK.

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