

MINUTES OF THE BOARD OF ADJUSTMENT
March 21, 2007

PRESENT: Chair Harrison, Vice Chair Fleischer, Mr. Haizel, Ms. Holloway, Mr. Rubenstein, Mr. Susswein, and Mr. Whipple; also, Mr. Koenig, Esq., Mr. Franco, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey and Ms. English

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 Mr. Whipple the **Minutes of the September 20, 2006** regular meeting were adopted as modified, Mr. Haizel abstaining.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Clifford F. Lindholm, III, 168 Gates Avenue** was adopted, Mr. Susswein abstaining:

WHEREAS, Clifford F. Lindholm, III, owner of property at **168 Gates Avenue**, 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 347-34A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-34A(3)** in connection with the construction of a detached garage on property designated as Lot 4 in Block 1205 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant submitted a property survey prepared by EKA Associates, P.A., dated September 29, 2006, and a site plan, floor plan, and elevations prepared by John Thomas Collins, Architect, dated July 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 21, 2007 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-0 Mountainside Zone, measuring 172.5 feet in width and approximately 28,782 square feet in area. The property contains a 2½-story single-family dwelling and a damaged detached garage in the southwesterly corner of the rear yard, which would be removed. The applicant indicated that the existing garage had been damaged by a vehicle driven by a family member in the summer of 2006.

2. The footprint of the existing garage measures approximately 32 feet in width by 24 feet in length. The applicant proposes to construct a new detached garage in the same general area as the existing garage, except that it would be 6 feet wider.

3. The existing garage has a nonconforming westerly side yard setback of 4.71 feet where 12 feet is required, and a nonconforming rear yard setback of 3.45 feet, where 10 feet is required. At the hearing the applicant submitted a revised site plan, marked as Exhibit A-1, which depicted the same westerly side yard setback of 4.71 feet, and an increased rear yard setback of 8.5 feet. The applicant indicated that the enlarged rear yard setback would help to preserve trees that exist behind the garage. A conforming height of 15 feet is proposed.

4. The Board determined that the requested variances could be granted since the location of the proposed garage is based on the existing garage, the applicant is improving rear yard setback, and the setbacks of the proposed garage are in keeping with the setbacks of the other detached garages in the neighborhood.

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 Clifford F. Lindholm, III is hereby approved, subject to the following conditions:

1. The westerly side yard setback shall be no less than 4.7 feet and the rear yard setback shall be no less than 8.5 feet.

2. Any outstanding property taxes shall be made current.

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. Fleischer, seconded by Mr. Haizel, the following Resolution memorializing the approval of conditional use and bulk variances and the denial of a 'd' variance for height and preliminary and final site plan approval for the application of

Alter Family, LLC for the Deron School (II), 130 Grove Street was adopted, Mr. Whipple abstaining:

WHEREAS, Alter Family, LLC for the Deron School (II) did make application to the Board of Adjustment of the Township of Montclair for use, bulk variances and conditional use approval in connection with an addition to the existing school on property designated as Lot 1.01 in Block 4301 on the Township Tax Map and located in the OR-3 Garden Apartment and Office Building Zone; and

WHEREAS, the applicant requested relief from N.J.S.A. 40:55D-70d(3) as follows:

1. To allow less than the required minimum street frontage of 300 feet on Christopher and Grove Streets contrary to Montclair Code Section 347-12A(3).
2. To allow frontage on Christopher Street with a paved width of less than 35 feet as required by Montclair Code Section 347-12A(4).
3. To allow building height in excess of 40 feet contrary to Montclair Code Section 347-12A(5).
4. Failure to provide two separate driveways each providing ingress and egress with a minimum separation of 150 feet as required by Montclair Code Section 347-12A(6).
5. To allow less than the required 104 parking spaces pursuant to Montclair Code Section 347-12A(9).
6. To allow parking areas and driveways to be set back less than 15 feet from property lines contrary to Montclair Code Section 347-12A(12).

WHEREAS, the applicant submitted engineering and architectural plans prepared by Jarmel Kizel, Sheet T-100, T-200, C-100, C-200, C-300, C-400, C-401, C-500, C-600, C-700, C-800, C-900, C-901, C-902, C-903, C-904, C-905 dated December 12, 2005 revised through July 17, 2006; Sheets A-1 through A-7, A-9 and A-10 dated August 9, 2005 revised through November 9, 2006, Sheet A-8 dated August 9, 2005 revised through December 6, 2006, Sheet C-601 dated December 12, 2005 revised through December 6, 2006 as well as a boundary and topographic survey prepared by Maser Consulting P.A. dated June 24, 2005 revised through January 9, 2006; and

WHEREAS, this matter came to be heard at meetings of the Board of Adjustment held on October 25, November 30, December 7, 2006, January 31 and February 21, 2007, 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 subject property contains 85,067 square feet in area and has frontage on three streets, namely Christopher, Oxford and Grove Streets. The property is improved with a three story school building in the center of the lot, a trailer in close proximity to the southerly property line and paved areas on the southerly, westerly and northerly sides of the building.

2. The existing school building was constructed on or about 1914 and known as the Grove Street School, a Montclair Township public school. The Deron School has been operating at the site pursuant to a resolution adopted by the Planning Board on June 18, 1990 granting conditional use approval subject to conditions. The Deron School is a State approved private day program established to provide educational opportunities for special needs students who cannot be served in a regular classroom setting by the special education programs in their local districts. Such a use is recognized as "near the top of the scale" of inherently beneficial uses. *Children's Inst. v. Verona Tp. Bd.*, 290 N.J. Super. 350, 356 (App. Div. 1996).

3. The application contemplates a three story addition to the westerly side of the school building for the additional 14,841 square feet excluding basement and includes additional classroom space, offices, library, elevator and handicap accessible toilet facilities and entry.

4. Christopher and Grove Streets contain approximately 265 feet of frontage where a minimum of 300 feet is required pursuant to Section 347-12A(3). Additionally, Christopher Street contains a paved width of less than 35 feet as required by Section 347-12A(4). The aforementioned conditions are preexisting nonconformities and approval of the application will not affect the suitability of the site for the proposed use.

5. The applicant sought a building height of 57 foot 6 inches where a maximum of 40 feet is permitted in the zone which in addition to a deviation from the conditional use standard contained in Section 347-12A(5) also requires a variance pursuant to N.J.S.A. 40:55D-70d(6). The Board determined that the proposed gable or parapet feature was excessive but that a deviation from the conditional use ordinance requirement to allow a building height of 44 feet for the addition was appropriate and constitutes an aesthetic enhancement without any visual detriment.

6. Based upon the conditions imposed herein, the applicant's request to deviate from Section 347-12A(6) for failure to provide two separate driveways each providing ingress and egress is no longer necessary.

7. The site contains 47 existing parking spaces (many of which are nonconforming as to size) and 61 parking spaces are proposed on the plan. The parking requirement pursuant to Section 347-12A(9) requires 104 on-site parking spaces. Based upon the conditions imposed herein, the actual number of parking spaces will be reduced to a minimum of 53 spaces. The Board seriously questioned

whether or not the visitor parking calculation requirement was even applicable to this use. Nevertheless, the testimony established that a minimum of 53 parking spaces would adequately address parking demands since there is virtually no drop off/pick up by parents as students arrive by bus and only a very small number of visitors come to the school.

8. The setbacks from parking areas and driveways are less than the required 15 feet and do not contain landscape screening as required by Section 347-12A(12). The southerly parking area and driveway is a preexisting nonconforming condition. The proposed parking and driveway layout as revised herein, is appropriate given the location of the existing structure and is necessary to provide safe and efficient on-site traffic circulation.

9. Based upon the traffic impact reports submitted by Joseph Staiger dated October 19 and November 13, 2006, the applicant proved that approval of the application will result in no degradation in the levels of service of the surrounding roadway network. All intersections will continue to operate as they do under existing conditions. Additionally, peak hour traffic volumes can be easily accommodated by the surrounding roadway network and the site traffic will not impact the adjacent roadways and intersections to any significant degree.

10. The proposed upgrades to the site eliminates below grade classrooms and a trailer and constitute appropriate modernization and will bring the school into compliance with A.D.A. and Department of Education facility standards. Additionally, despite the deviations from the conditional use standards, the site continues to be appropriate for the conditional use consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

11. 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.

12. The Board determined that the granting of site plan approval at this time was not appropriate as further modifications of the plan are required. Consequently, the applicant's request for a variance from Montclair Code Section 347-65 to allow parking areas between the main building and the curb as well as design standard waivers would be deferred to site plan review.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application 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.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Alter Family, LLC for the Deron

School (II) for use, bulk variances and conditional use approval is hereby approved subject to the following conditions:

1. The portable classroom shall be removed within 30 days of issuance of a Certificate of Occupancy for the addition approved herein.
2. The applicant's use of the dumpster at the end of the school year shall not exceed 2 weeks per year.
3. Students shall not be permitted to drive to school.
4. The driveway exit to Christopher Street is not approved and the proposed adjacent parking area shall be modified so as not to encroach any further than the limits of the existing westerly paved area behind the school. A backup area shall be provided with a cutout to protect the oak tree on the adjacent Township property to the south. At the edge of pavement a retaining wall shall be constructed so as to eliminate the need for any disturbance of soil beyond the edge of the retaining wall.
5. The applicant shall comply with the conditions imposed by the Essex County Planning Board approval dated October 11, 2006.
6. The applicant shall comply with the following comments contained in the report of W. Thomas Watkinson dated October 17, 2006:
 - a. The plans shall be revised to indicate replacement of the existing curb with a new depressed curb at the egress of the parking lot on Oxford Street as per comment 4.
 - b. The sidewalk between the school and Oxford Street shall be repaired as per comment 5.
 - c. The existing sidewalk between Christopher Street and the school shall be removed and replaced with lawn as per comment 7.
 - d. The plans shall be revised to provide the seepage pit shall contain a pipe distribution field utilizing perforated pipe with a clean out access on both ends of the main drain into the system as recommended in comment 9.
 - e. The plans shall be revised to reflect the main drain shall be perforated HDPE in lieu of PVC as per comment 10.
 - f. With reference to comment 11, the plans shall be revised to provide a slotted pipe installed across the parking lot at the driveway exit.
 - g. With regard to comment 15, the plans shall be revised to include installation of a grate.

h. A soil test shall be performed to confirm the permeability of the soil underlying the proposed seepage pit as recommended in comment 16.

7. The applicant shall provide drainage under the Oxford Street parking lot as provided on the south side parking lot and perform a soil test as required in condition 6h above.

8. The two parking spaces on the westerly side of the Oxford Street parking lot shall be eliminated.

9. The driveway from the south side parking lot shall be revised to provide for two way traffic and the egress shall be right turn only.

10. The air conditioning units shall be located away from Christopher Street to minimize their visibility from the train station parking lot.

11. Shrubs shall be installed along the south side of the southerly parking lot in conformance with the ordinance.

12. The applicant shall consult with and retain an arborist to supervise the site work in order to minimize damage to the large oak trees on and adjoining the subject property.

13. In the event any large oak trees are to be removed, they shall be replaced with oak trees that will mature to an equivalent size.

14. The white pine shown on the site plan on the Oxford Street side shall be eliminated as a gratuitous intrusion into the root zone of the oak trees.

15. The applicant shall comply with the following conditions contained in the Planning Board resolution adopted June 18, 1990 as follows:

1. There shall be a maximum enrollment of 187 students.

3. The applicant shall provide for interior refuse storage or if exterior storage is necessary, the applicant shall submit a detail of the refuse storage area and location of same to the planning and Health Departments for their approvals.

4. The applicant shall renovate the building in compliance with all relevant New Jersey Department of Education regulations and municipal building and fire Codes.

16. The property owner shall authorize the Township to enforce Title 39 on site.

17. The sculptures at the rear of the building shall be relocated consistent with the testimony before the Board.

18. The height of the addition shall not exceed 44 feet.

19. The number of classrooms shall not exceed 24 including specialty classrooms and speech rooms.

20. Subject to site plan review and approval.

21. The applicant shall be responsible for payment of all outstanding escrow fees.

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

Assistant Secretary Charreun announced that at the request of the applicants' attorney, the application of **Patrick and Rosemary LePore, 490 Park Street** would be adjourned to the next regular meeting of the Board, scheduled for April 18, 2007, and that no further notice would be given.

Chair Harrison announced the continuation the application of **Alcaro Realty, 112 Pine Street**. David Owen, Esq., appeared as attorney. Chair Harrison stated that a 7th Board member would arrive shortly. Mr. Owen proceeded to mark 2 Exhibits in the meantime.

Marked into evidence were:

A-10 Written consent from NJ Transit concerning the proposed 20-foot wide easement area

A-11 Resume of Eric Zwerling, Noise Consultant

Mr. Owen described the above Exhibits. Ms. Holloway arrived and viewed the above Exhibits. Mr. Owen called Eric Zwerling, who was sworn, and stated his qualifications as a noise expert and consultant. Mr. Zwerling testified that he visited the subject property in May 2006, took sound measurements, and, although the sound measurements were within state standards, recommended that the applicant insulate the rooftop fans in order to decrease sound emission. He further testified that he revisited the property in July, 2006, after insulation to the rooftop fans, took additional sound measurements, and found that sound emissions were well within state standards, measuring no more than 62 DBA at the roof parapet wall.

The Board questioned Mr. Zwerling. Mr. Zwerling stated that he did not enter any other private property to measure noise.

Chair Harrison called for questions and comments from the public. Anthony Ianuale, 37 Cloverhill Place, asked how many fans are on the roof of Mr. Alcaro's

building, and if all of the fans were tested. He also asked how noise is defined. Mr. Zwerling stated that all 4 fans were tested and explained the definition of noise taken from the State standards.

Mr. Owen called Peter Steck, Professional Planner, who sworn and stated his qualifications. Mr. Steck described the background of Mr. Alcaro's business in Montclair. He described the application, including the proposed canopy, the reconfigured parking area, and the existing and proposed easement areas alongside the New Jersey Transit property.

Marked into evidence was:

A-12 Planning Exhibit, prepared by Peter Steck, PP, consisting of 2 aerial photographs with additional information

Mr. Steck described the land uses in the immediate area of the subject property. He described the zoning requirements in the C-2 Zone and stated that the application is for conditional use approval involving the applicant's light manufacturing use; a use variance to allow for the applicant's parking area to extend onto the New Jersey Transit property containing a nonconforming railroad use; and bulk variances involving the parking area, accessory structures, and fences. He also stated that certain waivers are requested from the site plan standards. He continued by describing the conditional use standard in the zoning ordinance for a light manufacturing use. He stated that the street width on Pine Street poses no problem for any truck traffic associated with the use. He also stated that the applicant has utilized the State standards for noise and odors in an effort to show compliance. He stated that the proposed plan promotes the most appropriate use of land for the subject property, provides for improved safety and aesthetics, and is well within State standards for noise and odors.

The Board questioned Mr. Steck. Mr. Owen described the background of the subject property regarding the alleged violations of the previously approved application and the current zoning standards for this type of use.

Chair Harrison called for questions from the public. Anthony Ianuale, 37 Cloverhill Place, asked numerous questions. Mr. Steck explained his view of the use variance requested for having some of the applicant's parking encroach onto the adjoining railroad property.

Chair Harrison called for public comment. Anthony Ianuale, 37 Cloverhill Place, was sworn.

Marked into evidence were:

- O-2 Aerial photographs depicting the roof of the 112 Pine Street, labeled pre-2004 and post 1996
- O-3 Photoboard containing 6 photos of the building at 112 Pine Street ranging in date from 1996 through February 2007

Mr. Ianuale marked dates on certain photographs as he described them.

O-4 Photoboard containing 4 photographs of the building at 112 Pine Street

O-5 Photoboard containing 4 photographs of the building at 112 Pine Street

Mr. Ianuale described his view of the history of the subject property. He stated that the site and the building have been changed since the 1995 approval without proper review and that the parking area in the front yard has had storage containers located on it that were required to be removed. He stated that he is concerned that the proposed 20-foot wide leased area adjoining the railroad property will be used for storage and the fences along this easement area negatively affect ability of New Jersey Transit to maintain the property. He also stated his concerns over using the railroad property to satisfy the parking requirement and stated that he is still concerned about noise and odors associated with Mr. Alcaro's business.

Mr. Owen questioned Mr. Ianuale.

Chair Harrison called for more public comment.

Rosa Monroe, 110 Pine Street, was sworn and stated her support for the application.

Paul Galasso, 131 Pine Street, was sworn and stated his support for the application.

James Conover, purchasing agent for HK Metal Craft, was sworn, and stated that he has been to the property numerous times and has not smelled strong odors or heard any noise.

Joseph Ruba, Executive Director National Association of Metal Finishers, was sworn and stated his support for the application. He described Mr. Alcaro's achievements his area of work and his record of compliance with regulatory agencies.

Joe Shawless, of South Wall Analytical Environmental Laboratory, was sworn and stated his support for the application. He described Mr. Alcaro's record of compliance concerning environmental issues.

The Board questioned Mr. Shawless. The witness referred to Exhibit O-5 and stated that he tested the exhaust pipe depicted in the photograph and that it is water vapor. Mr. Ianuale asked whether the testimony of Mr. Shawless is considered expert testimony. Mr. Shawless offered to give his qualifications; however, Mr. Ianuale withdrew his objection.

Dominick Zingala, of North Caldwell, was sworn and stated that he has been to the property numerous times and has not smelled strong odors or heard any noise.

James Corbett, Liberty Insurance Agent, was sworn and stated his support for the application. He described Mr. Alcaro's record of compliance with the standards regulating the metal-plating industry.

Mr. Owen recalled Mr. Alcaro, who was still under oath. He stated that the rooftop contained 4 fan units at the time he moved in. He stated that one fan was moved from front of the roof to rear of the roof some time in 2004. He also stated that New Jersey Transit had cleaned the area adjoining his property on 2 or 3 occasions in the past 25 years.

Marked into evidence was:

A-13 Aerial photograph of the roof of the subject property, taken prior to 2004

Mr. Ianuale questioned Mr. Alcaro. Mr. Alcaro stated that the existing drainage swale would be outside of the fenced in easement area.

Mr. Owen asked to mark 3 additional Exhibits and Mr. Alcaro gave a brief description of each.

Marked into evidence were:

A-14 New Jersey State Air Permit

A-15 Yearly Certificate of Boiler

A-16 Laboratory Certificate for the subject property

Mr. Owen gave his summation. The Board had a lengthy discussion on the application. On motion by Mr. Fleischer, seconded by Mr. Rubenstein, the application was approved, Mr. Susswein voting in the negative, subject to the following conditions:

1. The applicant shall pay delinquent real estate taxes;
2. The applicant shall locate the dumpster between parking space number 1 and parking space number 2 as shown on Exhibit A2;
3. If the applicant's leases with New Jersey Transit expire, the applicant shall return for amended site plan approval and variances as may be necessary;
4. The applicant's storage containers shall be limited to those storage containers shown on the plans submitted to the Board;
5. There shall be no additional exhaust fans or any relocating of exhaust fans compared to the exhaust fans shown on the plans submitted to the Board;
6. There shall be no additional site lighting on the property;

7. The approximate 20 foot strip of land leased from New Jersey Transit shall be a maintained landscape area and serve as a buffer in keeping with the applicant's testimony. It shall not be used for storage of any materials but may contain a picnic table.

8. The applicant shall submit to Mr. Leslie of the Township Department of Code Enforcement within 30 days a response to Mr. Leslie's letter dated December 7, 2005 to include how the applicant has responded to each issue raised in Mr. Leslie's letter.

Chair Harrison called the application of **Steven and Mary Lee Wrede, 24 Greenview Way** for the purpose of rescheduling the application at a subsequent meeting. Calvin Trevenen, Esq., appeared as attorney for the applicants. After some discussion, Chair Harrison announced that the application would be heard at the regular meeting of the Board scheduled for May 16, 2007, and that no further notice would be given. Mr. Trevenen granted the Board an extension of time.

Vice Chair Fleischer called the application of **Omnipoint Communications, Inc, 153 Park Street** for the purpose of rescheduling the application at a subsequent meeting. Chair Harrison recused himself and left the meeting. James Pryor, Esq., appeared as attorney for the applicant. After some discussion, Mr. Fleischer announced that the application would be heard at the special meeting of the Board scheduled for April 11, 2007, and that no further notice would be given. Mr. Pryor granted the Board an extension of time.

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