

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**January 15, 2014**

PRESENT: Mr. Burr, Ms. Checca, Mr. Kenney, Mr. Harrison, Mr. Susswein, Mr. Tsai and Mr. Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun

ABSENT: Mr. Edwards, Mr. Fleischer, Mr. Reynolds, and Ms. Talley

Mr. Charreun called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

The Board appointed the Chair, Vice Chair, Secretary, and Assistant Secretary for 2014. On motion by Mr. Whipple, seconded by Mr. Burr, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining. On motion by Mr. Burr, seconded by Mr. Kenney, Mr. Whipple, was re-elected as Vice Chair, Mr. Whipple abstaining. On motion by Mr. Whipple, seconded by Mr. Burr, Ms. Talley was re-elected as Secretary and Mr. Charreun was re-elected as Assistant Secretary.

On motion by Mr. Burr, seconded by Mr. Susswein, the **Minutes of the December 18, 2013** meeting were adopted, Ms. Checca, Mr. Kenney, and Mr. Whipple abstaining.

On motion by Mr. Burr, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Mr. & Mrs. Felix Bhandari, 95 Heller Way** was adopted, Ms. Checca, Mr. Kenney, and Mr. Whipple abstaining:

WHEREAS, Mr. & Mrs. Felix Bhandari, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to construct a one story addition at the rear of the dwelling, on property designated as Lot 107 in Block 4805 on the Township Tax Map and located in the R-0(a) One-Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance from Montclair Code Section 347-39C to permit a greater principal structure width than permitted; and
2. A variance from Montclair Code Section 347-39D to exceed the maximum permitted principal building coverage; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 18, 2013, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey, dated December 18, 2009, and plans by George Held & Associates, dated October 22, 2013; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The property is located in the R-0(a) One-Family Zone, measures 110.05 feet in frontage width and 12,530 s.f. in lot area, and contains a 1½-story single-family dwelling and an attached garage.

2. A one story addition containing a laundry room and mudroom is proposed at the right side rear corner of the dwelling. The addition measures 10 feet 11 inches by 14 feet 8 inches.

3. The maximum permitted principal building width is 65% of the lot frontage width. The existing dwelling is nonconforming at approximately 74% across the front or widest part of the dwelling footprint. The proposed addition at the rear corner can be viewed as widening the rear section of the dwelling to a nonconforming width of approximately 69% of the frontage width, and a variance is requested.

4. The maximum permitted principal building coverage in the R-0(a) zone is 20% of the lot area. With the proposed addition, the lot coverage increases from an existing nonconforming 21.98% to 23.26% of the lot area, and a variance is requested.

5. The Board determined that the requested variances could be approved for the plan as submitted. The addition does not exacerbate the nonconforming width of the dwelling and the increase in the nonconforming building coverage is minor. The addition provides modern and functional benefits to the dwelling and does not negatively impact the streetscape or an adjoining neighbor; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application is hereby approved; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

The application of **James & Christina Axelrod, 12 Seneca Place** was announced. James & Christina Axelrod were sworn. Paul Sionas, Architect and Professional Planner was also sworn. Mr. Axelrod described the fire damage that occurred to the dwelling and their intent to reconstruct and modify the dwelling to continue to reside there. Mr. Sionas described the property and the application. The property is located at the northern end of Seneca Place in the R-1 One-Family Zone and contains a two-story single-family dwelling. The lot measures 50 feet wide by 166 feet deep, and measures approximately 8,294 s.f. in lot area. The dwelling on the property was damaged by a fire in September 2013. Variances are requested to reconstruct and enlarge the second floor of the dwelling and to construct additions to the first floor of the dwelling. The first floor of the dwelling would be expanded with a small addition on the westerly side and a small addition on at the rear. The second floor of the dwelling would be enlarged by extending the tallest ridgeline at its existing height to provide more second floor volume, along with dormer style additions on each side of the roof at the second floor. Mr. Sionas described the variances requested and the justification for the variances requested.

Exhibits Marked:

- A-1 Basement and First Floor Plans, by Sionas Architecture, dated 12/17/13
- A-2 Second Floor and Roof Plans, by Sionas Architecture, dated 12/17/13

The Board questioned the applicant. Mr. Sionas stated that the project results in a net increase of 162 square feet of impervious coverage. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved for the plan as submitted. The nonconforming easterly side yard setback and width of the dwelling are existing conditions that the plan does not reduce any further. The increase in the nonconforming building coverage is minor. The lot is unusually situated and is smaller in size than most of the adjoining properties. The additions provide modern and functional benefits to the dwelling and do not negatively impact the streetscape or an adjoining neighbor. On motion by Mr. Burr, seconded by Mr. Kenney, the application was approved.

The application of **Montclair Senior Housing Corporation, 340 Orange Road** was announced. David Owen, Esq., appeared as attorney for the applicant and described the application. Claire Benson, on-site manager for Montclair Senior Housing Corporation, was sworn. She stated that the site provides independent-living rental units for low-income senior citizens age 62 and over and for low-income handicapped and disabled persons age 18 and over. The building contains 100 dwelling units, with one dwelling unit for the building superintendent and 99 dwelling units for qualifying senior citizens and disabled persons. She testified as to the qualifications necessary to

become a resident of South End Gardens and reviewed the present and anticipated parking demand for South End Gardens. She testified that presently 46 residents have cars and require on-site parking spaces. She further testified that presently five employees have cars and also require on-site parking spaces. She also testified that South End Gardens has a variety of visitors and callers, including family and friends, healthcare workers, business callers and service personnel, transport services, and miscellaneous visitors. She testified that these visitors and callers require approximately ten on-site parking spaces. In addition, she testified as to the anticipated parking demand in the near future. She explained that between 1985 and the present, the number of residents with cars has been increasing and is expected to further increase for a number of reasons, including increased economic opportunity and increased health and longevity. Based upon turnover in residents and South End Garden's waiting list for new residents, she testified that in each year going forward South End Gardens expects to need approximately two additional parking spaces for incoming residents. She testified that current residents, employees, visitors and callers, and the future residents will utilize the proposed 71 on-site parking spaces. The Board questioned the witness. No questions were offered from the public.

Paul Sionas, Landscape Architect, was sworn. He reviewed the existing site conditions and explained the plan to expand the existing on-site parking area consisting of 51 parking spaces with the addition of 20 parking spaces and related site improvements. Such site improvements include new grading and drainage for the expanded parking area, new sidewalks including barrier-free sidewalks, new lighting featuring 42-inch bollard-style lights around the new parking spaces, and extensive landscaping. He testified that the applicant will comply with the various items set forth in the Board Engineer's report dated December 2, 2013 and that the applicant has received approval from the Essex County Planning Board by its letter dated December 11, 2013. He also explained the applicant's present conceptual parking plan whereby present and future residents, disabled residents, visitors, employees, and others will be assigned to park in designated areas in the parking lot.

Exhibits Marked:

- A-1 Site Plan, by Sionas Architecture, dated 03/27/13
- A-2 Landscape Plan, by Sionas Architecture, dated 03/27/13
- A-3 Lighting Plan, by Sionas Architecture, dated 03/27/13
- A-4 Essex County approval, dated 12/11/13

The Board questioned the witness. No questions were offered from the public.

Harold Maltz, Professional Engineer, was sworn. He provided his background and qualifications relating to traffic engineering and related studies. He testified that the project's increase in trip generation is nominal in magnitude and will have an imperceptible impact to Orange Road. He further testified that the sight distance at the site exit drive more than adequately meets the prescribed traffic engineering standards. The Board questioned the witness. No questions were offered from the public.

Peter Steck, Professional Planner, was sworn and testified as to the variances required by the applicant and his professional opinions as to why the variances are justified. He reviewed the increase between 1983 and 2010 in the number of older drivers and that the RSIS presently require on-site parking for a retirement community commensurate with the most appropriate housing unit listed in the RSIS. With respect to the variance for expansion of a legal non-conforming use, there are various purposes of zoning and special reasons in favor of such variance. The project promotes the community's general welfare because it supports low-income housing as well as housing for senior citizens and housing for handicapped and disabled persons. In addition, the project specifically promotes senior citizen housing. Moreover, low-income housing, housing for senior citizens, and housing for disabled citizens either have been found to be or arguably are inherently beneficial uses because they fundamentally serve the public good and general welfare. The project and the proposed location for the new parking spaces also promote the general welfare because the property and the southeasterly portion of the property are particularly suitable for the new parking spaces given the large size of the property and given that the new parking spaces are located behind or to the rear of the existing parking spaces. In this respect, the project provides sufficient space at an appropriate location for the new parking spaces.

Exhibits Marked:

- A-5 Planner's Exhibit, by Peter Steck, PP, dated 01/14/14
- A-6 Parking assignment plan, by Sionas Architecture, dated 01/14/14

The Board questioned the witness. No questions or comments were offered from the public.

The Board discussed the application and determined that the application could be approved subject to the conditions below. The project will not cause any substantial detriment to the public good or surrounding properties. The project will not cause any substantial impairment of the intent and purpose of the zone plan or zoning ordinance. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved subject to the following conditions:

1. The applicant shall comply with items 1, 3, 4, 5, 6, 7 and 9 set forth in the report of the Board Engineer W. Thomas Watkinson dated December 2, 2013;
2. The applicant shall place an additional bollard light in the landscaped peninsula in the expanded parking area; and
3. The applicant shall repair or replace the gate to the existing dumpster enclosure.
4. The applicant shall be bound by all representations made on its behalf by its attorney, witnesses, and professionals during the course of the public hearings.

5. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

The application of **Mathew C. Mathew, 235 Claremont Avenue** was announced. David Owen, Esq. appeared as attorney for the application. Mathew C. Mathew was sworn and briefly described the application to convert the existing building, which on record with the Township as a 7 unit rooming house, into a 5 unit apartment house. The Board had no questions for Mr. Mathew at this time. No questions were offered from the public.

Dennis Mylan, Architect and Professional Planner, was sworn and described the application. The property is an interior lot located on the north side of Claremont Avenue, between Midland Avenue and Park Street, with lot frontage of approximately 67 feet on Claremont Avenue and lot depth of approximately 190 feet. It consists of 11,996 square feet. The property contains a two and one-half story frame building with driveways, a parking area, and landscaping. According to Township records, the building has served as a rooming house since 1947, but it has changed over the years so that it now contains seven dwelling units. The Township records indicate there are no zoning approvals for the present configuration of seven dwelling units. The property is located in the OR-3 Garden Apartment and Office Building Zone, and the proposed conversion is a permitted conditional use in the OR-3 Zone, subject to conditions, but the proposed conversion does not meet all applicable conditions and requires conditional use variances.

Mr. Mylan testified that there are various purposes of zoning and special reasons in support of the variances requested. The conditional use variances will not cause any substantial detriment to the public good or surrounding properties. The existing residential building has been established for over 100 years, and the application does not propose any new building or any building addition. The project seeks primarily to consolidate and rehabilitate the interior of the building and, secondarily, to improve the exterior site. The project brings substantial benefits to surrounding properties. There is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance, and the project is consistent with these documents. To the extent certain conditions are not met, or certain dimensional variances are necessary, they are reasonable and justified in the context of the application and do not harm the surrounding neighborhood. The project meets most of the conditional use conditions, provides residential use at the prescribed residential density, maintains or improves existing building and site conditions, and promotes smaller, more affordable dwelling units. Under Coventry Square, notwithstanding the deviations from certain conditions, the site continues to be appropriate for the project. The variances are justified based upon the purposes of zoning and because of the absence of substantial detriment to the public good and surrounding properties or substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The benefits of the variances substantially outweigh any detriment. In addition, the variances are justified based upon

the location of the lawfully-existing building and site improvements, which give rise to peculiar and exceptional practical difficulties or exceptional and undue hardship, and because of the absence of substantial detriment to the public good and surrounding properties or substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

The Board questioned Mr. Mylan and the applicant. During the course of the Board's questions, the applicant stated that the plan could be amended so that the building would contain 4 dwelling units instead of 5 dwelling units. This would be achieved by combining the 2 proposed dwelling units on the 2<sup>nd</sup> floor into 1 larger dwelling unit. Mr. Mylan reviewed how that revision to the plan affects the zoning ordinances involved. No questions or comments were offered from the public.

The Board discussed the application and the applicant confirmed their understanding of the revision to the plan as described during the Board's questioning of the witnesses. A motion made by Mr. Whipple to approve the amended application subject to the conditions listed below, was seconded by Mr. Susswein, and was unanimously approved by the Board. The conditions of approval include:

1. The second floor units initially designated as Units 3 and 4 shall be combined and redesignated as Unit 3. The third floor unit initially designated as Unit 5 shall be redesignated as Unit 4.
2. The applicant shall enter into cross-easements with the owner of adjoining Lot 9 providing for joint and mutual use of the common driveway and related vehicle turning areas.
3. The applicant shall comply with items 2 through 5 of Board Engineer W. Thomas Watkinson's report dated November 30, 2013, except that the applicant shall remove and not repair or replace the wood fence running along the westerly property line inasmuch as the owner of adjoining Lot 11 will be installing a new wood fence along the westerly property line.
4. The applicant shall provide a handicapped parking space if required.
5. The applicant shall be bound by all representations made on its behalf by its attorney, witnesses, and professionals during the course of the public hearings.
6. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

On motion by Mr. Whipple, seconded by Mr. Tsai, the meeting was adjourned.