

Minutes of a special meeting of the Board of Adjustment of the City of Clifton, New Jersey, held on Wednesday, October 26, 2022. 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 ZALMAN GURKOV, SCOTT SOCHON, MICHAEL MOLNER, LOUIS DE STEFANO, GEORGE FOUKAS, VICE-CHRMN GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.

ABSENT: COMR URI JASKIEL AND GEORGE SILVA.

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.

NEW HEARING

1. **STEW LEONARD’S**, 467 Allwood Road,
Use Block 79.01, Lot 1 – B-D – Preliminary and
Variance; Final Site Plan, Use Variance, Variance,
Variances Waiver and Soil Moving Permit Approvals
 for Stew Leonard’s supermarket to
 Occupy existing tenant space occupied by
 SEASON’S supermarket. The Property is located in
 the B-D zone where supermarkets are a permitted
 use. The modifications being made are to the
 interior fit-up and exterior facades of the
 building where Stew Leonard’s will be located.

Part of the interior modifications will be a 6,253 square foot mezzanine. The mezzanine will only be used to provide office space, conference room area and lounge areas for employees already on-site. The mezzanine will not be used for retail purposes.

The applicant is also proposing two-1,609 square foot rooftop signs. There are also minor modifications to the existing site plan. The Applicant is also proposing permanent outdoor sales storage located on the sidewalk against Stew Leonard’s portion of the building as shown on the plans (796 sf) as well as a 3,012 square foot seasonal outdoor sales area. The seasonal sales will be used during the following times of the year:
Spring – April 1st until June 30th;

Fall – September 1st until November 10th; and
Winter – November 16th until December 23rd.
The seasonal outdoor sales area will be located in
the 23-space parking area just north of the
supermarket. As such, the variance, waivers and/or
exceptions requested by the Applicant are as
following:

- 1) A use variance in accordance with N.J.S.A.
40:55D-70(d)(1) for the outdoor sales/storage
areas which are not permitted by Clifton's Zoning
Ordinances;
- 2) Applicant proposes a building height of 41.9
feet where 40 feet is permitted; and
- 3) Applicant proposed two 1,609 square foot roof
signs making the total amount of signage at the
property 7,826 square feet where 4,700 square feet
was previously approved and 3,322 square feet is
permitted.

This Notice shall also be deemed to include such
other and further relief including any and all
variances, waivers, exceptions, non-conforming
conditions, or other relief from the Clifton
Zoning Ordinances as the Zoning Board of Adjustment
shall deem necessary throughout the public
hearings on this Application.

Andrew S. Kohut, Esq., with offices at 12 Route 17 North, Paramus, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant were the following: Patrick Dentato, CFO of Stew Leonard's; Sean Moransky, planner, of Burgis Associates, 25 Westwood Avenue, Westwood, New Jersey; Alan Lothian, engineer, of Langan Engineering, 300 Kimball Drive, Parsippany, New Jersey; Justin Scalfani, architect, 5 Kelsey Street, Rockaway, New Jersey; and Joseph Yannucci, engineer, of Langan Engineering, 300 Kimball Drive, Parsippany, New Jersey. Present and sworn in objecting to the application was Lawrence Waxman of 81 Colin Avenue, Clifton, New Jersey.

The Board was in receipt of reports from its engineering expert, Neglia Engineering dated October 20, 2022 and its planner, Nicholas A. Graviano dated October 21, 2022.

Mr. Kohut gave a brief overview of the application, the mezzanine, the variances, the signs, elevations; and sign variance ordinance.

Mr. Dentato testified as CFO of Stew Leonard's and gave a brief history of the family-owned and operated business; locations; focus of supermarket departments, suppliers, the Paramus location; branding and the silo and signage, visual importance; deliveries, trucks, loading bays; lighting and security; seasonal outdoor sales; advertising; refrigeration system; recycling; environmental friendly packaging; donations to food pantries; foundation; generators; hours of operation 7 AM to 9 PM seven days a week, depending on demand; curbside pickup and demand; customer service; number of employees.

Objector Mr. Waxman objected regarding increased traffic and lack of safety on Bloomfield Avenue and Allwood Road.

Mr. Scalfani testified as an architect and referred to the architectural plans submitted; Stew Leonard's own unique trade dress/design used for all its locations; interior renovations; the fixture plan; the rear and front mezzanine plans; and the exterior elevations and building signage details and visibility.

Mr. Yannucci testified as an engineer and referred to the site plan submitted; site location; and site layout.

Mr. Lothian testified as an engineer regarding traffic and parking at the site; parking counts; peak hours; capacity; access and egress; site circulation; sufficiency and adequacy of parking provided; employee parking; size of parking spaces.

Objector Mr. Waxman questioned the adequacy of parking at the site and employees parking by CVS.

Mr. Moransky testified as a planner and as to the site and surrounding area; site suitability; use variance for seasonal outdoor sales and storage is particularly suited for the site; sidewalk adequacy; that the use addresses public safety and promotes the general welfare; that the site has the space necessary for outdoor seasonal sales; negative criteria is met in that the positive criteria outweighs the negative criteria, if any; there is adequate parking; no substantial detriments to the zone plan or zone ordinance; accessory use less intense than permitted uses in the zone; the master plan goal 1 encourage land use and development; goal 6 encourage use of existing commercial and industrial sites, and this application re-occupies the retail use with the same use as is presently at the site; it is a permitted use and the accessory use of outdoor sales is common with modern supermarket use; materials stored outdoors will not be unsightly materials; variance for building height of 41 feet 9 inches which is to the height of the roof at the entrance; signage proposed to identify the site from Route 3 and Bloomfield Avenue; grading at the site and Route 3; visibility of signage; no substantial detriment to the public good, signage provides visibility, consistent with the goals to encourage land uses; helpful to residents who see the sign and want to come to the site, contributing to commerce in the City; rooftop signs are an accessory structure; outdoor storage is particularly suited; his interpretation of Clifton's ordinance with respect to the signage;

There were discussions with the Board's planner regarding the sign variance.

Mr. Scalfani testified as to reduction of the signage to address the Board's concerns.

Objector Mr. Waxman reiterated his traffic, parking, and safety concerns.

After a review of the testimony, Vice-Chrmn Gerard Scorziello moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution with the following stipulations:

1. Subject to compliance with the report dated October 20, 2022 and recommendations of Neglia Engineering Associates;
2. Subject to compliance with the report dated October 21, 2022 and recommendations of Graviano & Gillis Architects and Planners;
3. Hours of operation will be from 7 A.M. to 9 P.M., seven days a week;
4. Subject to reduction of 79- by 26-foot sign on top of building by 50 percent and lower the "Farm Fresh Foods & Wine" sign 5 feet as testified to before the Board.

The motion was seconded by Comr Louis DeStefano. Voting in the affirmative were Comrs Zalman Gurkov, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, 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.

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

Respectfully submitted,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF OCTOBER 26, 2022.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: STEW LEONARD'S for premises known as: 467 Allwood Road, Block 79.01, Lot 1 be and the same is hereby: GRANTED preliminary and final site plan approval with associated "c" and "d" variances to operate a Stew Leonard's supermarket.

Testimony concerning the aforesaid application was taken by the Board at its meeting on October 26, 2022. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

After a review of the testimony, Vice-Chrmn Gerard Scorziello moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant proposes renovations to the tenant space formerly occupied by Seasons Supermarket to accommodate a Stew Leonard's supermarket at premises located at 467 Allwood Road, Block 79.01, Lot 1, which premises are located in a B-D zone; and

WHEREAS, the applicant has applied for preliminary and final site plan approval with associated "c" and "d" variances for:

- a. "d(1)" use variance for outdoor storage and sales are not permitted and seasonal outdoor sales is proposed;
- b. "d(6)" height of sign variance in that a maximum height of 40 feet is required and the applicant is proposing a height of 52' 10" to the top of the proposed roof-top sign;
- c. "c" variance for maximum building height of 40 feet required and 41'9" is proposed to the height of the roof at the entrance;
- d. "c" variance for total amount of signage on the property proposed at 7,826 square feet where 4,700 square feet was previously granted and 3,322 square feet is permitted by ordinance;

WHEREAS, the Board has received the following reports:

- a. Report of Graviano & Gillis Architects & Planners, LLC dated October 21, 2022; and
- b. Report of Neglia Engineering Associates dated October 20, 2022; and

WHEREAS, the Board has heard testimony from the applicant's experts, Sean Moransky, planner, of Burgis Associates; Alan Lothian, engineer, of Langan Engineering; Justin Scalfani, architect, and Joseph Yannucci, engineer, of Langan Engineering; 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 modifications to the existing supermarket building with improvements consisting of interior renovations and a 6,253 square foot mezzanine, upgrades to the exterior façade, new signage, seasonal outdoor sales, outdoor storage area, and ancillary site improvements consisting of a generator pad and reconstruction of a trash enclosure area;
- b. There is no expansion of the footprint of the building;
- c. The mezzanine will provide office space and lounge areas for employees and will not be used for retail purposes;
- d. There will be a 796 square foot outdoor storage located on the sidewalk against Stew Leonard's portion of the building as well as a 3,012 square foot seasonal outdoor sales area;

- e. The seasonal outdoor sales will be from April 1 until June 30; September 1 until November 10; and November 15 until December 23;
- f. The seasonal outdoor sales will be located in the 23-space parking north of the supermarket;
- g. The applicant will erect roof-top signs and a decorative silo, and the applicant has agreed to reduce the signage to address the Board's concerns;
- h. Based upon the testimony presented by the applicant's expert, parking is sufficient at the site;
- i. Based on the testimony presented by the applicant's expert, the Board finds that the site is particularly suited for the proposed use since a supermarket is presently at the site;
- j. The applicant has satisfied the positive and negative criteria required for the grant of the use variances requested;
- k. The applicant has sustained the burden of proof for the "c" variances since they advance the purposes set forth in the Municipal Land Use Law as testified to by the applicant's experts;
- l. The variances may be granted without substantial detriment to the public good and without impairment of the intent and purpose of the zone plan and the zone ordinance;
- m. The benefits of the application outweigh the detriments, if any;
- n. The Board finds that the testimony presented by the applicant's experts is credible and supports approval of the application;
- o. The applicant has shown sufficient hardship to justify the grant of the "c" variances requested;
- p. Based upon the testimony presented by the applicant's experts, the Board concludes that the applicant has met its burden of proof, entitling it to the grant of the approval requested; 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 not be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application as aforesaid for preliminary and final site plan approval with associated "d" and "c" variances to operate a Stew Leonard's supermarket at premises located at 467 Allwood Road, Block 79.01, Lot 1, be and the same are hereby approved and the "d" and "c" variances as set forth herein are hereby granted subject to such further governmental approvals as may be required by law and **SUBJECT TO THE FOLLOWING:**

- 1. Subject to compliance with the report dated October 20, 2022 and recommendations of Neglia Engineering Associates;**
- 2. Subject to compliance with the report dated October 21, 2022 and recommendations of Graviano & Gillis Architects and Planners;**
- 3. Hours of operation will be from 7 A.M. to 9 P.M., seven days a week;**
- 4. Subject to reduction of 79- by 26-foot sign on top of building by 50 percent and lower the "Farm Fresh Foods & Wine" sign 5 feet as testified to before the Board.**
- 5. Subject to Passaic County Planning Board approval.**

AND FURTHER SUBJECT TO THE FOLLOWING:

- 1. Compliance with the terms of Neglia Engineering Associates report for the above-referenced project.
- 2. Submission to Neglia Engineering Associates of all necessary easements and/or cross-access agreements for review and approval by the Board Attorney and the City Engineer prior to filing of same.
- 3. Entering into a Developer's Agreement with the City of Clifton and payment of a site performance bond to the City of Clifton.
- 4. Submission of a site inspection escrow deposit for engineering inspection fees and safety and stabilization bond/guarantee in amounts to be determined by the Board Engineer.
- 5. Payment of all water and sewer connection fees to the Passaic Valley Water Commission and/or the Passaic

Valley Sewer Commission, if necessary.

6. Issuance of a road opening permit from the County of Passaic or the Clifton City Engineer, if required.
7. Compliance with the terms of Graviano & Gillis Architects & Planners, LLC report for the above project.
8. Shall maintain adequate escrow funds for all anticipated post-approval reviews.
9. Payment of any other fees due to the City of Clifton related to development or use of this project.
10. Payment of any outstanding taxes due and any outstanding fees to the City of Clifton.
11. Passaic County Planning Board approval or waiver.
12. Hudson Essex Passaic Soil Conservation District approval or waiver.
13. Submittal of approval or waiver of same from any additional agency having jurisdiction, including all applicable City, County, State, and Federal Laws, Ordinances, Regulations, and Directives, including without limitations the requirements of the City Engineering Department, City Fire Official, City Police Department, City Construction Code Official, City Board of Health, City Zoning Officer, and any other governmental authority.
14. Submission of engineering site plan to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of hearing.
15. Submission of architectural plans to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of the hearing.
16. All sewerage, utilities, and other site improvements to be installed and maintained by the applicant at its sole expense.
17. All utilities to be constructed underground.
18. All temporary encroachments into the public right-of-way shall require City Council approval.
19. All construction staging shall be done on-site, unless an encroachment for same into the public right-of-way shall be approved by City Council.
20. Replacement of damaged streets, curbs, and sidewalks as per the direction of the City Engineer and/or Board Engineer.
21. All oral representations made to the Board by applicant, counsel for applicant or applicant's witnesses, not specifically contained herein, but incorporated by consent of applicant.
22. Shall, upon final determination of the building and building footprint, submit to the City Tax Assessor, floor plans, elevations and estimated construction costs of the building. These materials will be utilized to determine the applicable COAH residential or non-residential fee. Fee certification forms shall be completed by the applicant or its assignees and the Tax Assessor prior to submitting for a building permit.
23. Building permit applications shall only be submitted upon receipt of all required approvals/waivers. All building permit applications shall be accompanied by the Board Resolution of approval and with documentation that all conditions of approval have been satisfied. 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.
24. This Resolution, if not acted upon (obtain building permit) within one (1) year of the date of adoption of this Resolution, shall become null and void; except where such variance or conditional use approval is granted in connection with site plan or subdivision approval, in which case the time limit shall be three (3) years from the date the resolution approving the variance or conditional use is adopted.

Resolution moved by: Comr VICE-CHRMN GERARD SCORZIELLO.

Seconded by: Comr LOUIS DE STEFANO.

Affirmed by: Comrs Zalman Gurkov, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello and Chrmn Mark Zecchino.