

MINUTES OF THE BOARD OF ADJUSTMENT
July 17, 2013

PRESENT: Chair Harrison, Vice Chair Whipple, Mr. Burr, Mr. Fleischer, Mr. Kenney; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Checca, Mr. Edwards, Mr. Reynolds, Mr. Tsai, 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.

On motion by Mr. Fleischer, seconded by Mr. Burr, the **Minutes of the June 19, 2013** regular meeting were adopted, Chair Harrison abstaining.

On motion by Mr. Fleischer, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **58 James Street, LLC, 58 James Street**, was adopted, Chair Harrison abstaining:

WHEREAS, 58 James Street, LLC, as owner, did make application to the Board of Adjustment of the Township of Montclair to retain the existing single family home, demolish the three commercial structures and build seven new dwelling units on property designated as Lot 24 in Block 1512 on the Montclair Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70d(1) as the proposed use is not a permitted principal use pursuant to Montclair Code Section 347-47; and

WHEREAS, the applicant submitted a site plan prepared by John M. Reimnitz, Sheets A-003.00, A-400.00 and A-401.00 dated October 18, 2012 as well as a property survey prepared by James Pica, dated October 12, 2012; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 19, 2013 at which time it was established that notice was properly published and the property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is located on the northerly side of James Street between Central Avenue and Valley Road and is .41 acres in size. The property is improved with a single family house and three dilapidated vacant structures which have historically been used for commercial uses, including a lumber shed, private automobile

garage and storage building and a plaster and lath business which closed operations approximately 10 years ago. The property was formerly part of the Erie Railroad right-of-way and is irregularly shaped.

2. The property immediately to the east of the subject property is utilized as a construction equipment storage yard for DiMilia Associates, a company that builds tennis courts. The property across the street from the subject site is largely undeveloped. The vacant lot is currently used to store commercial vehicles and equipment and is located adjacent to a commercial building. The properties to the east and north of the subject property contain two-family residential homes.

3. The applicant proposes to retain the existing single family home, demolish the three commercial structures and build seven new dwelling units for a total of eight dwelling units on the site. The applicant proposes to deed restrict two of the newly constructed dwelling units for moderate income households.

4. The application was bifurcated and the applicant sought only a variance pursuant to N.J.S.A. 40:55D-70d(1) at this time. The applicant's attorney indicated that if the application was approved, a subsequent application for site plan approval and any necessary bulk variances would be submitted. As part of this application, the applicant submitted a conceptual layout plan which the Board noted would require the following variances and design waivers:

a. To permit rear yard setbacks of 8 feet and 6 feet where a minimum of 37.5 feet is required pursuant to Montclair Code Section 347-51.

b. To permit approximately 35.5 percent principal structure coverage where a maximum of 25 percent is allowed by Montclair Code Section 347-51.

c. A front yard parking variance pursuant to Montclair Code Section 347-52.

d. To allow 12 off-street parking spaces where a minimum of 17 spaces are required pursuant to Montclair Code Section 347-101.

e. To allow a parking area setback of less than 4 feet from the west side and rear property lines contrary to Montclair Code Section 347-104.

5. The Board recognized the applicant's proposal would do away with vacant, dilapidated commercial structures and eliminate a preexisting nonconforming use. The Board, however, determined the applicant's proposal of eight dwelling units could not be adequately accommodated on this irregularly shaped .41 acre lot. The application proposes a density of approximately 19.5 dwelling units per acre. The applicant's planner submitted Exhibit A-7 which identified properties within 200 feet of the site and calculated density in dwelling units per acre for residential properties as follows:

Block	Lot	Units	Acreage	du/ac
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1512	1	2	0.1435	13.94
1512	2	2	0.1512	13.23
1512	3	3	0.1542	19.46
1512	4	1	0.1598	6.26
1512	5	2	0.1905	10.50
1512	6	3	0.1722	17.42
1512	7	2	0.1825	10.96
1512	8	2	0.2525	7.92
1512	9	1	0.149	6.71
1512	10	1	0.1291	7.75
1512	11	1	0.1061	9.43
1512	12	1	0.1136	8.80
1512	13	2	0.1136	17.61
1512	18	2	0.1536	13.02
1512	19	2	0.1067	18.74
1512	20	2	0.1194	16.75
1512	21	2	0.1191	16.79
1512	22	Comm.	0.1837	
1512	23	Comm.	0.2161	
1512	24	P.Q.	0.4086	
1512	25	2	0.112	17.86
1512	26	2	0.1412	14.16
1512	27	2	0.0953	20.99
1512	28	2	0.2009	9.96
1512	29	1	0.1782	5.61
1512	30	3	0.1435	20.91
1512	31	2	0.1435	13.94
1511	1	3	0.1234	24.31
1511	2	Barn	0.0353	
1511	3	Vacant	0.4637	
1511	4	3	0.2159	13.90
1511	5	6	0.1819	32.99
1511	5.01	12	0.9169	13.09
1511	6	2	0.0689	29.03
1511	39	2	0.1176	17.01
1511	40	1	0.1721	5.81
1511	41	1	0.1239	8.07

14.47 Average
32.99 High
5.61 Low

Of the 32 residential properties within 200 feet, only 6 had a density approximately equal or greater than the proposal. The Board concluded the applicant's proposal constituted an overutilization of the property with an intensity that would cause substantial detriment to area properties. In addition, the proposed density of approximately 19.5 dwelling units per acre on this lot results in an intensity of use that is not consistent with the intent and purpose of the R-2 Two-Family Zone. Based upon the foregoing, the Board determined the appropriate density would be five dwelling units including unit deed restricted for a moderate income household.

6. Approval of the applicant's proposal modified so as to provide a maximum of five dwelling units advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a); provides adequate light, air and open space (-2c); promotes the establishment of appropriate population densities and concentrations that contribute to the well-being of persons, neighborhoods, communities and regions (-2e); provides sufficient space in an appropriate location for residential use in order to meet the needs of New Jersey citizens (-2g) and promotes a desirable visual environment (-2i).

7. Based upon the Board's particular knowledge of local conditions, the applicant's proposal modified so as to provide a maximum of five dwelling units is not inconsistent with the character of the neighborhood, will not adversely impact the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

WHEREAS, the Board based on the foregoing findings, concluded that the applicant's proposal modified so as to provide a maximum of five dwelling units proved the requisite special reasons for the granting of the use variance and proved by a preponderance of the evidence that the proposed relief 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; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair that the within application of 58 James Street, LLC for a variance pursuant to N.J.S.A. 40:55D-70d(1) to permit a total of eight dwelling units on the site is hereby denied.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair that the within application of 58 James Street, LLC for a variance pursuant to N.J.S.A. 40:55D-70d(1) for a maximum of five dwelling units is hereby approved subject to the following conditions:

1. One of the dwelling units shall be deed restricted for a moderate income household. The form of the deed shall be subject to review and approval by the Township Attorney and Zoning Board Attorney.

2. The applicant shall obtain site plan approval.
3. The applicant shall be responsible for payment of all escrow fees incurred in connection with the review of this application.

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

It was announced that at the request of the applicant, the site plan application of **Wallwood Gardens, Inc., 400 Orange Road** was postponed until the December 18, 2013 meeting of the Board. The Board was granted an extension of time and the applicant would be required to complete a full public notice for that pending date.

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 August 21, 2013 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

The application of **Mill Hill Development, LLC, 47 Gray Street** was announced. Mr. Burr recused himself and there were 4 eligible Board members for the application. Calvin Trevenen, Esq., appeared as attorney for the applicant and described the application. Variances are requested for a new single family dwelling on the subject property located in the R-1 One-Family Zone.

Tomas Adach, Architect, was sworn and stated his qualifications. Mr. Adach described the existing property and the plans in detail. The plan is to demolish the existing dwelling and to construct a new single family dwelling with a detached garage in the rear yard. He also described the variances requested. 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. The existing dwelling has a front yard setback of 8.94 feet. The new dwelling would have a front yard setback 16.58 feet measured to the columns of the roofed front entrance. A conforming one car garage is proposed in the rear yard. A second parking space is proposed on the driveway in front of the garage. The setback provided from the easterly side property line for the parking space is landscaped and measures 2.92 feet, and tapers down to 1.17 feet.

Exhibit marked:

A-1 Setback Study, prepared by GB Engineering, LLC, dated 4/13/13

The Board questioned Mr. Adach. He clarified the front yard setback calculations shown on his plans and Exhibit A-1. No questions were offered from the public. Mr. Trevenen called Roger DeNiscia, Professional Planner, who was sworn. Mr. DeNiscia

described the application and the variances requested. 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. The adjoining lots are already developed with dwellings and are also of similar size to the subject property. The proposed front yard setback is larger than that of the existing dwelling, and is in keeping with what exists for the adjoining properties. The setback of the parking space is landscaped and is adequate considering the arrangement of the dwelling and the garage.

Exhibit marked:

A-2 Photographs of the subject property and neighborhood

The Board briefly questioned the witnesses. 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 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. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved.

Mr. Burr rejoined the Board. The application of **736 Valley Road LLC & Dr. Elizabeth Boyle, 736 Valley Road** was announced. David Owen, Esq. appeared as attorney for the applicant. The application is for a use variance and a parking space supply variance. He noted there were 5 eligible Board members present and proceeded to describe the application.

Dr. Elizabeth Boyle was sworn. She described the intended use, which is 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. She 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. 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;

Chair Harrison called for questions from the public. Keith Kelly, 7 Laurel Place, asked how many parking spaces would be used by the office. Ana Lejniaks, 5 Laurel Place, asked how much construction activity would be required for the use. Cordelia Siporin, 6 Laurel Place, asked if it is anticipated that staff and patients would park on the street as well.

Paul Sionas, Architect, was sworn and described the plans. The property consists of two adjoining lots located at the northwest corner of the intersection of Valley Road and Laurel Place. 732-734 Valley Road has frontage on Valley Road and Laurel Place and contains a building with pharmacy, delicatessen, offices, and a residential apartment on the second floor, with parking behind the building. 736 Valley Road has frontage on Valley Road only and contains a building with offices and a residential apartment on the second floor, with parking behind the building. 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. 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. He described the available street parking. He presented a parking calculation and 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; the general office space consists of 2,954 square feet and requires 11.8 parking spaces; the healing spa consists of 2,010 square feet and requires 13.4 parking spaces; 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.

Exhibit marked:

A-1 Parking calculation chart for 732 and 736 Valley Road, by Sionas Architecture, dated June 18, 2013

The Board questioned Mr. Sionas. Mr. Sionas described the 4 new office suites that have been created from the part of the prior real estate office that is not proposed to be used by Dr. Boyle. Mr. Sullivan stated that the Board could impose reasonable limitations on the use should the application be approved. Chair Harrison called for questions from the public. Cordelia Siporin, 6 Laurel Place, asked if the medical office

would cause the same street parking problems that the real estate office caused for years. Keith Kelly, 7 Laurel Place, asked about the extent of construction required for the proposed use. He also asked if the 4 separate office suites were previously part of Keil's deli. Ana Lejnieks, 5 Laurel Place, asked if the street parking could be controlled so as not to block residential driveways.

Peter Steck, Professional Planner, was sworn. Mr. Steck described the application and the variances requested. The property is located in R-2 Two-Family Zone; however, the business uses on the property are legal non-conforming uses. A use is requested to permit the healing spa, which is not a permitted use in the R-2 Two-Family Zone, a parking variance to permit 35 on-site parking spaces where 40.3 parking spaces are required is also requested. He 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. With respect to the use variance, there are several purposes of zoning and special reasons in support of such variance. The healing spa will not cause any substantial detriment to the surrounding properties. The healing spa will not involve any substantial impairment of the intent and purpose of the master plan or the zoning ordinance. 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. 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. The parking space supply variance will not cause substantial impairment of the intent and purpose of the master plan or zoning ordinance.

Exhibit marked:

A-2 Planner's exhibit, 2 pages, by Peter Steck, PP, dated June 19, 2013

The Board questioned Mr. Steck. He described the kinds of conditions the Board could reasonably impose should the application be approved. He also described the background variances in more detail. Chair Harrison called for questions from the public. Cordelia Siporin, 6 Laurel Place, asked for a clarification on the street parking available on Valley Road. Keith Kelly, 7 Laurel Place, asked if the 4 other office suites would negatively impact the available parking. He also asked if there were enough handicapped spaces in the lot. Ana Lejnieks, 5 Laurel Place, asked if additional signage would be added to increase the safety of vehicles exiting the parking lot. Cordelia Siporin, 6 Laurel Place, asked for a clarification on the parking variance.

Chair Harrison called for public comment. Cordelia Siporin, 6 Laurel Place, was sworn. She stated her opposition to the application. The site has been too active for years, and along with the nearby train station and bus routes, the local streets are overburdened with traffic and parking. The Board briefly questioned Ms. Siporin. Keith Kelly, 7 Laurel Place, was sworn, and stated his opposition to the application. He also stated that the local streets have been overburdened by traffic and parking associated with the subject property and commuters. The Board briefly questioned Mr. Kelly.

Mr. Owen summarized the application and requested that the Board vote on the application with the 5 Board members that were present. The Board discussed the application. The Board 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. The Board also 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. On motion by Mr. Whipple, seconded by Mr. Burr, the application was 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.

The application of **Bank of America, 560 Valley Road** was announced. Diane Hickey, Esq. appeared as attorney for the applicant. Variances are requested for wall mounted signage. John Janis, Butler Sign Company, was sworn, and described the application. Two new wall mounted signs are proposed for Merrill Lynch, which occupies second floor office space in the building. The Merrill Lynch signage includes a panel sign on the front wall, with dimensions of 2 feet 6 inches tall by 10 feet $\frac{1}{4}$ inch wide, above a set of 2nd floor windows over the main entrance of the building. The Merrill Lynch signage also includes individually mounted letters and logo, with overall dimensions of 2 feet $4\frac{3}{8}$ inches tall by 11 feet wide, on the large brick wall on the northerly side of the building. Existing wall mounted signage for Bank of America located on the large brick northerly wall is also proposed to replace a similar existing Bank of America sign that is associated with variances granted in 1993.

Exhibit marked:

- A-1 Photographs of the existing signage and photo-simulations of the proposed signage, by Butler Sign Company

The Board questioned Mr. Janis, who answered several questions about the size, design, and locations of the proposed signs. No questions were offered from the public.

Peter Steck, Professional Planner, was sworn and described the application and the variances requested. The plan was reviewed by the Historic Preservation Commission a few months ago. The proposed Merrill Lynch sign on the front façade requires variances for a sign height exceeding 24 inches and to locate the sign above the permitted sign band. The Merrill Lynch sign on the northerly brick wall requires variances to mount the sign on a portion of the building not occupied by the referenced business, to mount the sign on a wall that does not face a street or municipal parking lot, for a sign height exceeding 24 inches, and to locate the sign above the permitted sign band. In September 1993, variances were granted 2 signs for the bank, which included the front and northerly side wall. Those variances were for the height of the signs, and for the northerly wall sign not facing a street or public parking area. At that time, there was no mention of the sign band or requiring that the sign be located on the space occupied by the referenced business. The Bank of America sign on the northerly brick wall is being modified and requires new variances. Mr. Steck stated that the building's unique design, as noted by the Historic Preservation Commission in their review, warrants special consideration for the requested variances. Granting the requested variances would not set a precedent due to the unique design of the façade and the front setback of the building. The requested variances are in keeping with the previously granted variances from 1993.

Exhibit marked:

- A-2 Planner's exhibit, 3 pages, by Peter Steck, PP, dated July 14, 2013

The Board questioned Mr. Steck, who answered several questions about different options, both conforming and those that require variances. No questions were offered from the public.

Derek Tam, employed by CBRE as a property manager for the site, was sworn. Mr. Tam described the thought process of the applicant in designing the signage. He stated that the applicant felt it was important to have the signage not only provide advertising, but that it was also important to make a distinction between first and second floor users, and that they felt the proposed sign plan accomplished that. The Board had no questions for Mr. Tam. No question or comments were offered from the public. Ms. Hickey stated that the applicant would request that the application be carried to the next meeting of the Board so that the applicant could examine additional options. On motion by Mr. Whipple, seconded by Mr. Burr, the application was carried to the August 21,

2013 meeting. No further notice would be required and the Board was granted and extension of time.

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