

MINUTES OF THE BOARD OF ADJUSTMENT
August 21, 2013

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

ABSENT: Mr. Kenney, Mr. Edwards, and Ms. Talley, Secretary

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.

Chair Harrison had indicated that he would be arriving shortly. Vice Chair Whipple stated that the meeting minutes and resolutions would be adopted when Chair Harrison arrives. Mr. Sullivan stated that the Board should hear the residential bulk variance application first before starting the use variance.

It was announced that at the request of the applicant, the continuation of the application of **Bank of America, 560 Valley Road** was postponed until the September 18, 2013 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

It was announced that at the request of the applicant, the variance application of **Prudential New Jersey Properties, 695 Bloomfield Avenue** was postponed until the September 18, 2013 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

The application of **Eli Aronoff, 706 Valley Road** was announced. Eli & Jill Aronoff were sworn, as were Francis Klein and Susan Chandler, Architects. Mr. and Mrs. Aronoff each briefly described the existing house and the proposed addition to the top floor at the rear of the dwelling. Mr. Klein described the property and the application. The property is located in the R-2 Two-Family Zone and contains a two-family dwelling. The driveway on the property leads to a detached garage in the rear yard. The driveway is shared with the neighbor to the north but is mostly located on the subject property. The third floor at the rear of the dwelling is located under a roof that slopes towards the rear yard. An addition is proposed to the third floor at the rear of the dwelling to increase the usable floor area of the third floor. The floor plans depict a master bedroom in the area of the expanded third floor. The existing dwelling footprint on the survey indicates existing nonconforming side yard setbacks. Minimum side yard setbacks of 10 feet and 6 feet are permitted, and the existing condition is 9.93 feet and 2.75 feet, respectively at the northerly and southerly rear corners of the dwelling. The new construction would work along these existing nonconforming side yard setbacks, building upward to a degree, and a variance is requested for side yard setbacks of less than 10 feet and 6 feet, respectively, from the northerly and southerly side property lines.

Exhibit marked:

A-1 Site Plan and Roof Plans, by Francis Klein and Associates Architects, dated August 20, 2013

A-2 through A-7 Photographs of the subject property and adjoining properties

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved.

Chair Harrison arrived. The application of **Sprint Spectrum, LP, 36 Hawthorne Place** was announced. Kevin Jones, Esq., appeared as attorney for the applicant and described the application.

Terence Lulay, P.E. was sworn and stated his qualifications. He described the plans to replace and modify wireless telecommunications equipment. The Alpha sector is located at the southeasterly side of the roof, where an existing Sprint antenna under stealth screening would be removed. A new antenna with a new cylindrical stealth screen would be installed a few feet away. The Beta sector is located at the southwesterly side of the existing Sprint screened equipment enclosure, where there are three existing antennas mounted on the outside of the screen wall and a GPS antenna. One of the three existing antennas would be removed, and another would be replaced by a new antenna mounted on the outside of the screen wall. The existing GPS antenna would be replaced with a new GPS antenna. New equipment called RRH units would be mounted on the inside face of the screen wall. The Gamma sector is located at the northwesterly side of the screened equipment enclosure. With the exception of the GPS antenna, its existing and proposed condition is identical to the Beta sector. A fourth equipment cabinet is proposed within the existing screened enclosure. Existing dish antennas are depicted on the easterly corner of the screen enclosure. The Board questioned Mr. Lulay. The height above grade to the top of the new antennas will match the previously approved to height. No questions were offered from the public.

Dave Collins, P.E. was sworn and stated his qualifications. He reviewed the FCC Compliance Report, by Pinnacle Telecom Group, dated August 19, 2013, submitted with the application. He prepared the report and stated that the findings in the report conclude that the proposed antennas and related equipment would comply with all applicable State and Federal regulations for radiation transmission levels. The Board questioned Mr. Collins. He provided further details describing how the project would also comply with the FCC regulations for exposure as it relates to the rooftop of the building and the interior of the apartments at the top floor. No questions were offered from the public.

Bossener Charles, P.E., was sworn and stated his qualifications. He described the application and the type of radio frequency coverage provided by the proposed installation that is currently totally lacking. The installation provides coverage for Sprint's Long Term Evolution network, also known as 4G coverage, to provide wireless broadband, high speed internet, and enhanced mobile communications. The new technology allows Sprint to provide this enhanced coverage by using fewer antennas. No questions were offered by the Board or the public.

David Karlebach, Professional Planner, was sworn and stated his qualifications. The subject property located at the intersection of Hawthorne Place and Gates Avenue measures 142,441 square feet in size and contains a six story residential apartment building. The application complies with all the conditional use standards contained in the Montclair Township Zoning Ordinance except that height of the apartment building at the subject property is 58 feet 8 inches in height where a minimum of 60 feet is required and height of the relocated antenna in the Alpha sector and the GPS antenna exceed the height of the top of the building roofline. Approval of the requested variances advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1, since the proposed replacement and modification of antennas encourages appropriate use of land which promotes the general welfare and the overall reduction in the number of antennas provides adequate light, air and open space. Based upon the size and location of the existing apartment building, the proposed roof top location of the site is particularly suited for wireless communication antennas and continues to be an appropriate site for the conditional use notwithstanding the deviations from the conditions imposed by the ordinance. The visual intrusion caused by the height of the proposed antennas is minimal and will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance. The application does not involve any noise, vibrations, smoke, dust, odors, heat or glare and thus will not cause substantial detriment to the public good and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance

Exhibits marked:

A-1 through A-4 Photographs and Photo-simulations of the rooftop with and without the proposed wireless telecommunications equipment

The Board questioned Mr. Karlebach. No questions or comments were offered from the public. No comments were offered from the public. The Board discussed the application and determined that the application could be approved subject to the following conditions:

1. The application shall comply with all conditions contained in the Board's August 18, 2010 resolution not inconsistent herewith.

2. 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. Fleischer, seconded by Mr. Burr, the **Minutes of the July 17, 2013** regular meeting were adopted as modified, Ms. Checca, Mr. Reynolds and Mr. Tsai, abstaining.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Mill Hill Development, LLC, 47 Gray Street**, was adopted, Mr. Burr, Ms. Checca, Mr. Reynolds and Mr. Tsai, abstaining:

WHEREAS, Mill Hill Development, LLC, 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 new single family dwelling, on property designated as Lot 2 in Block 4511 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following variances:

1. A variance from **Montclair Code Section 347-44** for a lot width of less than 60 feet; and
2. A variance from **Montclair Code Section 347-45B(1)** for a front yard setback of less than 25 feet; and
3. A variance from **Montclair Code Section 347-104** for a side yard setback of less 4 feet for a parking space in the rear yard; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 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 map dated September 27, 2012 and architectural plans prepared by Tecton, LLC, dated April 17, 2013; and

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

1. The property is located in the R-1 One-Family Zone. The existing single family dwelling and attached carport would be demolished. A new single family dwelling and a detached one car garage in the rear yard is proposed.

2. The minimum lot width for a new dwelling in this section of the R-1 Zone is 60 feet. The existing lot measures 50 feet in width. The lot is not proposed to be widened and a variance is requested.

3. The average front yard setback of the 4 nearest dwellings, 2 on each side of the subject property on the same side of the street, is approximately 16.26 feet to the front property line. Therefore, the zoning ordinance requires a minimum front yard setback of 25 feet to the front property line for the new dwelling, including a roofed porch or entry. The existing dwelling has a front yard setback of 8.94 feet. The new dwelling would have a front yard setback 16.58 feet to the columns of the roofed front entrance, and a variance is requested

4. A conforming detached garage is proposed in the rear yard, accessed by a new driveway on the easterly side of the dwelling. The second parking space required for the single family dwelling is located on the driveway in front of the garage. The setback provided from the easterly side property line for the parking space is 2.92 feet for the most part, and tapers down to 1.17 feet. Landscaping is depicted in the setback. The parking space is required to have a 4 foot landscaped setback from the side property line, and a variance is requested; and

5. The Board determined that the requested variances could be approved for the plans as submitted. There is no opportunity to widen the existing lot, and the existing lot width is in keeping with what exists in the neighborhood. The design and scale of the proposed dwelling is keeping with that of the neighborhood. The proposed front yard setback would be an improvement on the front yard setback of the existing dwelling on the property, and would be in keeping with what exists on the adjoining lots. The parking space setback is adequately landscaped and the setback is based on the existing lot width and the best placement of the dwelling and garage; 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. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **736 Valley Road, LLC, 736 Valley Road**, was adopted, Ms. Checca, Mr. Reynolds and Mr. Tsai, abstaining:

WHEREAS, 736 Valley Road, LLC, as owner and applicant, and Dr. Elizabeth Boyle, as co-applicant, with respect to property located at 732-736 Valley Road, Upper Montclair, New Jersey (Block 803, Lots 1, 2) (hereinafter the "property"), made application to the Montclair Township Board of Adjustment (hereinafter the "Board") for a use variance and a parking space supply variance necessary to operate within a portion of vacant office space on the property a medical office in the form of a healing spa incorporating integrative therapy including but not limited to weight loss and nutrition, medical acupuncture, bio-identical hormone therapy, and stress management, with prescribed sales of vitamins and related products; and

WHEREAS, the applicants requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to permit the healing spa, which is not a permitted use in the R-2 Two-Family Zone under Montclair Code Section 347-47; and
2. A variance pursuant to N.J.S.A. 40:55D-70c to permit 35 on-site parking spaces where 41 parking spaces are required under Montclair Code Section 347-101; and

WHEREAS, the applicants submitted site plans prepared by Sionas Architecture, P.C, sheets SP1 and SP2 dated August 24, 2012 and revised through May 1, 2013, along with a first floor plan, Sheet A-1 also prepared by Sionas Architecture, P.C. dated May 1, 2013; and

WHEREAS, this matter came on to be heard at a meeting of the Board held on July 17, 2013, 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 A-2), 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 consists of two adjoining lots located at the northwest corner of the intersection of Valley Road and Laurel Place. Block 803, Lot 1 (732-734 Valley Road) has frontage on Valley Road and Laurel Place and contains a building with pharmacy, delicatessen, offices, and a residential apartment (second story), with

parking behind the building. Block 803, Lot 2 (736 Valley Road) has frontage on Valley Road only and contains a building with offices and a residential apartment (second story), with parking behind the building;

2. The property is located in R-2 Two-Family Zone; however, the business uses on the property are legal non-conforming uses;

3. The property has been the subject of prior applications to the Planning Board and the Board of Adjustment. In 1979, the Planning Board granted minor subdivision approval with respect to 736 and 740 Valley Road and the Board of Adjustment granted a use variance with respect to 736 Valley Road in order to permit real estate offices at 736 Valley Road. In 1999, the Board of Adjustment permitted the expansion of the legal non-conforming uses by allowing the existing parking areas to be joined to form one drive-thru parking area accessible from Valley Road and Laurel Place and increasing the number of on-site parking spaces from 31 to 35. In 2012, the Planning Board granted minor site plan approval to permit improvements including barrier free parking spaces, barrier free access ramps, pavement repairs, and new landscape areas;

4. Presently, the applicants propose to retain the existing uses on the property and to fill vacant office space with the proposed healing spa. The vacant office space consists of 2,010 square feet located on the first floor of the building at 736 Valley Road;

5. Dr. Elizabeth Boyle explained her medical background and her healing spa. She is a board-certified obstetrician and gynecologist, has a Master of Science in metabolic and nutritional medicine, and is board-certified in functional and regenerative medicine and anti-aging. She will no longer be practicing as an obstetrician and gynecologist and has for the past eight years been practicing patient-centered care with an integrative-science approach to health care, which seeks to achieve physical and psychological balance for each patient, including men, women, and children. She intends to relocate her practice from Clifton to Montclair. She described the various therapies within the healing spa, including: weight loss counseling; nutrition counseling; exercise counseling; pulse magnetic therapy; medical acupuncture; bio-identical hormone therapy; hyperbaric oxygen therapy; prescribed sales of vitamins; and stress management/spiritual healing. She also reviewed the layout of the healing spa and explained how the various rooms would interrelate;

6. Dr. Boyle also described her staff, her anticipated patients, and the maximum number of people expected to be in the healing spa at any one time. She testified that her staff, including herself, consists of three people. She also testified that she anticipates no more than to four to five patients in her office at any one time. She testified that she believes the maximum number of persons in her office at any one time (staff plus patients) might reach seven or eight persons;

7. Paul Sionas, the applicants' architect, presented a parking calculation. He reviewed the various uses within the existing buildings. He testified that Keil's Pharmacy and deli consists of 2,619 square feet and requires 13.1 parking spaces (1 parking space per 200 square feet); the general office space consists of 2,954 square feet and requires 11.8 parking spaces (1 parking space per 250 square feet); the healing spa consists of 2,010 square feet and requires 13.4 parking spaces (1 parking space for every 150 square feet); and the apartments require 2 parking spaces, although there are further parking spaces available to the apartments when retail and office uses close at the end of the day;

8. Peter Steck, the applicants' professional planner, reviewed the relevant factual background and planning and zoning considerations and provided his professional opinions as to why the use variance and the parking space supply variance should be granted;

9. The property has been well-maintained over the years and is presently undergoing upgrades with aesthetic improvements to buildings and site improvements including repaved parking area, new barrier-free facilities, new refuse and recycling area, and new landscape areas;

10. With respect to the use variance, there are various purposes of zoning and special reasons in support of such variance. The healing spa promotes the general welfare (N.J.S.A. 40:55D-2(a)) because the property is particularly suitable for the healing spa given that the property already contains vacant office space. The vacant office space was previously occupied by real estate offices that were a more intense use and that had a much greater actual parking demand than the healing spa. The healing spa also promotes the public health (N.J.S.A. 40:55D-2(a)). The vacant office space provides sufficient space at an appropriate location for the healing spa (N.J.S.A. 40:55D-2(g));

11. In addition, the healing spa will not cause any substantial detriment to the surrounding properties. The property is already approved for and contains office use. As the Planning Department's June 13, 2013 review memorandum states, "the portion of the building proposed for medical office use is set back from the street and will not detract from the retail-orientated streetscape that characterizes the remainder of the building". As previously noted, the vacant office space was formerly occupied by real estate offices that generated significant foot traffic and demand for parking spaces. By contrast, the healing spa requires a quiet environment, internally and externally, and will fit within the neighborhood. The healing spa will not have rapid turnover of parking spaces. The healing spa will have a sufficient supply of on-site parking spaces and will require no more on-site parking spaces than general office use. While the applicants do not intend to rely upon on-street parking, there are approximately seven on-street parking spaces along the property frontages on Valley Road and Laurel Place.;

12. Furthermore, the healing spa will not involve any substantial impairment of the intent and purpose of the master plan or the zoning ordinance. The property

already contains and has been approved for office use, including the subject vacant office space. There is no impairment of the master plan or zoning ordinance in allowing a change in the nature of the office space provided that sufficient parking is available. As the applicants demonstrated, sufficient parking is available. The overall demand for parking caused by all uses on the property is approximately 35 on-site parking spaces, whereas the property contains 35 on-site parking spaces with on-street parking spaces available.

13. Insofar as the applicants sought a use variance under N.J.S.A. 40:55D-70d(1), the applicants proofs and arguments included an enhanced quality of proof as prescribed by *Medici v. BPR Co.*, 107 N.J. 1 (1987). First, the applicants carefully analyzed the positive and negative criteria, as set forth above, including the relationship of the application and use variance to the master plan and zoning ordinance. Second, the applicants demonstrated that in granting the use variance, the Board would not be usurping the Governing Body authority. Such concern arises when variances from a particular restriction have been granted in other instances and the Governing Body has been made aware of those variances yet has not changed the zoning in response thereto, from which one can deduce that another variance should not be granted. Here, however, the application is unique and not recurrent, and it is judged by the Board on its own merits without concern that the Governing Body has already addressed the application;

14. The application can be viewed as requiring a variance under N.J.S.A. 40:55D-70d(2) for the expansion of a legal non-conforming use. The property already contains and has been approved for office use, and the healing spa is a form of office use. Although the healing spa has a more stringent requirement for on-site parking spaces, it will have sufficient parking spaces given its limited staff and patients. As an expansion of a legal non-conforming use, the applicants have demonstrated special reasons and have met the positive criteria and negative criteria as described above. The enhanced quality of proof is not required for the expansion of a legal non-conforming use.

15. With respect to the parking space supply variance, such variance is in furtherance of the healing spa and is supported by the purposes of zoning which support the healing spa. In addition, the parking space supply variance supports the free flow of traffic, both on-site and off-site, given the sufficient supply of parking spaces (N.J.S.A. 40:55D-2(h));

16. In addition, the parking space supply variance will not cause any substantial detriment to surrounding properties. The healing spa will provide a sufficient supply of on-site parking spaces. With reference to Exhibit A-2, the code-required parking for all uses on the property, including the healing spa, is approximately 41 parking spaces. However, whereas the code-required parking for the healing spa is 14 parking spaces, the anticipated actual parking demand for the healing spa (anticipated maximum) is 8 parking spaces -- a difference of about 6 parking spaces. Thus, the actual parking demand for all uses on the property (approximately 35 parking spaces)

will conform with the existing supply of on-site parking spaces (35 parking spaces). As previously noted, there are approximately seven on-street parking spaces along the property frontages on Valley Road and Laurel Place;

17. Furthermore, the parking space supply variance will not cause substantial impairment of the intent and purpose of the master plan or zoning ordinance. The healing spa will not require more parking spaces than the vacant office space, and in this respect the healing spa is fully consistent with the intent and purpose of both the master plan and the zoning ordinance in requiring an adequate supply of parking spaces for the uses on the property.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved the requisite special reasons, including but not limited to particular site suitability, for granting the use variance, 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(1) and d(2); and

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the parking space supply variance, that the applicants 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);

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of 736 Valley Road, LLC and Dr. Elizabeth Boyle, for a use variance and for a parking space supply variance, be and is hereby approved, subject to the following conditions:

1. Medical office use (as defined by Section 347-2) shall be limited to no more than eight people at one time, whether staff, patients or combination thereof, however, drivers and chaperones for the elderly, children, or ill shall not be included within such eight-person limitation;

2. 736 Valley Road, LLC shall comply with the conditions of this Board's resolution dated May 19, 1999;

3. 736 Valley Road, LLC shall install stop signs at both exits from the parking lot onto Valley Road and Laurel Place;

4. 736 Valley Road, LLC shall install a no left turn sign at the exit from the parking lot onto Laurel Place.

5. The applicant shall be responsible for payment of all escrow fees incurred in connection with the review of this application.

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

The Board briefly discussed the **Draft 2012 Annual Report**. The only section of the report still requiring information is the inclusion of any recommended changes to the zoning ordinance. There were no proposed recommendations by Board members at this time, but Chair Harrison stated that the adoption of the Report should be carried to the September meeting, to allow more time for consideration on the topic.

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