

Minutes of a regular meeting of the Board of Adjustment of the City of Clifton, New Jersey, held at the Council Chambers, City Hall, Clifton, New Jersey, on Wednesday, November 6, 2019. 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 ZALMAN GURKOV, SCOTT SOCHON, MICHAEL MOLNER, LOUIS DE STEFANO, GEORGE FOUKAS, ROY NOONBURG, VICE-CHRMN GERARD SCORZIELLO, AND CHRMN MARK ZECCHINO.

ABSENT: COMR DANIEL TRENK.

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 Vice-Chrmn Gerard Scorziello, the Minutes of the October 16, 2019, regular meeting were adopted with the unanimous approval of the entire Board.

CONTINUED HEARING

1. NELY ALTAMIRANO, 42 Paterson Avenue, Use Block 82.02, Lot 64 – RA3 – Bulk variances Variance; requested in connection with a proposed rear Variances addition to existing two-family dwelling and changing location of one car garage: seeking "D" variance approval for expansion for non-conforming use and such other variances and/or waivers, if any, relating to the application as the same may be amended.

Fausto Simoes, Esq., with offices at 112 Jabez Street, Ste 101, Newark, New Jersey, appeared on behalf of the applicant. Present and sworn were the applicant, Nely Altamirano, of 42 Paterson Avenue, Clifton, New Jersey; Daniel Roma of 877 Broad Street, Newark, New Jersey, an architect; and Brian E. Seidel of 2103 East High Street, Pottstown, Pennsylvania, a professional planner. There were several

objectors: Valerie Carluccio and Martin Carluccio, 46 Paterson Avenue, Clifton, New Jersey; and Maria Y. Puerta Castillo, 49 Paterson Avenue, Clifton, New Jersey.

Mr. Simoes stated that the applicant proposes a rear addition on an existing, non-conforming two-family home which requires a use variance; that a new detached garage is also proposed.

Mr. Roma testified as an architect, explaining that the applicant will remove the patio from the ground floor; that the size of the proposed addition is 20 feet by 34.08 feet; that the existing garage at the rear of the property will be relocated; that the structure will remain a two-family dwelling.

Nely Altamirano, the applicant, testified that the expansion is needed to accommodate more space for the family; that her son suffers from epilepsy and a bedroom will be provided for him on the same floor; that she requires the income from the two-family dwelling to maintain the premises.

Brian E. Seidel testified as a planner and stated that the application will be an improvement for the neighborhood; that there will be no detriment resulting from the proposed addition; that the size of the property can accommodate the addition; that the expansion is within the floor area of the building; that the proposal satisfies the positive and negative criteria required for the grant of a use variance.

In objecting to the application, Martin Carluccio had marked into evidence exhibit "O-1" which is a photograph indicating the rear of his premises. Mr. Carluccio testified that the privacy that he now enjoys will be eliminated if the addition is added.

In summation, Mr. Simoes stated that the applicant has sustained the burden of proof for the grant of the use variance; that the addition is appropriate for this location; that the applicant has proved the positive and negative criteria.

After a review of the testimony, Comr Roy Noonburg moved to deny the application, citing the fact that the applicant has failed to sustain the burden of proof required for the expansion of a non-conforming two-family dwelling in one-family zone. Comr Noonburg further instructed the Counsel Secretary to prepare the proper Resolution for denial. The motion was seconded by Comr George Foukas. Voting for denial were Comrs Scott Sochon, Michael Molner, George Foukas, Roy Noonburg, and Chrmn Mark Zecchino. Voting against the motion were Comrs Louis DeStefano and Vice-Chrmn Gerard Scorziello. By a five to two vote, the motion carried, and the application was denied in the form as more fully appears at the end of these Minutes.

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

NEW HEARINGS

1. DENA CONSTANDELIS, 465 Valley Road,
Use Block 32.02, Lot 1 – R-B1 – Applicant
Variance proposes to expand the existing Dental
 office. A use variance is required for the
 expansion of a non-conforming use.
 Application was previously heard and
 approved on August 19, 2015. The work
 was not started and the resolution was
 voided. This application includes the
 addition of a handicap ramp to meet ADA
 requirements.

Theodore Constandelis, the owner of the premises, residing at 48 Abbott Road, Towaco, New Jersey, was present and sworn. Also present and sworn was J.R. Frank of 30 Galesi Drive, Wayne, New Jersey, an architect. There were no objectors.

Vice-Chrmn Gerard Scorziello excused himself from participating in this matter, and Comr Zalman Gurkov sat in his place and stead.

Mr. Constandelis testified that he is the owner of the premises and that his daughter, who occupies and runs the dental office, was unable to be present to testify.

Mr. Frank testified that the applicant proposes to expand the existing dental office at the site; that a use variance is required for the expansion of a non-conforming use; that the application was previously heard and approved on August 19, 2015, by the Board; that the work was never started, and the Resolution became null and void; that the within application is the same application previously approved by the Board and also includes the addition of a handicap ramp to meet the ADA requirements; that the proposal will also create a barrier-free access to an existing dental office and there will be a barrier-free corridor and barrier-free restroom.

After a review of the testimony, Comr Louis DeStefano moved to grant the application, citing the fact that the Board previously did act upon this matter and approved the same. Comr DeStefano further instructed the Counsel Secretary to prepare the proper Resolution for approval. The motion was seconded by Comr Scott Sochon. Voting for the motion were Comrs Zalman Gurkov, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Roy Noonburg, 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 ZELENKA, 250 Delawanna Ave.,**
Use Block 59.06, Lot 93 – M2 – Applicant
Variance; proposes to use rear portion of lot for
Variances parking and storage of equipment for his
tree and snow removal company. A use
variance is required as the existing
printing business will remain in the
principal building, two uses on one lot.
Bulk variances for preexisting conditions
together with such other necessary relief
as deemed proper.

This matter was continued to the November 20, 2019, meeting of the Board at the request of the attorney for the applicant.

RESOLUTIONS

1. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr George Foukas, and affirmed by Comrs Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution DENYING the application of FRANK KOBLE for use variance and bulk variance to install an exterior door into basement at 305 Luddington Avenue, Block 19.12, Lot 1, was adopted. RA3

2. Upon motion made by Comr George Foukas, seconded by Vice-Chrmn Gerard Scorziello, and affirmed by Comrs Michael Molner, George Foukas, Roy Noonburg, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of SAMI SOLAIMANZADEH for front yard setback, rear yard setback, left and right side yard setback, combined side yard setback, and lot coverage variances for a second floor addition, a rear addition, and an addition to the front entry way at 107 Patricia Place, Block 71.04, Lot 8, was adopted. RA3

3. Upon motion made by Vice-Chrmn Gerard Scorziello, seconded by Comr Louis DeStefano, and affirmed by Comrs Michael Molner, Louis DeStefano, George Foukas, Vice-Chrmn Gerard Scorziello, and Chrmn Mark Zecchino, the Resolution GRANTING the application of RALPH TRAVELLIN for a use variance for a used car license and for two uses on one lot at 956 Van Houten Avenue, Block 35.10, Lot 1, was adopted. B-C

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

Respectfully submitted,

JOHN D. POGORELEC
COUNSEL SECRETARY

MEETING OF NOVEMBER 6, 2019.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: NELY ALTAMIRANO for premises known as: 42 Paterson Avenue, Block 82.02, Lot 64 be and the same is hereby: DENIED use variance for expansion of a non-conforming two-family dwelling and changing location of one-car garage.

Testimony concerning the aforesaid application was taken by the Board at its meeting on November 6, 2019. 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 Roy Noonburg moved to deny the application on the basis of the following Resolution:

WHEREAS, the applicant requests use and bulk variances to expand an existing, non-conforming two-family dwelling and change the location of a one-car garage at premises located at 42 Paterson Avenue, Block 82.02, Lot 64, which premises are located in an RA3 zone; and

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

- a. The premises in question is an existing two-family dwelling which is a non-conforming use in an RA3 zone which is for one-family dwellings;
- b. The applicant had a planner testify on her behalf; however, the testimony failed to satisfy the positive and negative criteria required for the grant of a use variance;
- c. Based upon the testimony of the next door neighbor, the proposal will be detrimental to the privacy he now enjoys since the addition will block his view of the adjacent rear yards of the neighborhood;
- d. The size and the location of the addition will not be in harmony with the adjacent one-family dwellings in the neighborhood;
- e. The applicant has shown no hardship to justify the grant of the bulk variances requested;
- f. The detriments of the application outweigh the benefits, if any; and

WHEREAS, the Board finds from the testimony presented that the proposal will not be in accord with the intent and purpose of the master plan and the zone ordinance since the zone is designated for one-family dwellings, and the applicant has an existing non-conforming two-family dwelling at the site; and

WHEREAS, the Board further finds that based upon the testimony presented by the objector, the proposal will be detrimental to the health, safety, and general welfare of the neighborhood due to its size and location;

NOW THEREFORE, BE IT RESOLVED that the application to expand an existing non-conforming two-family dwelling in a one-family zone at premises located at 42 Paterson Avenue, Block 82.02, Lot 64, be and the same is hereby disapproved and the use variance and any bulk variances requested be and the same are hereby denied.

**Resolution moved by: Comr ROY NOONBURG.
Seconded by: Comr GEORGE FOUKAS.
Affirmed by: Comrs Scott Sochon, Michael Molner, George Foukas, Roy Noonburg, and Chrmn Mark Zecchino.**

MEETING OF NOVEMBER 6, 2019.

RESOLVED by the ZONING BOARD OF ADJUSTMENT, CLIFTON, N.J., that the application of: DENA CONSTANDELIS for premises known as: 465 Valley Road, Block 32.02, Lot 1 be and the same is hereby: GRANTED a use variance to expand an existing dental office on the ground floor.

Testimony concerning the aforesaid application was taken by the Board at its meeting on November 6, 2019. 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 use variance approval to expand the existing dental office at premises located at 465 Valley Road, Block 32.02, Lot 1, which premises are located in an R-B1 zone; and

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

- a. The proposed application was previously presented to the Board on August 19, 2015, and the Board did, in fact, grant the use variance which was never acted upon, and therefore, the variance became null and void;
- b. The application presented to the Board is the same application which was previously approved by the Board and, in addition, includes a handicap ramp to meet ADA requirements;
- c. The proposal will create a barrier-free access to the dental office as well as barrier-free corridor and a barrier-free restroom;
- d. The applicant has satisfied the positive and negative criteria required for the grant of the use variance;
- e. The benefits of the application outweigh the detriments, if any;
- f. The findings made by the Board in the Resolution approving the application on August 19, 2015, are incorporated herein by reference and made a part hereof; and

WHEREAS, the Board finds from the testimony presented that the expansion of the dental office will be in accord with the intent and purpose of the master plan and the zone ordinance since the use is pre-existing at the site; 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 to expand the existing dental office located within a residential house at premises located at 465 Valley Road, Block 32.02, Lot 1, be and the same is hereby approved and the use variance be and the same is hereby granted subject to such further governmental approvals as may be required by law and **FURTHER SUBJECT TO PASSAIC COUNTY PLANNING BOARD APPROVAL, IF REQUIRED** 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 LOUIS DE STEFANO.
Seconded by: Comr SCOTT SOCHON
Affirmed by: Comrs Zalman Gurkov, Scott Sochon, Michael Molner, Louis DeStefano, George Foukas, Roy Noonburg, and Chrmn Mark Zecchino.