

Minutes of a virtual meeting of the Board of Adjustment of the City of Clifton, New Jersey, held on Wednesday, August 19, 2020. 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 SCOTT SOCHON, MICHAEL MOLNER, DANIEL TRENK, LOUIS DE STEFANO, GEORGE FOUKAS, VICE-CHRMN GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.

ABSENT: COMRS ZALMAN GURKOV AND ROY NOONBURG.

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

Upon motion made by Comr Louis DeStefano, seconded by Comr Scott Sochon, the Minutes of the July 15, 2020, virtual regular meeting were adopted with the unanimous approval of the entire Board.

CONTINUED HEARINGS

1. **UKRAINIAN CULTURAL CENTER OF CLIFTON, INC.**, 110 Vincent Drive, Block 63.01, Lots 24.01 and 24.02 – RA1 – Re-subdivision of the property into one single lot, use variances for the proposed use as a cultural, educational and social center and for having more than one principal use on the same lot and bulk variances for building height (30' permitted 32.89' proposed), and size of parking spaces (9'x19' permitted, 8'x18' proposed).

Chrmn Zecchino stated that the Board is in receipt of communications from John R. Dusinger, an attorney representing an objector; and Frank A. Carlet, the applicant's attorney; that the objectors are challenging the validity of the notice given by the applicant; that the applicant is seeking an adjournment of the matter.

Chrmn Zecchino requested Counsel Pogorelec to advise the Board concerning the communications. Counsel Pogorelec stated that he has had an opportunity to view both communications; that it appears that the applicant has failed to give proper notice by not giving notice to the Commissioner of Transportation of the State of New Jersey as is required by the statute; that notice is a jurisdictional requirement, and the failure to give proper notice is a prerequisite to the Zoning Board's jurisdiction; that the Board does not have jurisdiction of the matter, and a motion to dismiss the case without prejudice is in order.

Thereupon, Comr Michael Molner moved to dismiss the matter without prejudice due to the defective notice. The motion was seconded by Comr Scott Sochon. Voting in the affirmative were Comrs Scott Sochon, Michael Molner, Daniel Trenk, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino. By a seven to zero vote, the motion carried, and the application was dismissed without prejudice in the form as more fully appears at the end of these Minutes.

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

2. **MOHAMMED AND Wafa OTHMAN,**
Use 825 Allwood Road, Block 66.01,
Variance; Lots 22 & 24 – RA3 – Site plan and
Variances use variance pursuant to N.J.S.A. 40:
55D-70(d); Specifically, to demolish
the existing office building on lot 22 and
replace it with a two-story multi-family
dwelling containing six residential
apartments. As part of the application,
the small storage building on lot 24
would be converted to a parking lot
containing 12 spaces for use by occupants
of the dwelling. Pursuant to N.J.S.A. 40:
55D-70(c), application for several bulk
variances including variances for lot width,
lot depth and rear setback for lot 22, and
any other variances that may be necessary.
Application also involves a request for a
reverse subdivision approval to merge
lots 22 and 24 onto one lot.

Douglas J. Kinz, Esq., with offices at 356 Lafayette Avenue, Hawthorne, New Jersey, appeared on behalf of the applicants. Present and sworn were the following: Wafa Othman of 27 Tamboer Avenue, Clifton, New Jersey; Vincent Varella, Jr., of 584 Main Avenue, Passaic, New Jersey, an architect; and Nicholas Graviano of 65 Cedar Avenue, Long Branch, New Jersey, a planner.

Mr. Kinz stated that the applicant requests use variance and site plan approval to demolish an existing office on Lot 22 and replace it with a two-story multi-family dwelling containing six residential apartments; that a small storage building on Lot 24 will be demolished, and this lot will be converted to a parking lot containing 12 parking spaces for use by the occupants of the dwelling.

The Board is in receipt of reports from its experts, to wit: Gregory Associates dated July 6, 2020, and Neglia Engineering dated July 2, 2020.

Vincent Varella testified as an architect and stated that he prepared the plans set forth on Sheets PL-O.0 to PL-3.2 revised August 11, 2020; that the existing structure on the property will be demolished, and the applicant proposes to construct a two-story garden apartment style, multi-family building; that six apartments are proposed, three on each floor; that the building is to be constructed on Lot 22, and the 12 space parking lot is proposed to be located on Lot 24; that access to the parking lot will be from Hepburn Road; that a new 6-foot-tall row of hedges is proposed along the southwestern property line, and ten new trees are also shown on the site plan.

Mr. Varella continued to testify that he did review the report of Neglia Engineering dated July 2, 2020, and by written communication dated August 11, 2020, he did respond to the issues raised by Neglia Engineering concerning general engineering comments; grading, drainage and utility comments; traffic comments; and lighting and landscaping comments.

Vice-Chrmn Scorziello stated for the record that he is not sure that the proposal fits into the neighborhood; that the project needs more character.

There were several interested parties, Robert Surowiec and Bernadette Bielitz, who had questions concerning the drainage, environmental, traffic, lighting, Public Service to the site, and snow removal.

Wafa Othman gave testimony concerning her ownership of the site; that the site was acquired in 2001 which was occupied by a two-family residence; that subsequently, the residence was converted to a 2,500 square foot building where she conducted a real estate office; that in 2013, she sold the business, and the purchaser left the building to downsize its business; that she has diligently attempted to rent the property as an office to another tenant; however, all attempts have been unsuccessful.

Nicholas Graviano testified as a planner and identified the uses in the area, including a funeral home, office building, restaurant, credit union, bank, and medical offices; he also identified the uses across the street which are residential in nature; that in his opinion, the site is particularly suited for multi-family development; he testified as the special reasons, stating that the proposal advances the reasons set forth in the statute, and more specifically, paragraphs a) and g); that the proposal furthers the goals of the master plan; that the negative criteria is satisfied with the location of the parking lot and access to same from Hepburn Road; that the proposal is compatible with the zone plan in the area.

There were suggestions from Chrmn Zecchino and Comr Foukas that the applicant should consider reducing the number of units from six to four units.

Thereupon, the matter was continued by the Board until the September 16, 2020, meeting of the Board.

NEW HEARINGS

1. **MARSHA AND THERESA KELLEY,**
Variances 124 Cresthill Ave., Block 57.09, Lot 27
-- RA3 – Applicant proposes to build rear yard addition and deck. The addition meets setback requirements but the deck requires a variance for rear yard setback. Rear yard proposed at 24' where 35' is required. Lot coverage is also proposed at 27.65% where a maximum of 27% is permitted.

The applicants, residing at 124 Cresthill Avenue, Clifton, New Jersey, were present and sworn. There were no objectors.

The applicant testified that it proposes to build a rear yard addition and a deck at the subject premises; that the addition meets the setback requirements but the deck requires a variance for rear yard setback; that the rear yard proposed is 24 feet where 35 feet is required; that the lot coverage permitted is 27 percent maximum, and the applicant is seeking 27.65 percent.

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

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

2. **JOHN RADER**, 817-825 Clifton Avenue, Block 35.06, Lot 16 – B-C – Site plan Use Variance; Variance; Variances; 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 require variances.

Frank A. Carlet, Esq., with offices at 1135 Clifton Avenue, Clifton, New Jersey, appeared on behalf of the applicant. Gary Kliesch of 36 Ames Avenue, Rutherford, New Jersey, an architect, was also present and sworn.

Mr. Kliesch testified that the applicant is seeking site plan approval to remove the existing Mooney Auto Repair Garage located at the site to enlarge the building housing the existing Dunkin Donuts building and create an additional store; that there will be two vestibule entrances to the two stores and a drive-in facility is proposed; that a bulk variance is required to permit the use of lighting other than the ordinance-required high-pressure sodium lighting since it is no longer manufactured; that a use variance is required to permit the drive-in window; that all other non-conformities are pre-existing and do not require variances.

The Board is in receipt of reports from its experts: Gregory Associates dated August 17, 2020, and Neglia Engineering dated August 7, 2020.

Mr. Kliesch continued to testify concerning the comments raised in the Neglia report dated August 7, 2020, concerning the site and project description; general engineering comments; grading, drainage and utility comments; traffic comments; and lighting and landscaping comments.

Mr. Kliesch further testified that by removing the repair garage, the entire interior, side, and rear of the property will be substantially opened up and provide, not only additional parking, but also a larger landscape area than exists presently; that in his opinion, the granting of the requested variances serves to improve the traffic flow in the area with the addition of the drive-in window and, by removing the repair garage which is approximately 2,725 square feet, will serve to open up the entire property and improve its appearance.

At this point in the hearing, Chrmn Zecchino stated that he questions the traffic and queue lanes proposed by the applicant.

Thereupon, the matter was continued by the Board until the September 16, 2020, meeting of the Board.

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 Louis DeStefano, seconded by Comr Scott Sochon, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, and Acting Chrmn Gerard Scorziello, the Resolution GRANTING the application of RAYMOND NOWICKI for a conditional use variance for a 320 square foot coffee bar within the office building at 1037 Route 46, Suite G5, Block 39.04, Lot 21, Qualifier CCG05, was adopted. B-D

2. Upon motion made by Comr Louis DeStefano, seconded by Comr Michael Molner, and affirmed by Comrs Scott Sochon, Michael Molner, Louis DeStefano, and Acting Chrmn Gerard Scorziello, the Resolution GRANTING the application of LORIANN BURKE for a 5-foot-high solid fence with a 1-foot lattice for a total of 6 feet along the rear lot line of the subject premises along Van Houten Avenue at 60 Sperling Road, Block 38.03, Lot 7, was adopted. RA3

There being no further business before the Board, Vice-Chrmn Gerard Scorziello moved to adjourn. The motion was seconded by Comr Louis DeStefano with the unanimous approval of the entire Board.

Respectfully submitted,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF AUGUST 19, 2020.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: UKRAINIAN CULTURAL CENTER OF CLIFTON, INC. for premises known as: 110 Vincent Drive, Block 63.01, Lots 24.01 and 24.02 be and the same is hereby: DISMISSED WITHOUT PREJUDICE for defective service.

WHEREAS, this matter, coming on for hearing before the Board; and

WHEREAS, the objector, through its counsel, has by written communication dated August 14, 2020, indicated that there are defects in the notice which include the failure of the applicant to give notice to the Commissioner of Transportation of the State of New Jersey as required by statute; and

WHEREAS, the Board heard the opinion of Counsel who stated that the failure to give proper notice divests the Board from its jurisdiction and that the defective notice requires the applicant to re-notice and to start the public hearing from the very beginning; and

WHEREAS, Comr Michael Molner made a motion to dismiss the matter without prejudice, which motion was seconded by Comr Scott Sochon, affirmed unanimously by the entire Board;

NOW THEREFORE, BE IT RESOLVED that the application to re-subdivide the property into one single lot and proposed use as a cultural, educational, and social center at 110 Vincent Drive, Block 63.01, Lots 24.01 and 24.02, be and the same is hereby dismissed without prejudice.

**Resolution moved by: Comr MICHAEL MOLNER.
Seconded by: Comr SCOTT SOCHON.
Affirmed by: Comrs SCOTT SOCHON, MICHAEL MOLNER,
DANIEL TRENK, LOUIS DE STEFANO, GEORGE FOUKAS, VICE-CHRMN
GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.**

MEETING OF AUGUST 19, 2020.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: MARSHA AND THERESA KELLEY for premises known as: 124 Cresthill Avenue, Block 57.09, Lot 27 be and the same is hereby: GRANTED rear yard setback variance and lot coverage variance for a rear yard addition and deck.

Testimony concerning the aforesaid application was taken by the Board at its virtual meeting on August 19, 2020. Said testimony along with the application and plans and exhibits on file are incorporated herein by reference and made a part hereof.

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

WHEREAS, the applicant proposes to build a rear yard addition and deck at premises located at 124 Cresthill Avenue, Block 57.09, Lot 27, which premises are located in an RA3 zone; and

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

- a. The applicant proposes a rear yard addition and deck at the subject premises;
- b. The addition meets the setback requirement;
- c. The deck requires a variance for a rear yard setback where 35 feet is required and the applicant is proposing 24 feet;
- d. The lot coverage proposed is 27.65 percent where a maximum of 27 percent is permitted;
- e. The applicant has shown sufficient hardship to justify the grant of the variances requested;
- f. The benefits of the application outweigh the detriments, if any; and

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

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

NOW THEREFORE, BE IT RESOLVED that the application for a rear yard addition and deck at premises located at 124 Cresthill Avenue, Block 57.09, Lot 27, be and the same is hereby approved and the rear yard setback variance and lot coverage variance be and the same are hereby granted subject to such further governmental approvals as may be required by law and SUBJECT TO THE FOLLOWING:

1. Compliance with the terms of Neglia Engineering Associates report for the above-referenced project.
2. Submission to Neglia Engineering Associates of all necessary easements and/or cross-access agreements for review and approval by the Board Attorney and the City Engineer prior to filing of same.
3. Entering into a Developer's Agreement with the City of Clifton and payment of a site performance bond to the City of Clifton.
4. Submission of a site inspection escrow deposit for engineering inspection fees and safety and stabilization bond/guarantee in amounts to be determined by the Board Engineer.
5. Payment of all water and sewer connection fees to the Passaic Valley Water Commission and/or the Passaic Valley Sewer Commission, if necessary.
6. Issuance of a road opening permit from the County of Passaic or the Clifton City Engineer, if required.
7. Compliance with the terms of Gregory Associates, LLC report for the above project.
8. Shall maintain adequate escrow funds for all anticipated post-approval reviews.
9. Payment of any other fees due to the City of Clifton related to development or use of this project.
10. Payment of any outstanding taxes due and any outstanding fees to the City of Clifton.
11. Passaic County Planning Board approval or waiver.
12. Hudson Essex Passaic Soil Conservation District approval or waiver.

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

Resolution moved by: Comr MICHAEL MOLNER.
Seconded by: Comr JOHN FOUKAS.
Affirmed by: Comrs SCOTT SOCHON, MICHAEL MOLNER, DANIEL
**TRENK, LOUIS DE STEFANO, GEORGE FOUKAS, VICE-CHRMN GERARD
 SCORZIELLO, AND CHRMN MARK ZECCHINO.**