



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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## **MINUTES OF THE BOARD OF ADJUSTMENT**

### **February 4, 2015**

**ORDER:** The meeting was called to order at 7:40 p.m. by Ms. 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 Town website.

**ROLL CALL:** Chair Harrison, Mr. Kenney, Ms. Baggs, Mr. Reynolds, Ms. Checca, Mr. Susswein, Mr. Moore, Ms. Brinkman, Mr. Sullivan, and Ms. Talley, were present. Mr. Fleischer was excused.

### **NEW BUSINESS**

**App 2391: Bellclair, LLC. 691 Bloomfield Avenue. (Block 1403, Lot 15)** *Use variance to permit a physical therapy use in the C-1 center area.* Charles Lorber, Esq. introduced himself as attorney for the applicant. Mr. Lorber summarized the application, which involves opening a wellness center in a storefront that previously contained a frame shop. He stated that the proposed use includes a retail area that occupies 50 percent of the physical space and time of the use, physical therapy 30 percent of the space and time and acupuncturist 20 percent space and time..

Mr. Lorber introduced Christa Rubino who was sworn in by the Board. Ms. Rubino is the office manager of the proposed wellness center. No physical changes to the building are proposed. The facility will provide nutritional counseling and a juice bar,

Ms. Rubino stated that there will be five employees at the site, three full-time and two part-time employees. Full-time employees include a receptionist, physical therapy assistant and physical therapist. The office manager and acupuncturist will be part time. Treatment sessions will be 15 to 30 minutes long.

Tables will be located at the back of the storefront, surrounded by curtains, for the physical therapist and the acupuncturist. Equipment for physical therapy will be provided in the middle of the store. The juice bar and sales area will be located near the entrance to the store.

Mr. Susswein asked if there are locker rooms and showers. Ms. Rubino said none will be provided.

Ms. Checca asked if the personal training will be done by the PT and a physical trainer. Ms. Rubino said both will oversee the personal training. The physical therapist will be a DPT and will be an out-of-network provider.

Ms. Rubino stated that the hours of operation will be 9 am to 5 pm Monday through Friday and 8 am 12 pm Saturday. Two tables will be for physical therapy and one table for acupuncture.

Dr. Masri, a doctor of sports medicine, was sworn in as the owner. Ms. Checca asked about treatment intervals. Dr. Masri said treatment is only for acute treatment. Ms. Checca stated that treatment timing is typically longer than 15 or 30 minutes. Dr. Masri said it depends on the patient modalities.

Ms. Talley asked if the windows will be uncovered, as the site plan ordinance does not allow tenants to block the windows. Dr. Masri stated that the windows will not be covered as he wants to use the windows to display his products and the juice bar.

Mr. Lorber introduced Michael Tobia, a Professional Planner. Mr. Tobia was sworn in by the Board. Mr. Tobia described the existing property and the proposed use. He stated that there are 70 apartments in the complex and the site proposed for the wellness center was previously occupied by a frame shop. The following exhibit was marked into the record:

A-1: Bellclaire Layout and Dimensioning Plan, dated 1/4/2000 and revised through 6/20/03.

Mr. Tobia stated that a parking variance was granted in 1998 for a deficiency of 5 spaces. Seven parking stalls are dedicated to the retail space. He pointed out that there are three visitor parking spaces in the back of the parking lot. He reviewed the number of on-street parking spaces available in the vicinity of the property.

The following exhibit was marked into the record:

A-2: Enlarged photo of the subject building.

A-3: Enlarged photo of parking area for retail space in subject building.

A-4: Enlarged photo of visitor parking area.

A-5: Enlarged photo of on street parking on Claremont Avenue in front of subject property.

A-6: Enlarged photo of residential only parking across lot from retail parking.

Ms. Talley pointed out that the site plan approval indicated a shared parking arrangement between the retail and residential uses and that the existing arrangement on site is not shared parking.

Mr. Tobia stated that the property is in the C-1 Central Business zone district. He stated that the juice bar is a permitted use in the zone district. A use variance is required because the physical therapy and acupuncture uses are not permitted on the first floor in the C-1 zone district, thereby requiring a variance.

Mr. Tobia testified that the parking issue is created because medical office uses require more parking spaces than retail service uses. He stated that the seven onsite spaces and the three visitor spaces are sufficient to provide parking for the retail use. There are also on street parking spaces nearby that provide additional parking. He stated that the

applicant is willing to purchase three parking permits in municipal lots for employee parking.

Ms. Talley asked if the applicant had inquired from the parking utility about where these spaces will be located, as there is a waiting list for most lots. The applicant did not have this information. She pointed out that the total nonresidential area requires 19 parking spaces, which is well in excess of the seven spaces provided for the use.

Chair Harrison stated that the property owner has leased the spaces with the units, eliminating the possibility of shared parking. There is therefore a significant shortage of parking for the nonresidential use.

Mr. Lorber clarified that only 3,000 square feet of nonresidential space in the building. The applicant has suggested that when residential leases come up, they will ask the tenants to allow their spaces be available for daytime parking.

Mr. Susswein asked why the tenants would agree to that. He suggested that the Visitors spaces be designated as spaces for the commercial uses.

Mr. Tobia stated that during his site visit, only about one-third of the surface parking spaces are used during the day. There are spaces that could be made available to retail customers during the day when the residential leases come up for renewal.

Mr. Kenney asked how the spaces would be marked. Mr. Tobia stated that signage would be added indicating retail spaces available 9 am to 5 pm. Similar signage can be provided for the visitor parking spaces.

Mr. Moore asked about parking occupancy on Saturdays. Mr. Tobia stated that on three Saturday parking counts, only 2 cars, 3 cars and 3 cars were using the retail spaces. On a Saturday, only 18 of the 43 surface parking spaces for residential use were used.

Ms. Talley asked if the cost of the three parking permits could be paid to the tenants to provide daytime parking onsite for the retail use.

Mr. Wayne Zuckerman was sworn in as the property owner. He pointed out that the Luna Stage project was approved with a significant parking variance.

Ms. Baggs asked about the negative criteria for the use variance. Mr. Tobia stated that there is no substantial detriment to the public good with the proposed use. The use, a wellness center, promotes the public good. Mr. Tobia stated that the proposed use is consistent with the intent of the uses in the C-1 zone district and the proposed use is not a substantial detriment to what the Township wants to achieve in the C-1 zone.

Chair Harrison stated that the application does not require a parking variance. He noted that the parking associated with the proposed use creates a greater demand than the previous use, increasing the parking need by 3 spaces. The applicant has volunteered to provide 3 parking permits offsite, make 3 residential spaces onsite available for commercial use, and resign the existing visitor spaces so that they are clearly available for commercial use.

The Board discussed the application. The Board was generally favorable towards the application, but was concerned about the management of the parking.

Chair Harrison stated that any space that comes available will have a sign stating retail parking available 9 am to 5 pm. He suggested the following conditions for an approval:

- At least 20 percent of the space be used for retail use or a juice bar and this space will be located adjacent to the windows.
- The hours of operation are limited to 9 am to 6 pm Monday through Friday
- The three visitors spaces be relabeled to show retail parking 9 am to 5 pm.
- Prior to issuance of a CO, the applicant will provide documentation of the following: purchase three parking permits or, in lieu of one, two or three of these permits, designated additional spaces either adjacent to building 1 or the spaces adjacent to the visitors spaces for building 2 as available for retail parking and the signage be changed to state retail parking from 9 am to 5 pm.

The new signage will be comparable permanent signage for a total of 13 spaces so the applicant will not need to submit annual reports.

Upon a motion by Mr., Kenney to approve the application with the stated conditions, seconded by Mr. Reynolds, the application was approved unanimously.

**App. 2395: Boris Neymark, 30 Mission Street.** *Variance for addition to dwelling unit.* Boris Neymark introduced himself as the property owner. He introduced Chris Juchnik as his professional architect. Mr. Juchnik was sworn in by the Board.

Mr. Juchnik summarized the application. He stated that he proposes to remove the rear staircase in order to add a second bathroom to each of the two apartments. Access to the second floor unit will be through a new fire-rated staircase located in front of the unit.

The following exhibit was marked into the record:

A-1: Photo of the rear of the house.

Mr. Juchnik stated that the driveway is too narrow to permit vehicles to park in the rear garage. The garage is used for storage.

Ms. Baggs asked about removal of the rear stair to the second floor. Mr. Juchnik stated that removal of the rear staircase would provide a second bathroom for each apartment. Mr. Juchnik stated that the renovation will be code compliant with one fire-rated stair enclosure.

Mr. Kenney asked if the applicant is gutting the house. Mr. Juchnik said yes, the house will be gutted.

Ms. Brinkman asked if there is a fourth bedroom on the second floor. She asked if there will be a pull-down door to the attic. Mr. Juchnik said no. She asked what material will be used on the house. Mr. Juchnik said vinyl siding.

Ms. Checca asked if the blue house is a sister house to the property.

Ms. Baggs asked if the coverage will increase by adding a new rear stairs to the first floor unit.

The Board stated that the variances are reflective of existing conditions on Mission Street. Mr. Susswein stated he is in favor of the application as the size of the lot and the existing house creates a hardship. Mr. Kenney stated he is in favor of the application as it is consistent with the neighborhood and there are positive aspects of rehabilitation.

A motion to approve the application was made by Mr. Susswein, seconded by Mr. Kenney, and approved unanimously.

**App. 2401: Dane & Barbara Holmes. 155 Wildwood Avenue. Variance to permit a fence that exceeds the maximum height.**

Lisa Mierop was sworn in as the Landscape Architect for the project and Ms. Barbara Holmes was sworn in as the property owner. Ms. Mierop stated that the applicant proposes to install a fence in order to enclose the yard for dogs and children. She stated that the fence is tasteful and in scale with the house, and will provide privacy for the yard which is difficult since this is a corner lot with two front yards. She pointed out that the house is historic and is one of the more prominent houses in Montclair.

Ms. Mierop stated that the fence will be painted a very dark green and will be screened by landscaping between the fence and the street. She stated that the maximum permitted fence height is 4-1/2 feet and the following variances are necessary:

- The double gate extending across the driveway will have two columns, each measuring 6 feet 4 inches in height, with an arched wooden gate that extends to a height of 5 feet 8 inches. The arched gate meets the design of the wall and will provide privacy for the residents. The larger columns are necessary to support the weight of the gate.
- The fence height will measure 4 feet, 5-3/4 inches from the ground, but the fence posts will be 4 feet, 10-1/2 inches tall.
- A one-foot high curb wall will be constructed at the base of the fence between the existing wall and the gate post, increasing the total height of the fence at this location to 5 feet, 10-1/2 inches.

Ms. Mierop noted that the one-foot high retaining wall is not adding height to the fence, but recognizes the existing grade of the land. The land in front of the wall was regraded to create a level planting bed. The fence will be located just behind the retaining wall. She noted that her plans have addressed the comments from the Historic Preservation Commission about not connecting the fence to the brick wall.

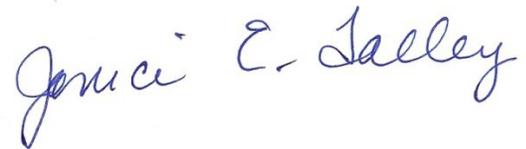
The Board discussed the application. They stated that they were generally favorable towards the application, understanding the need for maintaining privacy and consistency with historic design of the property.

A motion to approve was made by Mr. Susswein, with the condition established by the HPC regarding the lack of attachment between the fence and the wall. The motion was seconded by Ms. Checca and approved by Chair Harrison, Ms. Baggs, Mr. Reynolds, Ms. Checca, Mr. Susswein and Mr. Moore. Mr. Kenney voted no.

**ADJOURNMENT**

The meeting was adjourned at 11:00.

Respectfully submitted,

A handwritten signature in blue ink that reads "Janice E. Talley". The signature is written in a cursive style with a large, looped initial "J".

Janice Talley, P.P., AICP  
Zoning Board of Adjustment Secretary