

MINUTES OF THE BOARD OF ADJUSTMENT
April 18, 2007

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

ABSENT: Vice Chair Fleischer, Mr. Haizel, Mr. Rubenstein, and Mr. Franco, 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. Susswein the **Minutes of the October 18, 2006** regular meeting were adopted as modified, Ms. Cockey, Ms. English, and Ms. Holloway abstaining.

On motion by Mr. Whipple, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Alcaro Realty, 112 Pine Street** was adopted as modified, Mr. Susswein abstaining:

WHEREAS, Alcaro Realty LLC as owner did make application to the Board of Adjustment of the Township of Montclair ("Board") for preliminary and final site plan approval, use and bulk variances, and an exception required to construct a canopy onto the front of the existing commercial building, to relocate outdoor storage containers under the canopy, to construct a fence in front of the canopy, to reconfigure on-site parking spaces, and to include leased portions of adjoining New Jersey Transit property as part of the site plan, on properties designated as Lots 22 and 21 in Block 4208 on the Township Tax Map and located in the C-2 General Business and Light Manufacturing Zone; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to allow parts of certain parking spaces to be located on a leased portion of adjoining New Jersey Transit property, which is not permitted by Montclair Code Section 347-85;

2. A variance pursuant to N.J.S.A. 40:55D-70c to allow certain accessory structures to be set back less than 5 feet from property lines, contrary to Montclair Code Section 347-89B;

3. A variance pursuant to N.J.S.A. 40:55D-70c to allow on-site parking spaces to be set back less than 4 feet from property lines, contrary to Montclair Code Section 347-104;

4. A variance pursuant to N.J.S.A. 40:55D-70c to allow a fence height of 9 feet, contrary to the 7 feet limitation set forth in Montclair Code Section 347-27C;

5. An exception to allow aisle width of 22 feet 5 inches for the barrier-free parking space, contrary to the 24 feet requirement set forth in Montclair Code Section 281-9D; and

6. Demonstration of continued compliance with Montclair Code Section 347-84C pertaining to light manufacturing as a conditional use in the C-2 General Business and Light Manufacturing Zone; and

WHEREAS, the applicant submitted site and architectural plans prepared by Sionas Architecture, P.C. revised through December 19, 2006; and

WHEREAS, the matter came on to be heard at public hearings of the Board held on February 21, 2007 and March 21, 2007, at which time it was established that notice was properly published and that property owners within 200 feet of the subject properties had been properly served with notice; and

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

1. The property at 112 Pine Street consists of 13,940 square feet. It is a wedge-shape property with approximately 19 feet of frontage on Pine Street and approximately 141 feet along the rear lot line. The property is improved with a commercial building, which is the place of business of Alcaro & Alcaro Plating Company, which is in the business of metal plating and finishing.

2. In 1981, when the applicant moved to 112 Pine Street, it applied to the Planning Board for conditional use approval and a lot frontage variance required to occupy the existing but vacant commercial building at 112 Pine Street. The Planning Board determined that the applicant met the conditions for conditional use approval as a light manufacturing business in the C-2 General Business and Light Manufacturing Zone and that it was entitled to a lot frontage variance because of the peculiar shape of the property.

3. In 1995, the applicant applied to the Planning Board for site plan approval and a rear yard setback variance required to construct an addition onto the commercial building. The addition was designed for a water filtration and purification system. The Planning Board again determined that the applicant met the conditions for conditional use approval as a light manufacturing business in the C-2 General Business and Light Manufacturing Zone and that it was entitled to the addition and relief requested.

4. In 2005, the Township's Department of Code Enforcement advised the applicant of complaints concerning noise from rooftop fans, odor, front yard storage, fencing along New Jersey Transit property adjoining to the north, and drainage at the rear of 35 Cloverhill Place adjoining to the west. The within application addresses these complaints and also proposes the canopy which the applicant had independently planned.

5. The applicant proposes to construct a metal roof canopy onto the front of its commercial building and over the existing loading/material handling area, to relocate outdoor storage containers under the canopy, to construct landscape planters and board-on-board fencing in front of the canopy, to reconfigure the on-site parking spaces, and to include as part of the site plan leased portions of adjoining New Jersey Transit property for improved on-site parking and for a buffering green area.

6. In response to the complaint concerning noise from rooftop fans, the applicant hired a sound consultant, Mr. Eric Zwerling, with expertise in sound measurement, noise, and noise impact. 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.

7. In response to the complaint concerning odor, the applicant hired an odor consultant, Mr. Michael Banhidi, with expertise in chemistry and environmental engineering. Mr. Banhidi testified that he visited the subject property on various occasions in June, July, and August 2006 and also January 2007. He investigated inside the commercial building, on the property, and around the property for odor. He concluded that there were no detectable odors and therefore did not make any recommendations as to any remedial measures.

8. The Essex Regional Health Commission previously investigated the subject property with respect to complaints as to noise and odor but never issued any violations to the applicant.

9. The applicant's revised site plan eliminates storage containers in a front yard.

10. The application included an existing lease between New Jersey Transit and the applicant for the lease of a strip of property approximately 10 feet wide on which the applicant is entitled to locate parking spaces. The application also included the consent of New Jersey Transit for the lease of an additional strip of land approximately 20 feet wide to be used as stipulated by the applicant as a buffering green area that will contain plantings and a picnic table and that will be kept neat and orderly. The 20 feet wide buffering area will help eliminate graffiti on the building and the accumulation of weeds, trash, bottles, and rodents next to the building and also assist drainage to a swale along the New Jersey Transit railroad tracks.

11. The applicant demonstrated that following the Planning Board's approval in 1995, the applicant corresponded with the Planning Board's engineer and obtained his approval, by his letter dated October 11, 1995, that the applicant had complied with all of his requirements and recommendations, including those pertaining to drainage at

the rear of the subject property and at the rear of adjoining 35 Cloverhill Place. At the time of the hearing of the within application, no complaint was raised as to any drainage problem at such location.

12. The applicant presented the testimony of its principal, Mr. Anthony Alcaro, who testified as to various matters including that the applicant is in compliance with federal and state standards respecting air permits and air quality. He also testified that the applicant is certified by the State of New Jersey Department of Environmental Protection as a State Certified Environmental Laboratory for monitoring purposes.

13. With respect to the variance to allow parts of certain parking spaces to be located on a leased portion of adjoining New Jersey Transit property, the variance is necessary because the parts of the parking spaces located on New Jersey Transit property are not on the same lot as the principal commercial building and use, thereby necessitating relief under N.J.S.A. 40:55D-70d(1). There are special reasons in support of this variance. It promotes zoning purpose 2a because it promotes the appropriate use of land. It also promotes zoning purpose 2a and the general welfare because the subject property and the New Jersey Transit property are together particularly suitable for providing improved on-site parking. The variance also promotes zoning purpose 2g because it provides sufficient space for manufacturing use and zoning purpose 2m because it provides for the more efficient use of land. There is no substantial detriment to the public good because the proposed on-site parking provides improved on-site parking and vehicle maneuvering and also eliminates the compact parking spaces approved by the Planning Board in 1995. As well, there is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance. The proposed uses are permitted uses in the C-2 General Business and Light Manufacturing Zone. The revised site plan brings overall improvement to the property. The proposed on-site parking provides improved on-site parking and vehicular maneuvering and therefore better complies with the zoning ordinance and site plan ordinance. The Board notes that the applicant can provide the required number of parking spaces completely on its property but that the proposed parking plan that includes New Jersey Transit property is a superior parking plan.

14. With respect to the variance to allow accessory structures and in particular the storage containers to be set back less than 5 feet from property lines, the variance promotes several purposes of zoning, including zoning purpose 2g insofar as it provides sufficient space for manufacturing use according to its environmental requirements, zoning purpose 2m insofar as it promotes the more efficient use of land, and zoning purpose 2a insofar as it promotes safety. There is no substantial detriment to the public good. The storage containers closest to the south property line adjoin an existing automotive use. The storage containers closest to the north property line adjoin the New Jersey Transit railroad tracks. In the C-2 General Business and Light Manufacturing Zone, principal buildings are allowed to have 0 feet setback from side property lines, and here the commercial building is very near or on the side property lines. There is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance for the reasons set forth above. The benefits of this variance substantially outweigh any detriment.

15. With respect to the variance to allow on-site parking spaces to be set back less than 4 feet from property lines, this variance promotes zoning purpose 2g insofar as it provides sufficient space for manufacturing use, zoning purpose 2m insofar as it promotes the more efficient use of land, and zoning purpose 2h insofar as it promotes the free flow of traffic. There is no substantial detriment to the public good. The proposed on-site parking with setbacks at or near the side property lines represents an existing condition for a great many years. In addition, in 1995, the Planning Board approved on-site parking with setbacks at or near the side property lines. There is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance for the reasons set forth above. The benefits of this variance substantially outweigh any detriment.

16. With respect to the variance to allow fence height of 9 feet rather than 7 feet, the purpose of the proposed fence is to provide a visual screen so that the storage containers are shielded from public view. In order to more fully shield the storage containers, the fence must be 9 feet in height. It is noted that the fence itself is only 6 feet high, however, it is located on top of a railroad tie planter that is 3 feet high, and thus the fence has been deemed a total of 9 feet in height. This variance promotes zoning purpose 2i insofar as it promotes a more desirable visual environment by more fully screening the storage containers. There is no substantial detriment to the public good. The proposed fence is an interior site fence and does not run along any adjoining neighbor to the south or north. In addition, the principal building facade directly behind the proposed fence is 23 feet 3 inches in height and well within the height limitation of 35 feet. There is no substantial detriment to the intent and purpose of the zone plan or zoning ordinance for the reasons set forth above. The benefits of this variance substantially outweigh any detriment.

17. Finally, with respect to the exception to allow aisle width for the barrier-free parking space of 22 feet 5 inches rather than 24 feet, the proposed width of 22 feet 5 inches is adequate given the limited use of the barrier-free parking space and its 5 foot loading and unloading area adjoining to the west, which provide added room for vehicle maneuverability. The Board finds that the requested exception from the requirements for site plan approval is reasonable and within the general purpose and intent of the site plan ordinance and that literal enforcement of the aisle width requirement is impracticable or will exact undue hardship because of the peculiar conditions and configuration of the property.

18. The Board finds that at the time the application was heard by the Board of Adjustment, the applicant complies with the conditions set forth in Montclair Code Section 347-84C pertaining to light manufacturing use in the C-2 General Business and Light Manufacturing Zone and that the applicant has made a satisfactory showing, as determined by the Board of Adjustment, that there will not be noise, vibration, glare, odor or smoke discernable at the property line and that on-site facilities and access streets are adequate for truck traffic generated.

19. 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 pursuant to N.J.S.A. 70:55D-70d(1) 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.

WHEREAS, the Board, based on the aforementioned findings, concluded 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 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 Alcaro Realty LLC for preliminary and final site plan approval, use and bulk variances, and an exception is hereby approved 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.

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 the application of **Patrick and Rosemary LePore, 490 Park Street** was withdrawn at the applicants' request.

Assistant Secretary Charreun announced that the application of **Steven and Mary Lee Wrede, 24 Greenview Way** would be carried to the May 16, 2007 regular meeting of the Board at the applicants' request, and that no further notice would be given.

Assistant Secretary Charreun announced that the application of **Valley National Bank, 539 Valley Road** would be carried to the May 16, 2007 regular meeting of the Board at the applicant's request, and that no further notice would be given.

Chair Harrison called the application of **Michael Aiello, 105 Wildwood Avenue**. Michael Aiello, owner, and Nelson Benevides, Architect, were sworn. Mr. Benevides described the application and stated that the applicant is proposing to remove the detached garage on the property, which was damaged during a strong storm in July of 2006 and build a new garage. The size and height of the proposed garage would be exactly the same as the existing garage and the same setbacks are also proposed. The Board questioned the applicant and Mr. Benevides. Mr. Benevides described the photographs of the existing garage included on the plan and stated that no changes are proposed to the driveway.

Chair Harrison called for questions and comments from the public. A member of the audience, who did not give her name or address, asked which properties on Summit Avenue abut against the rear property line of the subject property. The answer was provided by the Board and staff. The Board discussed the application. On motion by Ms. English, seconded by Mr. Susswein, the application was approved.

Chair Harrison called the application of **Eugene Lieber, 74 Central Avenue**. Eugene Lieber, owner, was sworn and Nelson Benevides, Architect, remained under oath. Mr. Benevides described the application and stated that the detached garage on the property was removed after it was badly damaged during a storm in July of 2006. The applicant proposes to construct a new detached garage in the same location as the previous garage, which would have the same trapezoidal shape, height, and dimensions as the previous garage. The southerly side yard setback is 1.5 feet and 1.47 feet measured to the southerly corners of the garage, the rear yard setback is 0.62 feet at the northerly rear corner and 2.10 at the southerly rear corner, and the garage would cover 28.3 percent of the rear yard. Due to the small setbacks, the extension of the roof eaves on the sides and rear of the proposed garage would be reduced from that of the previous garage in order to maintain the eaves and gutters completely on the

applicant's side of the property lines, which is an improvement from the condition that existed on the previous garage.

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Ms. English, seconded by Mr. Whipple, the application was approved.

Chair Harrison called the variance application of **Michael Melia, 14 Nishuane Road**. David Owen, Esq. appeared as attorney for the applicant and described the application. He stated that the plan is to demolish an existing single-family dwelling and detached garage and construct of a new single family dwelling and detached garage. Mr. Owen called Paul Sionas, Architect, who was sworn and stated his qualifications.

Mr. Sionas described the subject property and the plan. He stated that the subject property is an interior lot that is 60 feet wide and approximately 140 feet deep and contains a one-story single family dwelling and a one-story detached garage. The applicant proposes to demolish the existing single family dwelling and detached garage and to construct in their place a new 2½ story single family dwelling and one-story detached garage. The new dwelling is approximately 317 square feet larger than the existing dwelling, whereas the new garage is approximately 102 square feet larger than the existing garage.

Mr. Sionas described the variances requested. The required front yard setback is 25 feet. The existing dwelling has a front yard setback of 15.55 feet, the two dwellings adjoining to the north have front yard setbacks of approximately 16.7 feet, and the two dwellings adjoining to the south have front yard setbacks of approximately 21.7 feet. The plans indicate a front yard setback of 15 feet; however the front yard setback is being amended to request a front yard setback of 16.7 feet so that the new dwelling will better align with the existing dwellings adjoining to the north and make for a better uniform streetscape. The side yard setback of the proposed garage is 1 foot rather than 6 feet in order to open up the backyard and also to make it easier to pull in and back out of the new garage.

Marked into evidence were

- A-1 Photograph of the existing detached garage as seen from the rear yard
- A-2 Photograph of the front of the adjoining property the north
- A-3 Photograph of the garage on the property directly across the street from the subject property
- A-4 Garage elevation drawings, prepared by Sionas Architecture, dated February 2, 2007

The Board questioned Mr. Sionas. He stated that the eaves of the garage roof extend 6 inches beyond the walls of the garage and that roof gutters would be proposed

as well. He also stated that the proposed front setback of 16.7 feet would be in keeping with the front stoop of the 2 nearest dwellings to the south, which have a front setback of approximately 21.7 feet to the front wall of the dwelling.

Chair Harrison called for questions from the public. None were offered.

Mr. Owen called Michael Melia, property owner, who was sworn. Mr. Melia stated that usability of the rear yard space is limited by the hill that exists in the rear yard, which should be a factor regarding the variance for the side yard setback of the garage. He stated that increasing the side yard setback from the 1-foot proposed would make vehicular access to the garage difficult.

The Board questioned Mr. Melia. Mr. Owen also questioned Mr. Melia, who stated that he would agree to a side yard setback of 3.10 feet, which would be in keeping with the side yard setback of the existing garage.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Ms. English, seconded by Mr. Susswein, the application was approved, subject to the following condition:

1. The southerly yard setback for the new detached garage shall be no less than 3.10 feet.

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