

MINUTES OF THE BOARD OF ADJUSTMENT
April 18, 2012

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

ABSENT: Mr. Burr, Ms. Checca, Ms. Holloway, Mr. Kenney, 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. Whipple, seconded by Mr. Fleischer, the **Minutes of the March 21, 2012** regular meeting were adopted as modified, Mr. Reynolds abstaining.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Edward & Pamela Moed, 5 Stonebridge Court** was adopted:

WHEREAS, Edward & Pamela Moed, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to reconstruct a dwelling on an existing foundation, on property designated as Lot 19.02 in Block 1101 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variances from Montclair Code Section 347-45A(1) for a for a dwelling height greater than permitted, and from Montclair Code Section 347-45C(4) for a dwelling width greater than permitted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 21, 2012 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 applicant submitted a property survey dated November 22, 2004 and plans prepared by Sionas Architecture, PC, dated January 3, 2012; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The property is located in the R-1 One Family Zone and contains a single-family dwelling that has been extensively damaged by a fire. The dwelling will be demolished and reconstructed on top of the existing foundation. Variances are requested to reconstruct 2 lawfully existing nonconforming conditions.

2. The property is a large irregularly shaped lot at the end of a cul-de-sac street. The lot measures 41,970 s.f. in lot area and 100.4 feet in curved frontage width. The street was created by a major subdivision approved by the Planning Board on September 13, 1999, which created the subject lot and several other building lots.

3. A construction permit was issued in September 2002 to construct the existing dwelling. The amount of reconstruction required by the application, which is the entire dwelling above the foundation, is considered the same as new construction for zoning purposes, therefore all current zoning regulations apply to the reconstruction.

4. The existing dwelling has a maximum height of 36.5 feet to the highest ridgeline. In 2005 the height limitations in the zoning ordinance were amended reducing the maximum height to 35 feet and a variance is requested to permit the reconstruction of the 36.5 foot dwelling height.

5. The existing dwelling width measures 92.8 feet. 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.

6. The Board 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 that were originally constructed at 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; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship 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 the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants proved 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 application is hereby 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; 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. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Gene & Elana Silverman, 17 Mt. Vernon Road** was adopted:

WHEREAS, Gene & Elana Silverman, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to construct additions onto the dwelling, on property designated as Lot 24 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested variances from Montclair Code Section 347-45C(4) for a dwelling width greater than permitted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 21, 2012 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 applicant submitted a property survey dated August 21, 2008 and plans prepared by Byrne Design Associates, Inc., revised December 23, 2011; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The property is located in the R-1 One-Family Zone contains a single family dwelling with an attached garage. The lot measures 60 feet in width and 168.36 feet in depth.

2. 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.

3. 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.

4. 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.

5. The Board 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; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship 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 the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants proved 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 application 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. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Mary Jane Weldon, 2 Chester Road** was adopted as modified:

WHEREAS, Mary Jane Weldon, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c regarding a corner property designated as Lot 63 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance from Montclair Code Section 347-46C to relocate a back-up electrical generator from the rear yard of the property to the Grove Street front yard of the property; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 21, 2012 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 applicant submitted a property survey with a sketch and hand written notations provided by the applicant, as well as photographs; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The property is a corner lot at the intersection of Chester Road and Grove Street, located in the R-1 One-Family Zone. The lot contains a single family dwelling with an attached garage.
2. The existing back-up generator is located in the rear yard of the lot in a conforming location and was installed in November 2011 due to recurring basement flooding. The back-up generator is an accessory structure, which requires 6 feet of set back space from rear and side property lines and is not permitted in a front yard.
3. The applicant indicated that the noise produced by the generator when it is operating is disruptive to the applicant and the adjoining property owners in its current location.
4. The proposal is to move the generator towards Grove Street, into the Grove Street front yard, to a location that would be 4 feet from the Grove Street property line and 6 feet from the northerly property line. The applicant indicated that the noise issue would be significantly reduced by moving the generator to the proposed location, since it is farthest from the dwellings and Grove Street is also wide and busy street.

5. The applicant indicated that the existing fencing and plantings plus additional new plantings around the proposed generator location would provide visual shielding.

6. The majority of the Board determined that the requested variance could be 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; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not 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 not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and did not prove that the benefits of the deviation would substantially outweigh any detriment and did not 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 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 application is hereby denied; 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. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Michael Steere, 18 Warfield Street** was adopted:

WHEREAS, Michael Steere, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c for the location of a recently constructed pergola, on property designated as Lot 2 in Block 707 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the property is an "L" shaped lot with frontage on Warfield Street and Highland Avenue, and the applicant requested a variance from Montclair Code Section 347-46C to locate the pergola in the Highland Avenue front yard of the property; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 21, 2012 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 applicant submitted a packet of information including photographs and a property survey with the location of the pergola depicted; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The property is an "L" shaped lot with frontage on Warfield Street and Highland Avenue, located in the R-1 One-Family Zone. The lot contains a single family dwelling with an attached garage.

2. 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 a considered a front yard up to the point where the dwelling is located.

3. The Construction Official recently required the applicant to file a construction permit for the pergola after it had been constructed. The construction permit application failed the required zoning review due to the location of the pergola, which is an accessory structure, in a front yard of the property.

4. The Board 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; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship 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 the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved 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 application is hereby 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; 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.

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 May 16, 2012 meeting of the Board. The Board was granted an extension of time and no further notice would be given. It also was announced that at the request of the applicant, the applications of **Omnipoint Communications, Inc., 153 Park Street**, and **T-Mobile Northeast, LLC, 118 Watchung Avenue** were withdrawn without prejudice.

Chair Harrison was recused. Vice Chair Whipple announced the continuation application of **360 Cycling Studio, LLC, 4 Lackawanna Plaza**. Mark Cohen, owner of the business, was still under oath. He stated that he is now the sole owner of the business and that Mr. Mascera, Esq., is no longer representing the applicant. Mr. Cohen provided an illustration of sign that would be nearly conforming as the Board requested at the previous hearing. This illustrated sign would measure 2.54 feet high by 27.6 feet wide and conforms to the maximum sign area requirement. For the most part, this sign conforms to the maximum allowable sign height; however, two of the letters exceed the requirement by approximately 6.5 inches. He stated that a sign of these dimensions is too small for the size and style of the storefront his business occupies and that the larger existing sign is more appropriate aesthetically, which benefits his business and the surrounding businesses.

Exhibit marked:

A-2 Photo simulation of a reduced sized sign

The Board questioned the applicant. Mr. Cohen stated that repeating the smaller sized sign across the large façade is not attractive and is not an option that he would consider for his business. There were no questions or comments from the public.

The Board discussed the application. The Board unanimously determined that variances for locating the sign outside of the sign band and painting the sign directly on the building could be approved. The applicant cannot locate the sign within the required sign location band due to the existing windows and that the proposed location of the sign is the only logical alternative. The background behind the proposed sign is silver metallic paint on metal and the Board determined a painted sign would not pose any maintenance issues and was appropriate in this instance.

The Board continued discussing the application. The majority of the Board determined that with respect to the variances for the sign area and sign height, the applicant failed to prove any purposes of the Municipal Land Use Law would be advanced or any public benefit would result from granting these variances. Any hardship related to the sign area and sign height is self-created and unrelated to the physical characteristics of the property. In addition, the existing sign is more than three times larger in area and two times larger in height than allowed by the zoning ordinance and would substantially impair the intent and purpose of the zoning ordinance.

A motion by Mr. Fleischer to grant the variances requested for locating the sign outside the sign band and to paint the sign directly on the building was seconded by Mr. Tsai, and was unanimously approved.

A motion by Mr. Fleischer to deny the originally proposed sign height of 5.3 feet and grant a variance to allow 2 of the letters to exceed the 24-inch maximum by 6.5 inches exactly as depicted on Exhibit A-2, was seconded by Mr. Edwards, and was approved by a vote of 3 to 2, with Mr. Tsai and Mr. Reynolds voting against the motion.

A motion by Mr. Fleischer to deny the variance requested to exceed the maximum sign square footage, was seconded by Mr. Edwards, and was approved by a vote of 3 to 2, with Mr. Tsai and Mr. Reynolds voting against the motion.

Chair Harrison rejoined the Board and was announced the application of **Tony Walia, 110 Haddon Place**. Tony and Honey Walia were sworn. Mr. Walia described the application. A variance is requested to construct an addition onto the easterly side of the dwelling. The property is an interior lot and contains a single family dwelling with an attached garage. The lot measures 100 feet in width by 110 feet in depth. The addition is 2-stories and measures approximately 26 feet 7 inches in height. The addition would extend 15 feet 5 inches in width from the existing dwelling at its widest point. The existing dwelling has a minimum front yard setback of 51 feet 6 inches. The entire addition would be recessed from the front wall of the existing dwelling and has a minimum front yard setback of 53 feet 10 inches. The required front yard setback for the subject property is approximately 88 feet, which is the average front yard setback of the

4 adjoining properties with frontage on Haddon Place, 2 on each side of the property. The front yard setback average includes a large "through lot" with an address on Lorraine Avenue, but with lot frontage on Haddon Place.

The Board briefly questioned the applicant. There were no questions or comments from the public. The Board discussed the application and determined that the requested variance could be approved. The dwelling located on the "through lot" included in the front yard setback calculation is oriented towards Lorraine Avenue, is approximately 211.5 feet from the Haddon Place front property line, and significantly skews the front yard setback requirement for the applicant. If not for the unusually large Lorraine Avenue front yard setback of that through lot, the proposal would be compliant with zoning. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

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