

Minutes of a regular meeting of the Board of Adjustment of the City of Clifton, New Jersey, held on Wednesday, August 17, 2022. Chrmn Mark Zecchino led the entire assembly in the Pledge of Allegiance to the Flag of the United States of America. Pursuant to the "Open Public Meeting Law" all notice requirements were satisfied. Chrmn Zecchino announced the time, place, and form of notice as well as advising all applicants that formal action may be taken on the matters set forth on the Agenda. Said opening statement is incorporated herein by reference and made a part hereof.

PRESENT: COMRS GEORGE SILVA, ZALMAN GURKOV, SCOTT SOCHON, MICHAEL MOLNER, LOUIS DE STEFANO, GEORGE FOUKAS, AND CHRMN MARK ZECCHINO.

ABSENT: COMR URI JASKIEL AND VICE-CHRMN GERARD SCORZIELLO.

Chrmn Zecchino advised all applicants that the testimony given before the Board was being tape recorded. The applicants were further advised of the right of appeal and the procedure to obtain a stenographic record of the Board.

Upon motion made by Comr Scott Sochon, seconded by Comr Louis DeStefano, the Minutes of the July 20, 2022, regular meeting were adopted with the unanimous approval of the entire Board.

REMANDED HEARING

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

This matter was continued without date.

INSPECTION AND DECISION

1. **BARNES KORNER, LLC**, 615 Van Houten Ave., Block 43.02, Lot 1 – BC & RB2 – An expansion of the bar and restaurant known as DINGO’S DEN presently located on the first floor of the property to the second floor for a room for party rentals and overflow from the first floor and a two person apartment which will require a use variance. In addition, a variance will be required for insufficient parking (60 parking spaces required/1 parking space provided). However, there is existing municipal parking located in a municipal parking lot across the street from the subject property and another available municipal parking lot less than a block away therefrom, which were created specifically for parking of business establishments located along Van Houten Avenue. Further additional parking will be available on the Shook Funeral Home parking lot after it closes. Front, side and rear yard parking variances will be required for the existing expanded front and side yard setbacks and expansion into the rear yard setback for the construction of an elevator for the second floor.

This matter was previously continued by the Board to the September 21, 2022 meeting of the Board.

CONTINUED HEARINGS

1. **BOTANY VILLAGE PROPERTY LLC**, 254 Dayton Avenue, Block 4.18, Lot 21 --PD1 – For preliminary and final major site plan approval, use variance, bulk variance and design waiver/exception relief. The property is located in a PD-1 Zoning District. The Applicant seeks approval to demolish the existing building on the Property and construct a new three- (3) story mixed-use building consisting of four (4) residential dwelling units above ground floor commercial (restaurant/tavern) space, along with related site improvements.
- The Applicant seeks use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) for a non-permitted use, as residential use is not permitted in the PD-1 Zoning District. The Applicant further seeks bulk variance relief Pursuant to N.J.S.A. 40:55D-70(c), including: (1) minimum lot area less than required (2,500 sf. required; 2,279 sf. existing non-conformity to remain unchanged);

- (2) Minimum lot depth less than required (100 ft. required; 90 ft. existing non-conformity to remain unchanged);
- (3) Building height greater than permitted (30 ft. permitted; 31.5 ft. proposed);
- (4) Number of stories greater than permitted (2 stories permitted, 3 stories proposed); and
- (5) Exterior lighting fixtures not proposed to be high-pressure sodium vapor where same is required.

To the extent necessary, the Applicant seeks a parking variance for providing less than required number of parking spaces and seeks conditional use approval or conditional use variance for not providing parking on the same lot as the principal use/principal structure.

The Applicant also seeks any additional deviations, exceptions, design waivers, submission waivers, variances, use variances, conditional use variances, interpretations, continuations of any pre-existing non-conforming conditions, modifications of prior imposed conditions and other approvals reflected on the filed plans (as same may be further amended or revised from time to time without further notice) and as may be determined to be necessary during the review and processing of the Application.

This matter was previously continued by the Board to the September 21, 2022, meeting of the Board.

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| 2.
Use
Variance;
Variances | <p>1128 SPRINGFIELD ASSOCIATES, LLC,
635 Brighton Road, Block 42.16, Lot 6
-- M2 – For site plan approval/amended site plan approval, with associated “c” and “d” variances to construct building additions to the existing warehouse building on property. Please take notice that the applicant hereby requests any and all necessary variances, waivers, approvals or other relief from the City of Clifton zoning, site plan and land use ordinances, including but not limited to the following:</p> <ol style="list-style-type: none"> 1. A d(2) variance for the expansion of the nonconforming warehouse use; 2. Section 461 attachment #3 (minimum rear yard) (15 feet required; 14.8 feet existing and proposed). 3. Section 461-14 (minimum landscape buffer) (40 feet required, 10.4 feet existing and proposed). 4. Section 461-60(E)(parking in front yard prohibited)(parking in front yard existing and proposed). 5. Section 461-32(A)(high pressure sodium lights required; LED lights proposed). |
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Please take further notice that to the extent required, applicant seeks conditional use approval for the proposed warehouse use, pursuant to Section 461-36(E), and d-3 (conditional use) variances as follows: Section 461-36(E)(2) (frontage not to be within half mile of public park/playground; existing/proposed warehouse is across the street from a park); Section 461-36(E)(3) (use not to be located within 100 feet of a residence district boundary; existing/proposed warehouse is within 100 feet of a residence district boundary); Section 461-36(E)(4) (use shall meet area, height and bulk requirements for industrial plants in an M-2 zone and shall meet off street parking, loading and unloading and buffer requirements as it pertains to industrial plants in M-2 district; proposal does not comply, though existing front yard and side yard setbacks are maintained other than for proposed building expansion).

Richard Schkolnick, Esq., with offices at 75 Main Street, Millburn, New Jersey, appeared on behalf of the applicant. Present and sworn on behalf of the applicant were the following: Brian Ehnes, P.E., of Bohler Engineering, 30 Independence Boulevard, Warren, New Jersey, an engineer; David Fahim, P.E., Atlantic Traffic & Design, 30 Independence Boulevard, Warren, New Jersey, traffic engineer; Timothy Klesse, AIA, of 38 Chatham Street, Millburn, New Jersey, architect; Donna Holmquist, AICP, PP, Preferred Planning Group, Montvale, New Jersey; and Glenn Langburg of Seaman's Beverage, 635 Brighton Road, Clifton, New Jersey, operator of the warehouse. There was one objector, Jalpa Khandhar, 2 Glen Oaks Court, Clifton, New Jersey.

The Board is in receipt of reports from its planner, Nicholas Graviano, dated July 31, 2022; and its engineer, Neglia Engineering, dated June 7, 2022.

Mr. Schkolnick stated that the applicant proposes to construct three one-story building additions for warehouse use and office use; that the office use is an accessory use to the warehouse use; that the applicant requests preliminary and final site plan approval with associated "c" and "d" variances; he addressed the issue and provided proof as to a d(2) use variance or, in the alternative, a d(3) use variance.

Mr. Langburg testified as the operator of the logistics warehouse at the site with respect to existing operations and 12 employees; that his business is heavily regulated; that the proposal will help his business operate more efficiently; that that the office use is an accessory use to the warehouse use, and the user of the office space will be the user of the warehouse.

Mr. Schkolnick had the following exhibits were marked into evidence: "A-1" which is an aerial view dated August 5, 2022; and "A-2" site plan layout.

Mr. Ehnes testified as an engineer and provided an overview of the exhibits; that the proposal will make operations more efficient; he testified as to existing conditions, adjacent uses, access, egress, landscaping, left turn movements, landscape buffer, parking, sidewalk, lighting, and addressed the report of Neglia Engineering.

Donna Holmquist testified as a planner as to the variances requested, the statutory criteria, the existing land use and zoning boundaries; the office use accessory to the

warehouse use; less intense than permitted uses; particularly suited to the site, granted in 1997 a use variance for a non-conforming use; no negative impacts; identified the “c” variances requested; testified as to the Clifton Zoning Ordinance and Master Plan, lighting; advances purposes of planning; Municipal Land Use Law; no substantial detriment to public good or Zone Plan or Zoning Ordinance; less intense use than other permitted uses in the zone; positive criteria benefits outweigh detriments; negative criteria is satisfied.

Mr. Fahim testified as a traffic engineer and referenced the report dated July 12, 2022 of Atlantic Traffic and Design; he addressed the traffic conditions at the site and on the adjacent roadway network; average 12-16 trucks per day; no left turns out of the site; emergency site access, traffic counts and turning movements, trip generations; dock doors; truck loading, passenger car parking, site access and egress, peak hours for site traffic volumes; and truck traffic analysis; and he testified that the overall site passenger car and truck traffic was found to be limited and is not expected to increase with the warehouse expansion; that the truck activity is expected to go down with the expansion; that the proposed improvements would result in a maximum of only two additional peak hour trips which is de minimis.

In objecting to the application, Ms. Khandhar testified that she was concerned with the many accidents at the site caused by the trucks.

After a review of the testimony, Comr Zalman Gurkov moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution subject to the applicant complying with all the Board’s expert’s reports, including Clifton Fire and Police Department reports to issue; and subject to no left turn permitted out of the property with appropriate signs posted; and the applicant will add landscaping in the common border between the premises and 211 Mt. Prospect Avenue, as contained in August 16, 2022 communication of Neuer Law. The motion was seconded by Comr Scott Sochon. Voting in the affirmative were Comrs George Silva, Zalman Gurkov, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino. By a seven to zero vote, the motion carried, and the application was granted in the form as more fully appears at the end of these Minutes.

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

3. **TFJ HAZEL LLC**, 252 Hazel Street & 237 West 3rd Street, Block 16.11, Lots 1 & 2
Use -- RB2 – Preliminary and Final Major Site
Variance; Plan Approval, Minor Subdivision (lot
Variances consolidation) approval, d(1) use variance,
d(1) use variance, d(5) density variance, and bulk
 (“c”) relief to construct a three (3)-story mid-rise
 (two (2) stories over parking), multi-family
 residential building containing fifty-four (54)
 dwelling units (currently proposed to contain
 twenty (20), one (1)-bedroom units; four (4) one
 (1)-bedroom plus office/den units; twenty-six (26)
 two(2)-bedroom units; and four (4) two (2)-bedroom
 plus office/den units) and resident amenities
 (the “Proposed Building”), along with 104 on-site
 parking spaces (sixty-two (62) covered/under the
 Proposed Building and forty-two (42) surface
 Parking spaces), and related site improvements
 (all proposed improvements collectively referenced

as the “Project”) on the “Property.”

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

Lot 2 (+/- 3,500 square feet) is improved with a vacant, one-family residential dwelling. As part of the application, the existing lots will be consolidated (combined) to form a new lot consisting of +/- 75,252 square feet and the existing improvements will be removed.

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

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

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

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

In connection with the preliminary and final major site plan approval related to the Project, the

Applicant is seeking the following variances pursuant to N.J.S.A. 40:55D-70(c), from the Ordinance, and if required, and/or waivers / exceptions from the Residential Site Improvement Standards (RSIS), N.J.A.C. 5:21-4.14, as follows:

1. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Minimum Rear Yard Setback - To permit a rear yard setback (measured to the Garden State Parkway right-of-way) of 4.9 feet, where a minimum rear yard setback of 40 feet is required.
2. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Minimum Side Yard Setback - To permit a side yard setback of 12 feet (along Hazel Street (CR702)), where a minimum side yard setback of 20 feet is required.
3. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Minimum Combined Side Yard Setback - To permit a combined side yard setback of 33.6 feet (12’ as measured from Hazel Street (CR702) and 21.6’ as measured from the property line adjoining Block 16.11, Lot 17), where a minimum combined side yard setback of 40 feet is required.
4. From Section 461-13, Attachment 1 “Schedule of Regulations as to Bulk, Height and Other Requirements - Residential Zone” - Maximum Lot Coverage of Principal Building – To permit a maximum lot coverage of 36.2%, where a maximum lot coverage of 25% is permitted.
5. From Section 461-60.1.A, “Requirements for off-street parking and loading spaces” – To permit 104 parking spaces to be provided, where 135 parking spaces are required under the Ordinance, but which 104 parking spaces satisfy RSIS requirement, which control.
6. From Section 461-42.A, “Additional requirements” - To permit pole-mounted, building-mounted, and/or site light-emitting diode (LED) lighting fixtures, where high-pressure sodium vapor lights are required.
7. From Section 461-60.A, “Standards for parking spaces and areas” – To permit off-street parking spaces sized 9’ wide by 18’ deep, where parking spaces are required to be 9’ wide x 19’ deep under the Ordinance, but which meets RSIS requirement which control.

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

Meryl A. G. Gonchar, Esq., of Sills Cummis & Gross P.C., with offices at One Riverfront Plaza, Newark, New Jersey; and Frank A. Carlet, Esq., of Carlet Garrison Klein & Zaretsky, with offices at 1135 Clifton Avenue, Clifton, New Jersey, appeared as co-counsel on behalf of the applicant. Present on behalf of the applicant and sworn to give testimony were the following: John Corak, PE, of Stonefield Engineering, 92 Park Avenue, Rutherford, New Jersey, an engineer; Frank J. Minervini, AIA, MVMK Architecture, 360 14th Street, Hoboken, New Jersey, architect; Matthew Zwingraf of CME Associates, 3141 Bordentown Avenue, Parlin, New Jersey, civil engineer; and Matthew J. Seckler, PE, PP, PTOE, of Stonefield Engineering, 92 Park Avenue, Rutherford, New Jersey, traffic engineer.

Present and sworn were the following objectors: Robert Vernarec, 231 West Third Street; Anne Konohue, 167 West Fourth Street; Glenn C. Bedford, 23 Louis Drive; Len Wiczerzak, 38 Florence Drive; Annette Karlsson, 31 Jerome Drive; Antonio Latona of 29 Samuel Avenue, all of the City of Clifton, New Jersey.

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

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

Ms. Gonchar stated that the plans have been revised and the application amended; that the applicant is requesting preliminary and final major site plan approval, minor subdivision approval for lot consolidation, and “d” and “c” variance relief for the construction of a multi-family residential building with resident amenities, on-site parking and associated site improvements; that the length of the building along the Hazel Street frontage has been reduced from 322.2 feet to 239.2 feet, and as a result, the front yard setback to West Third Street has been increased from 25 feet to 106.4 feet; that the gross square footage of the proposed building has been reduced from 99,854 square feet to 83,452 square feet; that the net square footage of the residential units have been reduced from 56,193 square feet to 46,618 square feet; that the revised submission proposes 20 one-bedroom units, 4 one-bedroom units with office/den, 26 two-bedroom units, and 4 two-bedroom with office/den; that the bedroom court has been reduced from 88 bedrooms to 84 bedrooms; that the number of offices/dens has been reduced from 40 to 8, and the size of the offices/dens has been reduced to 6- by 6-feet; that the building height has been reduced from 44.2 feet to 32.8 feet, and the previously requested “d” height variance has been eliminated; that the height has been reduced from 4 stories to 3 stories, and the previously requested “c” height variance has been eliminated; that the

number of proposed dwelling units has been reduced from 60 units to 54 units; that the proposed electric vehicle spaces are proposed within the covered parking area and not accessible to the public; that the previous refuse enclosure and dumpster have been eliminated, and a new trash room and compactor are proposed on the round floor within the building; that the previous loading space has been eliminated and replaced with a 50-foot-wide loading area along the easterly side of the building that will accommodate all building operations, including tenant move ins/moveouts, deliveries, and refuse removal; that the emergency access has been redesigned to accommodate emergency vehicles as per the Clifton Fire Marshal; that the stormwater management design has been modified in response to the Board's engineer's comments and on-site stormwater detention has been provided to address stormwater quantity reductions; that additional site improvements include an electrical transformer and associated concrete pad, grading and drainage, stormwater management, underground utilities, lighting, landscaping, direction/wayfinding signage, building identification/monument signage, paving and striping, curbing, and walkways/sidewalks.

Ms. Gonchar further stated in detail the variances requested.

Mr. Minervini testified as an architect as to the following exhibits: "A-7" showing area of building being removed; "A-8" computer-generated rendering looking south on Hazel Street rendering with elevations and plantings; "A-9" rendering of the courtyard building; and "A-10" revisions applied showing dusk/nighttime view; he testified as to the revisions and the positive and negative criteria required for the grant of a use variance; he testified as to the modifications and changes in design, as well as fire department access, natural ventilation for the garage, parking, ADA compliant, electric car charging stations, amenities.

Mr. Zwingraf testified as an engineer as to an "A-11" an aerial view of the site; he testified as to changes and reconfigurations to the site plan; submission and compliance with Passaic County Planning Board comments; referred to compliance with the Neglia report of August 10, 2022 comments; fire department apparatus; stormwater management; landscaping and lighting; landscape buffer; utilities; fire suppression, RSIS parking, driveways, circulation; grading; fencing around stormwater basin; and electric vehicles charging stations; sanitary sewer flow study; sidewalk replacement;

Objector Antonio Latona testified as to the need to upgrade infrastructure as a consequence of the proposed development.

The objectors further testified concerning grading and elevations, landscaping, access and egress, parking, contaminated soil remediation, water and sewer, flooding and drainage, parking, overflow of students in neighborhood school, snow removal, number of bathrooms, water pressure analysis, fire truck accessibility, more police presence, and low-income housing.

At this point in the hearing, the matter was continued to the October 19, 2022, meeting of the Board.

CONTINUED HEARINGS

1. **JAIME & VIVIANA BORJA**, 67 Huemmer Terrace, Block 64.01, Lot 17 – RA2 –
Variance Applicant is seeking variance relief from the Township Ordinance Section 461-47A for permission to construct a fence in excess of the height mandated by the said ordinance. The proposed fence is 6 ft. in height where 4 ft. is permitted. The fence is along the

perimeter of the property.

At the request of the attorney for the applicant, this matter was continued to the September 7, 2022, meeting of the Board.

2. **MIGUEL GARCIA & ROSEANN TEMPRA,**
Variances 242 Washington Avenue, Block 18.08, Lot 22
-- RA3 – Applicant is seeking to expand the second floor and perform multiple interior renovations to the first floor of the existing home which is their primary residence. The applicant is seeking one (1) new variance for the maximum building coverage where 27% is required and the applicant is proposing 37.2%. The applicant is also requesting three (3) variances, all of which are pre-existing (a side yard setback variance of 4.6 feet where 6 feet is required; combined side yard variance of 15.9 where 16 feet is required and a side yard (street side) variance of 11.3 feet where 10 feet is required).

Alfred V. Acquaviva, Esq., with offices at 1114 Goffle Road, Hawthorne, New Jersey, appeared on behalf of the applicants. Present and sworn on behalf of the applicant was Matthew Evans, AIA, 470 Chamberlain Avenue, Paterson, New Jersey, an architect. The applicants, residing at 242 Washington Avenue, Clifton, New Jersey, were present and sworn. Also present and sworn objecting to the application was Peter Bacarich, Esq., who lived across the street from the premises.

Comr Zalman Gurkov excused himself from the meeting.

Mr. Evans testified that the applicants request variance approval to expand the second floor and perform multiple interior renovations to the first floor of the existing one-family home; that a variance is required for maximum building coverage where 27 percent is required, and the applicant is proposing 37.2 percent; that variance is required for a side yard setback of 4.6 feet where 6 feet is required which is preexisting; a combined side yard setback variance of 15.9 feet where 16 feet is required and side yard (street side) variance of 11.3 feet where 10 feet is required which is preexisting; that there will be no negative impacts on the surrounding area; that the proposal will have a positive impact and would enhance the character and quality of this older colonial home; that the home will remain a one-family home; that the second floor addition will go straight up on the foundations.

Mr. Bacarich inquired as to the nature and extent of the improvements to be performed on the property.

After a review of the testimony, Comr Scott Sochon moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution for approval. The motion was seconded by Comr George Silva. Voting in the affirmative were Comrs George Silva, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino. By a six to one vote, the motion carried, and the application was granted in the form as more fully appears at the end of these Minutes.

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

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

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

NEW HEARING

1. **WHITE CASTLE SYSTEM, INC.**, 1325 Main Avenue, Block 11.01, Lot 17 -- B-C & Main Ave. Overlay – Applicant currently owns and operates a single-story, 1,571 sq. ft., 12 seat restaurant with a drive-thru at the Property. Applicant proposes to discontinue the existing internal dry storage mezzanine (a total of 583 sf) and add a single story building addition for dry-storage purposes (a total of 450 sf). The existing mezzanine will be locked to employees but remain in use as roof access for service providers. The Applicant is also proposing to modernize the site with additional site

improvements such as milling and overlaying the existing asphalt pavement, striping, an order confirmation board, a menu board, exterior façade improvements, and signage.

The Applicant is seeking preliminary and final site plan approval, d(3) conditional use variance relief and other related relief. The Applicant is seeking d(3) conditional use variance relief because the proposed modifications to the existing building slightly decrease the rear yard setback from 16.1' to 13.7'. The Applicant also seeks relief for the following:

- 1) Minimum Setback to Principal Building (Accessory Structure): 10' is required, 21.8' is existing, and 6.9' is proposed as a result of the addition;
- 2) Max Sign Area (freestanding and façade signage) 51.35 sf permitted; 134 sf proposed;
- 3) Maximum sign Height 2' permitted – North Façade 6.7' proposed; East Façade 6.7' proposed; Reader Board to be replaced 4' proposed.

The Applicant will also seek the Board's approval for any and all variances, exceptions, waivers, interpretations and other incidental relief that may be required or deemed necessary by the Board after or during its review of this Application, together with any further relief that may be deemed necessary by the Applicant during the hearing process, including that which may be generated by way of revised plans and submission of same. Measurements, percentages and other calculations provided in this notice are in accordance with the site plans filed with the Application. Please note that to the extent plan and/or Application revisions are made during the hearing process, these measurements, percentages and other calculations will likely change as will the associated relief required per the City Ordinance. The Applicant reserves the right to amend its application accordingly.

Jennifer M. Knarich, Esq., with offices at 50 Tice Boulevard, Woodcliff Lake, New Jersey, appeared on behalf of the applicants. Present and sworn on behalf of the applicants were the following: Thomas Muller, PE, of Dynamic Engineering, 1904 Main Street, Lake Como, New Jersey, an engineer; and Michael Kauker, PP, 356 Franklin Avenue, Wyckoff, New Jersey, a planner. There were no objectors.

Comr Zalman Gurkov excused himself from the meeting.

The Board was in receipt of reports from its planner, Nicholas Graviano, dated August 2, 2022; and its engineer, Neglia Engineering, dated August 12, 2022.

Ms. Knarich stated that the applicant requests preliminary and final site plan approval with associated "d(3)" and "c" variances for the construction of a dry storage area,

improvements to the parking area, internal restaurant modifications, drive-through display board, and building signage.

Mr. Muller testified as an engineer as to property information, variances requested, on-site access and circulation, ADA accessible routes, ingress/egress, parking spaces; grading, drainage and utilities; curbs, sidewalk, and driveway aprons, vehicular circulation; stormwater runoff, utilities.

Mr. Kauker testified as a planner with respect to floor plans and storage spaces; exterior of the building; and location of the proposed mechanicals; facades, ground signs; that the variances requested are for a use variance for minimum lot area of 25,000 square feet required, and the applicant is proposing 16,473 square feet which is existing; minimum lot width of 125 feet required and a lot width of 100 feet on Piaget Avenue is existing and proposed; minimum lot depth of 150 feet is required, and a lot depth of 127 feet and 140.21 feet are existing and proposed; rear yard setback of 50 feet is required, and a rear yard setback of 13.7 feet is proposed from 16.1 feet to accommodate an overhang in the drive-through lane; that the “c” variances required from the 10 foot separation between the main and accessory building where 6.9 feet is proposed; existing front yard setback where off-street parking or loading spaces, parking aisles or maneuvering areas shall not be located in the front yard; off-street parking or loading spaces, parking aisles or maneuvering areas shall not be located within 10 feet of any corner side lot line, within 10 feet of any rear lot line abutting a street or within 5 feet of any other lot line, and all setbacks area shall be adequately landscaped where the current parking lot and drive through lanes violate this requirement on all sides of the property; that the positive criteria is met because the site remains appropriate for the use; that the site is particularly suitable; that the negative criteria is met in that there is no substantial detriment to the public good and the proposal will not impair the intent and purpose of the zone plan and ordinance.

The Board requested if the applicant would stipulate to certain express conditions, to wit:

1. The reader board on the sign is 5 feet wide, 2 feet high, and not box lit;
2. The signs on the building are not box lit also, but have gooseneck lighting; and
3. The applicant will work with the Board Planner, Nicholas A. Graviano, PP, AICP, JD, with regard to the façade on the Piaget Avenue side.

Ms. Knarich conferred with her clients who agreed to the stipulations.

After a review of the testimony, Comr Louis DeStefano moved to grant the application and instructed the Counsel Secretary to prepare the proper Resolution for approval with the following stipulations:

1. The reader board on the sign is 5 feet wide, 2 feet high, and not box lit;
2. The signs on the building are not box lit also, but have gooseneck lighting; and
3. The applicant will work with the Board Planner, Nicholas A. Graviano, PP, AICP, JD, with regard to the façade on the Piaget Avenue side.

The motion was seconded by Comr Michael Molner. Voting for approval were Comrs George Silva, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino. By a six to zero vote, the motion carried, and the application was granted in the form as more fully appears at the end of these Minutes.

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

RESOLUTIONS

Chrmn Zecchino announced 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 Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino, the Resolution GRANTING the application of REED BERINATO for combined side yard setback variance to erect a second floor addition at 35 Merrill Road, Block 67.04, Lot 31, was adopted.

2. Upon motion made by Comr Scott Sochon, seconded by Comr Michael Molner, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino, the Resolution GRANTING the application of DEVORAH KATZ for variances for combined side yard setback and maximum lot coverage to erect a one-story rear addition at 52 Cresthill Avenue, Block 58.13, Lot 60, was adopted.

3. Upon motion made by Comr Scott Sochon, seconded by Comr George Foukas, and affirmed by Comrs George Silva, Scott Sochon, Michael Molner, George Foukas, and Chrmn Mark Zecchino, the Resolution GRANTING the application of MOSHE YEROSHALMI for front yard setback, rear yard setback, side yard setback, combined yard setback and maximum lot coverage variances to construct a second floor addition over the existing first floor, including a covered front porch, at 101 Patricia Place, Block 71.04, Lot 7, was adopted.

4. Upon motion made by Comr Scott Sochon, seconded by Comr Louis DeStefano, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino, the Resolution DENYING the application of ALMA BILLINGS for use variance to convert a two-family to a three-family dwelling by adding a level at 66 Scoles Avenue, Block 50.04, Lot 58, was adopted.

5. Upon motion made by Comr George Foukas, seconded by Comr Louis DeStefano, and affirmed by Comrs Louis DeStefano, George Foukas, and Chrmn Mark Zecchino, the Resolution GRANTING the application of PETRA GARDEN, LLC for preliminary and final site plan approval, use variance for two principal uses on one lot, use variance for residential use in B-A zone, use variance for multi-family residential use and day care use in RB1 zone; and variances for front yard setback, side yard setback, lot coverage, maximum building height, LED lighting, parking stall size, drive aisles distance from side property line, parking areas distance from rear property line, parking area in front yard, and parking area in commercial district accessed from residential district to keep the existing one-story building utilized as a day care in place and erect a 21-unit, 2 ½ story multi-family dwelling at 62-66 Mt. Prospect Avenue, Block 36.01, Lot 11.01, was adopted.

6. Upon motion made by Comr Scott Sochon, seconded by Comr Louis DeStefano, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino, the Resolution GRANTING a ninety (90) day extension of the conditional use variance approval to DANIEL AND MARGARITA KATZEVICH to utilize the property for a flex-industrial building with warehousing distribution, contractor storage, and manufacturing and office use to November 15, 2022, at 13 Somerset Place, Block 56.07, Lot 11.02, 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,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF AUGUST 17, 2022.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: 1128 SPRINGFIELD ASSOCIATES, LLC for premises known as: 635 Brighton Road, Block 42.16, Lot 6 be and the same is hereby: GRANTED preliminary and final site plan approval with associated “c” and “d” variances for three one-story building additions for warehouse use and office use.

Testimony concerning the aforesaid application was taken by the Board at its meeting on August 17, 2022. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

After a review of the testimony, Comr Zalman Gurkov moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests approval to erect three one-story building additions at premises located at 635 Brighton Road, Block 42.16, Lot 6, which premises are located in an M2 zone; and

WHEREAS, the applicant has applied for preliminary and final site plan approval and a d(2) use variance for expansion of a non-conforming use; and

WHEREAS, the applicant has applied for the following “c” variances:

- a. Rear yard setback where 15 feet is required and 14.8 is proposed;
- b. Landscaped buffer where 40 feet is required and 10.4 feet is proposed to three ADA parking spaces proposed in the southern portion of the site;
- c. Off-street parking or loading spaces, parking aisles or maneuvering areas shall not be located in any required front yard, and parking in the front yard is proposed;
- d. Off-street parking or loading spaces, parking aisles or maneuvering areas shall not be located within 10 feet of any corner side lot line, within 10 feet of any rear lot line abutting a street or within five feet of any other lot line and all setback areas shall be adequately landscaped where the current parking lot encroaches onto the neighboring property; and

WHEREAS, the Board has received the following reports:

- a. Report of Nicholas A. Graviano, PP, AICP, JD dated July 31, 2022;
- b. Report of Neglia Engineering dated June 7, 2022, revised July 27, 2022; and

WHEREAS, the Board has heard testimony from the applicant’s experts, Brian Ehnes, P.E. of Bohler Engineering, professional engineer; Donna Holmquist, AICP, PP, Preferred Planning Group, professional planner; David Fahim, P.E., Atlantic Traffic Design, traffic engineer, who all gave testimony in support of the application; and

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

- a. The current site consists of an industrial warehouse/office building encompassing 76,568 square feet;
- b. The applicant proposes to construct three one-story building additions for warehouse use with a total area of 9,408 square feet with site improvements including concrete curb and walkway, asphalt parking area restoration, stormwater management measures, lighting, and associates lawn and landscaping;
- c. Based on the testimony presented by the applicant’s expert, the Board finds that the site is particularly suited for the proposed use;
- d. The applicant has satisfied the positive and negative criteria required for the grant of the use variance requested;

- e. The applicant has sustained the burden of proof for the “c” variances since they advance the purposes set forth in the Municipal Land Use Law;
- f. The variances may be granted without substantial detriment to the public good and without impairment of the intent and purpose of the zone plan and the zone ordinance;
- g. The benefits of the application outweigh the detriments, if any;
- h. The Board finds that the testimony presented by the applicant’s experts is credible and supports approval of the application;
- i. The applicant has shown sufficient hardship to justify the grant of the “c” variances requested;
- j. Based upon the testimony presented by the applicant’s experts, the Board concludes that the applicant has met its burden of proof, entitling it to the grant of the approval requested; and

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

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

NOW THEREFORE, BE IT RESOLVED that the application as aforesaid for preliminary and final site plan approval and associated “d” and “c” variances to construct three one-story building additions for warehouse use with associated site improvements at premises located at 635 Brighton Road, Block 42.16, Lot 6, be and the same are hereby approved and the “d” and “c” variances as set forth herein are hereby granted subject to such further governmental approvals as may be required by law and **SUBJECT TO THE FOLLOWING:**

a. SUBJECT TO THE APPLICANT COMPLYING WITH THE REPORTS OF ITS PLANNER, NICHOLAS A. GRAVIANO, DATED JULY 31, 202; AND ITS ENGINEER, NEGLIA ENGINEERING, DATED JUNE 7, 2022, REVISED JULY 27, 2022; AND REPORTS TO ISSUE OF THE CLIFTON FIRE DEPARTMENT AND CLIFTON POLICE DEPARTMENT;

b. SUBJECT TO NO LEFT TURNS PERMITTED OUT OF THE DRIVEWAYS OF THE SUBJECT PROPERTY ONTO BRIGHTON ROAD. APPROPRIATE SIGNS WILL BE POSTED.

c. SUBJECT TO THE APPLICANT ADDING LANDSCAPING IN THE COMMON BORDER BETWEEN THE PROPERTY AND 211 MT. PROSPECT AVENUE. THE APPLICANT WILL INSTALL NEW WHITE PINES WHICH ON PLANTING WILL BE TEN FEET TALL AND SPACED ON TEN FOOT CENTERS WHICH WILL BE A CONTINUOUS LINE OF WHITE PINES TO THE SOUTHERLY BORDER OF THE SUBJECT PROPERTY. THE APPLICANT WILL ALSO PROVIDE A SEVEN YEAR MAINTENANCE AND REPLACEMENT BOND OR EVERGREEN MAINTENANCE AND REPLACEMENT BONDS WHICH WILL RENEW FOR THE ENTIRE SEVEN YEAR PERIOD. THE APPLICANT WILL ALSO FILL IN THE GAPS IN THE EXISTING TREE LINE BETWEEN THE TWO PROPERTIES WHERE TREES HAVE EITHER DIED OR BEEN REMOVED;

AND FURTHER SUBJECT TO THE FOLLOWING:

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

5. Payment of all water and sewer connection fees to the Passaic Valley Water Commission and/or the Passaic Valley Sewer Commission, if necessary.
6. Issuance of a road opening permit from the County of Passaic or the Clifton City Engineer, if required.
7. Compliance with the terms of Graviano & Gillis Architects & Planners, LLC report for the above project.
8. Shall maintain adequate escrow funds for all anticipated post-approval reviews.
9. Payment of any other fees due to the City of Clifton related to development or use of this project.
10. Payment of any outstanding taxes due and any outstanding fees to the City of Clifton.
11. Passaic County Planning Board approval or waiver.
12. Hudson Essex Passaic Soil Conservation District approval or waiver.
13. Submittal of approval or waiver of same from any additional agency having jurisdiction, including all applicable City, County, State, and Federal Laws, Ordinances, Regulations, and Directives, including without limitations the requirements of the City Engineering Department, City Fire Official, City Police Department, City Construction Code Official, City Board of Health, City Zoning Officer, and any other governmental authority.
14. Submission of engineering site plan to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of hearing.
15. Submission of architectural plans to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of the hearing.
16. All sewerage, utilities, and other site improvements to be installed and maintained by the applicant at its sole expense.
17. All utilities to be constructed underground.
18. All temporary encroachments into the public right-of-way shall require City Council approval.
19. All construction staging shall be done on-site, unless an encroachment for same into the public right-of-way shall be approved by City Council.
20. Replacement of damaged streets, curbs, and sidewalks as per the direction of the City Engineer and/or Board Engineer.
21. All oral representations made to the Board by applicant, counsel for applicant or applicant's witnesses, not specifically contained herein, but incorporated by consent of applicant.
22. Shall, upon final determination of the building and building footprint, submit to the City Tax Assessor, floor plans, elevations and estimated construction costs of the building. These materials will be utilized to determine the applicable COAH residential or non-residential fee. Fee certification forms shall be completed by the applicant or its assignees and the Tax Assessor prior to submitting for a building permit.
23. Building permit applications shall only be submitted upon receipt of all required approvals/waivers. All building permit applications shall be accompanied by the Board Resolution of approval and with documentation that all conditions of approval have been satisfied. No permits are to issue unless and until the final sealed plans reflecting any changes or amendments have been submitted and approved. The Zoning Board shall retain jurisdiction to reconsider, revise, modify, add, and vary the terms of any conditions herein imposed upon any use variance, variances, and/or site plan granted herein.
24. This Resolution, if not acted upon (obtain building permit) within one (1) year of the date of adoption of this Resolution, shall become null and void; except where such variance or conditional use approval is granted in connection with site plan or subdivision approval, in which case the time limit shall be three (3) years from the date the resolution approving the variance or conditional use is adopted.

Resolution moved by: Comr ZALMAN GURKOV.
Seconded by: Comr SCOTT SOCHON.
Affirmed by: Comrs George Silva, Zalman Gurkov, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino.

MEETING OF AUGUST 17, 2022.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: MIGUEL GARCIA & ROSEANN TEMPRA for premises known as: 242 Washington Ave., Block 18.08, Lot 22 be and the same is hereby: GRANTED variances for maximum building coverage, side yard setback, combined side yard setback, and street side yard setback for second floor addition and multiple interior renovations to the first floor.

Testimony concerning the aforesaid application was taken by the Board at its meeting on August 17, 2022. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

After a review of the testimony, Comr Scott Sochon moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests variance approval for an addition to the second floor and interior renovations to the first floor at premises located at 242 Washington Avenue, Block 18.08, Lot 22, which premises are located in an RA3 zone; and

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

- a. The applicants request approval to expand the second floor and perform multiple interior renovations to the first floor of the existing one-family dwelling;
- b. A variance is required for maximum building coverage where 27 percent is required and the applicant is proposing 37.2 percent;
- c. A variance is required for a side yard setback variance of 4.6 feet where 6 feet is required which is pre-existing;
- d. A variance is required for combined side yard setback of 15.9 feet where 16 feet is required which is pre-existing;
- e. A variance is required for side yard (street side) variance of 11.3 feet where 10 feet is required which is pre-existing;
- f. The applicant has shown sufficient hardship to justify the grant of the variances requested;
- g. The benefits of the application outweigh the detriments, if any; and

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

WHEREAS, the Board further finds that there has been no testimony presented to show that the proposal will be detrimental to the health, safety, and general welfare of the neighborhood since the premises will remain a one-family dwelling;

NOW THEREFORE, BE IT RESOLVED that the application for second floor addition and multiple interior renovations to the first floor at premises located at 242 Washington Avenue, Block 18.08, Lot 22, be and the same is hereby approved and the variances for maximum building coverage, side yard setback combined side yard setback, and street side yard setback be and the same are hereby granted and further subject to such further governmental approvals as may be required by law subject to the following:

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

5. Payment of all water and sewer connection fees to the Passaic Valley Water Commission and/or the Passaic Valley Sewer Commission, if necessary.
6. Issuance of a road opening permit from the County of Passaic or the Clifton City Engineer, if required.
7. Compliance with the terms of Graviano & Gillis Architects & Planners, LLC report for the above project.
8. Shall maintain adequate escrow funds for all anticipated post-approval reviews.
9. Payment of any other fees due to the City of Clifton related to development or use of this project.
10. Payment of any outstanding taxes due and any outstanding fees to the City of Clifton.
11. Passaic County Planning Board approval or waiver.
12. Hudson Essex Passaic Soil Conservation District approval or waiver.
13. Submittal of approval or waiver of same from any additional agency having jurisdiction, including all applicable City, County, State, and Federal Laws, Ordinances, Regulations, and Directives, including without limitations the requirements of the City Engineering Department, City Fire Official, City Police Department, City Construction Code Official, City Board of Health, City Zoning Officer, and any other governmental authority.
14. Submission of engineering site plan to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of hearing.
15. Submission of architectural plans to comply with any changes required by the Planning or Engineering letters or plan amendments offered or required at the time of the hearing.
16. All sewerage, utilities, and other site improvements to be installed and maintained by the applicant at its sole expense.
17. All utilities to be constructed underground.
18. All temporary encroachments into the public right-of-way shall require City Council approval.
19. All construction staging shall be done on-site, unless an encroachment for same into the public right-of-way shall be approved by City Council.
20. Replacement of damaged streets, curbs, and sidewalks as per the direction of the City Engineer and/or Board Engineer.
21. All oral representations made to the Board by applicant, counsel for applicant or applicant's witnesses, not specifically contained herein, but incorporated by consent of applicant.
22. Shall, upon final determination of the building and building footprint, submit to the City Tax Assessor, floor plans, elevations and estimated construction costs of the building. These materials will be utilized to determine the applicable COAH residential or non-residential fee. Fee certification forms shall be completed by the applicant or its assignees and the Tax Assessor prior to submitting for a building permit.
23. Building permit applications shall only be submitted upon receipt of all required approvals/waivers. All building permit applications shall be accompanied by the Board Resolution of approval and with documentation that all conditions of approval have been satisfied. No permits are to issue unless and until the final sealed plans reflecting any changes or amendments have been submitted and approved. The Zoning Board shall retain jurisdiction to reconsider, revise, modify, add, and vary the terms of any conditions herein imposed upon any use variance, variances, and/or site plan granted herein.
24. This Resolution, if not acted upon (obtain building permit) within one (1) year of the date of adoption of this Resolution, shall become null and void; except where such variance or conditional use approval is granted in connection with site plan or subdivision approval, in which case the time limit shall be three (3) years from the date the resolution approving the variance or conditional use is adopted.

Resolution moved by: Comr SCOTT SOCHON.
Seconded by: Comr GEORGE SILVA.
Affirmed by: Comrs George Silva, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrnm Mark Zecchino.

MEETING OF AUGUST 17, 2022.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: WHITE CASTLE SYSTEM, INC. for premises known as: 1325 Main Avenue, Block 11.01, Lot 17 be and the same is hereby: GRANTED preliminary and final site plan approval with associated “c” and “d” variances to construct a one-story dry storage building addition with improvements to the parking area, internal restaurant modifications, drive-through display, and building signage.

Testimony concerning the aforesaid application was taken by the Board at its meeting on August 17, 2022. Said testimony including the application and the plans and exhibits on file are incorporated herein by reference and made a part hereof.

After a review of the testimony, Comr Louis DeStefano moved to grant the application on the basis of the following Resolution:

WHEREAS, the applicant requests approval to construct a one-story dry storage building addition with associated improvements at premises located at 1325 Main Avenue, Block 11.01, Lot 17, which premises are located in a BC and Main Avenue Overlay zone; and

WHEREAS, the applicant has applied for preliminary and final site plan approval and a d(3) conditional use variance as follows:

- a. Minimum lot area of 25,000 square feet required and a lot size of 16,473 square feet is existing and proposed;
- b. Minimum lot width of 125 feet is required and a lot width of 100 feet on Piaget Avenue is existing and proposed;
- c. Minimum lot depth of 150 feet required and a lot depth of 127 feet and 140.21 feet are existing and proposed;
- d. Rear yard setback of 50 feet is required and a rear yard setback of 13.7 feet is proposed from 16.1 feet to accommodate an overhang in the drive-through lane; and

WHEREAS, the applicant has applied for the following “c” variances:

- a. 10 foot separation between the main building and an accessory building is required and a separation between the proposed building addition and the existing shed is proposed at 6.9 feet;
- b. Off street parking or loading spaces, parking aisles or maneuvering areas shall not be located in any required front yard, and parking in the front yard is existing and proposed;
- c. Off street parking or loading spaces, parking aisles or maneuvering areas shall not be located within 10 feet of any corner side lot line, within 10 feet of any rear lot line abutting a street or within five feet of any other lot line, and all setback areas shall be adequately landscaped. The current parking lot and drive-through lanes violate this requirement on all sides of the property;
- d. Facades fronting Main Avenue in the Main Avenue Overlay District shall have a wall of 50% glass and less than 50% of glass is proposed;
- e. Ground signs shall have a maximum height of 8 feet and 20 feet is proposed;
- f. Maximum sign area of 51.35 square feet (5% of the Main Avenue façade area) is permitted and 134.06 square feet of signage is proposed;
- g. Maximum sign height of 2 feet is permitted and the north façade sign is proposed at 6.75 feet, the east façade sign is proposed at 6.75 feet; the freestanding sign at 5.92 feet; the reader board at 4 feet;
- h. Ground signs shall meet the required setback (30 feet) and less than 30 feet is proposed; and

WHEREAS, the Board has received the following reports:

- a. Report of Nicholas A. Graviano, PP, AICP, JD dated August 2, 2022; and
- b. Report of Neglia Engineering dated August 12, 2022; and

WHEREAS, the Board has heard testimony from the applicant's experts, Thomas Muller, PE of Dynamic Engineering, professional engineer; and Michael Kauker, PP, professional planner, who gave testimony in support of the application; and

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

- a. The total area of the subject property is approximately 16,473 square feet and is developed with a one-story restaurant with associated parking;
- b. The applicant proposes exterior improvements to the existing building and construction of a one-story and 450 square foot dry storage building addition with additional site improvements including concrete walkways, mill and overlay of the existing parking area, and signage improvements;
- c. Based upon the testimony presented by the applicant's expert, the Board finds that the site remains particularly suited for the proposed use;
- d. The applicant has satisfied the positive and negative criteria required for the grant of the use variance requested;
- e. The applicant has sustained the burden of proof for the "c" variances since they advance the purposes set forth in the Municipal Land Use Law;
- f. The variances may be granted without substantial detriment to the public good and without impairment of the intent and purpose of the zone plan and the zone ordinance;
- g. The benefits of the application outweigh the detriments, if any;
- h. The board finds that the testimony presented by the applicant's experts is credible and supports approval of the application;
- i. The applicant has shown sufficient hardship to justify the grant of the "c" variances requested;
- j. Based upon the testimony presented by the applicant's experts, the Board concludes that the applicant has met its burden of proof, entitling it to the grant of the approval requested; and

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

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

NOW THEREFORE, BE IT RESOLVED that the application as aforesaid for preliminary and final site plan approval and associated "d" and "c" variances to construct a dry storage area, improvements to the parking area, internal restaurant modifications, drive-through display board and building signage at premises located at 1325 Main Avenue, Block 11.01, Lot 17, be and the same are hereby approved and the "d" and "c" variances as set forth herein are hereby granted SUBJECT to such further governmental approvals as may be required by law and **SUBJECT TO THE FOLLOWING:**

- 1. The reader board on the sign shall be 5 feet wide, 2 feet high, and not box lit;**
- 2. The signs on the building will not be box lit, but have gooseneck lighting; and**
- 3. The applicant will work with the Board Planner, Nicholas A. Graviano, PP, AICP, JD, with regard to the façade on the Piaget Avenue side and comply with his recommendations;**

4. Subject to compliance with all recommendations contained in the reports of Nicholas A. Graviano, PP, AICP, JD, dated August 2, 2022; and Neglia Engineering dated August 12, 2022; 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 same into the public right-of-way shall be approved by City Council.
20. Replacement of damaged streets, curbs, and sidewalks as per the direction of the City Engineer and/or Board Engineer.
21. All oral representations made to the Board by applicant, counsel for applicant or applicant's witnesses, not specifically contained herein, but incorporated by consent of applicant.
22. Shall, upon final determination of the building and building footprint, submit to the City Tax Assessor, floor plans, elevations and estimated construction costs of the building. These materials will be utilized to determine the applicable COAH residential or non-residential fee. Fee certification forms shall be completed by the applicant or its assignees and the Tax Assessor prior to submitting for a building permit.
23. Building permit applications shall only be submitted upon receipt of all required approvals/waivers. All building permit applications shall be accompanied by the Board Resolution of approval and with documentation that all conditions of approval have been satisfied. No permits are to issue unless and until the final sealed plans reflecting any changes or amendments have been submitted and approved. The Zoning Board shall retain jurisdiction to reconsider, revise, modify, add, and vary the terms of any conditions herein imposed upon any use variance, variances, and/or site plan granted herein.
24. This Resolution, if not acted upon (obtain building permit) within one (1) year of the date of adoption of this Resolution, shall become null and void; except where such variance or conditional use approval is granted in connection with site plan or subdivision approval, in which case the time limit shall be three (3) years from the date the resolution approving the variance or conditional use is adopted.

Resolution moved by: Comr LOUIS DE STEFANO.
Seconded by: Comr MICHAEL MOLNER.
Affirmed by: Comrs George Silva, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, and Chrmn Mark Zecchino.