

Minutes of a regular meeting of the Board of Adjustment of the City of Clifton, New Jersey, held on Wednesday, November 16, 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 URI JASKIEL, GEORGE SILVA, ZALMAN GURKOV (left at 8 PM), SCOTT SOCHON, MICHAEL MOLNER, LOUIS DE STEFANO, GEORGE FOUKAS, VICE-CHRMN GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.

ABSENT: NONE.

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 Comr Scott Sochon, the Minutes of the October 26, 2022 special meeting were adopted with the unanimous approval of the entire Board.

Upon motion made by Comr Louis DeStefano, seconded by Comr Scott Sochon, the Minutes of the November 2, 2022 regular meeting were adopted with the unanimous approval of the entire Board.

REMANDED HEARING

- | | |
|-----------|--|
| 1. | JOHN RADER , 817-825 Clifton Ave., |
| Use | Block 35.06, Lot 16 – B-C – Site plan |
| Variance; | approval required to remove the existing |
| Variance; | MOONEY AUTO REPAIR GARAGE, to |
| Site Plan | enlarge the building housing the existing |
| | DUNKIN DONUTS building, to create an |
| | additional store, two vestibule entrances |
| | to the two stores and a drive-in facility. |
| | A bulk variance is required to permit the |
| | use of lighting other than the ordinance |
| | required high-pressure sodium lighting, |
| | because it is no longer manufactured. |
| | A use variance is required to permit the |
| | drive-in window. All other nonconformities |
| | are pre-existing and do not require variances. |
| | DENIED DECEMBER 2, 2022 – |
| | COURT-ORDERED REMAND. |

This matter was continued without date.

CONTINUED HEARINGS

1.
Use
Variance;
Variances

TFJ HAZEL LLC, 252 Hazel Street & 237 West 3rd Street, Block 16.11, Lots 1 & 2

-- RB2 – Preliminary and Final Major Site Plan Approval, Minor Subdivision (lot consolidation) approval, d(1) use variance, d(1) use variance, d(5) density variance, and bulk (“c”) relief to construct a three (3)-story mid-rise (two (2) stories over parking), multi-family residential building containing fifty-four (54) dwelling units (currently proposed to contain twenty (20), one (1)-bedroom units; four (4) one (1)-bedroom plus office/den units; twenty-six (26) two(2)-bedroom units; and four (4) two (2)-bedroom plus office/den units) and resident amenities (the “Proposed Building”), along with 104 on-site parking spaces (sixty-two (62) covered/under the Proposed Building and forty-two (42) surface Parking spaces), and related site improvements (all proposed improvements collectively referenced as the “Project”) on the “Property.”

Lot 1 (+/- 71,752 square feet) is currently improved with a vacant, nonconforming manufacturing/ industrial building that was formerly operated as a textile dyeing and finishing facility (International Veiling Corp.).

Lot 2 (+/- 3,500 square feet) is improved with a vacant, one-family residential dwelling.

As part of the application, the existing lots will be consolidated (combined) to form a new lot consisting of +/- 75,252 square feet and the existing improvements will be removed.

The Project is proposed to be accessed by a full-movement driveway along 7th Avenue and a full-movement driveway at the intersection of 7th Avenue and West 4th Street. An on-site loading zone is being proposed for resident, delivery, and refuse collection. Proposed site improvements include, but are not necessarily limited to, an electrical transformer and associated concrete pad, grading and drainage, stormwater management, underground utilities, fencing, lighting, landscaping, a monument sign near the proposed driveway on Seventh Avenue, directional/wayfinding signage, building identification signage, electric vehicle charging stations, paving and striping, curbing, sidewalks and walkways.

The Property is in the R-B2 (Residential, One- and Two-Family and Garden Apartments) Zone District (the “R-B2 Zone”), which does not permit three (3)-story mid-rise, multi-family residential buildings.

In connection with the preliminary and final major site plan approval related to the Project, the Applicant is seeking the following variances pursuant to N.J.S.A. 40:55D-70(d), from the City of Clifton Zoning Ordinance (the “Ordinance”), as follows:

1. From Section 461-13.1.E “Use Regulations” for the R-B2 Zone - To permit a three (3)-story mid-rise, multi-family residential building in the R-B2 Zone, where three (3) story mid-rise, multi-family residential buildings are not permitted.
2. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements Residential Zone” - Minimum Lot Area per Dwelling Unit – To permit a lot area per dwelling unit of 1,393.6 square feet, where a minimum lot area per dwelling unit of 3,351 square feet is required.

In connection with the preliminary and final major site plan approval related to the Project, the Applicant is seeking the following variances pursuant to N.J.S.A. 40:55D-70(c), from the Ordinance, and if required, and/or waivers / exceptions from the Residential Site Improvement Standards (RSIS), N.J.A.C. 5:21-4.14, as follows:

1. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Minimum Rear Yard Setback - To permit a rear yard setback (measured to the Garden State Parkway right-of-way) of 4.9 feet, where a minimum rear yard setback of 40 feet is required.
2. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Minimum Side Yard Setback - To permit a side yard setback of 12 feet (along Hazel Street (CR702)), where a minimum side yard setback of 20 feet is required.
3. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Minimum Combined Side Yard Setback - To permit a combined side yard setback of 33.6 feet (12’ as measured from Hazel Street (CR702) and 21.6’ as measured from the property line adjoining Block 16.11, Lot 17), where a minimum combined side yard setback of 40 feet is required.
4. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Maximum Lot Coverage of Principal Building – To permit a maximum lot coverage of 36.2%, where a maximum lot coverage of 25% is permitted.

5. From Section 461-60.1.A, “Requirements for off-street parking and loading spaces” – To permit 104 parking spaces to be provided, where 135 parking spaces are required under the Ordinance, but which 104 parking spaces satisfy RSIS requirement, which control.

6. From Section 461-42.A, “Additional requirements” - To permit pole-mounted, building-mounted, and/or site light-emitting diode (LED) lighting fixtures, where high-pressure sodium vapor lights are required.

7. From Section 461-60.A, “Standards for parking spaces and areas” – To permit off-street parking spaces sized 9’ wide by 18’ deep, where parking spaces are required to be 9’ wide x 19’ deep under the Ordinance, but which meets RSIS requirement which control.

8. From Section 461-47.F, “Fences” To permit a fence along the common property line between the Property and the Garden State Parkway right-of-way, measuring seven feet (7’) in height, where a maximum fence height of six feet (6’) is permitted.

The Applicant also requests any other approvals, waivers, variances, deviations and/or exceptions from the Ordinance, the City of Clifton General Ordinances, and/or RSIS, including, but not necessarily limited to, any additional setback variances (front yard setback, rear yard setback, or side yard setbacks) that may result from an alternative interpretation of the Ordinance provisions relating to setbacks, all as may be determined to be required for the Project during the review and processing of the application and/or based upon an analysis of the plans and testimony at the public hearing.

Meryl A. G. Gonchar, Esq., of Sills Cummis & Gross P.C., with offices at One Riverfront Plaza, Newark, New Jersey; and Frank A. Carlet, Esq., of Carlet Garrison Klein & Zaretsky, with offices at 1135 Clifton Avenue, Clifton, New Jersey, appeared as co-counsel on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: Frank J. Minervini, AIA, MVMK Architecture, 360 14th Street, Hoboken, New Jersey, architect; and Paul Grygiel, 70 Hudson Street, Hoboken, New Jersey, a planner.

Present and sworn were the following objectors: Glenn C. Bedford, 23 Louis Drive; Len and Eileen Wiczerzak, 38 Florence Drive; Sylvia Martinez, 46 Florence Drive; and Leonard Wiczerzak, Jr., of 25 Highland Cross 07070, all of the City of Clifton, New Jersey except where noted.

This is a continued hearing from the meetings of May 11, 2022, June 22, 2022, and August 17, 2022.

The Board is in receipt of reports from its planner, Nicholas Graviano, dated May 2, 2022; revised June 20, 2022; revised August 17, 2022; and from its engineer, Neglia Engineering, dated May 2, 2022; revised June 17, 2022; revised August 10, 2022; and the Clifton Fire Prevention Bureau dated May 9, 2022; revised June 22, 2022; revised August 16, 2022; and Clifton Police Department dated June 23, 2022.

Ms. Gonchar summarized the testimony given at the previous meetings and stated the revisions the applicant has made to conform to the Board’s and residents’ concerns.

Mr. Minervini testified as an architect regarding the changes to the plans; that the applicant has removed the dens from the units; that there are 54 units, 30 two-bedroom units and 24 one-bedroom units; that the New Jersey Turnpike Authority requested a fence, and the applicant is proposing a 6-foot-high fence between the property and the Garden State Parkway.

Mr. Grygiel testified as a planner as to the mid-rise multi-family residential use; as to the use variance and variances requested; that the site is unique shaped and bordered by the Parkway; that the site is particularly suited, no detriments impacts to public good, master plan; that residential use benefits the public; that new housing will upgrade the site and makes economic sense; that the premises is up to ADA standards; that the applicant will remediate the site; that the density can be accommodated on the property; that parking underneath the building impacts density; there are no substantial impacts on traffic and noise; that the use will replace an existing, non-conforming industrial use; that the use is closer in conformity to the surrounding residential use; that this use is the best use compared to what the site could be used for; that residential use is a benefit to the area; that based on a Rutgers study, there will no substantial impact on school age children from the site; that any other renovation at the site is too expensive, considering the demolition and remediation required. He further testified as to variances required, impervious coverage; parking; electric vehicle accommodations; no negative impacts compared to what would be permitted; that the site is well suited with access to public transit; regarding garden apartments vs. this type of housing; trending away from garden apartments.

The objectors testified that the density is too high, it is double what is allowed; that parking is not sufficient; stormwater management and impervious coverage will have detrimental impact on neighborhood; that the use is a gross overuse.

After a review of the testimony, Comr Michael Molner moved to deny based on density and overuse of the premises and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr George Silva. Voting to deny were Comrs George Silva, Scott Sochon, Michael Molner, George Foukas, and Chrmn Mark Zecchino. Voting against the motion were Comrs Louis DeStefano and Vice-Chrmn Gerard Scorziello. By a five to two vote, the motion carried, and the application was denied 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.	522 VALLEY ESTATES LLC , 522 Valley Road,
Use	Block 32.01, Lot 12 – Steep Slope District –
Variance;	Preliminary and final major site plan approval,
Variances	use variance, bulk variance and design waiver/
	exception relief (the “Application”) by 522
	Valley Estates LLC (the “Applicant”) with
	respect to property having a street address of

522 Valley Road, Clifton, New Jersey 07013, and being designated as Block 32.01, Lot 12 on the City of Clifton Tax Map (the “Property”). The Property is located in the Steep Slope Zoning District. The Applicant seeks approval to demolish the existing building and raze the Property and construct a new residential complex consisting of 21 townhouse dwelling units within three (3) separate buildings, along with related site improvements, including but not limited to parking, landscaping and lighting. The Applicant seeks use variance relief pursuant to N.J.S.A. 40:55D-70(d)(6)for building height greater than permitted (35 ft. permitted;42.75 feet proposed). The Applicant also seeks bulk variance relief pursuant to N.J.S.A. 40:55D-70(c), including: (1) Number of stories greater than permitted (3 stories permitted; 4 stories proposed). The Applicant also seeks any additional deviations, exceptions, design waivers, submission waivers, variances, use variances, conditional use variances, interpretations, continuations of any pre-existing non-conforming conditions, modifications of prior imposed conditions and other approvals reflected on the filed plans (as same may be further amended or revised from time to time without further notice) and as may be determined to be necessary during the review and processing of the Application.

This matter was previously continued by the Board to the December 7, 2022, meeting of the Board.

3.
Variance

1041 PAULISON LLC, 1041 Paulison Avenue, Block 19.03, Lot 8 – M1 – Applicant is proposing to use this property as an auto accessory garage premises consisting of two bays for which a vehicle would remain for multiple days receiving installation of auto accessories. The applicant requests the following variances:

 - 1) Use variance for the proposed use;
 - 2) A variance for the left side yard where 5.1 ft. is provided and 10 ft. is required.
 - 3) A variance for parking as may be required.
 - 4) A variance for parking space setbacks.

Dominic Iannarella, Esq., with offices 139 Lakeview Avenue, Clifton, New Jersey, appeared on behalf of the applicant. Also present and sworn was the managing member of the applicant, Isaac Abuhaltam, 459 Grove Street, Clifton, New Jersey; Michael Capo of 12 Brookhill Terrace, Clifton, New Jersey, architect; William Martin, 25 Boulevard, Westwood, New Jersey, planner; and Thomas E. Donohue, 210 Summit Avenue, Montvale, New Jersey, an engineer. There were no objectors.

Comr George Foukas recused himself from participating, and Comr Uri Jaskiel sat in his place and stead.

The Board is in receipt of reports from its experts, Neglia Engineering Associates dated November 11, 2022; and Graviano & Gillis dated November 11, 2022.

Mr. Iannarella read into the record a proposed permanent access easement giving access to the car wash.

Mr. Abuhaltam testified as managing member; that proposed is an auto accessory garage consisting of two bays; that vehicles come in by appointment; there is a one week turnaround; hours of operation, 4 employees; refuse collection by dumpster two times a week; vehicles will be kept inside; that the refuse area is not enclosed now; that he can enclose by taking away parking.

Mr. Donohue testified as an engineer as the map, zoning, site area, size, existing conditions at site; impervious pavement; permanent access easement; parking; signage.

Mr. Capo testified as an architect and referred to visual aids and exhibits; that the use is an accessory use to car wash; uses in the surrounding area; goals of the master plan; visual environment; application is not detrimental; no impact on traffic; no noise; no detriments.

After a review of the testimony, Comr Louis DeStefano moved to grant the application sine it is a less intense use and instructed the Counsel Secretary to prepare the proper Resolution with the stipulation that the permanent easement is recorded; and further subject to compliance with reports and recommendations of Neglia Engineering Associates and Graviano & Gillis. The motion was seconded by Comr Scott Sochon. Voting in the affirmative were Comrs Uri Jaskiel, George Silva, Scott Sochon, Michael Molner, Louis DeStefano, 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.

4. Use Variance; Variances	WALBRI PROPERTIES, LLC , 1 & 9 Walnut Street, Block 37.04, Lots 9 and 13 – M2 – An Application for development has been submitted for property located at 1 & 9 Walnut Street, Clifton, NJ; and also located at Interior Brighton Ave., City of Passaic, NJ, Block 3245.03, Lot 10, Zone designation as C.
-------------------------------------	--

The purpose of the Application and the Project is for the development of the property & to combine the use of all 3 lots, to demolish the old pavement on the properties, and to construct a new 7,442 square foot 1 story 33.6 foot height commercial flex multi-tenant warehouse building on what is currently identified as Lot 9 and part of Lot 13, with 9 parking spaces, including 1 handicapped space on the remaining part of Lot 13 and on Lot 10.

The application in question requires the following approval/relief from the City of Clifton Zoning Board of Adjustment as per the Clifton Zoning Ordinance:

Variances for: 1] Allowing “d(3)” conditional use variances, pursuant to N.J.S.A. 40:55D-70.d (3), in that there is a deviation from a specification or standard pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining to a conditional use and based upon the requirements set forth in Clifton Code Section 461-36.E. and because the Applicant does not meet the following conditions, variances are required as to the following: (1) The frontage and principal access to such use shall be located on a collector or arterial street (as defined under Chapter 399, Subdivision of Land) not less than 60 feet in width; and (2) The frontage of the lot on which such use is proposed to be located shall not be within 1/2 mile of a public or parochial school or public park or playground which abuts the same street as the proposed truck terminal, transfer station or warehouse fronts, except State Highway Route No. 3 and Route No. 46, measured along the center line of said street; and (3) The use shall not be located on a lot, any part of which is within 100 feet of a residence district boundary; and (4) The use shall meet the area, height and bulk requirements for industrial plants in an M-2 District and shall meet the off-street parking, loading and unloading and buffer requirements of this chapter as it pertains to industrial plants in an M-2 District; and allowing any other d(3) conditional use variances that may be required pursuant to N.J.S.A. 40:55D-70.d (3), for any other deviations from a specification or standard pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining to the conditional use of the proposed building and use on the subject property; 2] Front Yard- a C Variance from City of Clifton Code Section 461 Attachment 3 in that a front yard setback of 20 feet is required and front yard setback of three (3) feet is proposed; 3] Rear Yard- a C Variance from City of Clifton Code Section 461 Attachment 3 in that a rear yard setback of 40 feet is required and rear yard setback of four (4) feet is proposed; 4] Side Yard- a C Variance from City of Clifton Code Section 461 Attachment 3 in that a side yard setback of 16.8 feet is required and side yard setback of four (4) feet is proposed; 5] From City of Clifton Code Section 461-60.E in that parking shall not be permitted in the required front yard and parking in the required front yard is proposed; 6] From City of Clifton Code Section 461-60.F in that: “off-street parking or loading spaces, parking aisles or maneuvering areas shall not be located within 10 feet of any corner side lot line, within 10 feet of any rear lot line abutting a street or within five feet of any other lot line and the proposed parking lot does not meet ten (10) feet on the rear property line at approximately one (1) foot and in the rear and side parking lot setbacks, and the proposed lot is also less than five (5) feet at the front yard setback requirement; 7] All setback areas shall be adequately landscaped; and 8] preliminary and final site plan approval with associated “c” and “d” variances; 9] Granting all other relief, waivers, variances and approvals that may be required or may be raised during the course of the hearing.

The application in question requires the following approval/relief from the City of Passaic Planning Board as per the Passaic Zoning Ordinance:

Variances for: 1] For site plan approval; 2] The Passaic City portion to be developed as a parking lot with a portion of the Ingress and egress into the property, and 3] Granting all other relief, waivers, variances and approvals that may be required or may be raised during the course of the hearing.

Gary E. Cohen, Esq, with offices at 180 Main Avenue, Passaic, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant was managing member of the applicant, George Bean of Passaic, New Jersey; Joseph Vince, 9 Post Road, Oakland, New Jersey, an engineer; and Michael Romanik of 291 Crooks Avenue, Paterson, New Jersey, an architect. Present and sworn was objector Carlos M. Santana, 22 Milton Avenue, Clifton, New Jersey.

The Board is in receipt of reports from its engineer, Neglia Engineering Associates, dated September 12, 2022; and its planner, Graviano & Gillis, dated September 19, 2022.

Mr. Cohen stated that the applicant requests approval to construct a one-story commercial flex, multi-tenant warehouse building with parking and improvements on the site; that the site needs developing; that the use is viable.

Mr. Romanik testified as an architect and presented the plans as an exhibit; testified as to the plans, surrounding uses, variances required, traffic conditions, zoning, area, height, maps, traffic, parking, and residential properties in the area, height, buffer, floor plan, dimensions, parking, setbacks, site elevation, facade, and addressed the revised drawings and changes to the plans.

The Board's planner, Nicholas Graviano, stated that there is no buffering; that the applicant should provide a buffer to the residential homes.

The objectors were concerned with the retaining wall, buffering, lighting, trucks, noise from reversing trucks, decrease in residential property values.

Mr. Bean testified as owner of the property; that currently, this lot is vacant; that he proposes three units for storage and assembly; proposed tenants will be for industrial purposes, like construction and plumbing uses; that he is familiar with this type of business; that it is not a large warehouse with large trucks; hours of operation, employees.

Mr. Vince testified as an engineer as to the zone; square footage; lot dimensions in the area; slopes; referred to exhibits and revisions in square footage and lot coverage; positioning of building on the lot.

The Board was concerned with placement of the building on the lot; that consideration should be given to the residents that abut the property; that a buffer is needed.

At this point in the hearing, the applicant requested a continuance so that the plans could be revised to address the concerns of the Board. Thereupon, the matter was continued to the January 18, 2023 meeting of the Board.

5.	EMB 561 LLC , 561 Van Houten Avenue,
Use	Block 43.04, Lot 8 – BC – Preliminary and
Variance;	Final site plan approval; use variance approval;
Variances	bulk variances from Section 461-13 for
	pre-existing non-conformities consisting of
	minimum front yard and minimum side yard/
	each, which none of the pre-existing
	non-conformities are being increased or
	changed; and any other variance, waiver, or
	other relief, if necessary, from the requirements
	of the Clifton Zoning code to permit the
	Applicant to convert the existing mixed use
	building into a multi-family apartment dwelling
	consisting of 2 one-bedroom apartments on the
	first floor and 4 two-bedroom apartments on
	the second floor.

Chrmn Zecchino announced that the Board was in receipt of a communication from Edina Bonassin requesting that the matter be continued to the January 18, 2023 meeting. Thereupon, the Board carried the matter to the January 18, 2023 meeting of the Board.

6.	833 CLIFTON AVE PARTNERS, LLC,
Use	833 Clifton Avenue, Block 35.07, Lot 1
Variance;	-- BC – Preliminary and final site plan
Variances	approval, use variance, bulk variances and exterior LED lighting. The applicant seeks approval to construct a 3-story residential apartment building containing 26 one-bedroom units. Any and all additional variances that may be required.

Glenn Peterson, Esq., with offices at 1037 Route 46 East, Clifton, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant were the following: William Martin, 25 Boulevard, Westwood, New Jersey, architect; Thomas E. Donohue, 210 Summit Avenue, Montvale, New Jersey, an engineer; and Michael Capo of 1037 Route 46, Clifton, New Jersey, an architect. Present and sworn were the following objectors: William and Lorraine Montesano of 21 Cloverdale Road, Clifton, New Jersey.

The Board is in receipt of report from its engineer, Neglia Engineering Associates, dated October 14, 2022, revised November 15, 2022; and its planner, Graviano & Gillis, dated November 12, 2022.

Mr. Peterson stated that the applicant requests preliminary and final site plan approval to construct a three-story residential apartment building containing 24 one-bedroom units.

Mr. Martin testified as an architect as to the reduction from 26 to 24 one-bedroom units; that two units were cut due to neighbor's concerns it was too close to the residential uses.

Mr. Capo testified as an architect and described the three-story structure, parking, units, exits, elevator, exterior, lighting, utilities; handicap accessibility, signage; mechanicals on the roof, change in elevation.

Objectors testified as to concerns with water runoff and parking.

Mr. Donohue testified as an engineer as to parking spaces, surrounding area, zone, existing conditions at the site; water runoff; applicant will remove existing asphalt and construct 3-story 24 one-bedroom units; setbacks; lot coverage, access and egress, parking stall size, landscaping; dumpster; building façade, retaining wall, curbing, sidewalk, lighting plan, landscaping plan, soil and sediment control plan, construction details, fire truck plans entering and existing; garbage truck access; if parking stall size is conforming, it would take away one space.

The Board's planner, Nicholas Graviano, stated that landscaping should be improved.

The Board expressed concerns over the number of units being an overuse and parking requirements.

At this point in the hearing, Mr. Peterson requested that the matter be carried so that the applicant could address the concerns of the Board. Thereupon, the matter was continued to the January 18, 2023 meeting of the Board.

NEW HEARINGS

1. **MARIA QUINTERO**, 9 Sheridan Ave.,
Block 13.05, Lot 16 – M2 – The applicant
Use is requesting a use variance to convert
Variance; vacant office space in a building into an
Variance office and Herb-A-Life store with a
kitchen to prepare shakes. A variance
for parking is also being requested.

The applicant, residing at 2 Mulberry Court, Paramus, New Jersey, was present and sworn. There were no objectors.

Ms. Quintero stated that she requires a use variance to convert a vacant office to a Herb-A-Life store with a kitchen to prepare shakes; that a variance for parking is required; that there will be no cooking at the premises; hours of operation and employees; that she will not totally cover the windows.

After a review of the testimony Comr Michael Molner moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution with the stipulation that there be no cooking at the premises. The motion was seconded by Vice-Chrmn Gerard Scorziello. Voting for approval 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.

2. **MOCHA YEMEN CORPORATION**,
441 Crooks Avenue, Block 9.04, Lot 20
Use -- M3 – The applicant intends to close
Variance; the rear balcony of the existing first-floor
Variances unit which the Applicant is currently
occupying for use as a café/coffee shop.
All bulk variances, as well as any use
variances are pre-existing, and the
applicant intends to continue the use
of the unit as it has been previously used.
The applicant also requests that the
Board consider any other variances
and/or waivers that the Board may
deem applicable to this application.

Alfred V. Acquaviva, Esq., with offices at 1114 Goffle Road, Hawthorne, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant was Mohamed Alsaidi, manager of the applicant; and Nassir Almukhtar, 1171 Madison Avenue, Paterson, New Jersey, architect. There were no objectors.

The Board is in receipt of a report from its planner, Graviano & Gillis, dated November 12, 2022.

Mr. Acquaviva stated that the applicant requests approval to close the rear balcony of an existing café/coffee shop.

Mr. Almukhtar testified as an architect as to the existing use at the site; that the applicant wants to enclose the patio area; that parking is existing and will be re-stripped; that the use is less intense than a restaurant; that the basement is used for storage and refrigeration; that the three posts are existing and permanent; that the enclosure will have heat.

Mr. Alsaidi testified that the premises is a coffee shop that sells pastries and coffee; that the signage has a name on the front where it is presently existing; that the second floor is residential; hours of operation; that garbage will be taken out three times a week and will be modified as needed; that parking is pre-existing; that he will enclose the dumpster and follow the Board's engineer, Nicholas Graviano's, recommendation regarding same.

After a review of the testimony, Comr George Foukas moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution with the stipulation that the dumpster be enclosed; that refuse pick-up be no earlier than 7 A.M.; and that the applicant will comply with all recommendations and report of the Board's planner, Graviano & Gillis, dated November 11, 2022. The motion was seconded by Comr Zalman Gurkov. 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.

RESOLUTIONS

1. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Louis DeStefano, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of STEW LEONARD'S for preliminary and final site plan approval with associated "c" and "d" variances to operate a Stew Leonard's supermarket at 467 Allwood Road, Block 79.01, Lot 1, was adopted.

2. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Louis DeStefano, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of BOTANY VILLAGE PROPERTY LLC for preliminary and final site plan approval with associated "c" and "d" variances to construct a three-story building with four residential units on the second floor and a restaurant and bar in the basement and first floor at 254 Dayton Avenue, Block 4.18, Lot 21, was adopted.

3. Upon motion made by Comr Louis DeStefano, seconded by Comr Scott Sochon, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution WITHDRAWING WITHOUT PREJUDICE the application of JAIME & VIVIANA BORJA for a 6-foot-high solid fence along the perimeter of the property at 67 Huemmer Terrace, Block 64.01, Lot 17, was adopted.

4. Upon motion made by Comr Michael Molner, seconded by Comr George Foukas, and affirmed by Comrs Scott Sochon, Michael Molner, George Foukas, and Chrmn Mark Zecchino, the Resolution DENYING the application of MJG-MAR REALTY, LLC for a use variance and bulk variances for a storage and distribution center for the retail and wholesale of motor vehicle parts at 42 Lakeview Avenue, Block 7.05, Lot 70, was adopted.

5. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr George Foukas, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of FAUSTO ORTEGO for variance for a 5-foot-high solid fence along Grove Street side of the property at 29 Abbe Lane, Block 27.12, Lot 6, was adopted.

6. Upon motion made by Comr Scott Sochon, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of LIGIA FILION for side yard setback variance for a driveway on right side of the home with 0 foot setback at 33 Clinton Avenue, Block 12.23, Lot 7, was adopted.

7. Upon motion made by Comr George Foukas, seconded by Comr Scott Sochon, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of ANDREA & JEFFREY HOLM for rear yard setback variance for a proposed addition at 10-12 Mt. Washington Drive, Block 32.08, Lot 14, was adopted.

8. Upon motion made by Comr Michael Molner, seconded by Comr Scott Sochon, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of KALMAN FRIEDMAN for variances for side yard setback and rear yard setback to replace an existing shed at 462 South Parkway, Block 58.01, Lot 7, was adopted.

9. Upon motion made by Comr Scott Sochon, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of ABRAHAM GHANOONI for variances for rear yard setback, lot coverage, and driveway not permitted in front of house not serving a garage for a two-story addition and conversion of garage to living space at 145 Allwood Place, Block 57.01, Lot 44, was adopted.

10. Upon motion made by Comr George Foukas, seconded by Comr Scott Sochon, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of DAWN JOHNSON for variance for right side yard, left side yard, and combined side yard setbacks to cover deck with roof and screening at 119 William Street, Block 72.05, Lot 14, was adopted.

11. Upon motion made by Comr Scott Sochon, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of JASMITA & RAHUL KAPOOR for variances for left side yard, front yard setback, and front yard setback for a two-story addition, extension to existing attic, and a front porch addition at 18 Barberry Lane, Block 53.09, Lot 2, was adopted.

12. Upon motion made by Comr Scott Sochon, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of SHAMAI GOLDBERG for variances for lot coverage, right side yard, combined side yards, and number of stories to erect a second floor addition at 25 Edgewood Avenue, Block 58.13, Lot 22, was adopted.

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

Respectfully submitted,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF NOVEMBER 16, 2022.

**RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: TFJ HAZEL LLC
for premises known as: 252 Hazel Street & 237 West 3rd Street,
Block 16.11, Lots 1 and 2
be and the same is hereby: DENIED use variances and bulk variances to erect a three-story mid-rise 54-unit multi-family residential building.**

Testimony concerning the aforesaid application was taken by the Board at its meetings on May 11, 2022; June 22, 2022; August 17, 2022; and November 16, 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, Comr Michael Molner moved to deny the application on the basis of the following Resolution:

WHEREAS, the applicant requests preliminary and final major site plan approval, minor subdivision approval, and associated “d” and “c” variances to construct a three-story mid-rise 54-unit multi-family residential building at 252 Hazel Street and 237 West Third Street, Block 16.11, Lots 1 and 2, which premises are located in an RB2 (Residential, one- and two-family residential) zone; and

WHEREAS, the applicant requests associated “c” and “d” variances for:

- a. D(1) use variance where mid-rise multi-family dwellings are not a permitted use in the RB2 zone district;
- b. D(5) density use variance to permit lot area per dwelling unit where the site’s ability to accommodate a density higher than what is permitted must be demonstrated;
- c. Variance for minimum rear yard setback;
- d. Variance for minimum side yard setback;
- e. Variance for combined side yard setback;
- f. Variance for maximum lot coverage;
- g. Variance for LED lighting fixtures;
- h. Variance for parking areas in the front yard;
- i. Variance for 6-foot-high fence; and

WHEREAS, the Board has received the following reports:

- a. Report of Graviano & Gillis Architects & Planners, LLC dated August 17, 2022; and
- b. Report of Neglia Engineering Associates dated May 2, 2022, revised June 17, 2022, revised August 10, 2022; and

WHEREAS, the Board has heard testimony from the applicant’s experts as follows:

- a. Frank J. Minervini who testified as an architect concerning the design of the structure, parking, and amenities to the site;
- b. Matthew Zwingraf who testified as an engineer concerning site plan, landscaping and lighting, utilities, parking, driveways, circulation, grading, and sanitary sewer flow study;
- c. Matthew Seckler who testified as a traffic expert concerning existing roadway conditions, traffic volumes, levels of service capacity, future traffic volume projections, trip generation, site circulation, and access to the premises; and
- d. Paul Grygiel who testified as a planner concerning the “d” and “c” variances, density, impervious coverage, and that any other renovation at the site is too expensive considering the demolition and remediation required; and

WHEREAS, the Board has heard testimony from the objectors with respect to density being more than double of what is permitted, fire safety, access and egress, parking, school-age children impact on school system, aesthetic appearance, lighting, infrastructure, stormwater management, impervious coverage, water and sewer, flooding and drainage, water pressure, negative drainage impact to adjacent properties, grading and elevations, and landscaping; and

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

- a. The applicant proposes to erect a 54-unit mid-rise multi-family residential dwelling with 30 two-bedroom units and 24 one-bedroom units;
- b. The existing lots will be consolidated to form a new lot consisting of +/- 71,752 square feet;
- c. Presently at the site is a vacant manufacturing/industrial building and a vacant one-family residential dwelling, which improvements are proposed to be removed;
- d. The R-B2 zone district allows residential one- and two-family dwellings and garden apartments but does not permit mid-rise, multi-family residential buildings;
- e. The applicant has failed to provide testimony that the premises in question may be used for its zoned purposes—that is, single-family, two-family, and garden apartments;
- f. The site is not particularly suited for the proposed use since the minimum lot area per dwelling unit is 3,351 square feet and the applicant is proposing a lot area per dwelling unit of 1,393.6 square feet, and the site cannot accommodate the higher density requested by the applicant;
- g. The applicant has failed to satisfy the positive and negative criteria required for the grant of the D(5) density use variance in that the site's ability to accommodate the proposed density has not been met;
- h. The applicant proposes to demolish the present structures and remediate the site; however, the number of proposed units represents a gross overuse of the premises;
- i. With respect to the Master Plan, the Land Use Plan Element, Paragraph No. 5 emphasizes the "establishment of appropriate densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment." The applicant's proposal does not satisfy this specific goal and objective due to the overuse of the premises.
- j. The applicant has failed to sustain the burden of proof required to approve the bulk variances requested;
- k. The applicant's experts have failed to satisfy the concerns regarding stormwater management, impervious coverage, and the negative drainage impact to adjacent properties;
- l. The applicant has shown no hardship to permit the grant of a rear yard setback variance where 40 feet is required and 4.7 feet is proposed;
- m. The applicant has shown no hardship to permit a side yard setback variance where 20 feet is required and 12 feet is proposed;
- n. The applicant has shown no hardship to permit a combined side yard setback variance where 40 feet is required and 33.6 feet is proposed;
- o. The applicant has shown no hardship to permit a maximum lot coverage variance where 25 percent is permitted and 43.4 percent is proposed;
- p. With respect to the rear yard setback variance, side yard setback variance, combined side yard setback variance, and lot coverage variance, the applicant has failed to show that the purposes of the Municipal Land Use Law N.J.S.A. 40:55D-2 would be advanced by a deviation from the zoning ordinance;
- q. The applicant failed to demonstrate that the proposal will not have a detrimental impact on the adjacent properties; and
- r. The variances requested may not be granted without substantial detriment to the public good and a grant of such variances will impair the intent and purpose of the zone plan and zone ordinance due to the overuse of the premises;

- s. Based upon the testimony presented by the objectors, the Board finds that variances cannot be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zone ordinance;
- t. The Board finds that the testimony of the objectors is more credible than the testimony given by the applicant's experts;
- u. A mid-rise multi-family dwelling as proposed by the applicant is not a special reason for granting a D(5) use variance; and
- v. The detriments of the application outweigh the benefits, if any;

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 the goals and objectives set forth in the Land Use Plan Element in Paragraph Nos. 5, 7, and 8; and

WHEREAS, the Board further finds that the proposal will be detrimental to the health, safety, and general welfare of the neighborhood due to the high density, stormwater management, impervious coverage, negative drainage impact to adjacent properties, inadequate ingress and egress to the site, parking, and internal circulation;

NOW THEREFORE, BE IT RESOLVED that the application as aforesaid for preliminary and final site major site plan approval with associated "d" and "c" variances and minor subdivision to erect a 54-unit mid-rise multi-family residential dwelling at 252 Hazel Street and 237 West Third Street, Block 16.11, Lots 1 and 2, be and the same are hereby disapproved and the application and variances as aforesaid are hereby denied.

Resolution moved by: Comr MICHAEL MOLNER.
Seconded by: Comr GEORGE SILVA.
Affirmed by: Comrs George Silva, Scott Sochon, Michael Molner, George Foukas, and Chrmn Mark Zecchino.

MEETING OF NOVEMBER 16, 2022.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: 1041 PAULISON LLC for premises known as: 1041 Paulison Avenue, Block 19.03, Lot 8 be and the same is hereby: GRANTED preliminary and final site plan approval with associated “c” and “d” variances to utilize the site for auto accessories installation garage.

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

WHEREAS, the applicant requests approval as aforesaid to change the use from an existing car wash facility and office building to a 2,500 square foot auto accessory installation garage at premises located at 1041 Paulison Avenue, Block 19.03, Lot 8, which premises are located in an M1 zone; and

WHEREAS, the applicant has applied for preliminary and final site plan approval with associated “c” and “d” variances; and

WHEREAS, the site is located in an M-1 zone which allows auto repair facilities (and this applicant will be performing “care” on vehicles) as a conditional use subject to the following requirements:

- a. The use shall meet the lot area, lot dimensions, lot coverage, height and yard requirements. The proposed use conforms to all yard requirements except for the side yard requirement where 10 feet is required and 4.95 feet is existing and proposed;
- b. The use shall not be located on a lot any part of which is within 1,000 feet of any part of any lot which is zoned for or used for residential, church, public or parochial school, or public playground, athletic field or park. The premises is within 1,000 feet of a residence, public school, and public playground, athletic field or park; and

WHEREAS, the Board has received the following reports:

- a. Report of Graviano & Gillis Architects & Planners, LLC dated November 11, 2022; and
- b. Report of Neglia Engineering Associates dated November 11, 2022; and

WHEREAS, the Board has heard testimony from the applicant’s experts, Michael Capo, architect; William Martin, planner; and Thomas Donohue, engineer; and

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

- a. The premises is developed with a one-story garage building presently used as a hand car wash and detail center with an office;
- b. The applicant proposes a change of use from an existing car wash facility and office building to a 2,500 square foot auto accessory installation garage with two bays and with new office and barrier free restroom within the existing structure, while exterior improvements are limited to new parking striping and directional arrow markings proposed on the existing pavement;

- c. The applicant proposes a permanent access easement giving access to the car wash;
- d. Based upon the testimony presented by the applicant's experts, the Board finds that the site remains appropriate for the conditional use despite the failure to conform to all of the ordinance's conditions;
- e. Based on the testimony presented by the applicant's expert, the Board finds that the relief 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 since the proposed use is a less intense use than what is previously conducted on site;
- f. The benefits of the application outweigh the detriments, if any;
- g. The Board finds that the testimony presented by the applicant's experts is credible and supports approval of the application;
- h. The applicant has shown sufficient hardship to justify the grant of the "c" variances requested;
- i. Based upon the testimony presented by the applicant's experts on the record, 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 utilize the site for an auto accessories installation garage at premises located at 1041 Paulison Avenue, Block 19.03, Lot 8, 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:**

- A. Subject to compliance with reports and recommendations of Neglia Engineering Associates and Graviano & Gillis;**
- B. Subject to recording of the permanent easement; and**
- C. 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 LOUIS DE STEFANO.

Seconded by: Comr SCOTT SOCHON.

**Affirmed by: Comrs Uri Jaskiel, George Silva, Scott Sochon, Michael Molner,
Louis DeStefano, Vice-Chrmn Gerard Scorziello and Chrmn Mark Zecchino.**

MEETING OF NOVEMBER 16, 2022.

RESOLVED by the **ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.,** that
the application of: **MARIA QUINTERO**
for premises known as: **9 Sheridan Avenue, Block 13.05, Lot 16**
be and the same is hereby: **GRANTED** use variance for an Herb-A-Life store with
a kitchen to prepare shakes.

Testimony concerning the aforesaid application was taken by the Board at its meeting on November 16, 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, Comr Michael Molner moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests use variance approval for an Herb-A-Life store at premises located at 9 Sheridan Avenue, Block 13.05, Lot 16, which premises are located in an M2 zone; and

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

- a. The applicant proposes an Herb-A-Life store with a kitchen to prepare shakes, and there will be no cooking at the premises;
- b. A use variance is required for a mixed use building;
- c. A conditional use variance is required for fast food;
- d. The applicant has satisfied the positive and negative criteria required for the grant of the use variance;
- e. The benefits of the application outweigh the detriments, if any; and

WHEREAS, the Board finds from the testimony presented that the proposal will be in accord with the intent and purpose of the master plan and the zone ordinance; and

WHEREAS, the Board further finds that there has been no testimony presented to show that the proposal will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for a Herb-A-Life store at premises located at 9 Sheridan Avenue, Block 13.05, Lot 16, be and the same is hereby approved and the use variance be and the same is hereby granted **SUBJECT TO THE STIPULATION THAT THERE BE NO COOKING AT THE PREMISES;** and further subject to such further governmental approvals as may be required by law 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 MICHAEL MOLNER.

Seconded by: Comr VICE-CHRMN GERARD SCORZIELLO.

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

MEETING OF NOVEMBER 16, 2022.

RESOLVED by the **ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.,** that
the application of: **MOCHA YEMEN CORPORATION**
for premises known as: **441 Crooks Avenue, Block 9.04, Lot 20**
be and the same is hereby: **GRANTED** use variance for a café/coffee shop, off
street parking, and approval to close-in rear balcony/patio area.

Testimony concerning the aforesaid application was taken by the Board at its meeting on November 16, 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, Comr George Foukas moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests use variance approval for a café/coffee shop, off street parking, and approval to close-in rear balcony/patio area at premises located at 441 Crooks Avenue, Block 9.04, Lot 20, which premises are located in an M3 zone; and

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

- a. The applicant requests approval to use the vacant commercial space in a mixed-use building for a café/coffee shop and to close the rear balcony/patio area;
- b. The coffee shop sells pastries and coffee and is less intense than the previous use as a restaurant at the site;
- c. The parking is existing and will be re-stripped;
- d. Signage will be as is presently existing;
- e. Coffee shops are not a permitted use in the M3 or PDO-2 District, and a D(1) use variance is required to occupy the vacant commercial space;
- f. The applicant has shown special reasons to address the positive criteria;
- g. The general purposes of zoning are advanced since the use is less intense than the previous restaurant use at the site;
- h. The premises is particularly suited;
- i. The negative criteria has been met in that the application can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the master plan and zone ordinance since the previous use was a restaurant and the proposed use is a less intense use as a café/coffee shop;
- j. The applicant has shown sufficient hardship to justify the grant of the variance requested;
- k. The benefits of the application outweigh the detriments, if any; and

WHEREAS, the Board finds from the testimony presented that the proposal will be in accord with the intent and purpose of the master plan and the zone ordinance; and

WHEREAS, the Board further finds that there has been no testimony presented to show that the proposal will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for a use variance for a café/coffee shop in a mixed use building and to close the rear balcony/patio area and variance for off-street parking at premises located at 441 Crooks Avenue, Block 9.04, Lot 20, be and the same is hereby approved and the use variance and variance as aforesaid be and the same are hereby granted **SUBJECT TO THE FOLLOWING STIPULATIONS:**

A. Subject to compliance with reports and recommendations of Neglia Engineering Associates and Graviano & Gillis;

B. DUMPSTER WILL BE ENCLOSED AS PER ALL RECOMMENDATIONS OF THE BOARD'S PLANNER, NICHOLAS GRAVIANO;

C. REFUSE PICK-UP WILL BE NO EARLIER THAN 7 A.M.;

D. PASSAIC COUNTY PLANNING BOARD APPROVAL; AND FURTHER SUBJECT TO further subject to such further governmental approvals as may be required by law 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 GEORGE FOUKAS.

Seconded by: Comr ZALMAN GURKOV.

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