

MINUTES OF THE BOARD OF ADJUSTMENT
April 7, 2010

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

ABSENT: Ms. Kadus, Secretary

Assistant Secretary Charreun called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison announced the continuation of the application of **The Mental Health Association of Essex County, Inc., 354 Orange Road**. The application was last before the Board on January 20, 2010. A special meeting on February 10, 2010 was canceled at the applicant's request. Craig Alexander, Esq. appeared as attorney for the applicant. James Key, Esq. was also present on behalf of objectors to the application.

Mr. Alexander recalled Jeff Cadoff, PE, who was still under oath. Mr. Cadoff stated that revised site plans dated February 24, 2010 were submitted in response to the Board's comments and the Board Engineer's latest comments. The revised plans depict two separate buildings and a parking area for 12 cars. He described the plan in detail including the proposed buildings, driveway and parking area, and the landscaping and lighting. He described the bulk requirements in the R-1 Zone and stated that the proposed building would be in compliance with most of those requirements. The only bulk variances requested are for the number of parking spaces provided and for not having one-third of those spaces in a garage. The revised plan calls for 12 parking spaces, including one barrier-free space. The parking area is located behind the proposed buildings and will be surfaced with permeable pavers. A new 18-foot wide driveway is proposed from Orange Road. The parking spaces comply with the standard size of 9 feet in width by 19 foot in length. The barrier-free space complies with ADA requirements. He described the grading and drainage plan for the site, provided information on the permeable pavers, and addressed the Board Engineer's latest comments on the revised plan. He described the proposed landscaping and lighting in detail. A total of eight pole mounted light fixtures at 8 feet in height are proposed. Six of these pole mounted light fixtures are shielded. The two pole mounted light fixtures at the top of the driveway as it enters the parking area are not shielded. Thirty two path light fixtures are depicted along the edges of the on-site paver walkways located near the buildings that extend down to the public sidewalk. The public sidewalk across the entire frontage is proposed to be replaced.

Mr. Kenney arrived at the meeting. The Board questioned Mr. Cadoff. Chair Harrison called for questions from the public. Joseph Haines, owner of the adjoining vacant lot to the south, asked if the applicant would consider requesting a variance to allow a taller fence height along the southerly side property line, if more white pines could be added in the southerly side yard, and if a variance could be requested to allow a smaller front yard setback. Janet Hubert, 5 Ward Place, asked if the lots are being

kept separate and asked if some type of on-site security would be required. Steve Sprung, 9 Gardiner Place, asked about alternative locations for the proposed use. James Key, Esq., stated he was representing William Scott, 23 Cedar Avenue and Jarvis and Audrey Hawley, 17 Grenada Place. Mr. Key questioned Mr. Cadoff about the project's compliance with RSIS standards and tree removal.

Mr. Alexander called Julie Ann Cecere, Architect, who was sworn and stated her qualifications. She described the revised architectural plans dated February 26, 2010. The revised plan calls for the construction of two new buildings, each containing 6 dwelling units, to be utilized as supportive housing for individuals with mental illness. She described the interior layout of proposed buildings in detail. The north building would also contain a 222 square foot office in the basement associated with an office use for the applicant, and a 541 square foot community room, which is a multipurpose common area. She described the exteriors and the elevations in detail. The proposed buildings are 2½ stories and measure 35 feet in height. She also described all of the patios and balconies depicted on the drawings.

Marked into evidence was:

- A-3 Photographs of the subject property and properties in the neighborhood
- A-4 Streetscape plan, dated February 26, 2010, with color added
- A-5 North Building floor plans, dated February 26, 2010, with color added
- A-6 North Building elevations, dated February 26, 2010, with color added
- A-7 South Building floor plans, dated February 26, 2010, with color added
- A-8 South Building elevations, dated February 26, 2010, with color added

The Board questioned Ms. Cecere. Mr. Cadoff returned to answer questions raised about the permeable pavers. Ms. Cecere stated that certain exterior stairways and balconies could be redesigned. She also described the fitness room located in the basement of the south building. Chair Harrison called for questions from the public. Luther Flurry, 14 Madison Avenue, asked about the proposed elevations, site selection process, and the zoning ordinance. Stanley White, 439 Orange Road, asked if the proposed development would negatively impact the existing sewer system. Greg Whitaker, 111 Lincoln Street, asked about the interior dimensions. John Washington, Montclair, asked if a traffic study was done and if Orange Road is safe enough to cross for the proposed occupants. James Key, Esq. asked several questions about the design of the buildings. Denise Powell, 29 Cedar Avenue, asked if the nearby public park and nursery school was noticed during the neighborhood review. Dave Herman, 136 Lincoln Street, asked if any fire zone was delineated on the site. John Washington, Montclair, asked fire safety questions pertaining to the proposed decks and balconies. Joseph Haines, owner of the adjoining vacant lot to the south, asked if the front yard setback could be reduced.

The Board took a recess at 10:15 pm and reconvened at 10:30 pm. Mr. Alexander called Peter Steck, Professional Planner, who was sworn and stated his qualifications. Mr. Steck described the application in detail including the plans and the variances requested. He described the zoning ordinance and the 1987 Master Plan and

the 2006 Master Plan Reexamination Report and stated that a need for housing for individuals with disabilities is identified in the Reexamination Report. He stated that in his opinion the proposed use is an inherently beneficial use that promotes a public benefit. The use serves handicapped individuals, provides low and moderate income housing, and is comparable to a group home, which is now specifically included in the definition of an inherently beneficial use in the Municipal Land Use Law. The allowances provided in N.J.S.A. 40:55D-66.1 and 40:55D-66.2 of the Municipal Land use Law for a variety of Community Residences, which are comparable to the proposed use, emphasize the high magnitude of the public benefit provided by the proposed use. The Fair Housing Act also requires municipalities to make reasonable accommodations for handicapped individuals to live in the community.

Mr. Steck continued with his testimony. The impacts associated with the proposed development are not substantial in comparison with a conforming development on the property. The proposed buildings are designed to appear like larger single family homes, a single driveway is proposed from Orange Road, there is no signage, substantial landscaping is included, the parking area is located in the rear yard, and the proposed dwelling units are small in size and will have a limited occupancy. The surrounding land use pattern includes other multiple unit properties and the property is on a busy County Road near a neighborhood commercial district. The required site plan approval allows the Board to impose conditions that could mitigate certain impacts. The use variance can be approved without substantial detriment to the public good and without a substantial impairment of the zone plan and zoning ordinance. The New Jersey Residential Site Improvement Standards allows for developing less than the required number of parking spaces under certain conditions and also encourages a shared parking approach for a mixed use development. The proposed development has a very low demand for on-site parking and the proposed parking area easily accommodates the needs of the residents, visitors, and any staff temporarily on the site. Placing one third of the parking in a garage would create more site disturbance and have negative aesthetic affect. The benefits of granting these bulk variances outweigh any detriments. A variance should not be required from Montclair Code Section 347-20 to permit more than one principal structure on the site, since the principal structures proposed are not one or two-family dwellings.

The Board questioned Mr. Steck. Mr. Steck reviewed the recent amendment to the definition of an inherently beneficial use in the Municipal Land Use Law that now includes a group home and N.J.S.A. 40:55D-66c, which defines a group home as a single-family dwelling used in the placement of children pursuant to law the Division of Youth and Family Services in the Department of Institutions and Agencies. He stated that the proposed use is not a group home. He also reviewed N.J.S.A. 40:55D-66.1 and 40:55D-66.2 and stated that under N.J.S.A. 40:55D-66.2a, a community residence for the developmentally disabled includes facilities licensed pursuant to statute, such as group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hostels. Mr. Alexander stated that the proposed facility will not be licensed pursuant to statute, and therefore is not a Community Residence covered under N.J.S.A. 40:55D-66.1 and 40:55D-66.2. Mr. Steck added that while the proposed use is not a Community Residence under N.J.S.A. 40:55D-66.1 and 40:55D-66.2, it will

serve the same segment of the population. Mr. Steck stated that the applicant has indicated that they are ready to place an income restriction on 10 of their 12 proposed units, and that they would like the ability to offer 2 of their units to individuals who may be over the low or moderate income categories. He also stated that in his opinion, the zoning allowances provided in the Municipal Land Use Law for uses similar to the proposed use, are a reflection that the State legislature recognizes the difficulty that municipalities may have zoning for uses such as the proposed use.

There was some brief discussion and Chair Harrison announced that the application would be continued at a special meeting on May 26, 2010 at 7:30 pm and that no further notice would be given. The Board was granted an extension of time. Chair Harrison called for questions of Mr. Steck and public comment from those who could not attend on May 26, 2010. Schela Hall, 74 High Street, asked questions about the potential occupants. Sharon Burton Turner, 3 Manor Court was sworn and stated her opposition to the application. Jason Bailey, 77 North 18th Street, East Orange, was sworn and stated his support for the application. John Washington, Montclair, was sworn and stated his opposition to the application. On motion by Mr. Susswein, seconded by Mr. Whipple the meeting was adjourned.