

Minutes of a regular meeting of the Board of Adjustment of the City of Clifton, New Jersey, held on Wednesday, March 15, 2023. 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 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, VICE-CHRMN GERARD SCORZIELLO AND CHRMN MARK ZECCHINO.

ABSENT: NONE

Chrmn Zecchino 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.

Upon motion made by Comr. Scott Sochon, seconded by Comr. Maureen O’Connor, the Minutes of the March 1, 2023 regular meeting were adopted with the unanimous approval of the entire Board.

### **REMANDED HEARING**

1. **JOHN RADER**, 817-825 Clifton Ave., Block 35.06, Lot 16 – B-C – Site plan approval required to remove the existing MOONEY AUTO REPAIR GARAGE, to 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 required variances. DENIED DECEMBER 2, 2022 – COURT-ORDERED REMAND.  
Use Variance;  
Variance;  
Site Plan

This matter was continued without date.

### **CONTINUED HEARINGS**

1. **522 VALLEY ESTATES LLC**, 522 Valley Road, Block 32.01, Lot 12 – Steep Slope Dist  
Use Variance;  
Variances  
The Applicant seeks approval to demolish the existing building and construct a new residential complex consisting of 20 townhouse/multifamily 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; 44.99 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) Vertical cut greater than permitted (15 ft. permitted; 56 ft. proposed); (5) Building coverage for over 30% slope area greater than permitted (0% permitted; 1.8% proposed); (6) Impervious surface (lot) coverage for over 30% slope area greater than permitted (0% permitted; 4.5% proposed); (7) Open space for 25.1-30% slope area less than required (50% required; 46.9% proposed); (8) Open space for over 30% slope area less than required (100% required; 79.9% proposed); (continued)

(9) Number of trees replaced less than required (87 trees required; 48 trees proposed); and (10) Ground sign proposed where same is not permitted. 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: Arthur Kuyan, PE of Stonefield Engineering & Design, LLC, 92 Park Avenue, Rutherford, New Jersey 07070, a civil engineer; Matthew Seckler, of Stonefield Engineering & Design, LLC, 92 Park Avenue, Rutherford, New Jersey 07070, an engineer; and 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; Natalia Muza, 503 Valley Road; Fred Hrinck, Springfield NJ on behalf of his mother who lives on 534 Valley Road; Luis Moreno, 43 Cherry Street; Sunil Raval, 514 Valley Road; Vera Lazar, 22 Spencer Ave; Greg Hancox, 84 Washington Drive; and Anne Schnackenberg, 280 Washington Street and member of various boards and commissions.

This matter arises from an application which was originally scheduled to be heard by the Board during its July 20, 2022 regular meeting. At the request of the applicant, the matter was continued on multiple occasions. A revised site plan has been submitted which modifies the original scope of the Project and the variances requested.

The Board is in receipt of: Engineering Review No. 3 from its Engineer, Neglia Engineering Associates dated July 18, 2022, revised October 14, 2022, and last revised March 13, 2023; Planning Review No. 3 from its Planner, Graviano & Gillis Architects & Planners LLC dated March 9, 2023; an email response dated February 27, 2023 from City Fire Marshall Mike Pressler; a report dated February 28, 2023 from Lt. Mohammad Droubi, Traffic Division Commander of the Clifton Police Department; and Commissioner Comments dated March 14, 2023 from the City of Clifton Environmental Commission.

Mr. Wine provided background on the Application. Currently located on the property is a single family home. In its place, the applicant seeks to build a 20 townhouse complex. The applicant seeks preliminary site plan approval as well as certain "D" and "C" bulk variances, including one related to height of the Building.

Arthur Kuyan, of Stonefield Engineering, testified as the applicant's engineer. Mr. Kuyan offered the following exhibits:

- Exhibit A-1 – Aerial Exhibit prepared by Stonefield Engineering
- Exhibit A-2 – Steep Slope Exhibit prepared March 15, 2023 by Stonefield Engineering
- Exhibit A-3 – Polarized Rendering of Submitted Site Plan dated February 22, 2023

Mr. Kuyan testified that a single family home currently sits on the property and is located in the steep slope district. He testified regarding the topography of the property. When testifying about Exhibit A-2, Mr. Kuyan explained that the different colors of Exhibit A-2 reflected the various grading and slopes of the Property. He testified that the various sloping and grading areas are unique to the Property. He explained that the construction on the property is divided into multiple clusters and each cluster represents a different composition of residences and details related to that cluster. He testified that the development would include a number of parking spots which complies with the Board's requirements.

Mr. Kuyan testified regarding trash removal and deliveries. He testified that the property contained a striped area which would provide sufficient space for delivery trucks, refuse trucks, and fire trucks or other vehicles to maneuver appropriately through the site. Mr. Kuyon testified that the proposed lighting would be LED lighting and downward facing to prevent spill over into neighboring properties.

Mr. Kuyan testified regarding installed vegetation, utility services, and fire hydrant installation. Mr. Kuyan acknowledged receipt of the Fire Department's correspondence regarding a need for an additional hydrant, with which Mr. Kuyan testified the applicant would be willing to agree. Mr. Kuyan testified that the site would contain multiple retaining walls due to the grading of the site. The retainage walls will vary in size.

Mr. Kuyan testified that the site is classified as a "major development" for purposes of drainage and stormwater. He testified that there are multiple stormwater and drainage sites and that the applicant's goal was to go "above and beyond" the requirements. The property will contain stormwater inlets and catch basins to capture, treat, and discharge the water. Mr. Kuyan testified that the driveways will be constructed with a porous surface. He testified that no negative impact is expected to the neighboring community regarding runoff. He acknowledged receipt of Neglia's reports and comments and would incorporate those comments into the site plan.

Mr. Kuyan testified that the property does not meet the ordinance for height. He testified that there are portions of the open space area of this section of this development which do not satisfy the requirements and therefore appropriate variances are requested. Mr. Kuyan testified that the applicant complies with all parking requirements. He testified that the applicant was seeking a variance for signage requirement. Mr. Kuyan testified regarding the requirements of the steep slope area and that the relief the applicant is seeking is necessary in order to provide a safe living space for residence.

Chrmn Zecchino asked if the steep slope ordinance exists to protect against this type of development. Mr. Kuyan testified that this is a permitted use within the zone. Chrmn Zecchino asked why a height variance is necessary.

Mr. Wine asked if Mr. Kuyan, as an engineer, believed that this type of development was acceptable within this area. Mr. Kuyan testified that it was, and that erosion would not create an issue in a development of this kind. He testified that the applicant's design was intended to address the potential risks of developing in a steep slope area and that such development would not create an issue of the type that the zone was intended to prevent.

Cmr. Foukas asked if single family homes could be built in the area, comply with all the same items that the applicant is proposing, such as the drainage, and still be successful in developing the property. Mr. Kuyan testified that he did not believe it would be possible.

Cmr. Eramo asked if the original plan submitted to the Board was similar to Exhibit A-2 and why it appeared to be different. Mr. Kuyan testified that the Exhibit was oriented differently and that the Exhibit images follow the property line. Mr. Kuyan then stated that what was submitted by the Board contained an error which would be corrected.

Cmr. Eramo asked about traffic and drainage patterns. Mr. Kuyan stated that a traffic expert would be provided, but he testified regarding drainage patterns. Mr. Kuyon stated that the drainage patterns would flow either east or west based on topography. He testified that the application sought to maintain the existing drainage patterns, and any change would be limited by the applicant's stormwater drainage plan which includes stormwater basins and porous surfaces. He testified that the excess water in the basins would be caught, treated, and drain on to Valley Road.

Cmr. Eramo asked about discrepancies between some information on drainage design. Mr. Mr. Kuyan stated that he was aware of the discrepancy and the applicant would discuss the issues with Neglia Engineering and incorporate their comments. Cmr. Eramo asked about pavers and who was responsible for maintenance, and Mr. Kuyan testified that it would be the responsibility of the owner.

Cmr. Eramo asked about the open space. Mr. Kuyan testified that the open space was a combination of lawn, tree areas, and that open space complies with the City's requirements except for setbacks and width. Cmr. Eramo asked about the definition of open space. Mr. Kuyan stated that the planner would have a better ability to answer. Cmr. Eramo asked about a retaining wall plan. Mr. Kuyan stated that for a project of this type, any wall over 4 feet would have to be designed by a structural engineer.

Cmr. Eramo asked about the existing buildings on the property and if those properties have a similar impact on the steep slope. Mr. Kuyan stated that some neighboring buildings likely had to disturb the steep slope area.

Cmr. Eramo asked about the permitted use within the steep slope district and how, based on tax maps, Mr. Kuyan concluded that a townhome variance was not needed. Mr. Kuyan testified that tax maps are not a good guideline, and based on the survey the applicant determined that the lot area requirements were met. Cmr. Eramo asked about space that cannot be developed and Mr. Kuyan testified that there was a rock area in the back of the property that could not be developed, but that it still needed to be included in its total lot area.

Anthony Kurus of Neglia Engineering asked about the maximum height of the retaining wall. Mr. Kuyan testified that the max height was 39 feet. Mr. Kurus asked about maximum cut in the area. Mr. Kurus commented that this is not a typical development of the area. He asked Mr. Kuyan about the number of projects he has done regarding the total removal and cut area. Mr. Kuyan testified that this project is unique.

Mr. Kurus commented regarding Neglia's concerns regarding cut areas, infiltration, and storm water. He commented that this is an "intense" proposal and not a typical site construction that would require significant engineering work. Mr. Kuyan testified that Stonefield has worked on projects in this type of area, with this type of topography, in other areas throughout the state. He testified that this project is constructable and feasible and that they are willing work through any and all engineering comments with Neglia.

Mr. Wine asked about the steep slope disturbance and deviations sought. Mr. Kuyan testified that the applicant is seeking 1.8% building coverage in an area over 30% slope area and 4.5% impervious surface lot coverage for over 30% slope area. Mr. Wine asked given the percentages that Mr. Kuyan is comfortable, from an engineering perspective, that the disturbances are acceptable and feasible. Mr. Kuyan stated based on his experience and prior work in similar sites, the disturbances were acceptable and feasible.

Vice Chrmn Scorziello asked about which cluster of building is most responsible for the greatest disturbance. Mr. Kuyan testified that it varied between areas of Clusters B and C. Vice Chrmn Scorziello asked if that would continue if the clusters were placed in a different spot. Mr. Kuyan stated that the change in area would create a greater disturbance.

Chrmn Zecchino asked if the project can be worked without needing any variances. Mr. Kuyan stated that he could not do so as a multi-family development.

Cmr. Foukas asked if he believed that the variances sought, other than the height, are de minimus. Mr. Kuyan testified that he agreed. Mr. Kuyan testified that any multi-family development would require variances, de minimus or not.

Cmr. Eramo asked if multiple single family homes would create the same issue. Mr. Kuyan testified that there would be an issue with erosion which would not occur in a project as proposed in this current application. He testified that a single family development would be more spread out. Cmr. Eramo asked if the vegetation disturbance would be limited by only removing a particular number of trees. Mr. Kuyan testified that the need for roads would be larger and they would need to be wider.

Nick Graviano, of Graviano and Gillis, commented that this application is a permitted use. He stated that the proofs for a variance of this height are similar to a conditional use variance and if the variance can be completed without detriment to the area.

Cmr. Foukas commented that this is a permitted use.

Interested parties asked questions of Mr. Kuyan.

Joseph Holzli, 75 Moutainside Terrace, asked about the height of the highest wall. Mr. Kuyan stated 39 feet. Mr. Holzli asked about the delay in the application. Mr. Holzli asked if Mr. Kuyan read about steep slope and cliff face. Mr. Kuyon stated that building will not be built in the cliff face.

Ines Armesto 43 J Street, asked how much impervious surface would be built. Mr. Kuyan stated that 90,185 sq of new impervious surface will be built .

Natalia Muza, 503 Valley Road, asked why so much area from the steep slope must be taken. Mr. Kuyan discussed the meaning of the word “typical” for engineering purposes, which is intended to describe the work to be done will be done throughout the project. He stated that the applicant’s would take on the area’s storm water into its system. Ms. Muza asked how long the system will retain the water. Mr. Kuyan stated that the system is sized for a 100 year storm, which will satisfy the regulations. Ms. Muza asked about the length of time that will be taken to release the water. Mr. Kuyan testified that at maximum, drainage will take 72 hours.

Chrmn Zecchino asked about the size of the retention basins.

Vice Chrmn Scorziello asked Ms. Muza to share the current experience in the area. Ms. Muza stated that after recent construction, there are a number of floods that happen in the area that did not happen before. Mr. Kuyan stated that over the past years, there has been a number of increased rain events.

Ms. Muza asked about wildlife habitat impact due to construction. Mr. Kuyan testified that the applicant is leaving a green area undisturbed to permit wildlife to have a place to go. Ms. Muza asked how many animals will be killed as a result of this construction. Mr. Kuyan stated he was not qualified to answer this question.

Cmr. Eramo asked about the increase impervious service in acreage. Mr. Kuyan testified 2.07 acres.

Fred Hrinnk, Springfield NJ on behalf of his mother who lives on 534 Valley Road, asked about wild life, what has been observed and the numbers other than birds. Mr. Kuyan stated he has seen deer on the property. He testified he cannot testify regarding the number of deer and that he has not seen turkeys.

Mr. Hrinnk asked about the vertical cut and where it would occur. Mr. Kuyan stated it is located in the rear part of Cluster C. Mr Hrinnk asked about why the cut needs to be there. Mr. Kuyon stated that it was done due to safety. Mr. Kuyan stated that the site will include a retaining wall which has a varying height from 32 to 39 feet. Mr. Hrinnk asked about the height of the retaining wall and grade near Lot 14. Mr. Kuyan stated that the height would be 1.4 ft. Mr. Hrinnk asked about setbacks and if it was behind Lot 14. Mr. Kuyan stated that there are setback requirements for the open space, and that such area was not behind Lot 14. Mr. Hrinnk asked why the open space is necessary for this development. Mr. Kuyan stated that it would be more beneficial.

Mr. Wine asked Mr. Kuyan to explain the open space variance. Mr. Kuyan stated that the open space needed to be a certain distance away from the edge of the property and needed to be a certain size, which the applicant could not meet and they were seeking relief from.

Mr. Hrinnk asked about other developments in the area. Mr. Kuyan stated he could not testify as to those other developments. Mr. Hrinnk asked about when Mr. Kuyan conducted site visits and what water did he observe on the Property. Mr. Kuyan stated he was not on the site during a rain event but that the design is based on topography. Mr. Hrinnk asked about the location of the catch basins. Mr. Kuyan demonstrated on the plans that the locations will be in the lower east quadrant and the lower west quadrant on the property.

Mr. Hrinck asked about trees and vegetation and why there cannot be more. Mr. Kuyan testified that they are planting the maximum amount of trees that the developed site can handle. Mr. Hrinck asked about turning vehicles, the location of turn arounds, and parking. Mr. Kuyan testified that the turnaround area was modified in accordance with the Fire Departments request. He testified that parking was located to be beneficial for residents. Mr. Kuyan testified that the turnaround would be approximately 21 feet away from the adjacent property line.

Cmr. Eramo asked about the number of trees to be removed from the site. Mr. Kuyan testified that there will be 12 evergreen trees and 87 major trees removed.

Mr. Graviano commented that some trees are proposed between the neighboring properties and suggested that the applicant consider adding additional tree coverage such as evergreen trees. Mr. Kuyan said that they would agree to this.

Luis Moreno, 43 Cherry Street, asked how residents can be assured that the retention wall to be constructed won't crack. Mr. Kuyan stated that a structural engineer will have to be engaged to construct these walls and he will consider how those walls are properly designed and can last. Mr. Moreno asked if there will be explosions as part of construction. Mr. Kuyan stated that if bedrock is encountered, controlled explosions may be necessary.

Sunil Raval, 514 Valley Road, asked if the definition of "multi-family" requires a specific number of units. Mr. Wine stated that he did not believe there was such a requirement. Mr. Raval asked why the number of units cannot be reduced to ensure compliance with the setbacks. Mr. Kuyan deferred to the planner. Mr. Raval asked about the percentage of yellow within the slope colorings. Mr. Kuyan testified that there is 34% yellow area. Mr. Raval asked about the heights and aesthetics of the retaining wall. Mr. Kuyan testified that Mr. Raval would not see the wall from his property as it would be below his property.

Mr. Raval asked if the developer would consider expanding existing infrastructure. Mr. Kuyan stated that the current proposal is a benefit to the neighboring area and needs to be approved by Passaic County. Mr. Raval asked about the maximum height of the building. Mr. Wine stated that this was a question for the architect. Mr. Graviano provided an answer based on the plans. Mr. Raval asked if the applicant would consider evaluating the impact of the construction after completion of construction. Mr. Kuyan stated that the developers are limited to comply with regulations which are extremely stringent and they will meet those regulations. Mr. Raval asked what is the developers intent to consider the wildlife of this development. Mr. Kuyan stated that wildlife was considered and limited the density. Mr. Raval asked about the impact to the neighboring properties. Mr. Kuyan stated he was not qualified to address this. Mr. Raval asked about maintenance for the properties. Mr. Wine stated that it has not been determined if the properties would be sold or rented and that maintenance would depend on that circumstance.

Vice Chrmn Scorziello asked about the drainage situation asked Neglia as to how the construction will impact in this area. Mr. Kurus stated that it would not be any worse than existing conditions. Mr. Kurus expressed concerns regarding soil and rock, but that there is not currently a storm drainage plan on the property. He also stated he did not believe that the drainage would be completely addressed by the current application and design. Mr. Kurus stated that DEP rules require that post construction runoff would be reduced based on the size of the storm, and that every major development is required to follow these requirements. Mr. Kurus explained that the burden is that the applicant cannot adversely impact adjacent properties.

Vera Lazar, 22 Spencer Ave, asked about tree removal. Mr. Kuyan stated that there will be 87 major trees to be removed, 12 minor trees, and 109 trees exempt from replacement. Ms. Lazar asked about whether wetlands exist on the site. Mr. Kuyan stated that there are no wetlands. Ms. Lazar asked if a report was done to confirm there were no wetlands and how, without this report, it could be determined that there were no wetlands. Mr. Kuyan testified that state mapping identifies wetlands. Ms. Lazar asked about areas with slope grading greater than 15%. Mr. Kuyan testified that there is 76.1% are over 15.1% slope. Ms. Lazar asked how much of the property has a slope greater than 30% and Mr. Kuyan stated 30.6%.

Greg Hancox, 84 Washington Drive, asked about the length of construction. Mr. Kuyan stated approximately 24 months. Mr. Hancox asked what happens if a major storm hits during construction of the retaining wall. Mr. Kuyan stated that there are soil erosion control measures that need to be complied with during construction. Mr. Wine asked if this is something that the County must evaluate prior to approval. Mr. Kuyan testified this would fall within the County's purview.

Anne Schnackenberg, 280 Washington Street and member of various boards and commissions, asked about the other expected witnesses. Mr. Wine stated that the traffic engineer, planner, and project architect will testify. Ms. Schnackenberg asked how frequently a 100 year flood occurs. Mr. Kuyan testified every 100 years. Ms. Schnackenberg asked about the size of the property and portion of the area to be disturbed. Mr. Kuyan that 91,168 sq ft would be disturbed. Ms. Schnackenberg asked about the age of the map to determine that calculation. Mr. Kuyan stated that a surveyor used multiple maps to determine the site size.

Ms. Schnackenberg asked about bodies of water, and Mr. Kuyan stated that none existed on the property. Ms. Schnackenberg asked where is the nearest body of water. Mr. Kuyan stated that the nearest wetland does not have a name and is over 1000 ft away and is located south of the property, near Block 113 Lot 12.01. Ms. Schnackenberg asked about the nearest body of water, other than a wetland. Mr. Kuyan stated he did not have that information. Ms. Schnackenberg asked about the study of the effect of the runoff. Mr. Kuyan stated that an analysis has to be done on both the water that enters the property as well as that exists the property. Ms. Schnackenberg asked Mr. Kuyan's opinion as to the Property and Mr. Kuyan stated that, when including the proposed stipulations, this is the best design of the property. Ms. Schnackenberg asked about locations of other steep slope developments he has done and Mr. Kuyan provided multiple addresses. Ms. Schnackenberg asked about the intent and his professional opinion of the steep slope ordinance. Mr. Wine stated that the testimony is limited to the impact or detriment to the steep slope area, and that the planner is better suited to answer specifics.

Ms. Schnackenberg asked how many times this proposal deviates from the step slope ordinance. Mr. Kuyan stated that there are 6 variances sought for the steep slope ordinance. Ms. Schnackenberg asked if there are endangered or rare species on the property. Mr. Kuyan testified that no endangered species were located, but he was unsure about rare species. Ms. Schnackenberg asked about the tree survey and Mr. Kuyan stated that the tree survey evaluated trees which range in size from 4 inches through 20 feet tall. Mr. Kuyan stated that the applicant will be submitting to a tree fund to make up for the trees that cannot be replaced.

Vice Chrmn Scorziello asked about the frequency of a 100 year storm. Mr. Kurus testified that a storm has a 1% chance of happening in one year. Mr. Kurus stated that it is a 100 year recurrence interval.

Cmr. Molner asked if the engineer will return and Mr. Wine confirmed that Mr. Kuyan would come back.

At the request of the Board, the matter was continued until May 3, 2023 with no further notice required.

The Minutes as stated is the complete testimony presented to the Board.

- |                                  |  |
|----------------------------------|--|
| 2.<br>Variances;<br>Use Variance | <b>833 CLIFTON AVE PARTNERS, LLC</b> , 833 Clifton Avenue, Block 35.07, Lot 1 - BC– Preliminary and final site plan 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. |
|----------------------------------|--|

At the request of the attorney for the applicant, this matter was continued by the Board until the April 5, 2023 meeting of the Board.

4. **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.

At the request of the attorney for the applicant, this matter was continued by the Board until the April 5, 2023 meeting of the Board.

### NEW HEARINGS

1. **BRIAD DEVELOPMENT, LLC**, 345 Allwood Road and 826 Route  
Site Plan; Use 3, Block 80.01, Lots 11.01 and 11.03– PD-HC – The applicant has  
Variances applied for amended preliminary and final site plan approval, with  
associated 'c' and 'd' variances to convert the existing single-tenant  
"Stew Leonard's" building at The Promenade Shops at Clifton into a  
multitenant facility with a drive-through for a future restaurant tenant  
on property identified on the tax maps of the City of Clifton as Block  
80.01, Lots 11.01 and 11.03, which parcels are commonly known as  
345 Allwood Road and 826 Route 3, Clifton. The applicant requests  
any and all necessary variances, waivers, approvals or other relief, site  
plan and land use ordinances as may be necessary for this application,  
including but not limited to the following: 1. A d(1) use variance  
(Sections 461-13.1AA(1) and 461-13.1AA(5)(i) for the drive through  
facility. 2. Section 461-13V(8)(c)(2) (maximum height of ground  
signs) (20 feet permitted; 29.1 feet existing; and 40.92 feet proposed).

Richard Schkolnick, Esq., of Law Offices of Richard Schkolnick, Esq, with offices at 75 Main Street, Suite 201, Millburn, New Jersey 07041, appeared on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: James Talerico, of the Briad Group, 78 Okner Parkway, Livingston New Jersey, the applicant; James Giurintano, P.E., of Bowman Consulting, with offices at 54 Horsehill Road, Suite 100, Cedar Knolls, New Jersey 07927, a civil engineer; Charles Jordan, of Urban Tectonics, 106 Essex Avenue, Glen Ridge, New Jersey 07028, an architect; and Sean Delany, PE, of Bowman Consulting, with offices at 54 Horsehill Road, Suite 100, Cedar Knolls, New Jersey 07927, a planner.

The Board is in receipt of: Engineering Review No. 1 from its Engineer, Neglia Engineering Associates dated March 6, 2023; and 1<sup>st</sup> Review from its Planner, Graviano & Gillis Architects & Planners LLC dated March 9, 2023; an email response dated February 27, 2023 from City Fire Marshall Mike Pressler; a report dated February 28, 2023 from Lt. Mohammad Droubi, Traffic Division Commander of the Clifton Police Department; and Commissioner Comments dated March 14, 2023 from the City of Clifton Environmental Commission.

Mr. Schkolnick explained that the property currently houses a Stew Leonards store. Stew Leonards will be vacating the property and the applicant is seeking to modify the property to add a drivethrough to the existing building, which is not permitted in the zone. Mr. Schkolnick explained that the applicant will testify regarding the location of the drive through and the experts will testify regarding the requested variances and uses.

Mr Talerico testified that he has been with the company for 16 years and he oversees development with restaurants and shops. Mr. Talerico provided history of the site and that this site currently houses the Stew Leonards among other businesses. Mr. Talerico testified that the owner is seeking to re-tenant that space, but it is complicated to do so for one tenant. The applicant is looking to re-purpose the site as a multi-tenant space. However, the tenants are seeking approval for a drivethru prior to considering signing a letter of intent. Mr. Talerico explained that the retail shopping center is considered a lifestyle center and that there is not a confirmed tenant for the drivethrough, but that the expected tenant would be an “upscale” tenant (i.e., Saladworks and not a Burger King).



Mr. Talerico testified regarding the location and structure of the current property. The drive through will be located along the Allwood side of the building. The site will be reconfigured to accommodate 3-4 tenants. The main purpose is ensuring flexibility when seeking tenants. Mr. Talerico testified that addition of the drive through will not dilute the quality of tenant and that the owner is looking to ensure the high quality of shop tenant.

Chrmn Zecchino asked whether a tenant can be secured without a drive through. Mr. Talerico stated that they are not looking to add another dine in restaurant, but looking for a higher end fast casual service area such as a Panera or Gregorys Coffee. Chrmn Zecchino expressed concern regarding the congestion of the area. Mr. Talerico expressed his own concern of impact of congestion on the applicant and how that congestion could impact other tenants. He explained that the drivethrough volume is much less for a business of the kind that the applicant is seeking. Mr. Talerico stated that the NJDOT and traffic study approvals were currently in progress. Mr. Talerico explained that while the shopping center is extremely busy and there is plenty of parking within the overall shopping center, maybe not by the specific business.

Chrmn Zecchino asked how Stew Leonards would be redesigned and the number of tenants. Mr. Talerico stated that there would be 3-4 tenants and only one would have a drive through.

Cmr. Sochon expressed concern over a Starbucks drivethrough at another location and the congestion at that drive through.

Cmr. Foukas asked how the applicant can ensure that a lower quality fast food restaurant will not be engaged as a tenant on the property. Mr. Talerico stated he understood the Board's hesitance without the name of a tenant. Mr. Talerico said that the size of the drivethrough would be a maximum of 12 cars, which would not be sufficient for Starbucks or a Chick Fil A. Mr. Talerico asked if a preliminary approval would be considered and final approval would be granted with a tenant.

Chrmn Zecchino expressed concern about the addition of a drivethrough.

Cmr Molner stated that even with a named tenant, addition of the drivethrough would survive the rental by the tenant and stated that he believed that the addition of a drive through was not appropriate.

Cmr. Gurkov echoed Cmr. Molner's statements.

Mr. Schkolnick stated that he has done stipulations in the past regarding particular tenants and traffic volume maximums.

Mr. Talerico expressed disappointment over the notion and belief that drive throughs are all similar.

James Giurintano, a civil engineer, provided testimony regarding the original approvals of the property in 2004. Mr. Giurintano stated that the property contains mixed used of businesses. Mr. Giurintano testified that there are 7 free standing signs. He testified that the eastern most sign is the sign to be replaced. Mr. Giurintano testified regarding the access points. Mr. Giurintano testified regarding a maintenance easement along the western side of Stew Leonards, and some along Allwood Road.

Mr. Giurintano offered the following exhibits:  
Exhibit A-1 –Existing Site Aerial Photograph  
Exhibit A-2 –Site Plan Rendering  
Exhibit A-3 – Garbage Truck Turning Exhibit  
Exhibit A-4 – Fire Truck Turning Exhibit  
Exhibit A-5 – Passenger Vehicle Turning Exhibit

Mr. Giurintano stated that there is full circulation around the building and the proposed drive through would result in removal of some of the parking aisle. The spaces will be modified to a 45 degree angle. Mr. Giurintano testified that a retaining wall of approximately 3 ft will be constructed as well as the construction of a refuse area. Mr. Giurintano testified that a menu board and some landscaping will be created. All modifications will be within the current footprint. Mr. Giurintano testified that there is a de minimus impact on impervious surface. Mr. Giurintano testified regarding the size of the loading and refuse area. Mr. Giurintano testified that the modifications will result in a reduction of 18 total parking spaces. Mr. Giurintano testified that the proposed change will result in 872 parking spaces on the property and this is excess of the requirements so no parking variance is required.

Mr. Giurintano provides demonstration of garbage trucks entering from two locations and that there is ample room from both entrances. Mr. Giurintano provides a demonstration of the entrance of fire trucks from one area and the prior analysis provided in this area remains unchanged. Mr. Giurintano stated that if cars are on the drivethrough lane, they will have to exit in order to permit entrance of the fire truck.

Chrmn Zecchino asked about a Fire Department report. Mr. Giurintano acknowledged that Neglia's comments recommended this report and Mr. Giurintano confirmed that the applicant would request that report.

Mr. Giurintano testified that the applicant will add 3 EV parking spaces. Mr. Giurintano testified regarding size of the signage and menu board.

Mr. Giurintano address the Planner's report and the proposed loading spaces. Mr. Giurintano acknowledged that the applicant is compliant with proposed loading spaces.

Cmr. Braid asked about handicapped spaces. Mr. Giurintano confirmed that 2 handicapped stalls will be added to bring the applicant into compliance.

Mr. Kurus asked about the parking calculations. Mr. Giurintano stated that based on prior Board decisions, any restaurant use in a multi-unit building has been calculated at the retail rate fo 1 per 250 sq ft. Two standalone restuarants are calculated at 1 per 75 sq ft plus 1 per employee. Mr. Kurus asked if any of the prior applications were restaurants with a drivethru, and Mr. Giurintano confirmed that no prior applications considered were restaurants with drive throughs. Mr. Kurus asked about the queue analysis and traffic, and Mr. Giurintano stated it was difficult to do so without an established tenant. Mr. Giurintano that there are two different categories of queues based on fast food or coffee shop, which is the general analysis considered for this application. Mr. Giurintano stated that there is an uptick in traffic based on a drive thru.

Mr. Kurus asked about parking counts and whether available parking is sufficient during peak times. Mr. Giurintano stated no parking analysis was done on site, but that the minimums have been satisfied.

Cmr. Foukas stated that while we rely on engineers for expert opinions, personal experience should also be considered.

Charles Jordan, an architect, testified regarding the building's design.

Mr. Jordan offered the following exhibits:  
Exhibit A-6 –Existing Site Photographs

Mr. Jordan addresses the proposed interior changes and that the property which is a currently open retail space will be carved into multiple sections for different tenants.

Sean Delany, a planner, testified regarding the D variance for the drive through and the C variances for the signage. Mr. Delany testified that the application is seeking a D 1 use variances for the drive through and several C variances relating to sign height, menu board, landscape requirements (which is an existing requirement that will remain), and maximum number of free standing signs. Mr. Delany stated that the free standing signs do not apply as the number of signs on one lot will not exceed the ordinance.

Mr. Delany referenced Mr. Graviano's report and reference to the burden of establishing positive criteria and the absence of negative criteria for the D 1 variance. Mr. Delany stated that the promotion of the general welfare is sufficient to satisfy the positive criteria, including the fact that a site is particularly suited for a use of this kind. Mr. Delany testified that based on his personal review of the general areas, there is only one restaurant with a drivethrough area. Mr. Delany stated that since the ordinance was adopted, the use of a drivethrough has evolved beyond what the general conception has been historically. Mr. Delany testified that the applicant has provided more parking spaces than is required.

Mr. Delany stated that the applicant does not seek to impact the traffic and congestion. Mr. Delany testified that the applicant is seeking a maximum queue of 12 vehicles, and that the site is suitable for circulation and parking around it. Mr. Delany testified regarding the surrounding property uses and that all the neighboring properties are commercial. Mr. Delany stated that the applicant is seeking a Class A tenant to fill the space. Mr. Delany stated that the application furthers Goal 1 of the Zone Plan, and the addition of the drive through provides a use which is greatly beneficial to the public. Mr. Delany stated that the proposed use is compatible with the existing use and will provide the public with another opportunity to secure food. Mr. Delany stated that the application further Goal 6. Mr. Delany stated that the proposed use is targeted at limiting the length of time the property will be vacant.

Mr. Delany addressed the C Variances and that they will enhance the purpose of the Zone Plan. Mr. Delany stated that the sign size will allow more people to know what businesses exist at the property. Mr. Delany addressed each of the goals of the zone plan that the signage will further, including the aesthetics. Mr. Delany addressed the negative criteria of the signage, and the use is a compatible use that will not negatively impact the surrounding areas. Mr. Delany stated that there is a need for uses of this kind and the site will be able to accommodate this type of signage. Mr. Delany testified that the existing ordinance is outdated. Mr. Delany stated that there is no testimony on the record that the circulation on the property does not work.

Mr. Schkolnick asked about perceived reasons why a drivethrough will not work. Mr. Delany stated that the traditional connotation of a drivethrough is not what will occur here. Mr. Delany testified that the proposed use is more consistent than the traditional connotation.

Mr. Graviano stated that the application is the result of drive through restaurants being specifically excluded. The standard for the Board's review is the evaluation of whether sufficient positive criteria has been provided, and whether the absence of negative criteria has been satisfied. Mr. Graviano stated that the negative criteria testimony may be lacking and that the applicant will require site plan approval. However, Mr. Graviano stated that if the Board rejects the variances, the jurisdiction will return to the Planning Board for the site plan.

Mr. Talerico asked if the Board is willing to entertain a modification to the application without the drive through so as to not go all the way back to the Planning Board. Chrmn Zecchino stated that he did not believe that the negative criteria has been satisfied. Without the drive through, the Board does not have jurisdiction on this matter. Mr. Graviano stated that absent the D variance, the Board does not have jurisdiction.

Ms. Morgese advised the Board that it was not recommended that the D variances and C variances be bifurcated or that the C variances be voted on separately.

Mr. Schkolnick stated that the applicant will withdraw the application and appreciates the Board's time.

After a review of the testimony, Comr. Scott Sochon moved to dismiss the application without prejudice and instructed the Counsel Secretary to prepare the proper Resolution. The motion was seconded by Comr. Michael Molner. Voting for approval were Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, 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.

## RESOLUTIONS

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

1. Upon motion made by Comr George Foukas, seconded by Comr Michael Molner, and affirmed by Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello and Chrmn Mark Zecchino, the Resolution GRANTING the application of EMB 561 LLC for preliminary and final site plan approval, use variances, and bulk variances in order to convert an existing mixed-use property into a multi-family apartment building with 2 one-bedroom apartments on the first floor and 4 two-bedroom apartments on the second floor for premises located at 561 Van Houten Ave., Block 43.04, Lot 8, was adopted.
2. Upon motion made by Comr Michael Molner, seconded by Comr Scott Sochon, and affirmed by Comrs. Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello and Chrmn Mark Zecchino, the Resolution GRANTING the application of JOSHUA & YAEL FOGEL for a front yard setback variance to construct a 2 story addition and new front porch for premises at 31 Heights Rd., Block 50.10, Lot 12, was adopted.
3. Upon motion made by Comr. Michael Molner, seconded by Vice Chrmn Gerard Scorziello, and affirmed by Comrs Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello and Chrmn Mark Zecchino, the Resolution GRANTING the application of AVI & SURI WALLEES for front yard and combined yard setback variances as well as lot coverage variances to construct a second story addition with a new covered porch for premises located at 74 Heights Rd., Block 50.07, Lot 6, was adopted.
4. Upon motion made by Comr Scott Sochon, seconded by Comr Michael Molner, and affirmed by Comrs Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello and Chrmn Mark Zecchino., the Resolution GRANTING the application of ELI & AMANDA KAUFMAN for a lot coverage variance to construct a rear addition and attic dormer, which adds a third story, for premises located at 370 South Parkway, Block 58.02, Lot 29, was adopted.
5. Upon motion made by Comr Zalman Gurkov, seconded by Comr Maureen O'Connor, and affirmed by Comrs Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello and Chrmn Mark Zecchino., the Resolution GRANTING the application of ELVIS OSPINA for side yard set back and front yard set back variances to construct an addition and side porch with a roof for premises located at 31 Homer St., Block 59.10, Lot 13, was adopted.
6. Upon motion made by Vice Chrmn Gerard Scorziello , seconded by Comr Scott Sochon, and affirmed by Comrs Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello and Chrmn Mark Zecchino., the Resolution GRANTING the application of RANDALL BERMAN for rear yard setback and side yard setback variances to enclose the existing loading dock for premises located at 495 River Road, Block 61.03, Lot 56, was adopted.

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 MARCH 15, 2023.**

**RESOLVED** by the **ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J.**, that the application of: **BRIAD DEVELOPMENT**  
for premises known as: **345 Allwood Road and 826 Route 3, Block 80.01, Lots 11.01 and 11.03**  
be and the same is hereby: **DISMISSED WITHOUT PREJUDICE** at the request of the applicant.

THIS MATTER, coming on for hearing before the Board for testimony at its meeting of March 15, 2023; and

WHEREAS, the Applicant has requested the dismissal of this application without prejudice; and

BE AND THE SAME is here by dismissed without prejudice.

**Resolution moved by:** Comr. **SCOTT SOCHON**  
**Seconded by:** Comr. **MICHAEL MOLNER**  
**Affirmed by:** Comrs **Maureen O'Connor, Zalman Gurkov, Scott Sochon, Michael Molner, George Foukas, Vice Chrmn Gerard Scorziello and Chrmn Mark Zecchino.**