

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, May 16, 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, MICHAEL MOLNER, DANIEL TRENK, 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 Keith LaForgia, seconded by Comr Daniel Trenk, the Minutes of the May 2, 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,

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.

2.

Use

Variance
- CARLOS SUAREZ & NELY ALTAMIRANO,

42 Paterson Avenue, Block 82.02, Lot 64

-- 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.

Chrmn Zecchino called the matter for hearing. No one appeared on behalf of the applicant. Chrmn Zecchino noted that this matter has been on the Agenda for quite some time and action needs to be taken.

Thereupon, Comr George Foukas moved to dismiss the matter without prejudice and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr Keith LaForgia with the unanimous approval of the entire Board. By a seven to zero vote, the matter was dismissed without prejudice in the form as more fully appears at the end of these Minutes.

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

3.

Variances
- YESHIVA KTANA OF PASSAIC, INC.

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
that which may be generated by way of revised
plans and submission of same. Measurements,
percentages and other calculations provided in
this notice are in accordance with the
development plans filed with the Application.
Please note that to the extent plan and/or
Application revisions are made during the hearing
process, these measurements, percentages and
other calculations will likely change, as may the
associated relief required per the City Code.
The Applicant reserves the right to amend its
application accordingly.

This matter was previously continued by the Board to the July 18, 2018, meeting of
the Board.

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| 4. | RICHFIELD MEWS, LLC, 1187 Van Houten |
| Subdivision | Avenue, Block 40.05, Lot 1 – B-B & RA3 – |
| Use | Subdivision of the property commonly known |
| Variance; | as RICHFIELD FARMS into two (2) lots with |
| Variances | one lot fronting on Van Houten Avenue and |
| | having a size of 91.990 square feet being |

known as Lot 1.01 having lot dimensions of Front 438.59', Rear 431.31', Right Side 39.2' and Left Side 208.6'. The second lot is to be fronting on Doremus Avenue and is to be known as Lot 1.02 having a size of 112,796 square feet, a Front Yard of 289.89', Rear Yard 294.99", Right Side 411.29' and Left Side 356.99'. In addition, a use variance is required to permit construction of thirty-six (36) townhouses on proposed Lot 1.02 requiring the following bulk variances:

- minimum lot area per dwelling unit (5,000 square feet required, 3,233 square 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

Chrmn Zecchino called the matter for hearing and acknowledged that the Board is in receipt of a communication from the attorney for the applicant requesting that the matter be dismissed without prejudice.

Thereupon, Comr George Foukas moved to dismiss the matter without prejudice and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr Keith LaForgia with the unanimous approval of the entire Board.

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

5.	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.

Frank Rivellini, Esq., of the office of Francis J. DeVito, with offices at 280 Moonachie Road, Moonachie, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant were the following: Joseph Yannucci, a professional engineer, with offices at 300 Kimball Drive, Parsippany, New Jersey, of Langan Engineering; Erwin Santos, the store manager; Norman R. Dotti of Russell Acoustics, LLC, with offices at 1525A Beaver Dam Road, Point Pleasant, New Jersey, a consultant engineer in sound and vibration; and Christine Hanington, the property manager of the applicant, Levin Management, with offices in Plainfield, New Jersey. There was one objector: Edward Gasior of 27 Elm Hill Road, Clifton, New Jersey.

This is a continued hearing from the meeting of April 4, 2018.

Chairman Zecchino acknowledged the receipt of the report of Planning Consultant, Gregory Associates, dated May 8, 2018, and April 24, 2018. The Board's Planner indicated that the applicant needed to provide a bulk table so that the conditional use variance may be determined; that the applicant needs to provide the number of employees for the calculation of the number of parking spaces; that the applicant has submitted a sign rendering without providing any information on existing signs and the calculations needed to determine compliance; the Planner indicated that this information was necessary for the Board to determine whether a variance is required for the signs.

Mr. Yannucci stated that in response to the requests of the planner, a correct parking table was provided; that there are no site improvements planned by the applicant; that the applicant proposes signs totaling 1,331 square feet where the ordinance permits 1,225 square feet resulting in a deficiency of 106 square feet; that a sign variance is required which will not be detrimental to the neighborhood.

Erwin Santos testified as the store manager of the proposed facility; that the sign locations as proposed are needed; that the applicant proposes to have a café in the supermarket; that he has had experience in the past with cafes in supermarkets; that it is anticipated that there will be 20 employees at the site from the hours of 8 A.M. to 8 P.M., Monday through Sunday; that the café will actually employ 11 employees in two shifts of six and five for the morning and evening hours; that deliveries will be made on a daily basis at approximately 8:30 A.M.; that according to the planner's report, the number of parking spaces is based upon the number of employees; that there are 450 parking spaces required for the existing retail, restaurant, bank, and gym uses presently at the site; that the proposed supermarket will require an additional 52 parking spaces, and the supermarket café will require 54 parking spaces; that there currently exists 456 parking spaces at the site; that the addition of the supermarket and the supermarket café will increase the number to 492, which information was requested by the planner; that as a result, the applicant will be requiring a variance for the additional 42 parking spaces.

Edward Gasior, the objector, stated that continues to express his concerns for noise coming from trucks coming to the site in the morning and disrupting the neighborhood as well as the noise which is generated from the refrigeration and air-conditioning at the site.

Norman A. Dotti testified as a consulting engineer in sound and vibration; that it is the applicant's desire to conduct the operation in a satisfactory manner not objectionable to the neighbors in the neighborhood; that with respect to the sounds generated from the neighborhood, his inspection indicates that the tests show a reading of 46 decibels from the site to the nearest adjacent residence; that the permissible standard is 56 decibels; that the noise generated is significantly under the limits of the administrative code; that in his opinion, the noise generated from the site will not have an adverse impact from a noise level standpoint.

At the request of the Board, Mr. Gasior indicated the location of his property to the supermarket site, and it was suggested that there be some type of screening or barrier which the owner of the site is willing to accommodate.

Mr. Rivellini had marked into evidence a map of the air-conditioning and refrigeration system as "A-3."

Christine Hanington testified as the property manager of Levin Management; that there will be personnel available to supervise; that there will be no garbage trucks coming to the site before 7 A.M. and that any noise generated, especially between the hours of 8 P.M. and 7 A.M. will be monitored; that the applicant has advised all tenants within the complex of their obligation to comply with the noise ordinance of the City of Clifton; that a communication dated April 26, 2018, has been sent to the tenants which has been marked into evidence as "A-4."

After a review of the testimony, Comr Roy Noonburg moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution with the following stipulations:

1. That there be no deliveries or garbage pickup/removal to the site prior to 7 A.M.;

2. That in the event the applicant's tenant who will occupy the supermarket with the café discontinues its lease with the applicant, Levin Management, for any reason,

than the conditional use variance to permit the operation of a restaurant or café in the proposed new supermarket shall become null and void;

3. The stipulation with regard to noise shall apply to all tenants at the site.

The motion was seconded by Comr Keith LaForgia. 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.

NEW HEARINGS

1. **JOSEPH & AMIE KOLODZIEJ,**
Variance 109 McCosh Road, Block 62.05,
Lot 44 – RA1 – Applicant received
variance approval for additions and
renovations to the existing home.
Applicant is requesting an additional
two feet (2') into the required front yard,
proposed 26.9' where 35' is required.

The applicants, residing at 109 McCosh Road, Clifton, New Jersey, were present and sworn. There was one objector, Greg Madsen of 91 Nugent Drive, Clifton, New Jersey, who was also present and sworn to give testimony.

Amie Kolodziej testified that she and her husband received variance approval for additions and renovations to the existing home, as memorialized in a Resolution of the Board of Adjustment dated May 17, 2017; that the applicant now comes before the Board requesting an additional 2 feet into the required front yard setback; that a variance was approved for 28.9 feet, and the applicant is now seeking a variance for

26.9 feet, resulting in an addition 2 feet into the required front yard setback; that when a footing inspection was conducted by the Building Department, that the footing was done according to plan; that apparently, the architect made a change to the original plans, and once said change was discovered by the applicant, they immediately took action to rectify the matter by reporting it to the Clifton Building Department. The applicants then completed the within application to the Zoning Board to seek approval for a 2 foot variance.

Mrs. Kolodziej further testified that there were similar-type porches in the neighborhood, and their proposal will not be detrimental to the neighborhood.

In objecting to the application, Mr. Madsen testified that the applicant has created its own hardship; that he objects to the notice provided by the applicant; that he objects to the plans provided; that he requests an explanation as to what occurred and when did the applicant know and what action did they take with regard to the discrepancy as previously testified.

Mrs. Kolodziej further stated that there was no deception; that the applicant has followed all the State and Municipal requirements concerning the process to rectify the matter.

Counsel Pogorelec referred to the notice provisions and what is required in a notice pursuant to N.J.S.A. 40:55D-11 and stated that the notice is proper.

Vice-Chrmn Gerard Scorziello stated that the only issue before the Board is whether the proposed variance should be granted or denied.

Comr Roy Noonburg also commented that on the prior application, there were no objectors present when the Board did, in fact, grant the initial front yard setback variance.

In summation, Mrs. Kolodziej stated that she and her husband have followed all the Clifton rules and New Jersey state laws and handled the matter through a public process as required by any other Clifton citizen.

There was no summation made by Mr. Madsen.

After a review of the testimony, Comr Louis DeStefano moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution, stating that, in his opinion, the 2 foot variance is *de minimis* and will not have any negative impact on the neighborhood. The motion was seconded by Comr Keith LaForgia who also stated that there would be no negative impact as a result of the grant of the 2 foot variance. Voting for approval of the variance were Comrs Daniel Trenk who stated that the 2 foot variance request is *de minimis*; Comr Louis DeStefano, Comr Keith LaForgia, Comr George Foukas, Comr Roy Noonburg who stated that he voted for the initial variance and his vote is for the within variance since 2 feet is minimal; Vice-Chrmn Gerard Scorziello who stated that the 2 feet is *de minimis*; and Chrmn Mark Zecchino who stated that he approved the first application for a 28.9 front yard setback and he would also have voted for a 26.9 front yard setback at the initial hearing. 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.	65 INDUSTRIAL CLIFTON, LLC
Use	65 Industrial South & 35 Bloomfield
Variance	Avenue, Block 56.08, Lots 4 and 13
	-- M-1 – Amended height variance
	from 42’6” to 43’11”.

Frank A. Carlet, Esq., with offices at 1135 Clifton Avenue, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn was Cybul Wilhelm of 1064 River Road, Edgewood, New Jersey, an architect; and David Mafoud of 56 Gold Street, Brooklyn, New York, one of the owners of the applicant. There was one objector, Frank Gaccione of 88 Virginia Avenue, Clifton, New Jersey.

Mr. Carlet stated that the applicant seeks approval for an amended height variance previously granted by the Board on December 6, 2017, and memorialized by

Resolution adopted on December 20, 2017, for a 2 foot 6 inch height variance; that the amendment requested is to increase the height to 3 feet 11 inches; that the reason for said request is that the slope of the roof building for drainage purposes requires an additional 1 foot 5 inches in order to enable the proposed freezer to be installed into the building.

Mr. Wilhelm testified as an architect and stated that the amendment is required to enable the installation of the proposed freezer into the building. Marked into evidence as "A-1" was a plan showing the height of the proposed building.

Mr. Wilhelm further stated that the neighbors had no concern of what the applicant was doing in the initial application and has no objection to the increase in height from 42 feet 6 inches to 43 feet 11 inches.

Mr. Gaccione inquired as to the enforcement of zoning stipulations and stated that he was satisfied with the stipulations set forth in the Resolution dated December 6, 2017, as follows:

1. Truck traffic is limited from 7:30 A.M. to 7:30 P.M.;
2. Satisfactory reports from the Police and Fire Departments of the City of Clifton;
3. The indoor tennis court located within the building shall be limited to the private use of the employees and not to the public;
4. Compliance with the Neglia Engineering Associates report dated December 4, 2017; and
5. Subject to Passaic County Planning Board approval.

After a review of the testimony, Comr Roy Noonburg moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution and also include the stipulations set forth in the Resolution previously granted by the Board on December 6, 2017. The motion was seconded by Comr George Foukas who stated that the findings of the Board previously made on December 6, 2017, should be incorporated in the Resolution. Voting for approval 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.

3. **FRANCISCO AGUILAR**, 61 Knapp Avenue, Block 3.09, Lot 4 – RB2 –
- Variances required for a two-story rear deck:
- 1) Rear yard proposed at 15’ where 35’ is required;
 - 2) Lot coverage proposed at 33.24% where a maximum of 25% is permitted;
 - 3) Proposed deck is separated from the garage by 4’ where 10’ is required;
 - 4) Existing, nonconforming lot width and area.

This matter was continued to the June 6, 2018, meeting of the Board due to improper notice by the applicant.

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Chrmn Mark Zecchino stated that the next order of business would be the consideration of a communication dated May 11, 2018, from Gaccione, Pomaco of 524 Union Avenue, Belleville, New Jersey, concerning the application of **MOUNT PROSPECT PARK, LLC** requesting that the Board accept a settlement of new plans to end the pending litigation filed by the Mt. Prospect Park, LLC challenging the decision of the Board denying its previous application on August 16, 2017, (Resolution adopted September 6, 2017) which is the subject of a lawsuit in the Passaic County Superior Court. Chrmn Zecchino requested an explanation from Counsel Pogorelec.

Counsel Pogorelec stated that the communication refers to a decision in the matter of Whispering Woods at Baum Hollow v. Middletown Planning Bd., 220 N.J.Super.

161 (Law Div. 1987) where in that matter, the applicant requested that during the pending litigation, the board would consider new plans. Counsel Pogorelec stated that the Board has several options:

1. That the current litigation should be dismissed with prejudice, and the applicant should be advised to file the new application before the Board incorporating the testimony of its experts in the application denied by the applicant and setting forth its new proposal to the Board which cuts down the height of the project and reduces the number of units; or

2. The Board may permit the applicant to appear before the Board to submit its revised plans during the course of the litigation.

Upon motion made by Comr Louis DeStefano, seconded by Comr Keith LaForgia, with the unanimous approval of the entire Board, it was agreed by the Board that the more prudent course of action would be for the applicant to dismiss with prejudice its current matter pending in the Superior Court and then proceed to submit its new application to the Board incorporating the changes and the testimony previously given in the prior application which was denied by the Board.

Thereupon, Counsel Pogorelec was instructed to communicate this decision to the applicant.

RESOLUTIONS

Chrmn Mark Zecchino stated that the next order of business would be the adoption of the Resolutions set forth on the Agenda:

1. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Keith LaForgia, and affirmed by Comrs Michael Molner, Daniel Trenk, Keith LaForgia, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution DENYING the application of WIESLAW SERAFIN for use variance approval to use the basement of an existing condominium unit for living space and a three-fixture bathroom at 420 Highland Avenue, Block 21.02, Lot 65, was adopted. RB2

2. Upon motion made by Comr George Foukas, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Michael Molner, Daniel Trenk, Keith LaForgia, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of ALI ZIDAN for variances for left side yard setback, combined side yard setbacks, front yard setback, and lot coverage for a single-story rear addition and a second story addition at 10 Hobart Place, Block 20.03, Lot 20, was adopted. RB1

3. Upon motion made by Comr Roy Noonburg, seconded by Comr Keith LaForgia, and affirmed by Comrs Michael Molner, Daniel Trenk, Keith LaForgia, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of CHURCH OF GOD for use variance approval for a House of Worship on the first floor of a mixed use building at 558-600 Getty Avenue, Block 9.04, Lot 22, was adopted. M-3 (PDO-2)

4. Upon motion made by Comr Roy Noonburg, seconded by Comr Keith LaForgia, and affirmed by Comrs Michael Molner, Daniel Trenk, Keith LaForgia, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of AMERICAN ANALYTICAL ASSOCIATION, LLC use variance and bulk variance to reconfigure an existing structure to contain one commercial unit and seven residential units at 240 Parker Avenue a/k/a 231 Dayton Avenue (3 Botany Village Square West), Block 4.23, Lot 2, was adopted. PD1

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

Respectfully submitted,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF MAY 16, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: CARLOS SUAREZ & NELY ALTAMIRANO for premises known as: 42 Paterson Avenue, Block 82.02, Lot 64 be and the same is hereby: DISMISSED WITHOUT PREJUDICE a rear addition on a non-conforming two-family home and a new detached garage.

Testimony concerning the aforesaid application was taken by the Board at its meeting on January 3, 2018. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

Comr George Foukas moved to dismiss the application without prejudice on the basis of the following Resolution:

WHEREAS, the applicant requests use variance and variance approval as aforesaid at premises located at 42 Paterson Avenue, Block 82.02, Lot 64, which premises are located in a RA3 zone; and

WHEREAS, the applicant failed to re-notice and re-serve and failed to appear to give testimony as notified by the Board;

NOW THEREFORE, BE IT RESOLVED that the application for a rear addition on a non-conforming two-family home and a new detached garage at premises located at 42 Paterson Avenue, Block 82.02, Lot 64, be and the same is hereby dismissed without prejudice.

Resolution moved by: Comr GEORGE FOUKAS.

Seconded by: Comr KEITH LA FORGIA.

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

MEETING OF MAY 16, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: RICHFIELD MEWS, LLC
for premises known as: 1187 Van Houten Avenue, Block 40.05, Lot 1
be and the same is hereby: DISMISSED WITHOUT PREJUDICE for a subdivision, use variance, and variances to permit construction of a 35-unit townhouse development.

Testimony concerning the aforesaid application was taken by the Board at its meeting on January 17, 2018. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

At the request of the attorney for the applicant, Comr George Foukas moved to dismiss the application without prejudice on the basis of the following Resolution:

WHEREAS, the applicant requests subdivision, use variance and variance approval as aforesaid at premises located at 1187 Van Houten Avenue, Block 40.05, Lot 1, which premises are located in a B-B and RA3 zone; and

WHEREAS, the attorney for the applicant has requested that the matter be dismissed without prejudice;

NOW THEREFORE, BE IT RESOLVED that the application for a subdivision, use variance, and variances to permit construction of a 35-unit townhouse development at premises located at 1187 Van Houten Avenue, Block 40.05, Lot 1, be and the same is hereby dismissed without prejudice.

Resolution moved by: Comr GEORGE FOUKAS.

Seconded by: Comr KEITH LA FORGIA.

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

MEETING OF MAY 16, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: LEVIN MANAGEMENT CORP. (CLIFTON PLAZA) for premises known as: 1010 Route 46 West a/k/a Route 46 West and Van Houten Avenue, Block 39.01, Lot 23 be and the same is hereby: GRANTED preliminary and final site plan approval, sign variance, parking variance, use variance, and conditional use variance to permit operation of a restaurant or café in a proposed new supermarket with approximately 88 seats in the mall known as CLIFTON PLAZA.

Testimony concerning the aforesaid application was taken by the Board at its meeting on April 4, 2018, and May 16, 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, conditional use variance, and bulk variances as aforesaid to permit the operation of a restaurant or café in a proposed new supermarket at premises located at 1010 Route 46 West a/k/a Route 46 West and Van Houten Avenue, Block 39.01, Lot 23, which premises are located in a B-D zone; and

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

- a. The applicant proposes a supermarket with a restaurant/café with approximately 88 seats;
- b. Clifton Plaza is currently developed as a 95,549 square foot shopping center which consists of a combination of various uses, including retail, restaurant, fitness center, and a bank with a total parking area of 456 parking spaces;
- c. The site in question is presently vacant and was previously used as a supermarket;

d. The proposal requires a conditional use variance since the café is considered to be a fast food restaurant according to the definition of restaurant in the fast food ordinance of the City of Clifton;

e. Based upon the testimony presented by applicant's experts, the applicant has satisfied the positive criteria in that according to the case of Coventry vs. Westwood, a conditional use is considered a permitted use;

f. The applicant has satisfied the two-prong requirements of the Coventry decision—namely, that the proposal will not have detrimental effect on the surrounding properties and further that the grant of the conditional use variance will not substantially impair the intent and purpose of the zone plan and the zone ordinance; and

WHEREAS, the Board finds that the applicant has shown sufficient hardship to justify the grant of the bulk variance concerning signage; and

WHEREAS, the Board further finds that although the applicant is deficient 36 parking spaces, the existing 456 parking spaces for Clifton Plaza will be sufficient to accommodate the peak demands of the shopping center; and

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WHEREAS, the applicant has shown sufficient hardship to justify the grant of the bulk variances requested; and

WHEREAS, the Board further finds that the benefits of the application outweigh the detriments, if any; and

WHEREAS, the Board finds from the testimony presented by applicant's experts 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 the variance may be granted without substantial detriment to the public good and not impair the intent and purpose of the master plan and the zone ordinance;

NOW THEREFORE, BE IT RESOLVED that the application as aforesaid for a new supermarket consisting of 16,060 square feet and a restaurant/café of 3,231 square feet at premises located at 1010 Route 46 a/k/a Route 46 West and Van Houten Avenue, Block 39.01, Lot 23, be and the same is hereby approved and the conditional use variance, site plan approval, sign variance and parking variance be and the same are hereby granted subject to such further governmental approvals as may be required by law and subject to the following stipulations:

1. That there be no deliveries or garbage pickup/removal to the site prior to 7 A.M. on a daily basis;
2. That in the event the applicant's tenant who will occupy the supermarket with the café discontinues its lease with the applicant, Levin Management, for any reason, than the conditional use variance/café license to permit the operation of a restaurant or café in the proposed new supermarket shall become null and void and expire;
3. The foregoing stipulations with regard to noise and deliveries and garbage pickup/removal shall apply to all tenants at the site; and
4. Subject to Passaic County Planning Board approval, if required.

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, Louis DeStefano, Keith LaForgia, George Foukas,
Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino.

MEETING OF MAY 16, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: JOSEPH & AMIE KOLODZIEJ
for premises known as: 109 McCosh Road, Block 62.05, Lot 44
be and the same is hereby: GRANTED front yard setback variance at 26.9 feet.

Testimony concerning the aforesaid application was taken by the Board at its meeting on May 16, 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 Louis DeStefano moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicants did receive approval for additions and renovations to the existing home from the Clifton Zoning Board of Adjustment on May 17, 2017, which testimony and Resolution is incorporated herein by reference and made a part hereof; and

WHEREAS, the applicant is now requesting an additional two feet into the required front yard setback where 35 feet is required and 26.9 feet is proposed at premises located at 109 McCosh Road, Block 62.05, Lot 44, which premises are located in an RA1 zone; and

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

- a. The applicants did receive approval for a front yard setback variance where 35 feet is required and 28.9 feet was proposed;
- b. In addition to the front yard setback variance, the applicant did receive variances for right side yard, combined side yards, and maximum building height for a new addition;
- c. Applicants now request an additional two feet into the required front yard proposed at 26.9 feet where 35 feet is required;
- d. The applicant has experienced peculiar and exceptional practical difficulties in

that the footing was changed on the original plan unbeknownst to the applicants;

e. The benefits of the deviation substantially outweigh any detriments to adjacent property owners;

f. There are similar-type structures in the neighborhood; and

WHEREAS, the Board finds from the testimony that the proposal will be in accord with the intent and purpose of the master plan and the zone ordinance since the proposal is substantially similar to other additions in the neighborhood; 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;

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NOW THEREFORE, BE IT RESOLVED that the application requesting an additional two feet into the front yard setback resulting in a front yard setback of 26.9 feet where 35 feet is required at premises located at 109 McCosh Road, Block 62.05, Lot 44, be and the same is hereby approved and the front yard setback variance be and the same is hereby granted subject to such further governmental approvals as may be required by law.

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

MEETING OF MAY 16, 2018.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: 65 INDUSTRIAL CLIFTON, LLC
for premises known as: 65 Industrial South & 35 Bloomfield Avenue,
Block 56.08, Lots 4 and 13
be and the same is hereby: GRANTED amended height variance.

Testimony concerning the aforesaid application was taken by the Board at its meeting on May 16, 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 did receive a height variance approval of 2 feet 6 inches by Resolution of December 6, 2017, adopted December 20, 2017, of the Clifton Zoning Board of Adjustment, which testimony and Resolution is incorporated herein by reference and made a part hereof; and

WHEREAS, the applicant now seeks an amended height variance from 2 feet 6 inches to 3 feet 11 inches at premises located at 65 Industrial South and 35 Bloomfield Avenue, Block 56.08, Lots 4 and 13, which premises are located in an M-1 zone; and

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

- a. The applicant previously did receive a height variance as aforesaid;
- b. The applicant now requests a height variance from 42 feet 6 inches to 43 feet 11 inches;
- c. The purpose of the request is because of the slope of the roof building for drainage purposes and the additional 1 foot 5 inches is required in order to enable a freezer to be installed in the building;
- d. The Board incorporates by reference and makes a part hereof its findings set

forth in the Resolution dated December 6, 2017;

e. Due to the irregular shape of the property, the grant of the height variance is *de minimis*;

f. 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 the proposal will help promote the health, safety, and general welfare of the neighborhood;

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NOW THEREFORE, BE IT RESOLVED that the application for a height variance from 42 feet 6 inches to 43 feet 11 inches at premises located at 65 Industrial South and 35 Bloomfield Avenue, Block 56.08, Lots 4 and 13, be and the same is hereby approved and the height variance be and the same is hereby granted subject to such further governmental approvals as may be required by law and subject to the same

stipulations set forth in the Resolution dated December 6, 2017, as follows:

1. Truck traffic is limited from 7:30 A.M. to 7:30 P.M.;
2. Satisfactory reports from the Police and Fire Departments of the City of Clifton;
3. The indoor tennis court located within the building shall be limited to the private use of the employees and not to the public;
4. Compliance with the Neglia Engineering Associates report dated December 4, 2017; and
5. 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 ROY NOONBURG.

Seconded by: Comr GEORGE FOUKAS.

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