



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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## **DRAFT MINUTES OF THE BOARD OF ADJUSTMENT AUGUST 17, 2016**

**ORDER:** The meeting was called to order at 7:40 p.m. by Janice Talley. Ms. Talley read the notice of compliance with the New Jersey Open Public Meetings Act and indicated that appropriate notice was forwarded to the officially designated newspaper of Montclair and posted in the Municipal Building. The schedule of meetings is also posted on the Township website.

**ROLL CALL:** Ms. Talley called the roll. Present were Mr. Harrison, Mr. Fleischer, Ms. Baggs, Mr. Moore, Mr. LaVail, Ms. Chowaniec, Mr. Allen, Mr. Sullivan, and Ms. Talley. Mr. Reynolds and Ms. Checca were absent.

### **APPROVAL OF MINUTES:**

Mr. Harrison introduced the minutes of the July 20, 2016 Board meeting. He noted a few edits to the minutes as presented. A motion to approve the minutes as amended was offered by Mr. Fleischer, seconded by Ms. Baggs. The minutes were approved unanimously with Mr. Allen abstaining.

### **OLD BUSINESS:**

**Resolution for App. 2460: Glenn & Katherine Newmark. 93 Union Street.** Mr. Harrison introduced the resolution. A motion to approve the resolution was offered by Mr. Fleischer, seconded by Ms. Baggs. The resolution was approved unanimously with Mr. Allen abstaining.

**Resolution for App. 2466: Daniel Nachman. 193 Cooper Avenue.** Mr. Harrison introduced the resolution. Several edits to the resolution as presented were noted. A motion to approve the resolution as amended was offered by Mr. Fleischer, seconded by Ms. Baggs. The resolution was approved unanimously with Mr. Allen abstaining.

**App. 2448: The Deron School. 130 Grove Street.** Steve Hehl, attorney for the applicant, gave a brief recap of the application. He stated that The Deron School is a licensed school for disabled children. He noted that the application is to create an additional 13 parking spaces on the property. He stated that the plans have been modified so that only one variance is required for parking in the front yard, which is an existing condition. He noted that a design waiver is required to permit tandem parking.

Mr. Hehl introduced Mr. Craig Peregoy, a traffic engineer. The Board accepted Mr. Peregoy as an expert traffic engineer. Mr. Peregoy stated that there will be no traffic impact caused by the expanded parking area. He referenced his 2006 traffic impact statement which has been updated for the present application.

Vice Chair Fleischer questioned Mr. Peregoy. He noted issues in other municipalities where on-street parking is frequently used by schools. Mr. Peregoy agreed.

Chair Harrison stated that the intersection of Oxford and Grove is a mess during the morning rush hour. He wants to understand how the additional cars coming to the school will affect this intersection.

Mr. Peregoy stated that cars are already coming to the school and that the expansion of the parking area will not increase the number of vehicle coming to the property. He noted that some drivers to the school currently go through the intersection twice while looking for a parking space and the proposal should reduce the number of vehicles traveling through the intersection. Mr. Peregoy noted that an increase of 100 trips in an hour is a significant impact on an intersection and that the traffic from the application is well below this threshold. He concluded that there is no significant impact.

Mr. Allen asked about school bus activity. Mr. Peregoy stated that there is no change.

There were no questions from the public. There were no comments from the public.

Mr. Hehl summarized the application, noting that the school is an inherently beneficial use. He noted that providing the additional parking spaces onsite will bring the project more into conformity with the zone requirements. He stated that it is a well-designed plan with lots of input from the Board and that only one variance is required.

Vice Chair Fleischer stated that he supports the application. He stated that the on-street parking limitations are a mistake and that on-street parking is a normal way to handle parking adjacent to schools. He is opposed to the additional impervious coverage.

Mr. Moore stated that he agrees with Mr. Fleischer.

Ms. Baggs stated that she supports the application and that the testimony shows that care has been take to take care of the health of the trees. She states that removing the parking from the street is a benefit to the neighborhood and that there is no substantial detriment created by the application.

Mr. Allen, Mr. LaVail, and Ms. Chowaniec stated their support for the application.

Chair Harrison stated that the original intent was to preserve as much green area as possible. He understands the Council's concerns about all-day commuter parking, but feels that it is short-sighted considering the school. He noted that there is not a lot of traffic created by the change. He asked the applicant switch the garden to the Grove Street side of the school to better maintain the green area on Christopher Street. He asked the applicant to plant an oak tree at a suitable location on the property. He stated that the revised plan should address the curbing issue raised by the Board Engineer.

A motion to approve the application with the stated conditions was made by Ms. Baggs, seconded by Mr. Fleischer and approved unanimously.

**App. 2457: Ronald DeMyers, Sr. Agency, Inc. 119 Grove Street.** Alan Trembulak, Esq. appeared on behalf of the applicant. Mr. Trembulak noted that the application is requesting a use variance to permit an office use on the first floor. He stated that the applicant currently has an office at 100 Grove Street and simply wants to move to a

slightly smaller office location at 119 Grove Street. He noted that there are other office uses on the first floor in the block. He noted that the application previously received a use variance to relocate to 491 Bloomfield Avenue, but has decided not to proceed with that relocation because of personal reasons.

Mr. Trembulak introduced Mr. Ronald DeMeyer who is the applicant. Mr. DeMeyer was sworn in. Mr. DeMeyer stated that he has operated a State Farm Insurance office in Montclair for the past nine years. He stated that his currently location is 100 Grove Street and his hours of operation are 9 am to 5 pm Monday through Friday, 9 am to 7 pm on Thursday and 10 am to 1 pm on Saturday. He has eight employees and has 25 to 30 customers a day visiting his office. He stated he wants to relocate to the new space because it is slightly smaller than his currently location and better meets his needs. In addition, the new space has 18 parking spaces available in the rear parking lot which he doesn't have at his current location. Other tenants in the building include a physician's office, tutoring facility and an adventure room.

The Board questions Mr. DeMeyer. A Board member asked whether there is a formal arrangement for the shared parking lot. Mr. DeMeyer stated that the parking spaces are available to tenants as needed. A Board member asked how long clients visit his office. Mr. DeMeyer responded that each visit is between 10 and 15 minutes.

Ms. Baggs asked about signage. Mr. DeMeyer stated that he his sign will be the exact same size and location as the sign presently on the property.

Ms. Talley asked if he plans to keep the front window unobstructed. Mr. DeMeyer stated that the window will remain transparent and unobstructed.

Mr. Trembulak introduced Peter Steck, the applicant's expert planner. The Board accepted Mr. Steck's credentials.

Mr. Steck passed out a handout consisting of two pages of photographs which was marked as Exhibit A-1. Mr. Steck showed the 18 parking spaces on the subject property. He stated that the proposed space was previously used for a physical therapy business and that 3 spaces are marked reserved for the physical therapy use. He noted that it is unusual to have onsite parking in this area since there is a public parking lot behind the business district and 2 hour parking on the side streets.

Mr. Steck noted that the district has a number of similar uses and that there is a good supply of retail and service uses already. He noted that the front of the building does not have a large storefront window and does not lend itself easily to retail uses. He stated that the proposed insurance business is not a dead office use and that there is a lot of client contact.

Mr. Steck stated that the Master Plan recommends office uses in the NC business district, although not on the first floor. He stated that the d(1) use variance meets the special reasons argument because it advances the purposes of planning identified as paragraph a, g and m in the Municipal Land Use Law. He stated that the site is peculiarly suitable for the proposed use as it is not a "dead" office use, the architecture of the building lends itself to office use, and the applicant has developed a local following in the community. He stated that the negative criteria are addressed as the space was previously used as an office and there is off-street parking available for the

applicant. In summary, he stated that there is no substantial detriment to the zone plan or the zoning ordinance created by the use variance.

Ms. Baggs pointed out that Mr. Steck has a slightly different version of the Master Plan.

Mr. Moore stated that the use is not a detriment to the community and it is a good fit for the space.

Ms. Baggs stated that the applicant has met the positive criteria as it relates to site suitability and special reasons. She supports the application.

Mr. Allen, Mr. LaVail, Ms. Chowaneic and Vice Chair Fleischer stated that their support for the application.

Mr. Harrison noted that there is an existing sign mounted to the front sloped roof of the building. He asked if a new sign would be installed on the building for the proposed business. Mr. Trembulak replied yes. Mr. Harrison noted that the new sign should be installed in the same location and of the same size as the existing sign.

Mr. Harrison stated that he supports the application as there is no substantial impact to the zone plan or the public good. He stated that the building is suitable for the proposed use, particularly with the availability of onsite parking. He stated that one condition is that the window should not be blocked.

A motion to approve with the stated conditions was made by Vice Chair Fleischer, seconded by Ms. Baggs and approved unanimously.

### **NEW BUSINESS**

**App. 2465: Richard Stanton & June Raegner. 49 North Mountain Avenue.** Cal Trevenen, Esq. represented the applicant. Mr. Trevenen summarized the history of the property, stating that on July 14, 1986, Dr. Kenneth Davis received site plan approval from the Planning Board to build condo units and an apartment in the building that also contained his dental office. This resolution was marked as exhibit A-1. On October 21, 1992, the Board of Adjustment granted use variance and subdivision approval to subdivide the carriage house from the remainder of the property. This resolution was marked as exhibit A-2.

Mr. Trevenen noted that there is a reciprocal easement agreement for parking and access between the two properties in which 8 parking spaces are to be shared between the two uses. This agreement is dated June 11, 1983 and was marked as exhibit A-3.

Mr. Trevenen stated that the applicant requires minor site plan approval to build a new driveway and parking area for three cars adjacent to the house. He introduced June Raegner, the applicant. Ms. Raegner and her husband, Richard Stanton, proposed to reside in the second floor apartment on the property and operate their real estate company out of the first floor office. She stated that the Stanton Real Estate Company currently located at 25 North Fullerton Avenue. She stated that the company has been in Montclair since 1922 and is the last family-owned realtor in the Township.

Ms. Raegner stated that they want to relocate to the North Mountain Avenue location because her father-in-law is retiring and wants to sell their present office location. She

was attracted to the North Mountain Avenue location because of the beauty of the historic house on the site and the ability to both work and live in the same house.

Ms. Raegner stated that her company employs 19 agents and 3 family members. There are five licensed brokers in the office. She stated that the office operates with limited staff and that the largest meeting involves 12 people. The office will occupy 1400 square feet of space in the house. She noted that the nature of the business has changed with agents spending less time in the office and more time working through computers, smart phones and home offices.

Ms. Raegner stated the office staff includes 2 full-time employees and that at most there are 5 staff members in the office at one time. Hours of operation are 9am to 5 pm Monday through Friday and 9 am to 3 pm on Saturday.

Ms. Raegner stated that the house was built in 1887 and contains a 5 bedroom apartment. The apartment was historically used by Dr. Davis' family.

Ms. Baggs asked how clients will find the office. Ms. Raegner stated the office sees about 3 or 4 clients per day and that they will park in either the visitor's spots in the back or on the street. She stated that they get very few walk-in clients, but that the site provides good visibility.

Vice Chair Fleischer asked how will visitors know to park in the back. Ms. Raegner stated that she will tell visitors to park in the back. She noted that they are only required to have nine spaces for their use and 8 spaces are available. She stated she only really needs one or two spaces.

Vice Chair Fleischer stated that the large turn around area in the new parking area creates a problem. He asked why add all the paving when parking is available on the street and in the parking lot. He stated that the applicant should honor the intent of the reciprocal parking easement agreement.

Ms. Raegner stated that the problem is that the parking spaces are not always available. She noted that this afternoon five of the visitor's parking spots were occupied.

Ms. Baggs questions whether the property is suitable for the intended use without the parking spaces. Ms. Raegner stated it is not suitable without the additional parking.

Chair Harrison noted that the driveway and one parking space are located on the subject property.

The public was invited to ask questions.

Dean Semer, Esq. stated that he has been retained by the owners of Victoria Stables. Mr. Semer asked how many employees could be on site at one time. Ms. Raegner stated that there could be 12 people for a meeting once every few months. Mr. Semer asked about closings. Ms. Raegner stated that closings occurred at attorney's offices 99 percent of the time. Mr. Semer asked where the entrance to the office is. Ms. Raegner said it was the door facing the street. Mr. Semer asked if she had considered general liability insurance for the reciprocal agreement. She responded no, she will look at how Dr. Davis handled it. Mr. Semer asked about her policy for compliance with

parking. Ms. Raegner said she will be happy to direct clients to use the spaces. Mr. Semer asked if the 3 additional proposed spaces are for her family. She said yes.

At 10:20, Chair Harrison noted that the Board will not hear **App. 2467: Trademark Sign (Capital One Bank). 605 Valley Road**. This application was carried to the September 21 meeting.

Mr. Trevenen introduced Craig Villa as the professional engineer for the project. The Board accepted him as an expert.

Mr. Villa stated that he prepared the site plan to provide more onsite parking for the family. He stated that there is limited space on the site for additional parking and that he tried to limit the additional impervious coverage. His biggest concern is not to park too close to the trees at the back of the property. Mr. Villa stated that the Historic Preservation Commission requested that they move the parking area back 10 feet. He stated that he cannot comply with this request because it will eliminate the yard area in the back of the property and will impact the tree.

Vice Chair Fleischer asked why three parking spaces were provided. Mr. Villa stated because it fits in the area. Mr. Fleischer asked if he surveyed the parking spaces on the shared parking lot. Mr. Villa said no. Mr. Fleischer asked how the drop in the backyard precludes it from being used – it is only 2 feet. Mr. Villa responded that it depends.

Mr. Trevenen stated that the applicant is willing to reduce the number of parking spaces from 3 to 2 and to realign the spaces so that they point towards the house.

Mr. Fleischer suggested that the back yard be filled to provide a level space for parking.

Mr. Harrison asked if a parking variance is required if the reciprocal easement is not honored. He stated that since the reciprocal easement is part of the application, the parking lot property is part of the application and the 200 foot notice list should be drawn from both properties.

The Board stated that the notice is deficient and that the hearing must be renoticed. They asked the applicant to provide a correct count as to the number of parking spaces, including garage spaces. They stated that a parking variance will be required if the number of parking spaces in the lot is less than the number of the parking spaces identified in the Planning Board resolution.

### **ADJOURNMENT**

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Ms. Baggs. The meeting was adjourned at 11:30 pm, August 17, 2016.

Respectfully submitted,



Janice Talley, PP, AICP  
Zoning Board of Adjustment Secretary