

MINUTES OF THE BOARD OF ADJUSTMENT
April 16, 2008

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

ABSENT: Mr. Charreun, Assistant Secretary

Acting Secretary Kadus 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. Whipple, seconded by Ms. English, the **Minutes of the October 17, 2007** regular meeting were adopted as modified, Mr. Fleischer abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein the **Minutes of the November 14, 2007** regular meeting were adopted, Ms. Cockey Mr. Fleischer, Ms. Holloway, and Mr. Rubenstein abstaining. On motion by Mr. Whipple, seconded by Ms. English the **Minutes of the December 12, 2007** regular meeting were adopted as modified.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the following Resolution memorializing the denial of the application of **Francis Guyot, 424-428 & 434-436 Bloomfield Avenue** was adopted, Chair Harrison, Ms. Cockey, Ms. English, Ms. Holloway, and Mr. Whipple abstaining:

WHEREAS, Francis Guyot, as owner, did make application to the Board of Adjustment of the Township of Montclair for minor subdivision approval on property designated as Lots 6 and 7 in Block 3106 on the Township Tax Map and located in 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(5) to exceed the maximum permitted density on Lot 6 contrary to Montclair Code Section 347-83B(5).
2. Variances pursuant to N.J.S.A. 40:55D-70c to allow lot widths of 45.64 feet on Lot 6 and 39.58 feet on Lot 7 where a minimum of 60 feet is required pursuant to Montclair Code Sections 347-83A(2) and (3).
3. Variances pursuant to N.J.S.A 40:55D-70c to allow lot area of 3,837.3 square feet on Lot 6 and 4,614 square feet on Lot 7 where a minimum of 10,000 square feet is required pursuant to Montclair Code Sections 347-83A(2) and (3).
4. A variance to allow a side yard setback of 1 foot on Lot 6 where either 0 feet or a minimum of 6 feet is required pursuant to Montclair Code Section 347-83B(3).
5. A variance to allow a rear yard setback of 0 feet on Lot 7 where a minimum of 10 feet is required pursuant to Montclair Code Section 347-83B(4).

WHEREAS, the applicant submitted a survey dated December 5, 2006 and a minor subdivision plan prepared by Richard J. Hingos, Inc. dated July 13, 2007; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on February 20 and March 19, 2008 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 an interior lot located on the southerly side of Bloomfield Avenue between South Fullerton Avenue and Seymour Street and is located in the "Center" area of the C-1 Central Business Zone. Although designated as Lots 6 and 7 in Block 3106 on the Tax Map, the lots merged by virtue of a deed dated June 5, 1978 from Seymour Feigelson et al. to Francis Guyot. The northwesterly side of the property is improved with a three-story mixed use building with first floor commercial space and four apartments at 434-436 Bloomfield Avenue. The southeasterly side of the property is improved with a one-story commercial building at 424-428 Bloomfield Avenue.

2. The proposed subdivision line follows the tax map lot lines between the two buildings eventually diverting from the tax map lot line at the rear of the properties following the exterior wall of the one-story building towards the rear of the lot. No new buildings, additions, or other physical changes to the site are proposed as part of the subdivision.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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 consistent with *Kaufmann v. Planning Bd. for Warren Tp.*, 110 N.J. 551 (1988).

8. 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.

9. The applicant offered insufficient proof to establish the application would not substantially impair the intent and purpose of the master plan.

10. Other alternatives exist which will meet the applicant's needs without the necessity of variances.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant failed to prove the requisite special reasons for the granting of this application, and failed to prove 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 did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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 zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1);

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to 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 zoning ordinance pursuant to the requirements of 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 Francis Guyot for minor subdivision and variances is hereby denied.

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

On motion by Ms. English, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Amy and Jeffrey Plaut, 228 Grove Street** was adopted, Mr. Whipple abstaining:

WHEREAS, Amy and Jeffrey Plaut, owners of property at **228 Grove Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a rear yard setback less than required by **Montclair Code Section 347- 45D** in connection with the proposed construction of a one-story addition onto the rear of the dwelling on property designated as Lot 31 in Block 4403 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey, dated March 25, 1999, and a plot plan, floor plans, and elevations prepared by John Thomas Collins Architect, dated August 2007; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 19, 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 and is located in the R-1 One-Family Zone. The property measures 170 feet in width and 26,464.75 square feet in area, and contains a single-family dwelling and a detached garage.

2. 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.

3. 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.

4. 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.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance 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 applicants 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 variance 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 Amy and Jeffrey Plaut is hereby approved; and

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

On motion by Ms. English, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Covenant House of NJ, 32 South Willow Street** was adopted, Mr. Whipple abstaining:

WHEREAS, Covenant House of New Jersey, owner of property at **32 South Willow Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a rear yard setback less than required by **Montclair Code Section 347- 45D** in connection with the proposed construction of a one-story addition onto the rear of the dwelling on the property designated as Lot 3 in Block 3105 on the Township Tax Map and located in the R-3 Garden Group Zone; and

WHEREAS, the applicant submitted a property survey, dated November 9, 2007, and a plot plan, floor plans, and elevations prepared by Heritage Architecture, LLC, dated December 12, 2007; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 19, 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 and is located in the R-3 Garden Group Zone. The property measures 75 feet in width and 9,173 square feet in area, and contains a 2½-story single-family dwelling that was most recently occupied by a lawfully existing Boarding Home for Sheltered Care. The property also contains a detached 3-car garage at the rear of the lot.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

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 variance 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 variance 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 Covenant House of New Jersey is hereby approved; and

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

On motion by Mr. Susswein, seconded by Ms. Cockey, the following Resolution memorializing the approval of the application of **St. John's Episcopal Church, 55 Montclair Avenue** was adopted, Mr. Whipple abstaining:

WHEREAS, St. John's Episcopal Church, as owner, did make application to the Board of Adjustment of the Township of Montclair for preliminary and final site plan approval in connection with the construction of an enclosed stairwell on property designated as Lots 1 & 2 in Block 3309 on the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to allow expansion of a preexisting nonconforming use contrary to Montclair Code Section 347-112.

2. A variance pursuant to N.J.S.A. 40:55D-70c to allow a rear yard setback of 26.5 feet where a minimum of 61.8 feet is required pursuant to Montclair Code Section 347-45D.

WHEREAS, the applicant submitted a site plan, floor plan and elevations prepared by Sionas Architecture, P.C. dated January 3, 2006 revised November 28, 2007 as well as a topographic boundary survey prepared by David H. Smith, P.L.S. dated August 31, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 19, 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 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.

2. The application contemplates a two story addition to the northeast corner of the Parish Hall consisting of an enclosed fire exit stairwell.

3. 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. *State v. Cameron*, 184 N.J. Super. 66 (Law Div. 1982), affirmed, 189 N.J. Super. 404 (App. Div. 1983), reversed on other grounds 100 N.J. 586 (1985); *Kali Bari Temple v. Board of Adj.*, 217 N.J. Super. 241 (App. Div. 1994); *Sugarman v. Township of Teaneck*, 272 N.J. Super. 162 (App. Div. 1994).

4. 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.

5. 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.

6. 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.

7. 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 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; and

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 variance 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, conclude 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 St. John's Episcopal Church for preliminary and final site plan and variances is hereby 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.

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

The application of **Pinnacle Asset, LLC, 295 Bloomfield Avenue** was adjourned to the May 21, 2008 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application.

The application of **Julius and Susan DeSantis, 10 Clinton Avenue** was adjourned to the May 21, 2008 regular meeting of the Board, at the applicants' request. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison announced the resignation of Gerard Haizel and recognized his many years of service on the Board.

The Board discussed the extension of time requested for the application of **Michael Melia, 14 Nishuane Road**, which is due to expire on June 7, 2008. The applicant is requesting a one year extension of time so that the approval would expire on June 7, 2009. After a brief discussion, a motion by Mr. Whipple, seconded by Mr. Fleischer, was approved to grant the extension.

Chair Harrison called for a discussion and vote on the site plan and variance application of **R&R Realty, 651 Bloomfield Avenue**. He noted that the public hearing had concluded. Ms. Cockey and Mr. Whipple had both signed statements indicating that they had listened to the recording of the hearings on the matter and were eligible to vote. The Board discussed the application. The Board believed that the combination of a gas station and retail use on a busy corner with poor parking and traffic circulation was problematic. The applicant had not presented any traffic testimony that would have demonstrated that the traffic circulation on and off the site would have been workable. The traffic volume anticipated was most likely higher than that of the gas station even with the reduction in the number of gas pumps. The Board believed that no proofs to support an expansion of the nonconforming use were given. On motion by Vice Chair Fleischer, seconded by Mr. Whipple, the application was denied, with Ms. Holloway and Ms. Cockey voting against the motion.

Chair Harrison called for the variance application of **Sarah Conklin, 141 Haddon Place**. Richard Jacobs, Architect, was sworn and described the application. The applicant proposes to construct a one-story addition to the easterly side of her dwelling to enlarge the existing kitchen to accommodate family members. The applicant also proposes to enlarge an existing deck at the rear of the dwelling and construct of a roof over a portion of the deck. A variance is requested to allow the width of the dwelling to exceed the maximum width permitted. The proposed addition and deck extend 2 feet 10.75 inches into the easterly side yard from the existing dwelling. Although the 7.15 foot easterly side yard setback conforms, the proposed expansion widens the dwelling to 41 feet or 68% of the lot width for which a variance is required, as the dwelling is not permitted to exceed 65% of the lot width.

Marked into evidence were:

- A-1 Photograph of kitchen interior
- A-2 Photograph of house exterior
- A-3 Photograph of house exterior

The Board questioned the witness. Mr. Fleischer said that there was insufficient detail in the plans to determine whether there were any alternatives to a side expansion. Mr. Jacobs said that the proposed expansion is a considerable distance from the street and would be partially blocked by the existing bay window on the side of the house. Sarah Conklin, owner, was sworn. She stated that the kitchen is very small and although this was not a large expansion, it would make a huge difference in the functioning of the kitchen. Tony Conklin, owner, was sworn. He said that the kitchen expansion had been considered for two years and that this was the best plan. He said that although the addition did violate the width of house rule, it met the spirit of the ordinance in that it was a modest expansion.

The Board called for questions and comments from the public. None were offered. The Board discussed the application. The Board determined that the requested variance could be approved. The proposed expansion is located along the rear section of the side wall of the dwelling, and is obscured from view by an existing bay window on the easterly side the dwelling. The proposed expansion will not add considerable massing to the existing dwelling as it is only one story in height and increases the width of the house by only 2 foot 10.75 inches in width, and would provide an improved interior plan for the dwelling. On motion by Mr. Fleischer, seconded by Mr. Whipple, the variance application was approved.

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

