

Minutes of a regular meeting of the Board of Adjustment of the City of Clifton, New Jersey, held on Wednesday, July, 2023. Acting Chrmn Gerard Scorziello 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. Acting Chrmn Gerard Scorziello announced the time, place, and form of notice as well as advising all applications 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. DAVID BRAID, ALESSIA ERAMO, MAUREEN O’CONNOR, ZALMAN GURKOV, SCOTT SOCHON, MICHAEL MOLNER, GEORGE FOUKAS, AND VICE-CHRMN GERARD SCORZIELLO.

ABSENT: CHRMN MARK ZECCHINO.

Acting Chrmn Gerard Scorziello advised all applications 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.

**REMANDED HEARING**

1.  
Use Variance;  
Variance;  
Site Plan

**JOHN RADER**, 817-825 Clifton Ave., Block 35.06, Lot 16 – B-C – The Application was previously heard and denied by the Board in 2020. Following an appeal to the New Jersey Superior Court, Law Division, Docket No, PAS-L-309-21, the Superior Court reversed the December 2, 2020 decision of the Board and remanded the matter back to the Board for additional proceedings. The Applicant has modified the previously submitted plans to eliminate prior deviations regarding landscaping and buffering requirements for fast food restaurant uses abutting residential zones. Pursuant to the revised plans, the Applicant seeks preliminary and Final Site plan approval with a conditional use variance to remove the existing, non-conforming MOONEY AUTO REPAIR GARAGE, to enlarge the building housing the existing DUNKIN DONUTS building and add an additional food service use, two vestibule entrances to the two stores, and construct a drive-through window to the existing building. All other nonconformities are pre-existing and do not require variances. DENIED DECEMBER 2, 2020 – COURT-ORDERED REMAND.

At the request of the attorney for the applicant, this matter was continued by the Board until the September 6, 2023 meeting of the Board with no further notice required and all timing requirements tolled until September 30, 2023.

**CONTINUED HEARINGS**

1.  
Use Variance;  
Variances

**522 VALLEY ESTATES LLC**, 522 Valley Road, Block 32.01, Lot 12 – Steep Slope Dist  
The Applicant seeks approval to demolish the existing building and construct a new residential complex consisting of six (6) townhouse/multifamily dwelling units, 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; 39.38 ft. proposed). The Applicant also seeks bulk variance relief pursuant to N.J.S.A. 40:55D-70(c) and design waiver/exception relief, including: (1) Number of stories greater than permitted (3 stories permitted; 4 stories proposed); (2) Open space consisting of less than 25 ft. and located within 10 ft. of side or rear Property lines proposed where same is not permitted; (3) Soil proposed to be excavated in excess of 30% and on the cliff face where same is not permitted; (4) Building coverage for over 30% slope area greater than permitted (0% permitted; 1.7% proposed); (5) Impervious surface (lot) coverage for 0-15% slope area greater than permitted (30% permitted; 31% proposed); (continued)

(6) Open space for over 30% slope area less than required (100% required; 98% proposed); (7) Ground sign proposed where same is not permitted; and (8) Ground sign setback from Valley Road less than required (40 ft. required; 17.4 ft. proposed). The Applicant also seeks any additional deviations, exceptions, design waivers, submission waivers, variances, use variances, conditional use variances, interpretations, de minimis exceptions to the State of New Jersey Residential Site Improvement Standards, 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.

Benjamin Wine, Esq., of Prime & Tuvel LLC, with offices at 1 University Plaza Drive, Suite 500, Hackensack, New Jersey 07601, appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: Osvaldo Martinez, OMLK Architects, 66 Willow Avenue, Hoboken, an architect.

The following objectors and interested parties were present and sworn: Joseph Holzli, 75 Moutainside Terrace; Ines Armesto 43 J Street; Fred Hrinnk, 534 Valley Road; Sunil Raval, 514 Valley Road.

A hearing regarding this Application was previously commenced before the Board during its March 15, 2023 and June 21, 2023 meetings and continued to the July 19, 2023 meeting. Prior to the June 21, 2023 meeting, the Board received of a second set of revised Plans which further modifies the original scope of the Project and the variances requested.

Subsequent to the March 15, 2023 meeting, the Board is in receipt of: Engineering Review No. 4 from its Engineer, Neglia Engineering Associates dated July 18, 2022, revised October 14, 2022, revised March 13, 2023, and last revised June 9, 2023; Planning Review No. 4 from its Planner, Graviano & Gillis Architects & Planners LLC dated June 19, 2023; revised Environmental Impact Statement dated June 16, 2023 from the City of Clifton Environmental Commission; and Plan Review dated June 21, 2023 from Fire Prevention Bureau.

Mr. Wine offered a brief summary of the Project and the prior testimony that was taken. He advised that he would offer architectural testimony and, if time permitted, testimony of a traffic engineer.

Mr. Martinez offered architectural testimony. The façade of the construction will be off set so as to stagger the exterior of each unit. The façade of the units will be made of different materials. At the ground level, a gray brick will be used and an aluminum entry door and wood plank garage door; on the second level, there will be glass windows and stucco finish; the third floor will include a small patio and stucco finish; as well as penthouse.

Mr. Martinez explained the floor plans of each unit. Each unit will have a 2 car garage on one side and on the other is a mechanical utility closet. On the second level, there is 830 sq ft interior and an open living space with kitchen, living area, and half bath. At the rear of the second level, there is a rear deck slash patio. On the third level, there are 3 bedrooms, 2 baths, and a small balcony off of one bedroom. On the penthouse level, there are 300 sq ft with a roof access stair that may be used as a flex space such as a home office or gym. There is also a 300 sq ft roof deck in the front. In the back there are the rear HVAC units for the property.

Mr. Martinez stated that each town house is approximately 39 ft as opposed to the original 43 ft height. In the ground level there are 9 ft ceilings; there are 10 ft ceilings in the second and third floor. The penthouse is setback 14 ft from the front of the building and 11 ft from the rear of the building.

Mr. Wine asked Mr. Martinez follow up questions. Mr. Martinez provided testimony why a penthouse level was added. He explained that the ground level is primarily a garage and storage space. He explained that the flex space in the penthouse would allow residents to have the ability to expand their growing families. He explained that it is not usually seen from grade level due to its setback from the property. Mr. Martinez stated that the flex space was opted for as opposed to a basement to mitigate disruption to the property and remain within the building footprint.

Acting Chrmn Scorziello asked if the six units were identical and their square footage. Mr. Martinez confirmed that they were identical. Comr. Foukas advised that pursuant to the plans, the units were about 2700 sq ft. Mr. Martinez confirmed the sq ftage was approximately 2730 sq ft including the garage.

Comr. Sochon asked about building height. Mr. Martinez stated that the second floor and third floor have 10 foot ceilings which makes the property more enjoyable as they are narrow units. Comr. Sochon asked if the applicant would consider 9 foot ceilings. Mr. Martinez stated that the applicant sought to utilize as much glass as possible, which would be difficult if there were 9 foot ceilings.

Comr. Molner asked about the second foot rear and its relation to ground level. Mr. Martinez confirmed that the second floor back is ground level. Comr Molner asked about the height of the wall around the airconditioning units on the penthouse level. Mr. Martinez stated that the wall would be pursuant to code, which was approximately 24 inches. He stated that the wall would provide some noise shelter and minimization. He also stated it was common for HVAC condensing units to be on the roof.

Nicholas Graviano of Graviano & Gillis, the Board's planner, asked about additional vegetation. Mr. Martinez stated that the plans had attempted to address the issue, but that there would be no problem adding more.

Interested party Ines Armesto asked if the penthouse would be a bedroom. Mr. Martinez stated it was being provided as a flex space. Ms. Armesto asked what would prevent someone from turning the space into a bedroom and creating a fourth bedroom. Mr. Martinez stated that there is no closet up there. Ms. Armesto stated that the design is somewhat large and it could be modified into a bedroom if a resident wanted to do so. Mr. Martinez stated that while there is a small bar sink, there is no bathroom. Ms. Armesto asked about the building height. Mr. Martinez stated that 35 feet is allowed by ordinance. The average building height is 38.3 feet above grade. Ms. Armesto asked if a 4<sup>th</sup> floor is permitted and if a variance is required. Mr. Martinez stated that it is not a full floor that houses a roof stairwell. He stated that it was setback from the front and rear which limits the ability of the level from being seen. Mr. Martinez says there is a parapet roof that masks some of the height of the penthouse level.

Mr. Graviano provided clarification regarding the variances requested including a d(6) height variance and a height variance related to the number of stories.

Interested party Sunil Raval asked if heating and cooling will be provided to the penthouse level. Mr. Martinez stated that they would. Mr. Raval asked if there was gathering space in the rear of the property. Mr. Martinez confirmed there would not be.

Interested party Fred Hrinnk asked about the wording of variances. He also asked about the 10 foot ceilings as they are not the norm in Clifton. Mr. Wine stated that Mr. Martinez provided testimony regarding the windows. Mr. Martinez stated that changing the windows would change the intent and the design of the property. He stated that if the units could be made wider, the change in windows would not create the same impact. Mr. Hrinnk asked about the rear patio. Mr. Martinez stated that there is a small patio area in the rear of the property on the second level. Mr. Hrinnk asked about the design of the property and whether it has to fit in to the neighborhood. Mr. Wine stated that a building owner has broad discretion. Mr. Hrinnk asked about the penthouse level and the ability to see the level. Mr. Martinez stated that not much is being seen. He stated that if there was not a penthouse level, there would still be a stair bulkhead, which would still be seen. Mr. Hrinnk asked about the setback from the side and how this would impact the project visually.

Interested party Joseph Holzli asked about the height variance and how it differs from the ordinance. Mr. Martinez stated that the applicant is exceeding the ordinance by 4 feet 5 inches. Mr. Holzli asked about the number of windows on the left hand side. Mr. Martinez stated that 3 windows are proposed, and the Board's Planner's report contains a comment requesting additional windows. The windows may open in some cases. Mr. Holzli asked about the height of the property when compared to J street. Mr. Martinez stated that J street is graded very similarly to the property, the height of the building would not be changed. Mr. Martinez stated that the construction will go into the slope. He stated it would be similar height wise.

Mr. Graviano stated that in a hypothetical situation, if an applicant had a pitched roof, the height would be similar, if not greater, than what the applicant in this case is seeking. The test is whether or not the site can accommodate the additional level.

Comr. Molner asked about the impact of the slope on the home and second level. Mr. Martinez stated that at the rear of the property, the building will appear as two stories due to the slope of the road. The drawings are taken as of a flat grade, which is not the case of the actual site. At the rear, the property will be perceived only as a 2 story home.

Mr. Wine stated that the remaining witnesses include the planner and traffic engineer.

At the request of the Board, the matter was continued until August 16, 2023 with no further notice required.

2. **MAIN FOOT AND ANKLE LLC**, 1610 Main St. & 80 W. 2<sup>nd</sup> St.,  
Variances; Use Block 9.07, Lots 25 and 36 – B-C (Lot 26) and M-2 (Lot 25) – The  
Variance; Site Plan applicant is proposing a consolidated subdivision of 1610 Main Avenue  
and 80 West 2<sup>nd</sup> Street. The applicant further proposes a 3-story mixed  
use building for medical offices and a retail pharmacy. A D1 use variance  
is requested in addition to any and all other variances as may be required.

Glenn Peterson, Esq., of Peterson & Peterson, 1037 Rt. 46 E, Suite 105, Clifton, New Jersey appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: Almutasemb Sehada, of Main Foot and Ankle LLC, 1040 Main Street, 2<sup>nd</sup> Floor, Paterson, New Jersey 07503, the applicant; Nassir Almukhtar, of Heritage Madison Architecture LLC, 1171 Madison Ave., Suite 201, Paterson, New Jersey 07503, an architect; Thomas Donohue, Donohue Engineering, 210 Summit Avenue, Montvale, New Jersey an engineer; William J. Martin, WJM Architect, 25 Boulevard, Westwood, New Jersey, a planner.

The following objectors and interested parties were present and sworn: Jayla Lassiter, 70 West Second Street; Kirk Lassiter 70 West Second Street; and Coral Silfa, 79 West Second Street.

This matter arises from an application which was originally scheduled to be heard by the Board during its February 1, 2023 regular meeting. At the request of the applicant, the matter was continued on multiple occasions. Revised plans were provided to the Board subsequent to the original submission of the application.

The Board is in receipt of: Engineering Review No. 2 from its Engineer, Neglia Engineering Associates, dated January 20, 2023 and revised June 30, 2023; and Planning Review No. 1 from its Planner, Graviano & Gillis Architects & Planners LLC dated June 25, 2023.

Mr. Peterson provided an opening statement. The property is on two lots where there is an existing building and a rear parking area. The application has been revised and now only proposes 2 hours.. Mr. Peterson asked the applicant about the hours of operation and the refuse on the property. The applicant stated that there are 4 employees including himself.

Nassir Almukhtar, of Heritage Madison Architecture LLC, testified as the applicant's architect. Mr. Almukhtar stated that there is an existing vacant structure on the property, a drive through, and a small parking lot. Mr. Almukhtar stated that there is a small residential structure on the site as well. Mr. Almukhtar stated that there will be an addition on the first floor, which has an existing brick façade and stucco and glass on the vestibule. The addition would match the same façade materials as the existing building. The second floor addition will be added on the left side of the property. The upper portion would have metal paneling and the lower portion would match the existing property. Mr. Almukhtar stated that the average height is 28 feet which is in compliance with the ordinance.

Mr. Almukhtar provided testimony regarding the floor plans of the existing property and the additions. Most of the interior will be demolished. The exterior walls and windows will be preserved. There is a common hallway which will connect two doctors offices, as well as common stairwells. One doctors office would have 6 exam rooms, waiting area, reception area, and two accessible restrooms. The second doctors office would have 4 exam rooms, waiting area, and reception area. On the second floor, there would be 2 medical offices.

Acting Chrmn Scorziello asked about the number of exam rooms on the second floor offices. Mr. Almukhtar stated one office would have 7 exam rooms and the other would have 4.

Mr. Almukhtar stated that the applicant intends to meet all standards of the overlay zone.

Comr. Foukas asked about how the properties would be merged if they are different grades. Mr. Peterson deferred to the architect.

Comr. Braid asked if there will be 4 doctors on site. Mr. Peterson clarified that there will be one doctor on each floor.

Nicholas Graviano, of Graviano & Gillis, the Board's planner, provided clarification regarding the nonconforming use and the elimination of same.

Interested Party Jayla Lassiter stated that the property is on a one way street. She asked about whether there will be ample parking for the number of exam rooms to be created. Mr. Peterson stated that an appropriate witness to answer such question will be provided at a later time. Ms. Lassiter asked and expressed concern about the dumpster. Mr. Peterson reserved the matter for the engineer.

Mr. Donohue provided engineering testimony. He described the current property and the different lots which are the subject of this application. The corner lot exits on to Main Avenue. Mr. Donohue explained that there is currently a nonconforming use due to the existence of the residential property. Mr. Donohue also explained there are preexisting nonconforming setbacks. Mr. Donohue provided testimony regarding trees to be added and the addition of a white PVC fence. Mr. Donohue stated that a dumpster area which will be enclosed and will be adjacent to the existing building, and a 5x5 monument sign, 2 ADA parking spaces with access to the existing entrance way. Mr. Donohue stated that 46 parking spaces are required, and the applicant is proposing 5 EV parking spaces. With that, there is a reduction to the requirement of the number of spaces, but the applicant still seeks a variance.

Mr. Donohue stated that the applicant seeks d(1) and (c) variances in order to construct a first and second story addition and an expanded parking lot. The d(1) variances are sought due to the fact two uses on one commercial lot are not permitted, and the type of uses proposed are not permitted in the zone. The (c) variances sought include parking within 10 feet of the property line; reduction in the number of proposed parking spaces; side yard setback; and maximum building height. Mr. Donohue that the applicant is proposing a landscape island in the parking area. Mr. Donohue provided testimony regarding the refuse and its location in comparison to neighboring properties.

Mr. Donohue stated that the proposed parking lot will slope from the existing property to the east. There will be an infiltration basin underneath the parking lot. Roof runoff will be directed to the infiltration basin. The basin is sized to support a 100 year storm. There will be a retaining wall installed at the rear of the parking lot. Mr. Donohue provided testimony regarding lighting and landscaping. The applicant will install arborvitaes on the right side of the property and boxwoods along West Second street. Along Main Avenue, a shade tree will be installed.

Mr. Donohue provided testimony regarding traffic flow and accessibility of emergency vehicles.

Acting Chrmn Scorziello asked about the number of parking spaces. Mr. Donohue stated that 32 total spaces will be provided.

Comr. Molner asked about the rear retaining wall and whether the fence will be on top of the wall. Mr. Donohue provided testimony that the fence will be in front of the retaining wall.

Comr. Eramo asked about the trees being removed and whether a tree removal table exists. Mr. Donohue stated that the trees to be removed are noted on the plans. Comr. Eramo asked if the applicant is prepared to conform with the Clifton street ordinance, but Mr. Donohue stated he was not. Comr. Eramo asked about trees in the parking lot. Mr. Donohue provided testimony regarding the landscape island and bordering plants. Comr. Eramo asked about the number of parking spaces and what use this is calculated for. Mr. Donohue stated that the calculation is based off of a medical use, which is then reduced by the installation of EV spaces. Comr Eramo asked about the setbacks. Mr. Donohue stated that the setback for the addition is calculated based on the nonconforming residential use.

Acting Chrmn Scorziello asked about if Mr. Donohue had received and reviewed the Neglia Engineering report. Mr. Donohue stated that the applicant had reviewed and would comply with those comments, including 5.4 which addresses trees and landscaping.

Interested Party Kirk Lassiter asked about the height of the fence and the trees. Mr. Donohue stated that the fence will be 6 foot fence and the trees. Mr. Lassiter asked about the lighting and how it would impact neighbors Mr. Donohue stated that the lights proposed are pointing straight down. Mr. Lassiter asked dumpster and what happens when trash is not picked up. Mr. Peterson stated that the dumpster comes once a week and the applicant, as a good citizen, will do its best to police the trash removal.

Mr. Graviano stated that the application might benefit from establishing a trash pickup time. Mr. Peterson stated that the applicant would commit to a pickup time between 8 and 9 am.

Comr. Foukas asked Interested Parker Lassiter about his experience with traffic based on living in the area.

Comr. Braid asked about other commercial vehicle traffic. Mr. Peterson stated that no large commercial vehicles will be traveling.

Ms. Sulfa asked about congestion in the entrance and exit and what can be done to prevent traffic on the street. Mr. Donohue stated that there will be some congestion by nature of traveling patrons, but it should not create street congestion. Ms. Sulfa asked about biohazard disposal. Mr. Peterson stated that he will recall the owner to provide more information. Ms. Sulfa asked about ADA spaces and whether that's enough. Mr. Donohue stated that the number of spaces provided are what is required.

Acting Chrmn Scorziello asked if it is necessary for the applicant to exceed what is required when it comes to ADA parking. Mr. Peterson stated that the applicant will discuss the issue.

Comr. Eramo asked about the number of exam rooms and number of employees and parking spaces. Mr. Donohue stated that there will be approximately 29 public parking spaces.

Comr. Sochon asked if surgeries will take place on the property. Mr. Peterson stated no.

Comr. Molner asked about the number of employees. Comr. Gurkov asked for similar follow up regarding the operations of the business. Mr. Peterson stated he would recall the applicant.

Comr. O'Connor asked what kind of business will be on the second floor. Mr. Peterson stated that it would be a medical doctor, but unknown type.

Comr. Molner asked about ADA accessibility to the second floor. Mr. Peterson stated that there is an elevator.

Mr. Peterson recalled the applicant. The applicant provided testimony regarding separate pickup for biohazard. On average, they are called once a month. There is not a high frequency as hazardous materials are not often collected. The applicant stated that he would be willing to provide additional ADA spaces, such as one or two more spaces. The applicant stated that in his experience, there aren't usually that many handicap individuals coming in at the same time. His typical patients are those seeking foot care, and children.

Comr. Molner asked about the second floor and the type of doctors. The applicant stated that it was likely that one office would be filled by a physical therapist, but the second office was unclear. Comr. Molner expressed concern because it is unknown what the staffing needs of the other offices, pick ups, and parking needs.

Comr. Gurkov asked if there is a waiting room and how many seats are proposed in the waiting room. The applicant stated that there is a waiting room but he does not know the number of waiting room seats. The applicant stated that in the current office there are 15 current chairs for one doctor, with an existing 3 exam rooms. He states he says approximately 5 patients an hour. The applicant provided testimony regarding the estimated number of patients being seen at one time.

Mr. Peterson stated that the applicant hears the Board concerns and would consider revising the interior layout of the plans in advance of the Board's August meeting.

Comr. Braid asked about the operating hours. The applicant stated that the hours are 9-5 six days a week. He stated that he has another office in New York. He stated he anticipated that he would be present at this location 3 days a week.

Comr. Gurkov asked about the size of the applicant's other offices. He stated that he has the ability to see about 40 patients a day in one location.

Interested Party Coral Sulfa asked about the operating hours of the other doctors in the building. The applicant stated that he is unsure of the schedule of other doctors. Mr. Peterson stated that the applicant would consider a stipulation for the entire building. MS. Sulfa asked if staff can remain after hours. The applicant stated that he may stay approximately 1 hour to handle paperwork.

Comr. Foukas stated that the proposed expansion may be too big and it could be problematic if he no longer owns the property.

Interested Party Jada Lassiter asked if the applicant has any idea who he will rent to on the second floor. Mr. Graviano stated that the applicant has stipulated that the use on the second floor will be a medical use and that the calculated parking is based on that use. Acting Chrmn Scorziello stated that the Board is evaluating whether the proposed use is an overuse.

At the request of the Board, the matter was continued until August 16, 2023 with no further notice required.

3. **SASAN IMANI**, 32 Lorrie Lane, Block 71.03, Lot 24 – RA3 – The applicant is proposing a second-floor expansion and 3rd story addition which requires the following variances, side yard setbacks proposed at 4.9' and 4.5' where 6' is required, combined side yard setback proposed at 9.4' where 16' is required, proposing conversion of attic to 3rd story where 2 stories are permitted.
- Variances

Due to the absence of the Commissioners present during the original hearing of this application, this Matter was continued by the Board until the August 16, 2023 meeting of the Board.

### NEW HEARINGS

1. **MOHAMMAD JUBRAN**, 435 Lakeview Avenue, Block 1.10, Lot 35 –  
Variances; Use B-C – The applicant requests 1] Approving a variance as to Clifton  
Variance Ordinance, Zoning Law, Article IV, Section 461-13.1 and allowing the  
three-fixture full bathroom, containing a stall shower, sink, and toilet,  
located in the basement of this two-family residential house to be  
approved, remain in the basement and be maintained where said  
Ordinance does not permit this bathroom. 2] Approving a variance as to  
Clifton Ordinance, Zoning Law, Article IV, Section 461-64, in order to  
allow the attic, which is part of this two-family house, connected to the  
house by way of a hallway, but not directly connected to the second floor  
apartment, and not used for sleeping, cooking, sanitary facilities, nor  
everyday living, to be sheet rocked and finished to be used for purposes of  
storage. The attic will not be connected to any heating and cooling  
systems, nor will the attic have any kitchen, bathroom or electrical  
system. 3] Allowing the issuance of the Certificate of Occupancy for the  
first floor apartment and for the second floor apartment. 4] Granting all  
other relief, waivers, variances, and approvals that may be required or  
may be raised during the course of the hearing..

Gary Cohen, Esq., with offices at 180 Main Avenue, Passaic, New Jersey 07055, appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony was Mohammad Jubran, 435 lakeview avenue. There were no interested parties or objectors.

Mr. Cohen provided an opening statement. He stated that the city will not provide Certificates of Occupancy because the properties on the first and second floor because it is not connected except through a common hallway.

Mr. Cohen explained that the applicant hired a contractor to do work. The applicant believed that the contractor received the required permits. The contractor did not do so. There were fines assessed, and those fines have been resolved. The applicant now seeks to remedy the issue to ensure legality of the property and permit occupancy. The basement is connected through a common hallway. Mr. Cohen stated that he understands the Board and municipalities concern regarding basement dwelling units.

The applicant stated that the home is very small and the basement is key to the overall use of the house. The first floor is occupied by the applicant's parents. The applicant's father has a serious debilitating medical condition.

Mr. Cohen offered the following exhibits:

Exhibit A-1 Medical Condition Records

Mr. Cohen explained that the Board must consider whether these units are being used as a dwelling units or units to accommodate the medical needs of his father. The bathroom in the basement addresses the father's hardship of accessing and using stairs. Mr. Cohen stated that the applicant will ensure compliance with all building codes. The applicant stated that there is a doorway and access to outdoors which is never used.

The applicant stated that the attic has no heating and cooling, and that the basement has no kitchen. Mr. Cohen explained that Section 8 inspects this building annually. Mr. Cohen explained that he understands the Board's hesitance but that there are extenuating circumstances which should be considered. The applicant is willing to consider any and all stipulations or requirements.

The applicant provided testimony that he is not looking to expand any construction or any other work. The applicant stated that the basement bathroom has a stall shower as the applicant's father cannot step into the tub on the floor.

Comr. Foukas stated that the Board previously heard a similar application with medical impacts. Comr. Foukas stated that he will abstain from the application as he has sympathy for the application, but his job is to be objective. Mr. Cohen stated that the Board's job is to consider the special circumstances of the applicant.

The applicant has owned the property since March 2019. His family moved in in May 2022. Previously, the property was occupied by tenants. The applicant stated that the first floor is smaller than 800 sq ft. The basement space expands the small space. Utilities are stored in the basement. The basement floor has laundry. The applicant stated that there is a Section 8 tenant also living at the property. The applicant stated it is not his intention to use the basement as a separate dwelling.

Comr. Braid asked about the bathroom on the second floor. The applicant stated that the basement has a three fixture bathroom. Upstairs the bathroom accommodates the rest of the home and a stall shower is not feasible. Comr Braid asked about the outdoor door. The applicant confirmed that the door exits outside, but that it is a small door and it is not the main entrance to the property.

Comr. Molner asked if the applicant would be willing to close up the outdoor door. He expressed concern that the variances go with the property. The applicant stated that he would be willing to do so.

Comr. Sochon asked about the medical condition of the father and whether he can use stairs.

Comr. O'Connor asked about the other tenants of the property. The applicant stated that there are 4 individuals living at the property, but that he has a large family that visits frequently. The applicant stated he did not believe that a stall shower was safe for visiting children.

The applicant offered a brief closing statement. Mr. Cohen stated that the arguments are compelling and it is within the Board's power to help a person in need rather than focus on the legal impacts of a potential future owner. Mr. Cohen stated that the Board has the ability to institute reasonable stipulations on the use.

After a review of the testimony, Comr. Michael Molner moved to approve the application with the stipulations of permanently closing the basement door and instructed the Counsel Secretary to prepare the proper Resolution. The motion was not seconded. Therefore, the Motion failed.

After a review of the testimony, Comr. Scott Sochon moved to deny the application instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr. Zalman Gurkov, on the grounds that this is not the venue to change policy. Voting in favor of the Motion to deny the application were Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, and Acting Chrmn Gerard Scorziello. Voting against the denial of the application was Comr. Michael Molner. Abstaining from the vote was Comr. George Foukas. By a five to one vote with one abstention., the motion carried and the application was denied in the form as more fully appears at the end of these Minutes.

2. **LIHUA ZHOU**, 605 Van Houten Avenue, Block 43.02, Lot 5 – B-C –  
Use Variance The applicant is requesting a use variance to change the present use at the subject location to a health spa which will include massage services. The new use is a conditional use in the zone that doesn't meet all the conditional use requirements.

Dominick Iannarella, Esq., with offices at 139 Lakeview Avenue, Clifton, NJ, appeared on behalf of the applicant. Present and sworn was on behalf of the applicant was Vito Marcoliese. There were no interested parties or objectors.

Mr. Iannarella offered a summary of the property. He stated that the property currently houses a daycare center and a salsa studio in the basement but that the business will be changed to a health spa.

Mr. Marcoliese stated that he works with the applicant. The applicant operates another health spa location in Nutley. He stated he is involved in construction. The floor plan will contain treatment rooms for various services. The applicant anticipates 3 employees who will use public transportation. The applicant is aware that there is local municipal parking in the area. The business is entirely appointment based. In some occasions, walkins can be accommodated by it is rare. The hours of operations will be 10 am to 10 pm similar to the other application, but may be modified as required by the Board. The business will operate 7 days a week. The applicant stated that garbage is not frequent and would not increase from the prior use.

Comr. Braid asked if there were any shower facilities. The applicant stated no.

Comr. Molner asked about whether the use will be used for the entire first floor. The applicant confirmed that health spa will be on the first floor. The daycare is no longer on premises.

Mr. Iannarella stated that the building has been in place for an extended period of time. There is significant street parking. This is a beneficial use and the applicant operates a successful business elsewhere. The use fits within the neighborhood and the applicant would be an asset to the community. There is no substantial detriment to the city or the Master Plan.

After a review of the testimony, Comr. Zalman Gurkov moved to approve the application and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr Maureen O'Connor. Voting in favor of the Motion to approve the application were Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, and Acting Chrmn Gerard Scorziello. By a seven to zero vote, the motion carried and the application was approved in the form as more fully appears at the end of these Minutes.

3. **10 JAMES ST LLC**, 10 James St., Block 4, Lot 11 – RB3 - The applicant  
Variances is requesting variance to keep already installed 6' electric fence in the front yard of the property where 4' 50% open is permitted.

Dominick Iannarella, Esq., with offices at 139 Lakeview Avenue, Clifton, NJ, appeared on behalf of the applicant. Present on behalf of the applicant was managing member Alex Milich.

There were no interested parties or objectors.

Mr. Iannarella stated that the applicant seeks relief for a 6' ft 50% open fence where the zone permits 4' 50% open. The lot is used as a rear yard to an adjacent property.

Mr. Milich stated he has owned the property for 12 years and has used it as a rear yard to his café. On the property there is an existing garage which is used for personal storage. The applicant seeks to retain his previously installed fence for safety reason as he previously experienced a break in on the property. There is no house on the property and the garage is 60 feet back. The garage stores his car and materials for the restaurant. He has had issues with people going on the property.

Comr. Gurkov asked if the applicant used a contractor. The applicant stated he did use a contractor who believed this was permitted. He stated he believed he was able to do 6 feet and was mistaken.

Mr. Iannarella stated that the applicant uses the lot as a back yard, not a front yard, which creates the need for this use. The MLUL focuses on safety. The applicant is seeking to forward that intent. There is a beneficial use and there is no substantial impact to the zone plan.

After a review of the testimony, Comr. Michael Molner moved to deny the application on the grounds that the fence is still in the front yard and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr Scott Sochon. Voting in favor of the Motion to deny the application were Comrs. Maureen O'Connor, Scott Sochon, and Michael Molner. Voting against the Motion to deny the application were Comrs. Alessia Eramo, Zalman Gurkov, George Foukas and Acting Chrmn Gerard Scorziello. By a three to four vote, the motion failed.

After a review of the testimony, Comr. Zalman Gurkov moved to grant the application on the grounds that the applicant presented a unique application and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr George Foukas. Voting in favor of the Motion to approve the application were Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, George Foukas, and Acting Chrmn Gerard Scorziello. Voting against the application to approve were Comr. Scott Sochon and Michael Molner. By a five to two vote, the motion carried and the application was approved in the form as more fully appears at the end of these Minutes.

- |                           |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. Variances;<br>variance | Use | <p><b>ALEX MILICH</b>, 243 Parker Avenue, Block 4.16, Lot 34 – PD-1 – The applicant is proposing to construct a 3-story mixed use building consisting of a bakery with an administrative office and a residential apartment. The applicant requests the following variances for this lot: 1. Lot area will be 1,494 sq. ft. which is already existing where 2,500 sq ft is required. 2. Lot width will be 13.13 ft which is already existing where 25 ft is required. 3. The number of stories will be 3 where 2 are required and 1 is existing. 4. The lot coverage will be 91.3% where 90% is required and 58.7% is existing. 5. The use will be changed from an ice cream store to a mixed-use building with a bakery use and a residential apartment, and any other variances or waivers that the board may require.</p> |
|---------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Dominick Iannarella, Esq., with offices at 139 Lakeview Avenue, Clifton, NJ, appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: Michael Capo, of Michael Capo Architect LLC, with offices at 1046 Rt 46 E., Clifton, New Jersey 07013, an architect; Thomas Donohue of Donohue Engineering, LLC, with offices at 210 Summit Avenue, Suite C3, Montvale, New Jersey 07645, an engineer.

There were no interested parties or objectors.

The Board is in receipt of: Engineering Review No. 1 from its Engineer, Neglia Engineering Associates dated July 13, 2023; Planning Review No. 1 from its Planner, Graviano & Gillis Architects & Planners LLC dated July 7, 2023.

Mr. Iannarella explained the application. The first floor will contain a mixed use for bakery use and a residential apartment. There are 5 different variances requested.

The applicant stated that he wants to create a bakery to make his own bread and pastries for the community. He wants to bring some traditional French food to the community. The bakery will also have a small counter area with a small seating area, but the primary business will be take out. The business will be a small café and it is needed in the location. The hours of operation will be from 8 am to 9pm, 7 days a week. The apartment will be created as there are some staff who work early in the morning and this would accommodate those people. There are 3 employees for the overnight, and another 2 people will be working the counter.

The applicant addressed the Graviano & Gillis report related to signage. The signage will be a back lit sign. The applicant will comply with the requirements of the Graviano report.

Acting Chrmn Scorziello asked about trash pickup and removal, employee parking, and deliveries. The applicant states that there is one delivery per week as there is significant freezer space. The applicant provided testimony regarding the traffic at his other location. The capacity is approximately 30-40 people, but the expected capacity at any one time is less. There is also municipal parking behind the building.

Comr. Braid asked about the residential component and parking. The applicant stated that the employees living there do not have cars. If they did, they would park in the neighborhood on James street.

Comr. Foukas asked about parking and hours of operation. The applicant stated that employees will come earlier but operatio will only occur beginning at 8 am.

Michael Capo, of Michael Capo Architect LLC, testified as the applicant's architect. The applicant is proposing to add a rear 3 story addition and 2 stories on top of the existing building. The first floor will be entirely gutted. There will be a basement stairwell access. A new stairwell will be added to access the second floor. The second floor will have a second seating area. On a portion of the second floor, and the third floor, is the apartment. The apartment has a small office and fire escapes. The third floor will contain the bedrooms and the main bathroom as well as a small laundry area. The exterior has been revised to comply with the terms of the professional's design reports.

Mr. Capo also provided testimony regarding lighting. There is an existing canopy out front and the applicant will install some lighting on the canopy as well as on the rear doors. The signage will be back lit and illuminated.

Mr. Capo offered the following exhibits:

Exhibit A-1 – Letter from 239-241 Parker Avenue LLC

Comr. Eramo asked if the building will be attached to the neighboring buildings. Mr. Capo confirmed that it would. Comr. Eramo asked about how the buildings will be connected if there are windows and fire escapes on the building. The applicant has contacted the owner of the property next door. The adjacent property owner has confirmed that he supports the application and understands that certain work will impact his property. The adjacent applicant does not object. The applicant stated based on the plans, any work done on that property would not require any variances or come before the Board.

Comr Foukas asked about the considerations of the fire department.

Thomas Donohue, of Donohue Engineering, offered engineering testimony for the applicant. The property is neighbored by mixed uses on three sides, and a municipal parking lot on the fourth. There is a private fence along the rear of the property. The existing pavement in the rear of the building will be removed. A new refuse area will be constructed. There are existing non conformities and variances are requested for lot area, lot width minimum, lot coverage, and number of stories. ADA spaces are provided through the municipal lot. With the additional work, new utilities will be constructed. Roof leaders are directed to the rear of the building and a seepage pit will be installed to accommodate runoff requirement. There are no lighting or landscape items proposed except as noted in the Board's professional comments which the applicant is willing to comply.

Mr. Iannarella asked about other 3 story buildings in the area. Mr. Donohue commented that there are other 3 story buildings in the area.

Mr. Graviano thanked the applicant for making the exterior building more traditionally appealing. He stated that the 3 story application is consistent in the space. Catch all language would be provided and the applicant could not secure permits absent compliance with Building Codes.

Mr. Iannarella stated that the variances requested are sought to ensure that the property complies with similar adjacent properties. This type of use is supported by the area. The applicant is a successful business owner in the area and this facilitates both the MLUL and zone plan. The lot is being rehabilitated. There will not be a substantial disruption to the area. The apartment use assists with the operation of the business.

After a review of the testimony, Comr. Scott Sochon moved to approve the application and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr Maureen O'Connor. Voting in favor of the Motion to approve the application were Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, and Acting Chrmn Gerard Scorziello. By a seven to zero vote, the motion carried and the application was approved in the form as more fully appears at the end of these Minutes.

### **COMMUNICATION**

Acting Chrmn Scorziello stated that the next order of business would be the review of the Communications set forth on the Agenda requesting an extension of variance approval for the application of AVI & BAYLA GELLER, 15 East Parkway, Block 58.05, Lot 8, granted June 15, 2022, adopted July 20, 2022.

Comr. Michael Molner moved to grant a 90 day extension. The motion was seconded by Comr. Scott Sochon with the unanimous approval of the entire Board.

### **RESOLUTIONS**

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

1. Upon motion made by Comr. Scott Sochon, seconded by Comr. Zalman Gurkov, and affirmed by Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution DISMISSING WITHOUT PREJUDICE the application of 833 CLIFTON AVE PARTNERS, LLC for preliminary and final site plan approval and related variances to construct a 3 story residential apartment building containing 26 one bedroom units for premises located at 833 Clifton Avenue, Block 35.07, Lot 1, was adopted.
2. Upon motion made by Comr. Michael Molner, seconded by Vice Chrmn Gerard Scorziello, and affirmed by Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of DHF REALTY LLC for bulk variances, use variance, and site plan approval to store 148 new and used motor vehicles in connection with an offsite automobile dealership as well as onsite fleet maintenance for premises located at 618-630 Rte 46, Block 24.05, Lot 1, was adopted.
3. Upon motion made by Comr. Michael Molner, seconded by Comr. Maureen O'Connor, and affirmed by Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of KRISTY & ORLANDO MELENDEZ for a variance to retain an already existing 5' solid fence where 4' 50% open is required for premises located at 2 Orange Street, Block 91.13, Lot 12, was adopted.
4. Upon motion made by Comr. Zalman Gurkov, seconded by Vice Chrmn Gerard Scorziello, and affirmed by Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of GEZIM NEZIRAJ & VALBONA SECI for a variance permitting construction of a side yard deck which expands a nonconforming 3 family use for premises located at 38 Speer Ave, Block 43.06, Lot 20, was adopted.

5. Upon motion made by Comr. Scott Sochon, seconded by Comr. Maureen O'Connor, and affirmed by Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of ANGEL VALDEZ for a variance to construct a rear addition to existing home which provides for 8' separation between home and garage where 10' is required for premises located at 57 Speer Ave, Block 43.15, Lot 6.
6. Upon motion made by Comr. Zalman Gurkov, seconded by Comr. Maureen O'Connor, and affirmed by Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of SOMERSET PLACE, LLC for a conditional use variance and bulk variances in order to add a level to the existing two story building and expand offices and warehouse use for premises located at 15 Somerset Place, Block 56.01, Lot 11.01.
7. Upon motion made by Vice Chrmn Gerard Scorziello, seconded by Comr. Michael Molner, and affirmed by Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of iLEARN SCHOOLS INC for preliminary and final major site plan approval, conditional use variance, and bulk variances related to the expansion of the existing elementary school building for premises located 400 Mt. Prospect Ave., Block 55.03, Lot 1.

Thereafter, upon motion made by Comr. Scott Sochon, seconded by Comr. Maureen O'Connor the Minutes of the June 21, 2023 regular meeting were adopted with the unanimous approval of the entire Board

Upon motion made by Comr. Zalman Gurkov, seconded by Comr. Michael Molner, the Minutes of the June 28, 2023 special meeting were adopted with the unanimous approval of the entire Board.

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

Respectfully submitted,

  
JACLYN M. MORGESE, ESQ.  
COUNSEL SECRETARY

**MEETING OF JULY 19, 2023.**

**RESOLVED** by the **ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.**, that the application of: **MOHAMMAD JUBRAN**  
for premises known as: **435 Lakeview Ave., Block 1.10, Lot 35**  
be and the same is hereby: **DENIED** variances to maintain the previously constructed basement bathroom and finish the attic for purposes of storage.

Testimony concerning the aforesaid application was taken by the Board at its meeting on July 19, 2023. 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. Scott Sochon moved to deny the application on the basis of the following Resolution:

WHEREAS, the applicant requests variances to maintain the previously constructed basement bathroom and finish the attic for purposes of storage; and

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

- a. The applicant owns and resides in the property ; and
- b. The applicant's father also lives in the property and suffers from an undisputed serious medical condition which limits his mobility; and
- c. The applicant hired a contractor to complete work related to a three fixture basement bathroom, finished attic, and apartments on the first and second floor;
- d. The contractor completed the work without securing the required permits unbeknownst to the applicant; and
- e. Due to the construction without requisite permits, the applicant was not issued the required Certificate of Occupancy; and
- f. The three fixture basement bathroom was installed to accommodate the medical needs of the applicant's father, who has difficulty using the bathtub in the first floor bathroom, and the basement bathroom has a stall shower; and
- g. The applicant does not believe it is feasible to install a stall shower in the first floor bathroom as that bathroom accommodates the rest of his family, including children; and
- h. The basement contains a small door which exits to the outside of the property; and
- i. The applicant stipulated that:
  1. The basement egress door would be permanently sealed.
- j. The applicant has failed to demonstrate sufficient hardship to justify the grant of the variance requested; and
- l. The detriments of the application outweigh the benefits; and

WHEREAS, the Board finds from the testimony presented that the proposal will not be in accord with the intent and purpose of the master plan and the zone ordinance; and

WHEREAS, the Board further finds from the testimony 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 variances to maintain the previously constructed basement bathroom and finish the attic for purposes of storage for premises located at 435 Lakeview Ave., Block 1.10, Lot 35, is hereby denied.

|                             |                                                                                                               |
|-----------------------------|---------------------------------------------------------------------------------------------------------------|
| <b>Resolution moved by:</b> | <b>Comr. SCOTT SOCHON</b>                                                                                     |
| <b>Seconded by:</b>         | <b>Comr. ZALMAN GURKOV</b>                                                                                    |
| <b>Affirmed by:</b>         | <b>Comrs. Alessia Eramo, Maureen O’Connor, Zalman Gurkov, Scott Sochon, and Vice Chrmn Gerard Scorziello.</b> |

**MEETING OF JULY 19, 2023.**

**RESOLVED** by the **ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.**, that the application of: **LIHUA ZHOU**  
for premises known as: **605 Van Houten Avenue, Block 43.02, Lot 5**  
be and the same is hereby: **GRANTED a conditional use variance to change the primary use to open a health spa.**

Testimony concerning the aforesaid application was taken by the Board at its meeting on July 19, 2023. 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. Zalman Gurkov moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests a conditional use variance to change the primary use to open a health spa; and

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

a. The applicant owns and operates a health spa in Nutley and is seeking to open a second location at the Property; and

b. The business will operate from 10 am to 10 pm 7 days a week, with a clientele primarily established through standing appointments; and

c. The health spa will offer treatments such as manicures and pedicures, massages; skin care; and other health related services, which shall all occur in various treatment rooms within the property;

d. There is ample parking on the property due to the existence of municipal parking; and

e. The applicant offered testimony to establish the positive criteria required for the use variance, including the fact that the site is particularly suited for the use of this nature; and

f. The applicant provided testimony that the regarding the negative criteria including proof that the use will not substantially impair the intent and purpose of the zone plan, and its not inconsistent with the purpose of the master plan; and

g. The applicant has shown sufficient hardship to justify the grant of the variance requested;

h. 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 proposed addition will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for a conditional use variance to change the primary use in order to open a health spa for premises located at 605 Van Houten Avenue, Block 43.02, Lot 5, is hereby approved and the variances are hereby granted subject to such further governmental approvals as may be required by law and 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 the 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, are 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:**  
**Seconded by:**  
**Affirmed by:**

**Comr. ZALMAN GURKOV**  
**Comr. MAUREEN O'CONNOR**  
**Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov,**  
**Scott Sochon, Michael Molner, George Foukas, and Vice**  
**Chrmn Gerard Scorziello.**

**MEETING OF JULY 19, 2023.**

**RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: 10 JAMES ST LLC  
for premises known as: 10 James St., Block 4, Lot 11  
be and the same is hereby: GRANTED a variance to keep an already installed 6' electric fence in the front yard where 4' 50% open is permitted.**

Testimony concerning the aforesaid application was taken by the Board at its meeting on July 19, 2023. 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. Zalman Gurkov moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests a variance to keep an already installed 6' electric fence in the front yard where 4' 50% open is permitted; and

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

- a. The applicant owns the Property and installed a 6 foot 50% open fence thereon; and
- b. Unbeknownst to the applicant, an ordinance existed limiting the fence height to 4 foot 50% open; and
- c. The applicant uses the property primarily for storage as he owns an adjacent property that does not have sufficient back yard space;
- d. The applicant provided testimony that while the fence is located on a portion of the property which is traditionally viewed as the front yard, given its location to the applicant's other property, it is more appropriately considered and treated as a back yard; and
- e. The applicant testified that if the property was truly a back yard, the fence he installed would be permissible under the ordinance; and
- f. The applicant provided testimony that the purpose of the fence is for safety as he has previously had trespassers and his garage was broken into; and
- g. The applicant provided testimony that the regarding the negative criteria including proof that the variance can be granted without substantial detriment to the public good, and that the variance will not substantially impair the intent and purpose of the zone plan; and
- h. The applicant has shown sufficient hardship to justify the grant of the variance requested;
- i. The benefits of the application outweigh the detriments, if any; and

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

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

NOW THEREFORE, BE IT RESOLVED that the application for a variance to keep an already installed 6' electric fence in the front yard where 4' 50% open is permitted for premises located at 10 James St., Block 4, Lot 11, is hereby approved and the variances are hereby granted subject to such further governmental approvals as may be required by law and 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 the 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, are 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:**  
**Seconded by:**  
**Affirmed by:**

**Comr. ZALMAN GURKOV**  
**Comr. GEORGE FOUKAS**  
**Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov,**  
**George Foukas, and Vice Chrmn Gerard Scorziello.**

**MEETING OF JULY 19, 2023.**

**RESOLVED** by the **ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.**, that the application of: **ALEX MILICH**  
for premises known as: **243 Parker Avenue, Block 4.16, Lot 34**  
be and the same is hereby: **GRANTED** variances to construct a 3 story mixed use building containing a bakery, administrative office, and residential apartment.

Testimony concerning the aforesaid application was taken by the Board at its meeting on July 19, 2023. 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. Scott Sochon moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests variances to construct a 3 story mixed use building containing a bakery, administrative office, and residential apartment; and

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

- a. The applicant proposes to open a bakery at the property with seating on two floors, administrative office, and small residential apartment; and
- b. The hours of operation will be from 8 am to 9 pm, 7 days a week, with some employees coming to work earlier in order to begin baking; and
- c. The residential apartment is intended to be used by the overnight staff members in order to limit their need for travel;
- d. The applicant provided testimony regarding the signage to be provided at the property and willingness to comply with the recommendations of the Board's professionals. ; and
- e. The building will be connected to the adjacent buildings which are also 3 stories; and
- f. The applicant provided testimony and correspondence from the adjacent property owner indicating consent to the application; and
- g. The applicant offered testimony to establish the positive criteria required for the use variance, including the fact that the site is particularly suited for the use of this nature;
- h. The applicant provided testimony that the regarding the negative criteria including proof that the variance can be granted without substantial detriment to the public good, and that the variance will not substantially impair the intent and purpose of the zone plan; and
- i. The applicant has shown sufficient hardship to justify the grant of the variance requested;
- j. 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 proposed addition will be detrimental to the health, safety, and general welfare of the neighborhood;

NOW THEREFORE, BE IT RESOLVED that the application for variances to construct a 3 story mixed use building containing a bakery, administrative office, and residential apartment for premises located at 243 Parker Avenue, Block 4.16, Lot 34, is hereby approved and the variances are hereby granted subject to such further governmental approvals as may be required by law and 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 the 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, are 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.
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**Resolution moved by:**

**Seconded by:**

**Affirmed by:**

**Comr. SCOTT SOCHON**

**Comr. MAUREEN O'CONNOR**

**Comrs. Alessia Eramo, Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, and Vice Chrmn Gerard Scorziello.**