

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**March 21, 2012**

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

ABSENT: Ms. Holloway, Mr. Reynolds, and Ms. Talley, 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. Burr, seconded by Mr. Kenney, the **Minutes of the February 15, 2012** regular meeting were adopted, Mr. Edwards, Mr. Fleischer, and Mr. Whipple abstaining.

It was announced that at the request of the applicant, the continuation of the application of **Wallwood Gardens, Inc, 400 Orange Road** was postponed until the June 13, 2012 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 future meeting date.

It was announced that at the request of the applicant, the continuation of the application of **Valley National Bank, 529 and 539 Valley Road**, was postponed until the April 18, 2012 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

The application of **Edward & Pamela Moed, 5 Stonebridge Court** was called. Pamela Moed was sworn and described the application. Their single-family dwelling was extensively damaged by a severe fire. The dwelling will be demolished and reconstructed on top of the existing foundation. Variances are requested to reconstruct 2 lawfully existing nonconforming conditions. The dwelling was constructed in 2002. In 2005 the height limitations in the zoning ordinance were amended reducing the maximum height to 35 feet. The existing dwelling has a maximum height of 36.5 feet to the highest ridgeline and a variance is requested to permit the reconstruction of the existing height. The limitation on dwelling width was added in 2006, also after the dwelling was constructed. Based on the lot frontage width of 100.4 feet along the curved frontage for the lot which is located at the end of a cul-de-sac, the dwelling width is limited to 65.26 feet, or 65 percent of the lot frontage width. The existing dwelling measures 92.8 feet in width and variance is requested to permit the reconstruction of the existing dwelling width.

The Board briefly questioned the applicant. Ms. Moed stated that they had not considered lowering the height of the dwelling to the new requirement. She stated that

they are using the original plans and that since their family has been displaced, they are trying and expedite the process. She also stated that the height deviation was minor and does not extend for the full extent of the roofline. Chair Harrison called for questions and comments from the public.

Frank Allen, 20 Warman Street, asked if the application would have an impact on the storm sewer system on Warman Street and if the dead end of Warman would be opened to connect to the applicant's property or Stonebridge Court in any way.

Beverly Brown, 42 Warman Street, asked questions about the approved drainage plan from the 1999 subdivision that created the lot. She also asked about parts of the applicant's property that are fenced off and abut Warman Street and not being maintained by the applicant.

Carmela Sylvestri, 34 Warman Street, made several statements regarding the flooding that occurs at the end of Warman Street that she attributed to the development of Stonebridge Court. Several comments were also provided by unidentified people in the audience. Chair Harrison stated that public should communicate with the Engineering Department, which is responsible for the storm water sewer system that was constructed when the subdivision was approved.

Veronica Brown, 42 Warman Street, was sworn and stated that the variances should not be granted. She stated that parts of the applicant's property that are fenced off and abut Warman Street and not being maintained by the applicant.

Carmela Sylvestri, 34 Warman Street, was sworn and made statements about the fire that occurred at the applicant's property. She stated that she was negatively impacted physically by the smoke from the fire and expressed concern over the condition of the Warman Street homes as a result of the fire. Mr. Burr briefly questioned Ms. Sylvestri regarding her statements.

Izonia Ball, 9 Warman Street, asked if the Warman Street was proposed to be extended to connect to the applicant's property or Stonebridge Court in any way.

Raymond Sipperly, 16 Warfield Street, was sworn. He stated his support for the application. He stated that the applicants' home was destroyed by an accidental fire and that the applicants are entitled to the variances.

Keith Gollop, 21 Warman Street, stated that the neighbors are not looking for confrontation. He stated that the applicants should adhere to the plan as proposed.

The Board discussed the application and determined that the requested variances could be approved. The existing foundation is being reutilized, and the dwelling is being replicated. The height variance request is minimal, does not extend the full width of the dwelling, and is in keeping with the scale of dwelling footprint as well as

with the other dwellings on Stonebridge Court originally constructed around the same time. The dwelling width variance can also be granted due to the reutilization of the footprint and the lot shape which widens significantly in the area of the lot where the dwelling is situated. The side yard setbacks are well above the minimum allowance and the dwelling width is also in keeping with that of the other existing dwellings on Stonebridge Court. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, subject to the following condition:

1. The Planning Department shall verify that the storm water sewer easement required to be located under the subject property by condition 7 of the September 13, 1999 Planning Board resolution was fully executed by the original developer. Should the easement not have been fully executed, the easement shall be agreed to by the current applicant and the Township, in order to grant the Township the ability to maintain any storm water sewer located on the subject property.

The application of **Gene & Elana Silverman, 17 Mt. Vernon Road** was called. Gene Silverman, and William Byrne, Architect, were sworn. Mr. Silverman and Mr. Byrne each described the described the application. An addition is proposed to the second floor that would be located above the existing attached garage on the westerly side of the dwelling. The existing dwelling has a nonconforming side yard setback of 4.54 feet from the westerly side property line. The second floor addition has been designed to meet the minimum required side yard setback of 6 feet from the westerly side property line and is recessed 1.5 feet from the side wall of the first story garage. The maximum permitted dwelling width is 65 percent of the lot width, which is 39 feet for the subject property. The existing footprint including the attached garage measures 43 feet in width and is nonconforming. The extension of the second floor over the attached garage would create a 41.5 foot width for the second floor and a variance is requested. At the rear of the dwelling, an existing sunroom would be removed and an addition is proposed comprised of a one and two story sections. The total width of this addition measures approximately 40 feet 8½ inches, and also requires a variance.

Exhibits marked:

- A-1 Rendering of the front elevation
- A-2 Sheet 1 of the plans with color added

The Board questioned the applicant. Mr. Byrne described how conforming to the dwelling width limitation would significantly impact the usability of the proposed second floor addition over the garage. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved. The design of the proposed additions is largely based on the existing conditions of the interior and exterior of dwelling. The additions have been sensitively designed and proportioned and the design and scale of the dwelling would not have a negative impact on nearby properties or the streetscape. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved.

The application of **Mary Jane Weldon, 2 Chester Road**, was called. The applicant was sworn and described the application. A variance is requested to relocate a back-up electrical generator. The property is a corner lot at the intersection of Chester Road and Grove Street. The existing back-up generator is located in the rear yard of the lot in a conforming location; however, the noise it produces when it is operating is disruptive to the applicant and the adjoining property owners. The proposal is to move the generator towards Grove Street, to a location that would be 4 feet from the Grove Street property line and 6 feet from the northerly property line. The existing fencing and plantings in this area, plus additional plantings around the proposed generator location would provide visual shielding. The noise issue would be significantly reduced by moving the generator to this location, since it is farthest from the dwellings and Grove Street is a wide and busy street.

The Board questioned the applicant. The generator was installed in November 2011 due to basement flooding. The adjoining neighbor at 4 Chester Road has expressed support for the application, but could not be at the meeting due to a personal tragedy. An acoustic buffer was considered, but due to clearance requirements, the acoustic shelter would be large. No questions or comments were offered from the public.

The Board discussed the application and the majority of the Board determined that the requested variances could not be approved. Locating the unit in the Grove Street front yard would have a negative effect on the public both visually and from a noise perspective, which is not outweighed by any incremental improvement in noise reduction that may benefit the immediately adjoining property owners. The Board also determined that the applicant could seek alternate methods to reduce any noise impact while remaining in a conforming location, and that allowing this variance would set a precedent for similar applications. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was denied, by a vote of 6 to 1, with Mr. Edwards voting against the motion to deny.

The application of **Michael Steere, 18 Warfield Street** was called. Michael Steere and Sue Cross were sworn. Ms. Cross is co-owner of the property. Mr. Steere and Ms. Cross each described the application. A variance is requested for the location of a recently constructed pergola. The property is an "L" shaped lot with frontage on Warfield Street and Highland Avenue. The lot contains a single family dwelling with an attached garage. Within the last few weeks, the Construction Official required the applicant to file a construction permit for the pergola after it had been constructed. The construction permit failed zoning review due to the location of the pergola on the property. As a result of the lot configuration abutting 2 street frontages, the lot has 2 front yards, and has limited areas that are not considered front yard areas. The large open yard space from the Highland Avenue frontage is considered a front yard up to the point where the dwelling is located. The location of the pergola is the area that has been used as the outdoor yard space associated with the dwelling. The pergola

is located over an existing concrete patio area that is almost 100 feet from the Highland Avenue front property line and is aligned with the rear yard spaces of the adjoining properties.

The Board briefly questioned the applicant. Questions and comments were offered from the public. Larry Hays, 24 Warfield Street, was sworn. He stated that he has the most direct view of the pergola, and stated his support for the application. Raymond Sipperly, 16 Warfield Street, was still under oath, and stated his support for the application.

The Board discussed the application and determined that the requested variance could be approved. The subject property has a unique lot shape with double frontage, which coupled with the location of the dwelling on the lot, leaves little open yard space for which to locate the pergola without a variance. The pergola is located over existing concrete patio, in an area of the property that is aligned with the rear yard areas of adjoining properties. The pergola is also set back nearly 100 feet from Highland Avenue, has limited visibility from Highland, and is not a visual detriment to the adjoining properties which can see the structure from their rear yards. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved, subject to the following condition:

1. The variance granted is limited to a pergola, which shall not exceed the size nor be positioned differently than the pergola as depicted on the drawings and photographs submitted for this application.

Prior to taking a short recess, Mr. Sullivan indicated that escrow accounts associated with the applications of **Omnipoint Communications, Inc., 153 Park Street**, and **T-Mobile Northeast, LLC, 118 Watchung Avenue** have been deficient despite numerous requests to replenish the accounts. The Board recently carried the selection of a special meeting date for both applications to the May 16, 2012 meeting, and the Board was granted an extension of time to act through May 16, 2012. Due to the ongoing deficiency of the escrow accounts, Mr. Sullivan was seeking authorization from the Board that both applications be dismissed at the May 16, 2012 meeting should the escrow accounts not be replenished accordingly. Chair Harrison was recused from the discussion. Mr. Sullivan's request was unanimously approved on motion by Mr. Whipple, seconded by Mr. Fleischer, Chair Harrison abstaining.

Prior to the break, Chair Harrison and Mr. Kenney indicated that they are recused from the next application and would be leaving the meeting. The Board took a short recess.

Vice Chair Whipple called the application of **360 Cycling Studio, LLC, 4 Lackawanna Plaza**. Gregory Mascera, Esq., appeared as attorney for the applicant and described the application for variances associated with existing signage installed without permits. Mark Cohen, 28 Aubrey Road, was sworn. He is currently part owner of the subject business. The business is an exercise facility and he described the

operations of the business and their methods of advertising and marketing. He also described the various improvements they have completed to the interior and exterior of the space. He also described existing sign and described how it was designed. The neighboring businesses are not against the sign as it exists. He was not aware of the requirement for permitting or the zoning rules pertaining to signage prior to its installation. He stated that the size of the sign is in keeping with the scale of the storefront and assists people to locate the business when traveling to the site from Bloomfield Avenue or Glenridge Avenue. A smaller sign would be detrimental aesthetically and would make his business more difficult to locate.

Exhibit marked:

A-1 Color photograph of the front façade with certain measurements of the façade and existing wall signage provided

The Board questioned the applicant. Mr. Mascera had a lengthy discussion with the Board about the various sign requirements, variances requested, and the application. The Board asked if a sketch of a conforming or more conforming sign was created for comparison. The applicant stated that they would like to provide such a sketch or drawing and requested a postponement the application until the April 18, 2012 meeting. The Board was granted an extension of time and granted the request. No further notice would be given.

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