

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**March 19, 2008**

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, Ms. Holloway, Mr. Rubenstein, Mr. Susswein; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Haizel, Mr. Whipple, and Mr. Franco, Secretary

Assistant Secretary 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 Ms. English, the **Minutes of the August 15, 2007** regular meeting were adopted as modified, Mr. Rubenstein, abstaining. On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the September 19, 2007** regular meeting were adopted as modified, Ms. English and Mr. Rubenstein, abstaining.

On motion by Mr. Fleischer, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Bellcaire II, LLC, 18 Bell Street** was adopted as modified, Ms. Holloway abstaining:

**WHEREAS**, Bellcaire II, LLC, as owner and applicant with respect to property located at 18 Bell Street, Montclair, New Jersey (hereinafter "the property"), did make application to the Montclair Township Board of Adjustment (hereinafter "the Board") for use and bulk variances in order to construct a new two-family dwelling in place of an existing non-conforming three-family dwelling on property designated as Lot 19 in Block 1402 on the Montclair Township Tax Maps and located in the "center area" of the C-1 Central Business Zone; and

**WHEREAS**, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to allow a two-family dwelling which is not permitted under Montclair Code Section 347-80B.
2. A variance pursuant to N.J.S.A. 40:55D-70c to permit a lot area of 2,702 square feet where a minimum of 20,000 square feet is required under Montclair Code Section 347-83A(1).
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit a lot width of 30 feet where a minimum of 100 feet is required under Montclair Code Section 347-83A(1).
4. A variance pursuant to N.J.S.A. 40:55D-70c to allow grade level parking under the two-family dwelling contrary to Montclair Code Section 347-82.
5. A variance pursuant to N.J.S.A. 40:55D-70c to allow tandem parking spaces contrary to Montclair Code Section 347-102A.

**WHEREAS**, the applicant submitted a site and variance plan prepared by Omland Engineering Associates, Inc. dated September 14, 2007 and revised through January 29, 2008 and revised architectural plans prepared by Thomas J. Brennan Architects (sheets A1, A2, and A3) dated January 29, 2008; and

**WHEREAS**, this matter came on to be heard at meetings of the Board of Adjustment held on December 12, 2007 and February 20, 2008, at which time it was established that notice was properly published and that 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 property is a small interior lot located between an apartment building to the south and a commercial parking lot to the north. The property lies at the north edge of the C-1 Zone and is proximate to the R-2, R-3 and OR-3 Zones.

2. The property presently contains a three-family dwelling which is not in good condition and which does not have any on-site parking.

3. The applicant proposes to remove the existing three-family dwelling and replace it with a new two-family dwelling. Each new dwelling unit will have two bedrooms and two and one half baths. Each unit will have two garaged parking spaces.

4. Initially, in December 2007, the applicant proposed a two-family dwelling with a setback greater than the adjoining apartment building to the south, a front door facing south, parking spaces in front of garage doors, and side yard setbacks not permitted in the zone. This particular configuration required the variances identified above and additional variances with respect to front yard setback, front yard parking, parking space setback from side property lines, and principal building setback from side property lines. In response to various concerns raised by the Board with respect to such configuration, the applicant returned with a redesigned building and site configuration.

5. The applicant's new building and site configuration changed the front yard setback from 20 feet to 6 feet so that the two-family dwelling lines up with the apartment building to the south. It increased the rear yard setback from 10 feet to 19.3 feet. It moved the front door so that it faces Bell Street. It eliminated front yard parking by locating all parking spaces at grade level inside the two-family dwelling. It reduced the side yard setbacks to 0 feet in keeping with the zoning ordinance. It eliminated four variances.

6. The revised building and site configuration constitute a better development plan for the property. In addition, the proposed parking spaces, which are tandem or end-to-end parking spaces under the control of one owner, do not require variance or other relief.

7. With respect to the requested variances: Residential use has been the longstanding use of the property. Residential use is permitted in the C-1 Zone and in particular apartments are permitted on all floors except the first floor of the center area of the C-1 Zone. As well, the property is proximate to other zones where a two-family dwelling is a specifically permitted use. The proposed reduction in dwelling units from three dwelling units to two dwelling units provides less density for the property. The proposed dwelling units provide on-site parking for the property. None or virtually none of the permitted uses in the C-1 Zone would work well at the property because of remoteness from Bloomfield Avenue retail frontage and pedestrian traffic and/or because of inability to provide on-site parking.

8. The applicant's proposal and the requested variances advance the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-2. In particular, they promote the appropriate use of land and the general welfare (-2a) because the property is particularly suited for the proposed development given the existing and surrounding residential use and the small size of the property; they promote appropriate residential density (-2e); they provide sufficient space for residential use (-2g); and they provide a desirable visual environment (-2i).

9. With respect to the use variance, there is no substantial detriment to surrounding properties: Residential use is abundant nearby. The project maintains residential use but decreases residential density. The project provides the required on-site parking. In addition, there is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance: Both allow residential use and apartments in the C-1 Zone. Both allow the proposed residential density. Both favor uses that can provide the required on-site parking.

10. With respect to the lot size and lot width variances, the purposes of zoning that favor the use variance also favor the lot size and lot width variances. These variances also promote the free flow of traffic and discourage traffic congestion given that the project provides on-site parking.

11. With respect to the lot size and lot width variances, there is no substantial detriment to surrounding properties: The existing lot width and existing lot size are longstanding conditions accompanied by a three-family dwelling, whereas the project proposes a two-family dwelling. Also, there is no substantial impairment of the zone plan or zoning ordinance: Both allow residential use at the proposed residential density and both favor a use that can meet its on-site parking needs.

12. With respect to the variance to allow grade level parking below the two-family dwelling, the rationale for disallowing parking below a building is to prevent buildings on "stilts" or columns where parked cars are open to public view below the building and are unattractive. Here, however, the proposed parking spaces are incorporated into the building and cars are fully shielded from public view. This arrangement meets the intent and purpose of the zoning ordinance. It promotes zoning purpose 2(i) because it promotes a desirable visual environment through creative

development technique and good civic design and arrangement. It will not cause any substantial detriment to surrounding properties because parked cars are screened from public view. It will not cause any substantial impairment of the intent or purpose of the zone plan or zoning ordinance. The project helps to revitalize this C-1 Zone property, and the zoning ordinance specifically recognizes the difficulty of providing on-site parking in the C-1 Zone (Section 347-79D).

13. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant 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.

**WHEREAS**, the Board, based on the foregoing findings, concluded 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 zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

**WHEREAS**, the Board, based on the foregoing findings, concluded 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).

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair that the within application of Bellclaire II, LLC for use and bulk variances is hereby approved subject to the following conditions:

1. Air-conditioning condenser unit(s) shall be located and set back in accordance with the zoning ordinance.
2. The applicant shall install a conforming fence on three sides that encloses the rear yard of the property.
3. The landscaping shall conform to the plan prepared by Omland Engineering Associates, Inc. which depicts a single shade tree on the lot rather than two as shown on the architectural plans prepared by Thomas J. Brennan.
4. Additional landscaping shall be installed along the driveway consistent with the testimony of the applicant's engineer including low shrubs such as boxwoods not higher than 36 inches.

On motion by Mr. Fleischer, seconded by Ms. English, the following Resolution memorializing the approval of the application of **William Budney, 20 Aubrey Road** was adopted as modified, Ms. Holloway abstaining:

**WHEREAS, William Budney**, owner of property at **20 Aubrey Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a westerly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)**, and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of an accessory building on property designated as Lot 17 in Block 3502 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey, dated December 14, 1988, and a floor plan and elevations, prepared by BPC Architecture, dated December 10, 2007; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on February 20, 2008 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 Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is an interior lot located in the R-1 One Family Zone, measuring 60 feet in width and 8,483 square feet in area. The property contains a single-family dwelling and a detached garage in the southwesterly corner of the rear yard, which would be demolished.

2. The applicant proposes to construct an accessory building that would consist of a two-car garage and an attached storage shed, which would be located in the same area of the property as the existing garage but the footprint would be enlarged.

3. The footprint of the existing garage measures approximately 18 feet in width by 18 feet in length. The existing garage has a nonconforming westerly side yard setback of 1.77 feet at its front corner and 2.03 feet at its rear corner; and a nonconforming rear yard setback that measures 5 feet to the main portion of the garage, and 3 feet to a "bump-out" along a section along the rear wall constructed to fit larger vehicles in the garage.

4. The proposed accessory building in total measures 32 feet in width. The garage area is 18 feet deep; the storage area is recessed 4 feet from the front of the garage wall and is 14 feet deep. The proposed accessory building would be constructed along the existing westerly side setbacks of the existing garage, and would follow the existing 5-foot rear setback, and variances are requested. A conforming height of 15

feet is proposed, and the footprint of the proposed structure covers 17.3% of the rear yard, which is under the 25% maximum for accessory building in a rear yard.

5. Considering the fact that the proposed accessory building is significantly wider than the existing garage, the Board determined that the requested variances could only be granted if the plan was modified so that the westerly side yard setback is increased to be no less than 3 feet, and that the overall width of the accessory building be reduced by at least 1.5 feet.

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 did prove 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 variance application of William Budney is hereby approved, subject to the following conditions:

1. The westerly side yard setback shall be no less than 3 feet.
2. The overall width of the accessory building shall be reduced by at least 1.5 feet to measure no more than 30.5 feet in width.
3. Roof leaders shall be positioned so that stormwater drainage from the roof of the proposed accessory building shall discharge onto the subject property only.

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

The Board discussed the extension of time requested for the application of **Alcaro Realty, LLC, 112 Pine Street**, which is due to expire on April 26, 2008. After a brief discussion, a motion by Mr. Fleischer, seconded by Mr. Rubenstein, was approved to grant an extension of time through July 26, 2008.

The continuation of the application of **R&R Realty, 651 Bloomfield Avenue** was announced. There were 6 eligible Board members for the application. Grant Gille, Esq.,

appeared as attorney for the applicant. Wayne Gusskind, Architect, was still under oath and described the revised plans.

Marked into evidence were:

- A-4 Revised plans dated March 7, 2008
- A-5 Rendered site plan, on a board
- A-6 Rendered elevations, on a board
- A-7 Essex County Approval

The applicant proposes to convert the building housing the automobile repair business into a 7-11 convenience store and retain the existing gas station use. The revised plan eliminates one of the fuel pump islands and includes a redesigned parking area and revised signage. The Board had numerous questions for Mr. Gusskind on the signage, the parking lot design, and the effect of the remaining gas pump island on the traffic flow on the site. Chair Harrison called for questions from members of the public. John Roemer, 76 Christopher Street, asked if it would be necessary to improve the intersection of Bloomfield Avenue and Valley Road. Mr. Gille stated that the County has commented on the project and has not requested any improvements to the intersection.

Mr. Gille called Nasser Nasser, of North Haledon, NJ, who was sworn and stated that he is the prospective lessee and purchaser of the property and would operate the 7-11 convenience store and gas station. Mr. Nasser described what he would expect in terms of employees parking, customer parking, and gas customers. He stated that in his opinion the proposed plan would operate safely and efficiently. The Board questioned Mr. Nasser.

Mr. Gille called Richard Riccardi, of East Hanover, NJ, who was sworn and stated that he is one of the owners of the subject property. Mr. Riccardi described the service station business that had existed on the site for years. He stated that due to the existing gas tanks in the ground on the site, they have had little interest from any prospective purchaser other than those who would also sell gasoline. He also described the environmental background of the property. The Board questioned Mr. Riccardi.

Mr. Gille called Roger DeNiscia, PP, who was sworn and described the application. The application brings a conforming retail use onto the property, including pedestrian usage, which is beneficial to the C-1 Zone. Although the proposed on-site parking is difficult due to the shape of the property and the presence of a gas pump, the proposed on-site parking is an improvement to the existing unorganized site. The site and the area are particularly suited to proposed use, which is a reasonable alteration of an existing nonconforming use that encourages economic development, and the application should be approved. The Board questioned Mr. DeNiscia.

Marked into evidence was:

- A-8 Board with 6 photos

Chair Harrison called for questions and comments from members of the public. Stuart Kaufman, of Secaucus, was sworn and stated that he is the realtor associated with the proposed transaction. He described the issues with the property from his perspective and the problems that the owner has had selling or leasing the property. He stated that the prospective lessee and purchaser requires the sale of gas for business purposes. The Board took a short recess. Mr. Gille summarized the application and requested that the vote be postponed until there are 7 eligible members present. It was announced that the application would be continued at the April 16, 2008 regular meeting of the Board. No further notice would be given. The Board was granted an extension of time.

The continuation of the application of **Francis Guyot, 424-428 & 434-436 Bloomfield Avenue** was announced. Lawrence Olive, Esq., appeared as attorney for the applicant. There were 6 eligible Board members for the application. Mr. Olive acknowledged the Board's receipt of the easements associated with the property and stated that the applicant is willing to relocate the proposed subdivision line as the Board sees fit. He requested that the Board vote on the application with the 6 eligible members present.

The Board discussed the application. Three (3) of the 6 Board members expressed concerns over the application. The applicant failed to present sufficient testimony to prove "special reasons" or that any purposes of the Municipal Land Use Law contained in N.J.S.A.40:55D-1 et seq. would be advanced by the granting of this application. The applicant argued the development application promotes the general welfare consistent with N.J.S.A.40:55D-2a. The Board, however, rejected this argument finding there was no public benefit whatsoever in approving the application which benefited only the property owner. The applicant argued the application provides adequate light, air and open space and provides sufficient space in an appropriate location for residential use consistent with N.J.S.A.40:55D-2c and 2g. The Board, however, determined these arguments were without merit resulting in irregularly shaped substantially undersized lots with regard to lot area and width and density exceeding the maximum permitted by ordinance. With respect to the variances requested pursuant to N.J.S.A.40:55D-70c(1), the applicant failed to present sufficient testimony of peculiar and exceptional practical difficulties or undue hardship upon the applicant relating to the physical characteristics of the land to establish the requisite positive criteria. With respect to the variances requested pursuant to N.J.S.A.40:55D-70c(2) the applicant failed to offer any testimony that approval of the application would actually benefit the community and represent a better zoning alternative for the property. Approval of this application would substantially impair the intent and purpose of the zone plan and zoning ordinance which seeks to provide lots of sufficient area and width and to provide appropriate residential density consistent with the general welfare. The applicant offered insufficient proof to establish the application would not substantially impair the intent and purpose of the master plan. Other alternatives exist which will meet the applicant's needs without the necessity of variances.

A motion by Ms. English, seconded by Ms. Cockey to approve the application did not receive enough affirmative votes, with Mr. Fleischer, Mr. Susswein, and Mr. Rubenstein voting against the motion, and the application was denied.

The application of **Amy and Jeffrey Plaut, 228 Grove Street** was called. The applicants were sworn and described the application. The property is an interior lot, measures 170 feet in width and 26,464.75 square feet in area, and contains a single-family dwelling and a detached garage. An existing one-story section at the rear of their dwelling, that measures 15 feet wide by 6 feet long, would be removed and a larger one-story addition is proposed in the same area that would extend 4 feet further into the rear yard. A roofed rear entry is also proposed that would extend an additional 4 feet in the rear yard. The addition, excluding the roofed entry, has a footprint that measures 15 feet wide by 10 feet long, and would contain a new eating area for the kitchen which would be remodeled. The required rear yard setback for the property is 51.4 feet, which is equal to 30 percent of the lot depth. The dwelling has a nonconforming rear yard setback of approximately 46.5 feet to the existing one-story section at the rear. The proposed addition is set back 38.5 feet from the rear property line, measured to the proposed roofed entry and a variance is requested. All other zoning requirements are met.

The Board questioned the applicants. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. Due to the position of the dwelling on the property, and its unique layout on the property that stretches far into the rear yard, it is not possible to construct an addition onto the rear of the dwelling that conforms to the rear setback. The proposed addition is small in size and would help modernize the kitchen for family-style living. The topography of the adjoining properties to the rear is elevated, which mitigates the impact of the proposed encroachment. On motion by Mr. Fleischer, seconded by Ms. Holloway, the application was approved.

The application of **Covenant House of NJ, 32 So. Willow Street** was called. Meghan Barrett, Esq., appeared as attorney for the applicant and described the application. The applicant intends to occupy the dwelling as a State licensed community residence for the developmentally disabled. *N.J.S.A. 40:55D-66.1* states that certain State licensed community residences, including those for the developmentally disabled, shall be permitted uses in residential districts of a municipality, and the requirements therefore shall be the same as for single family dwelling units. The proposed use was deemed to be a permitted use by the Planning Department and the Law Department on July 10, 2007.

Marked into evidence was:

A-1 Covenant House information booklet

Mary McDonald, of Absecon, NJ, and employee with the Covenant House was sworn. She described the Covenant House organization and the proposed use at the subject property in detail.

Summer Alhamash, Architect, was sworn and described the proposed addition. The applicant indicated a need for more shared living space within the dwelling. A rear porch would be removed and a one-story addition is proposed at the rear of the dwelling, which will also extend towards the southerly side property line. The addition measures approximately 495 square feet in area and would accommodate an eating area for the kitchen and a great room. The required rear yard setback for the property is 36.75 feet, which is equal to 30% of the lot depth. The existing dwelling has a conforming rear yard setback of 39.75 feet. The proposed addition at the rear of the dwelling is set back 32 feet from the rear property line and a variance is requested. The proposed work complies with all other zoning requirements.

The Board questioned the witnesses. Chair Harrison called for questions and comments from members of the public. Michael Shulman, owner of 41 So. Willow Street, was sworn and asked about the front façade and the State licensing for the community residence. The Board discussed the application. Due to the position of the dwelling on the property, it is difficult to construct a functional addition onto the rear of the dwelling that conforms to the rear yard setback. The proposed addition would provide the additional shared living space within the dwelling to meet the applicant's needs, and the topography of the adjoining properties to the rear is elevated, which mitigates the impact of the proposed encroachment. The Board also recognizes the need within the State to provide housing for the developmentally disabled in a residential setting, and the application represents a public benefit. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved.

The application of **St. John's Episcopal Church, 55 Montclair Avenue** was called. Barry Roy, Esq., appeared as attorney for the applicant. He called Paul Sionas, Architect and Planner, who was sworn.

Marked into evidence were:

- A-1 Sheet A-1 on a board with color added
- A-2 Photograph of the northerly side of the parish hall building
- A-3 Photograph of the northerly side of the parish hall building

The subject property is located at the northeast corner of Montclair Avenue and Chestnut Street. Lot 1 consists of 35,529 square feet and contains the stone church building and the Parish Hall building. Lot 2 consists of 12,035 square feet and contains a framed dwelling utilized as a rectory. The application contemplates a two story addition to the northeast corner of the Parish Hall consisting of an enclosed fire exit stairwell. The use of the property as a house of worship is "inherently beneficial" thus satisfying the positive criteria under N.J.S.A. 40:55D-70d. The proposed enclosed addition will provide a second fire exit stairway to the second floor in compliance with the current building code which increases safety and represents a public benefit. The Parish Hall has a preexisting nonconforming rear yard setback of 36.33 feet. The proposed addition would result in a rear yard set back to the northerly property line of 26.5 feet. The proposed addition will be partially screened by existing vegetation and

will have little or no visual or noise impact on other area properties. The proposed stairway addition will not increase the intensity of use of the property and is not inconsistent with the intent and purpose of the zoning ordinance and master plan.

The Board questioned Mr. Sionas. Chair Harrison called for questions and comments from members of the public. None were offered. The Board discussed the application. On motion by Ms. English, seconded by Mr. Susswein, the application was approved, subject to the following conditions:

1. The applicant shall comply with the recommendations contained in a memorandum from W. Thomas Watkinson, Montclair Zoning Board Engineer dated January 10, 2008.

2. The exterior of the proposed addition shall match the existing building.

On motion by Mr. Fleischer, seconded by Ms. English the meeting was adjourned.