



PLANNING MEMORANDUM

To: City of Clifton Zoning Board of Adjustment
From: Kathryn M. Gregory, PP, AICP
Principal
Re: John Rader
Block 35.06 Lot 16
817 - 825 Clifton Ave.
Date: August 17, 2020

INTRODUCTION

The applicant, John Rader, has submitted an application for variance approval for the property located at 817 - 825 Clifton Avenue. The property in question (PQ) is 21,520 SF and is located in the B-C District, is irregular in shape, with over 100' of frontage along Clifton Avenue and almost 150' of frontage along Cloverdale Road. The applicant proposes to demolish the existing Mooney's garage building, and construct an addition to the other existing building on the property, and reconfigure the parking area to accommodate same for a Dunkin Donuts with a drive-thru, and an additional restaurant space.

Variations required include:

- D(1) Use Variance
- C Variations:

The application consists of the following:

1. City of Clifton Application for Development and/or Appeal.
2. Rider to Application.
3. Architectural Drawings and Site Plan, Sheets T-1, SP - 1 through SP - 5, D-1 to D-2, G-1 through G-4, A-1, A-2, and A-2.1, prepared by gk+a Architects, PC, dated 03/10/20.

PROPERTY DESCRIPTION

The property in question (PQ) is 13,190.32 SF and is located in the B-C Business Commercial District, is irregular in shape, with over 100' of frontage along Clifton Avenue and almost 150' of frontage along Cloverdale Road. The site currently contains two buildings - a 1-story masonry and wood building housing Mooney's Garage, and a 1-story masonry building housing a Dunkin Donuts Restaurant, along with 22 parking spaces.

EXISTING ZONING AND SURROUNDING LAND USES

The site is located in the B-C Business Commercial District. The site abuts the R-B-1 District to the east.

The uses in the area are varied; Clifton Avenue contains a variety of uses, including the Boys and Girls Club, a pharmacy, offices, retail, and other commercial uses; and single-family residential is found to the east. An aerial of the site is found below.



Source: bing maps

PROPOSED DEVELOPMENT

The application involves demolishing the existing structure housing Mooney's Garage at the rear of the property and constructing a 949 SF addition to the Dunkin Donuts building. The site will be reconfigured to accommodate a drive-thru and a total of 27 parking spaces. Access to the site will be via both Clifton Avenue and Cloverdale Road. A one-way in will be located along Clifton Avenue, and one-way out will be located both along Clifton Avenue and Cloverdale Road. Site circulation will be one-way in a counter-clockwise direction around the site. The site plan shows a total of 6 cars available to queue in the drive-thru lane.

ZONING REQUIREMENTS

The P.Q. is located in the B-C Business Commercial District. The uses in the B-C Business Commercial District are as follows:

- (a) Professional and business offices.
- (b) Professional and business offices involving accessory dwelling facilities only for a resident businessman and his family or a resident professional person and his family.
- (c) Retail stores, service establishments and supermarkets.
- (d) Hotels and theaters.
- (e) Printing shops and newspaper publishing plants where no engraving, photoengraving or lithography is done on the premises.
- (f) Parking lots and parking garages.
- (g) Vending machines.
- (h) Repair of shoes, clothing, small appliances and other personal and household articles of a size and bulk which can be carried and transported without the aid of machinery or mechanical assistance.

- (i) Mortuary, as such or when conducted as an integral part of a resident mortician's home.
- (j) Automotive sales agencies for the sale of new motor vehicles and parts within a building, together with the following accessory uses:
 - [1] The sale of used motor vehicles.
 - [2] The leasing of motor vehicles.
 - [3] The repair of motor vehicles; provided, however, that disabled vehicles and parts thereof shall be stored within a building.
- (k) All other buildings, structures and uses primarily devoted to retail trade and business, including processes of manufacture, assembly, alteration, conversion or treatment which is clearly incidental to such retail trade or business conducted on the premises but not exceeding a floor area equal to 20% of the area devoted to the retail use.

The following uses and structures are specifically prohibited in the B-C District:

- (a) Any use permitted in an M District but in no other district. Any nonresidential use prohibited in an M-2 District and M-3 District.
- (b) Mixed residence and business in the same structures, except as provided in Subsection **K(1)(b)** and **(i)**.
- (c) Slaughtering poultry and animals, rendering lard and other fats and meat smoking, whether or not the same is incidental to a retail trade or business.
- (d) The storage of used cars, except in accordance with Subsection **K(1)(j)** above. [Added 4-21-1995 by Ord. No. 5732-95]

Conditional uses permitted in B-C Zones shall be as follows:

- A. Conditional uses permitted in R-A1, R-A2 and R-A3 Zones and subject to the same standards.
 - Private and public schools offering instruction, including elementary, high school and college levels. [Amended 5-1-1984 by Ord. No. 4888-84]
 - Houses of worship and related accessory uses.
- B. Conditional uses permitted in B-B Zones and subject to the same standards.
 - Conditional uses permitted in R-A1, R-A2 and R-A3 Zones, and subject to the same standards. (see above)
 - Meeting halls and clubs as permitted in R-B2 and R-B3 Zones, and subject to the same standards.
 - Nursery schools as permitted in R-B2 and R-B3 Zones, and subject to the same standards.
 - Hospitals as permitted in B-A Zones, and subject to the same standards.
 - Restaurants, excluding fast-food restaurants, serving food and/or beverages for consumption within the building in which the food is prepared.
 - All permitted retail or commercial uses involving a drive-in facility, including but not limited to drive-in banks, drive-in photo service and drive-in cleaners. A report shall be received from the Police Department, and any recommendations included in the report shall be considered by the Planning Board.
- C. Car washes.[Amended 4-18-1994 by Ord. No. 5730-95^[1]] [1]Editor's Note: This section also superseded former § 461-33C, New and used car lots, and it re-designated former Subsections D and E as Subsections C and D, respectively.
- D. Fast-food restaurants.
- E. Therapeutic massage facility.

The following definitions should be considered in this application:

RESTAURANT

An establishment serving food and/or beverages for consumption within the building in which the food is prepared.

RESTAURANT, FAST-FOOD

An establishment where orders are primarily taken and food is dispensed to the public at a takeout counter or drive-in window, whether for on-premises or off-premises consumption, to include an establishment which dispenses food prepared on the premises for consumption off premises only.

[Amended 1-5-1993 by Ord. No. 5619-93]

RESTAURANT, FAST-FOOD, ON-PREMISES OR OFF-PREMISES CONSUMPTION

An establishment where orders are taken and food is dispensed to the public at a take-out counter or drive-in window, either for on-premises or off-premises consumption.

[Added 7-19-1994 by Ord. No. 5693-94]

RESTAURANT, FAST-FOOD, OFF-PREMISES CONSUMPTION ONLY

An establishment where orders are taken and food is dispensed to the public at a take-out counter or drive-in window, for off-premises consumption only.

[Added 7-19-1994 by Ord. No. 5693-94]

Based on the definitions above, a fast-food restaurant with a drive-thru is a conditionally permitted use in the zone, so therefore a d(3) conditional use variance is required.

D(3) Conditional Use Variance

- **d(3) variances** (deviation from a specification pertaining solely to a conditional use)
- Case law that applies: *Coventry v. Westwood*
 - Declared a variance for a conditional use is more like a permitted use, and therefore, that the standards whether to grant a conditional use variance are less burdensome than those applicable to prohibited uses granted variances d(1) or d(2), but also unlike the standard applied to a “c”
 - Whether this change is desirable depends on the governing body’s *intended purpose* for conditional uses
 - Positive criteria is presumptively met, as the governing body has allowed that use in the zone (with certain conditions)
 - The Court stated that the conditional use applicant’s inability to comply with some of the ordinance’s conditions need not materially affect the appropriateness of the site for the use
 - How to apply the negative criteria: where a variance can be granted only “without substantial detriment to the public good” and “will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”
 - With respect to the first prong of the neg. criteria, the focus is on the effect on surrounding properties of the grant of the variance
 - The Bd. Of Adjustment must evaluate the impact of the proposed conditional use variance (the actual deviation from the ordinance) upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good”
 - With respect to the Second prong, the bd. of adjustment must be satisfied that the grant of the conditional use variance will not “substantially impair the intent and purpose of the zone plan and zoning ordinance”
 - The board of adjustment must be satisfied that the grant of the conditional use variance for the specific project at the designated site is reconcilable with the municipality’s legislative determination that the condition should be imposed on all conditional uses in that zoning district

Additional requirements for conditional uses:

The general standards for the review of all conditional uses shall be:

- (1) The Planning Board shall first determine that the proposed use shall not be detrimental to the health, safety and general welfare of the community.
- (2) The proposed use shall be reasonably necessary for the convenience of the community.
- (3) The proposed use shall not create a fire, traffic or safety hazard.
- (4) The proposed use or structure shall not have an adverse effect on the neighborhood in which it is proposed.
- (5) Off-street parking and loading spaces shall be provided in accordance with the Schedule of Regulations in Article IV.
- (6) Where parking, loading or recreation areas adjoin a residential use or residential zone, there shall be a ten-foot-wide landscaped strip adjoining the residential lot line, unless a wider buffer is specifically required.
- (7) The use shall provide safe and efficient vehicular and pedestrian circulation, with access and egress designed to eliminate any traffic safety hazards entering and exiting the site, and so designed as not to cause traffic congestion on abutting streets.

"C" variances

N.J.S.A. 40:55D-70c sets forth the criteria for a board of adjustment to grant variance from bulk requirements of zoning ordinance. Two types of "c" variances can be granted:

- 1) (c)1: in cases of hardship, such as "exceptional narrowness, shallowness or shape of specific piece of property," or by reason of exceptional or unique topographic conditions, physical features, or an exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
- 2) (c)2: where the purposes of zoning would be advanced and the benefits derived by the variance would outweigh any detriments.

The applicant must also meet the negative criteria of the statute for the granting of a "c" variance, wherein a variance can be granted only "without substantial detriment to the public good" and where it "will not substantially impair the intent and the purpose of the zone plan and zoning ordinance."

Lot Area

- 25,000 SF required
- 21,520 SF proposed
- Existing Condition

Lot Depth

- 150' required
- 140' proposed
- Existing Condition

Ground Sign Setback

- Ground signs shall be subject to all applicable setback lines in the same manner as buildings.
- 5' required
- 1' – 2" proposed for ground sign at corner of lot
- Variance required

§ 461-52. Screening required for certain uses in business districts.

- Where a business district abuts an R District, a use permitted in the business district shall be screened at the rear and side lot lines coincidental to the R District by evergreens or a fence approved by the Planning Board or Board of Adjustment, which will provide an effective visual screen when viewed from the R District. Such screen shall be at least six feet in height and shall be located within a buffer space at least six feet in width.
- 6' board on board fence provided
- Buffer space of six feet not provided
- Variance required

Fencing

- A fence not exceeding six feet in height erected along all property lines. Such fences shall have open spaces of at least the same size as and between each two pickets, slats or other construction elements, that is, 50% open construction, and shall be 100% open within 10 feet of a street property line.
- Fence is 50% open within 10' of street property line for both Clifton Avenue and Cloverdale Road
- Variance required

We reserve the right to determine additional variances and/or make comments during the course of testimony.

KMG

Cc: John Pogorelec, Esq. Zoning Board of Adjustment Attorney
Dan Howell, Zoning Officer, City of Clifton
Frank Carlet, Esq, Applicant's Attorney