

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**February 19, 2014**

PRESENT: Chair Harrison, Mr. Burr, Ms. Checca, Mr. Edwards, Mr. Fleischer, Mr. Kenney, Mr. Susswein, Mr. Reynolds, and Vice Chair Whipple; also, Mr. Sullivan, Esq., Ms. Talley, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Tsai

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.

On motion by Mr. Burr, seconded by Mr. Susswein, the **Minutes of the January 15, 2014** meeting were adopted as modified, Mr. Edwards, Mr. Fleischer, and Mr. Reynolds abstaining.

On motion by Mr. Burr, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **James & Christina Axelrod, 12 Seneca Place** was adopted, Mr. Edwards, Mr. Fleischer, and Mr. Reynolds abstaining:

WHEREAS, James & Christina Axelrod, 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 reconstruct and enlarge the second floor of the dwelling and to construct additions to the first floor of the dwelling, on property designated as Lot 36 in Block 706 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance from Montclair Code Section 347-45C(1) for an easterly side yard setback of less than 10 feet; and
2. A variance from Montclair Code Section 347-45C(4) to permit a greater principal structure width than permitted; and
3. A variance from Montclair Code Section 347-45E 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 January 15, 2014, 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 plans by Sionas Architecture, dated December 18, 2013, and a property survey dated July 27, 2009; and

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

1. 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.

2. 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.

3. 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.

4. The Board 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; 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.

On motion by Mr. Burr, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Montclair Senior Housing Corporation, 340 Orange Road** was adopted, Mr. Edwards, Mr. Fleischer, and Mr. Reynolds abstaining:

WHEREAS, Montclair Senior Housing Corporation, as owner and applicant, with respect to property located at 340 Orange Road, Montclair, New Jersey and commonly known as South End Gardens (Block 2904, Lot 71) (hereinafter the "property"), a low-income residential building for qualifying seniors and disabled persons, made application to the Montclair Township Board of Adjustment (hereinafter the "Board") for variances, exceptions, and site plan approval necessary to expand the existing on-site parking area with the addition of 20 parking spaces and related site improvements; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) and from Montclair Code Section 347-41 that the existing residential building on the property is a legal non-conforming use in the R-1 Zone and the proposed parking spaces and related site improvements constitute the expansion of such legal non-conforming use;

2. A variance pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Section 347-46C in that certain proposed parking spaces are located in a front yard between the main building and the curb of the street on which the building fronts;

3. An exception from Montclair Code Section 281-8.3E(5) in that certain areas of the expanded on-site parking area are illuminated with site lighting less than .5 foot candles; and

4. If necessary, an exception from the New Jersey Residential Site Improvement Standards, N.J.A.C 5:21-4.14, Table 4.4, to permit less than the prescribed number of on-site parking spaces; and

WHEREAS, the applicant submitted site plans prepared by Sionas Architecture, P.C., sheets SP-1 through SP-4, dated March 27, 2013 and revised through September 27, 2013; and

WHEREAS, the application came on to be heard at a meeting of the Board held on January 15, 2014, at which time it was established that notice was properly published and that property owners within 200 feet of the property had been properly served with such notice; and

WHEREAS, the Board carefully reviewed the testimony, the exhibits (A-1 through A-6), and the questions and comments presented at the public hearing and based thereon established the following findings of fact and conclusions of law:

1. The property is an irregularly-shaped parcel consisting of over three acres and approximately 143,560 square feet with approximately 551 feet of frontage along Orange Road. It contains an independent-living residential building (South End Gardens), owned and operated by the non-profit corporation applicant (Montclair Senior Housing Corporation), and 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;

2. South End Gardens was first established in 1985. At that time, as low-income housing for seniors and the disabled, it was a permitted conditional use in the R-1 Zone, and the Planning Board approved it as such along with its site plan. In 1989, the Planning Board approved certain changes to the site plan relating to signs, lighting, and other site improvements. In 1998, low-income housing for seniors and the disabled was removed as a permitted conditional use in the R-1 Zone, and thus, at that time, South End Gardens became a lawful non-conforming use at its location and continues to be a lawful non-conforming use to date;

3. The applicant seeks to modernize and upgrade the property's site plan with the addition of 20 parking spaces and related site improvements. Presently, there are 51 on-site parking spaces. With the addition of 20 new parking spaces, the total parking space supply will be 71 parking spaces. Given 100 units in the residential building, the proposed parking space supply will amount to .71 parking spaces per dwelling unit;

4. The applicant's manager 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 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;

5. The applicant's architect 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 as depicted on site plan sheet SP-4. The architect 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. The architect 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 (Exhibit A-6);

6. The applicant's traffic engineer 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;

7. The applicant's professional planner testified as to the variances required by the applicant and his professional opinions as to why the variances are justified. In the course of his testimony, he reviewed his four-page exhibit (Exhibit A-5), which explained, among other things, the increase between 1983 and 2010 in the number of older drivers and that the New Jersey Residential Site Improvement Standards (RSIS) presently require on-site parking for a retirement community commensurate with the most appropriate housing unit listed in RSIS Table 4.4;

8. 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 (N.J.S.A. 40:55D-2a) 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 (N.J.S.A. 40:55D-2l). 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 (N.J.S.A. 40:55D-4). The project and the proposed location for the new parking spaces also promote the general welfare (N.J.S.A. 40:55D-2a) 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 (N.J.S.A. 40:55D-2g);

9. The project will not cause any substantial detriment to the public good or surrounding properties. The new parking spaces are located behind the existing, much larger parking lot, and they are set back much further from Orange Road than the existing parking lot. The new parking spaces will be paved and drained as requested by the Board Engineer. They will connect to convenient regular and barrier-free sidewalks. They employ low-intensity site lighting. They are abundantly landscaped on all sides with many new trees and other plantings. The project does not cause any adverse traffic impacts and lessens or prevents off-site parking on nearby streets;

10. The project will not cause any substantial impairment of the intent and purpose of the zone plan or zoning ordinance. Although neither the master plan nor the zoning ordinance no longer call for new low-income senior and disability housing in the R-1 Zone, the existing residential building is longstanding for almost 30 years in the R-1 Zone, the project does not propose any new units or building additions, and the new parking spaces constitute a relatively modest expansion of an accessory use and help modernize and upgrade a valuable community asset. The current Master Plan Re-Examination Report (2006) contains several goals and policies promoted by the application, including: "Maintain Montclair as a desirable residential community accommodating a range of population and income groups" (page 23); "Offer housing types for a diverse population. . . to meet the needs of a population diverse in age, income, and physical ability" (page 24); and "Identify housing opportunities for persons with disabilities in light of the increase in the disabled population over the past decade from 1,016 to 2,817 persons" (page 24). Whereas the zoning ordinance has for many years required for senior citizen housing "one-half parking space per dwelling unit", the superseding New Jersey State standard set forth in the New Jersey Residential Site Improvement Standards currently requires for a retirement community on-site parking "commensurate with the most appropriate housing unit type", which comparison requires as few as .8 parking spaces per dwelling unit (when comparing a retirement community to one-bedroom high-rise apartments) and as many as 1.8 parking spaces per dwelling unit (when comparing a retirement community to one-bedroom garden apartments). New Jersey Residential Site Improvement Standards, N.J.A.C. 5:21-4.14, Table 4.4. Here, even with the established mix of residents, employees, and visitors, the applicant is proposing only .71 parking spaces per rental unit;

11. With respect to the variance for certain new parking spaces within a front yard, the number of parking spaces located within a front yard is approximately 5 parking spaces, as set forth in the Planning Department's memorandum dated December 11, 2013. The variance is justified based upon the purposes of zoning set forth above 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, as set forth above. The benefits of the variance substantially outweigh any detriment. In addition, the variance is justified based upon the location of

the lawfully-existing building and site improvements, including the existing parking lot, 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, as set forth above;

12. With respect to the exception from Montclair Code section 281-8.3E(5) in that certain areas of the expanded on-site parking area are illuminated with site lighting less than .5 footcandles, the Board finds that the expanded parking area is substantially illuminated in accordance with the site plan ordinance, as set forth on site plan sheet SP-3, and that the additional bollard light required below as a condition of approval will further benefit the parking area. The board finds that the exception is reasonable and within the general purpose and intent of the site plan ordinance and that literal enforcement of the minimum footcandle standard is impracticable or will exact undue hardship because of peculiar conditions of the property;

13. With respect to the exception, if necessary, from the New Jersey Residential Site Improvement Standards, N.J.A.C. 5:21-4.14, Table 4.4, to permit less than the prescribed number of on-site parking spaces, the Board finds, based upon the applicant's testimony, that the existing and expanded parking areas provide a sufficient supply of parking spaces for the applicant's present needs. The Board finds, pursuant to N.J.A.C. 5:21-3.1, that the exception is consistent with the intent of the Site Improvement Act; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructure and possible surrounding development; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved the requisite special reasons for granting the variance for expansion of a non-conforming use, and proved by a preponderance of the evidence that the same could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan or zoning ordinance pursuant to N.J.S.A. 40:55D-70 d(2); and

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the variance for parking spaces within a front yard that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and the benefits of the deviation would substantially outweigh any detriment, and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(2); and

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the variance for parking spaces within a front yard that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variance 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 N.J.S.A. 40:55D-70c(1);

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Montclair Senior Housing Corporation, for variances, exceptions, and preliminary and final site plan approval, be and is hereby 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.

NOW, THEREFORE, BE IT RESOLVED, that a copy of this Resolution be transmitted to the applicant, Township Manager, Township Council, and Township Clerk.

On motion by Mr. Burr, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Mathew C. Mathew, 235 Claremont Avenue** was adopted, Mr. Edwards, Mr. Fleischer, and Mr. Reynolds abstaining:

WHEREAS, Mathew C. Mathew, as owner and applicant, with respect to property located at 235 Claremont Avenue, Montclair, New Jersey (Block 2307, Lot 10) (hereinafter the "property"), made application to the Montclair Township Board of Adjustment (hereinafter the "Board") for variances, an exception, and site plan approval necessary to convert the existing principal residential building on the property to provide five dwelling units (subsequently amended to four dwelling units) and to redesign driveways, parking areas, and other site improvements; and

WHEREAS, the applicant requested relief as follows:

1. 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 as follows:

a. A variance pursuant to N.J.S.A. 40:55D-70d(3) and from Montclair Code Sections 347-60A and 347-54B(1) in that the floor area of Unit 2 is less than 800 square feet;

b. A variance pursuant to N.J.S.A. 40:55D-70d(3) and from Montclair Code Sections 347-60A and 347-54B(4) in that the lot area is less than 15,000 square feet within 150 feet of the front street line;

c. A variance pursuant to N.J.S.A. 40:55D-70d(3) and from Montclair Code Sections 347-60A and 347-54B(5) in that the existing fire escape is not enclosed within the existing building walls;

d. A variance pursuant to N.J.S.A. 40:55D-70d(3) and from Montclair Code Sections 347-60A and 347-54B(7) in that access to Unit 1 within the converted building is not provided by a common entrance in the wall of the building facing the street on which the lot has frontage; and

2. Variances pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Sections 347-65 and 347-58D in that a trash enclosure, certain parking spaces, and a driveway are located within six feet of a principal building and a driveway and certain parking spaces are set back less than three feet from property lines; and

3. An exception from Montclair Code Section 281-8.4A(3) in that the proposed dwelling units will have less than 200 square feet of storage (per dwelling unit) in the basement of the converted building; and

WHEREAS, the applicant submitted site plans and architectural plans prepared by The Mylan Architectural Group consisting of Sheet SP-1 revised through November 22, 2013 and Sheets SP-2 and A-1 revised through November 18, 2013; and

WHEREAS, the application came on to be heard at a meeting of the Board held on January 15, 2014, at which time it was established that notice was properly published and that property owners within 200 feet of the property had been properly served with such notice; and

WHEREAS, the Board carefully reviewed the testimony, the exhibits (A-1) and the questions and comments presented at the public hearing and based thereon established the following findings of fact and conclusions of law:

1. 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 within application is intended to provide formal zoning approvals;

2. Initially, the applicant proposed to convert the existing residential building to provide five dwelling units. After questions and comments presented at the public hearing, the applicant proposed to convert the existing residential building to four dwelling units. The proposed conversion to four dwelling units is a permitted conditional use in the OR-3 Zone, however, as set forth above, the conversion does not meet four conditions and requires conditional use variances. The proposed conversion reduces residential density from a non-conforming seven dwelling units to a conforming four dwelling units and meets all other prescribed conditions including lot coverage;

3. The proposed conversion includes modifications to the existing building's interior and the property's exterior site plan. Presently, the square footages of the existing seven dwelling units are approximately as follows: Unit 1 – 572 square feet; Unit 2 – 240 square feet; Unit 3 – 660 square feet; Unit 4 – 296 square feet; Unit 5 – 522 square feet; Unit 6 – 688 square feet; and Unit 7 – 949 square feet. The proposed square footages for the proposed four dwelling units are approximately as follows: Unit 1 (first floor) – 1,043 square feet; Unit 2 (first floor) – 736 square feet; Unit 3 (second floor) – 1,210 square feet; and Unit 4 (third floor) - 949 square feet. The increases in the square footages of the dwelling units will upgrade the quality of the dwelling units. The project will involve the removal of the westerly driveway with the planting of a new lawn area and nine arborvitae to help shield the existing fire escape. It will also involve the planting of six shrubs at the northeast corner of the property. The project will include the widening of the existing two-way common driveway from a non-conforming 13 feet to a conforming 18 feet, along with reorganization of the on-site parking spaces to provide the number of on-site parking spaces required by Montclair Code Section 347-101 and the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-4.14, Table 4.4). Whereas currently there is no trash enclosure on the property, the project will include a new trash enclosure located approximately four feet from the building;

4. With respect to the conditional use variances, there are various purposes of zoning and special reasons in support of such variances. The project promotes the general welfare (N.J.S.A. 40:55D-2a) because the property is particularly suitable for the project given the residential zone and given the longstanding residential use of the existing residential building. The project promotes appropriate residential density (N.J.S.A. 40:55D-2e) by reducing residential density from the existing non-conforming seven dwelling units to the proposed conforming four dwelling units. The project provides sufficient space at an appropriate location for residential use (N.J.S.A. 40:55D-2g). Overall, the project helps to promote a more desirable visual environment (N.J.S.A. 40:55D-2i). The project promotes the efficient use of land (N.J.S.A. 40:55D-2m);

5. 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;

6. Moreover, with the amendment to the application, and the reduction in proposed dwelling units from five dwelling units to four dwelling units, only one dwelling unit is less than 800 square feet. Dwelling unit 2 consists of 736 square feet, which is more than 90% of 800 square feet. The proposed size of dwelling unit 2 is reasonable and provides a more affordable apartment. Dwelling unit 2 has an additional approximately 110 square feet of private storage in the basement of the building following the elimination of the second dwelling unit on the second floor;

7. Although the lot size is 11,996 square feet, rather than 15,000 square feet, the lot size is adequate for the project and allows for the required parking, landscaping, and open space. Also, the building coverage is 18.66%, whereas 25% is permitted, and the impervious coverage is 55.82%, reduced from 72.37%, whereas 70% is permitted;

8. Although the existing fire escape is not enclosed within the existing building, the fire escape is a longstanding feature of the building, is a common feature within the neighborhood, and is located between two projecting portions of the building;

9. Although access to one apartment (Unit 1) is not provided by a common entrance in the front wall of the building, this separate access is an existing condition and does not represent any substantial detriment to the property or neighborhood;

10. The project brings substantial benefits to surrounding properties. The existing, non-conforming density is reduced to a conforming density of four dwelling units. The westerly driveway is to be eliminated and replaced with lawn and plantings. The common driveway is to be widened from 13 feet to 18 feet, as prescribed for a two-way driveway. The northerly wood fence is to be replaced with a new wood fence, and the westerly wood fence is to be removed with a new wood fence to be provided by the adjoining property owner. The existing canopy-covered storage and refuse area, covering an existing parking space, is to be removed and replaced with a new refuse area adjacent to the building. The on-site parking area is to be redesigned to provide the prescribed number of parking spaces along with new shrub plantings at the northerly property line, and the existing mature landscaping is to be retained;

11. At the same time, there is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance, and in fact the project is consistent with these documents. The master plan provides for multifamily residential use in the OR-3 Zone. The most recent Master Plan Re-Examination Report of 2006 provides as its first housing goal: "Offer housing types for a diverse population. Provide a wide range of

housing styles. . . to meet the needs of a population diverse in age, income, and physical ability. Maintain a zoning pattern which permits a range of housing types at appropriate densities throughout the community.” The project fulfills this housing goal with respect to both density and smaller, more affordable apartments. Finally, the zoning ordinance specifically recognizes that an existing principal residential building can, in the OR-3 Zone, be converted to provide more than two dwelling units. The project is fully consistent with the intent and purpose of this part of the zoning ordinance. 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;

12. With respect to the standard for conditional use variances set forth in *Coventry Square, Inc. v. Westwood Zoning Board*, 138 N.J. 285 (1994), the New Jersey Supreme Court established a special, relaxed standard of proof for applications involving conditional use variances. It held that the applicant must show that “the site proposed for the conditional use, in the context of the applicant’s proposed site plan, continues to be an appropriate site for the conditional use, notwithstanding the deviations from one or more conditions imposed by the ordinance.” Here, 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.

13. With respect to the bulk or dimensional variances concerning a trash enclosure, certain parking spaces, and a driveway located within six feet of a building and a driveway and certain parking spaces set back less than three feet from property lines, the trash enclosure is located approximately four feet from the existing building, one parking space is adjacent to the existing building, one parking space is located adjacent to the easterly property line, and the new widened driveway is located less than six feet from a building and is set back less than three feet from the easterly property line (because it is a common driveway). The variances are justified based upon the purposes of zoning set forth above 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, as set forth above. 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, as set forth above. The variances are minor technical variances, and they do not present any safety concerns or any inconvenience to surrounding properties;

14. With respect to the exception from Montclair Code Section 281-8.4A(3), in that the proposed dwelling units will have less than 200 square feet of storage (per dwelling unit) in the basement of the converted building, the Board finds that the proposed storage is a substantial upgrade over the current absence of any such storage, that it cannot be further increased without enlarging the existing building, and that it is sufficient for the proposed units. The board finds that the exception is reasonable and within the general purpose and intent of the site plan ordinance and that literal enforcement of the minimum storage standard is impracticable or will exact undue hardship because of peculiar conditions of the property; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved the requisite special reasons for granting the conditional use variances, and proved by a preponderance of the evidence that the same could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan or zoning ordinance pursuant to N.J.S.A. 40:55D-70d(3); and

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the bulk or dimensional variances, that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment, and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(2);

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the bulk or dimensional variances, that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 N.J.S.A. 40:55D-70c(1);

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Mathew C. Mathew for conditional use variances, bulk variances, an exception, and preliminary and final site plan approval be and is hereby approved and granted, subject to the following conditions:

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.

NOW, THEREFORE, BE IT RESOLVED, that a copy of this Resolution be transmitted to the applicant, Township Manager, Township Council, and Township Clerk.

The application of **Ben and Candice Brennan, 121 Chestnut Street** was announced. Ben Brennan and Mark Thomas, Architect, were sworn. Mr. Thomas described the property and the application. The property is located in the R-2 Two-Family Zone and contains a single-family dwelling with an attached garage. The lot measures 94.5 feet wide by 160 feet deep. The average front yard setback of the 4 nearest dwellings, 2 on each side of the subject property, is approximately 36.46 feet, which is the required front yard setback for new construction on the subject property, including the proposed front porch. The front wall of the dwelling has a conforming front setback of 36.8 feet. The existing front stoop has a nonconforming front setback of approximately 33.05 feet. The proposed front porch would have a front setback of 30.8 feet, and a variance is requested. Building permits have recently been issued for additions and other work on the subject property which comply with zoning.

Exhibits Marked:

A-1 14 photographs of dwellings in the neighborhood

A-2 Square footage analysis of existing and proposed porch conditions, by Mark Thomas, Architect

The Board questioned the applicant. The Board discussed the application and determined that the variance requested could be approved. The proposed porch is not oversized and has been thoughtfully designed relative to the streetscape. The front porch and the other work depicted on the plan will allow the appearance of the dwelling to be more in keeping with the predominant architectural style of the neighborhood. The required front yard setback is slightly skewed due to the larger setback of the properties to the west. The requested front yard setback variance will not negatively impact the

streetscape or an adjoining neighbor. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved.

The application of **Montclair Kimberley Academy Foundation, 40 Upper Mountain Avenue** was announced. Alan Trembulak, Esq., appeared as attorney for the applicant and described the application. Richard Sunshine, Assistant Headmaster and CFO for MKA, was sworn and described the application. He stated that the lack of safety netting on the field was an oversight during the 2012 application for the new field, fieldhouse, and parking lot. By late August 2013 the field was ready for use but they had determined that safety netting should be installed to prevent soccer balls and lacrosse balls from creating a hazard to the public on Upper Mountain Avenue. The netting was installed and was in use for several weeks during the fall of 2013 before they were notified that they needed to apply to the Board to amend the approved site plan. He stated that they decided on a 20 foot height based on the input they received from their staff and the manufacturer. He described the posts and netting in more detail.

The Board questioned the witness. Mr. Sunshine stated that the school would like to have safety netting installed from mid-March to mid-November to cover the games and practices for the sports that use the field. He stated that MKA has no intention of increasing the use of the field beyond what was approved with the 2012 application. He stated that the soccer practices are the main concern, and that those occur from mid-August to mid-November. No questions were offered from the public.

Exhibit Marked:

A-1 Photograph of the posts and safety netting

John Williams, Landscape Architect, was sworn and stated his qualifications. He described the posts and netting and how they function. He stated that they would have to look further into whether the posts could be shortened. He described the existing landscaping and trees that help screen the view of the posts and that additional landscaping could be added along the embankment for that purpose. He also described the permeable pavers intended to replace the gravel area for the bus turn-around area on the prior site plan. He addressed the comments in the December 24, 2013 letter from the Board Engineer. The Board questioned the witnesses. Mr. Sunshine stated that if the netting was limited for the soccer season, it would be up from mid-August to mid-November. He stated that they feel it is also necessary for lacrosse as well, which runs from mid-March to mid-June. Mr. Trembulak stated that the application was reviewed and approved by the Montclair Historic Preservation Commission. Mr. Williams further described some of the other minor modifications to the site plan. James Castelli, Director of Facilities for MKA, was sworn. He described the posts and the pulley system built in to the poles to raise and lower the netting. No questions were offered from the public.

Mr. Trembulak stated that the applicant would like look further into whether the height of the existing posts could be made lower before concluding the application and requested that the application be carried to the March 19, 2014 meeting of the Board. Chair Harrison called for comments from the public who are present and prefer to do so at this hearing. Edward Skillin, 29 Upper Mountain Avenue, was sworn, and stated his displeasure with the new field and fieldhouse. Chair Harrison announced that that the application would continue at the March 19, 2014 meeting and that no further notice would be given.

The application of **Mathew C. Mathew, 231 Claremont Avenue** was announced. David Owen, Esq. appeared as attorney for the applicant and described the application. Dennis Mylan, Architect and Professional Planner, was sworn and described the application. The property is located in the OR-3 Garden Apartment and Office Building Zone. Township records indicate there are no zoning approvals for the present configuration of eight dwelling units. The application is intended to provide formal zoning approvals for five dwelling units. The proposed conversion includes modifications to the existing building's interior floor plan and the property's exterior site plan. He described the plans in detail. The proposed conversion to five dwelling units is a permitted conditional use in the OR-3 Zone. 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. The master plan provides for multifamily residential use in the OR-3 Zone. There are various purposes of zoning and special reasons in support of the conditional use variances. The conditional use variances will not cause any substantial detriment to the public good or surrounding properties. 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. Notwithstanding the deviations from certain conditions, the site continues to be appropriate for the project. The bulk or dimensional 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.

Exhibits Marked:

- A-1 Site plan with color added
- A-2 Photographs of the subject property

The Board questioned Mr. Mylan. No questions or comments were offered from the public. The Board discussed the application. A motion made by Mr. Whipple to approve the amended application subject to the conditions listed below, was seconded by Mr. Fleischer, and was unanimously approved by the Board. The conditions of approval include:

1. The applicant shall enter into cross-easements with the owner of adjoining Lot 10 providing for joint and mutual use of the common driveway and related vehicle turning areas;
2. The applicant shall comply with items 2 through 5 of Board Engineer W. Thomas Watkinson's report dated November 30, 2013;
3. The applicant shall implement measures to maintain the safety of the existing fire escape during inclement weather, and if the applicant becomes required in the future to enlarge or replace the existing fire escape, it shall return to the Board for review and approval of such enlargement or replacement;
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 hearing; and
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 **Bellclaire, LLC and Bellclaire II, LLC, 6, 7 and 18 Bell Street and 693 Bloomfield Avenue** was announced. Craig Alexander, Esq., appeared as attorney for the applicant. Wayne Corsey, was sworn and stated his qualifications as a Professional Engineer and Professional Planner. Mr. Corsey described the application. The subject property contains the Bellclair apartment complex with two three-story buildings on Lot 15 in Block 1403 and one three-story building on Lot 20 in Block 1402 containing a total of 70 apartments and 4,000 square feet of retail space with 120 parking spaces. Lot 19 in Block 1402 is vacant, having previously received approval from the Board to construct a two-family dwelling by resolution adopted March 19, 2008, which was never built. The applicants seek to consolidate Lots 19 and 20 in Block 1402 and construct six off-street parallel parking spaces for use by tenants and visitors of the Bellclair apartment complex. The applicants propose to install four shoe box style light poles at a height of 14 feet and privet hedges along the southerly side of the parking area. The existing vinyl fence along the northerly and westerly property line of Lot 19 shall remain. The proposed parking area represents a public benefit by providing additional parking without any meaningful increase in intensity of use. The applicants previously received approval for a parking variance and providing additional parking will lessen the nonconformity. The expansion of the preexisting nonconforming use and other variances will have little or no adverse impact on area properties and based upon the nature and scope of this application will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

Exhibit marked:

A-1 Plan by Omland Engineering Associates, Inc., revised 02/06/2014

The Board questioned the witness. To answer a specific question from the Board Jeffrey Garfinkel, Property Manager for Sterling Properties, was sworn. He stated that they have generally been getting a high amount of requests for additional parking from their residents of the subject properties. He could not be more specific than that. No questions or comments were offered from the public.

The Board discussed the application. The Board determined that the applicants failed to present sufficient proof in order to warrant relief from the front and rear yard setback requirements. The applicants cannot prove a hardship under because elimination of two parking spaces obviates the need for these variances. In addition, the applicants failed to prove that the benefits of allowing six parking spaces as opposed to four parking spaces substantially outweighed any detriment. Approval of six parking spaces as originally proposed would result in an overutilization of the property, fail to provide adequate light, air and open space and not permit plantings in the front yard which would cause substantial detriment to the public good and substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. The Board concluded that a parking area of four parking spaces rather than six parking spaces as originally proposed met the requisite special reasons for granting this application and 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. The parking area with 4 vehicles also eliminates the need to grant front and rear yard setback variances for the parking area.

A motion made by Mr. Whipple to approve the application as modified by the Board and subject to the conditions listed below, was seconded by Mr. Fleischer, and was unanimously approved by the Board. The conditions of approval include:

1. The plans shall be revised to reflect four parking spaces conforming with the front and rear setback requirements.
2. The applicants shall obtain Essex County Planning Board approval.
3. The curb detail shall be changed to granite block curb.
4. A clean-out (small inlet) shall be provided for the roof leader at the north corner of the building.
5. The apron detail shall provide a 7 inch thickness.
6. Compliance with the requirements of the Maintenance Manual.
7. The applicants' engineer shall submit an itemized construction cost estimate of site work for determination of inspection escrows.

8. Lots 19 and 20 in Block 1402 shall be consolidated by the filing of a Deed.
9. The applicants shall provide a cross easement to allow residents of Lot 15 in Block 1403 to utilize the parking area approved herein.
10. The entrance to the parking area shall be modified by eliminating the drop curb providing a level sidewalk and tapered entrance.
11. The landscape plan shall be modified to vary the plantings along the southerly side of the parking area and to add low plantings in the front yard subject to review and approval by the Township Planning Department.
12. The applicants shall be bound by all representations made on their behalf by its attorney, witnesses, and professionals during the course of the public hearings.
13. The applicants 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.
14. This approval shall not constitute an abandonment of the approval obtained by Bellclair II, LLC memorialized by resolution adopted by the Board on March 19, 2008.

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