

MINUTES OF THE BOARD OF ADJUSTMENT
May 21, 2008

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

ABSENT: Ms. Cockey, Ms. Holloway, 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. Fleischer, seconded by Ms. English, the **Minutes of the January 16, 2008** regular meeting were adopted.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the following Resolution memorializing the denial of the application of **R&R Realty, 651 Bloomfield Avenue** was adopted:

WHEREAS, R&R Realty, Inc., as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval to convert an existing motor vehicle repair station into a convenience store and retain and modify the existing gas station on site on property designated as Lot 13 in Block 1403 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(2) as the addition of the convenience store to the nonconforming gas station use is not permitted pursuant to Montclair Code Section 347-112.

2. A variance pursuant to N.J.S.A. 40:55D-70c to allow parking in the front yard contrary to Montclair Code Section 347-83C(1).

WHEREAS, the applicant submitted a site plan, floor plan and elevations prepared by W. J. G. Architects, LLC dated December 10, 2007 revised March 7, 2008; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on February 20, March 19 and April 16, 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 located at the northwest corner of Bloomfield Avenue and Valley Road and located in the "Center Area" of the C-1 Central Business Zone. The property consists of 9,500 square feet of lot area and contains lot widths of 124.34 feet along Bloomfield Avenue and 130.53 feet along Valley Road. The property contains two gas pump islands under a canopy and a single story masonry building used for auto repair.

2. The applicant proposes to convert the building housing the automobile repair business into a 7-11 convenience store, retaining the existing gas station use but eliminating one of the fueling islands, redesigning and creating parking areas and installing new signs.

3. The introduction of a 7-11 to the site which retains the gas station use with a single pump island will substantially increase the intensity of use on the site. The testimony established that the anticipated volume of traffic for the combined 7-11, gas station use would far exceed past use of the property even at its maximum level.

4. The applicant failed to present sufficient credible testimony to establish safe and efficient on-site traffic circulation. The proposed on-site traffic flow around the fueling island adjacent to parking spaces in conjunction with restricted driveways (exit only/enter only on Bloomfield Avenue) with the combination of uses proposed results in many conflicts and an unsafe condition.

5. Continuation of the nonconforming gas station use is contrary to the intent and purpose of the Zoning Ordinance and Master Plan which seek to eliminate the nonconforming use and bring it into conformity as quickly as is compatible with justice.

6. The applicant failed to present sufficient credible 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 or that the site could reasonably accommodate the increase in intensity of use.

7. With respect to the requested front yard parking variance pursuant to N.J.S.A. 40:55D-70c(1), the hardship, if any, relating to the existing structures and shape of the subject property is not persuasive given the overburdening of the property by the combined uses.

8. With respect to the requested front yard parking variance 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).

9. All the proposed parking spaces are located in the prohibited front yard which represents a substantial visual intrusion on a prominent corner within the municipality representing substantial aesthetic detriment to the public good which is contrary to the intent and purpose of the zone plan and zoning ordinance.

10. Given the substantial increase in traffic associated with the proposed combined uses, the applicant failed to present sufficient credible evidence to establish there would not be substantial detriment to the public good.

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 R&R Realty, Inc. for site plan approval and variances to expand a nonconforming use and to allow parking in the front yard 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 **Sarah Conklin, 141 Haddon Place** was adopted as modified:

WHEREAS, **Sarah Conklin**, owner of property at 141 Haddon Place, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA 40:55D-70c to allow the width of the dwelling to exceed the maximum width permitted by **Montclair Code Section 347-45C(4)** in connection with the proposed construction of a one-story addition to the easterly side of her dwelling and the expansion of a deck at the rear of the dwelling on property designated on the Township Tax Map as Lot 3 in Block 3605 and located in the R1 One Family Zone; and

WHEREAS, the applicant submitted a property survey, dated April 3, 1998, and a plot plan, partial floor plan and elevations prepared by Architectural Design Associates, revised to March 26, 2008; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 16, 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 60 feet in width and 7,748 square feet in area. It contains a single-family dwelling.

2. 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.

3. 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.

4. 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.

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 NJSA 40:55D-70C(1); and

WHEREAS, the Board, based upon the foregoing 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 NJSA 40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Sarah Conklin 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.

The application of **Wallwood Gardens, Inc, 400 Orange Road** was adjourned to the July 16, 2008 regular meeting of the Board, at the applicant's request. The applicant acknowledged that a new public notice for the application would be required. 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 June 18, 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. The application of **Thomas Rose & Peter Wert, 272 Valley Way** was adjourned to the June 18, 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. The application of **Pinnacle Asset, LLC, 295 Bloomfield Avenue** was adjourned to the August 20, 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 Board discussed the extension of time requested for the application of **Peter Foley & Susan Yoo, 149 North Mountain Avenue**. Mr. Whipple recused himself. The approval expired on August 3, 2001. No permits were ever filed. No new variances would be required. The owners have requested that their variance approval be extended so that they may file permits for the addition. After a brief discussion, a motion made by Mr. Rubenstein, seconded by Mr. Susswein, to deny the requested extension was passed, Mr. Whipple abstaining. The request was denied due to the passage of time, and the fact that current nearby property owners should be notified.

The Board also discussed the extension of time requested for the previously approved variance application of **David and Laura Janay, 210 Highland Avenue**. Mr. Susswein recused himself. 210 Highland Partners, LLC, is under contract to purchase the subject property, which is currently a vacant lot. In 2004 variances in connection with the construction of a new single-family dwelling on a vacant lot were granted subject to conditions. A building permit application was filed for site work and building foundations during October 2005, however, no work on the site commenced. In June of 2006 and extension of time was requested by the applicant, which was granted through February 10, 2007. Due to changes in the zoning ordinance, at least one new variance would be required; for the number of stories. The contract purchaser is seeking a 2 year extension on the previously approved variances, and also sought to include any newly required variances within that extension. Martin Schwartz, agent for the contract purchaser, and Eric Maran, Architect, were present and made brief statements. After a brief discussion, a motion by Mr. Whipple, seconded by Mr. Fleischer, to approve the requested extension on the previously approved variances was passed, Mr. Susswein

abstaining, subject to the review of the plan to conform with the 2005 approval, plus the interplay between the approved variances and any new variances. Any newly required variances would need a new application filed.

Chair Harrison announced the variance application of **Akio Kaneda, 608 Valley Road**. Mr. Fleischer recused himself. Cal Trevenen, Esq. appeared as attorney for the applicant. Jonathan Perlstein, Architect, was sworn and described the application for site plan approval to construct additions to the rear and northerly side of the existing building. The proposed additions would connect the existing two story principal building with the detached garage creating a unified two-story structure from front to back. The additions include a second story over the one story portion of the existing building on the northerly side, a two story addition connecting the existing building with detached garage at the rear and a second story over the garage. The first floor addition between the existing building and the garage will be used as a kitchen area and vestibule. The second floor will contain an expanded restaurant area and restaurant offices expanding over the existing garage.

Marked into evidence were:

- A-1 1 Photograph and 1 Photo-simulation of the southwest elevation
- A-2 1 Photograph and 1 Photo-simulation of the northwest elevation
- A-3 Photograph of the existing front elevation
- A-4 Photograph of the existing front elevation
- A-5 Photograph of the existing front elevation

The Board questioned Mr. Perlstein. The existing and proposed building height as measured to the roof ridge is 28 feet, not the 29 indicated on the plan. The applicant is proposing a “stepped” or “saw tooth” parapet design which was approved by the Montclair Historic Preservation Commission by Resolution and Certificate of Appropriateness adopted on March 20, 2008. The Board expressed concern over this design which unnecessarily increased the perception of scale and massing of the additions. The Board inquired whether a sloped parapet design would be aesthetically more attractive and minimize the scale of the additions. The Board called for questions from the public. Howard Press, Esq. gave his appearance on behalf of the owner of the adjoining property at 602-606 Valley Road. He asked questions relating to his client’s property, which adjoins the subject property to the south, and what easements exist that give the subject property permission to walk or drive on his client’s property. Mr. Trevenen indicated that there are no such easements. The Board expressed concerns over certain design elements that would require such easements. Mr. Trevenen requested a short recess.

Michael Petry, Professional Planner, was sworn and described the application. The applicant is requesting a variance pursuant to N.J.S.A. 40:55D-70d(6) to permit building height of 28 feet where a maximum of 24 feet is allowed pursuant to Montclair Code Section 347-95A(1), a variance pursuant to N.J.S.A. 40:55D-70c to allow a rear yard setback of 11.04 feet at the first floor and 8.58 feet at the second floor bay extension where a minimum of 20 feet is required pursuant to Montclair Code Section

347-95C(3), a variance pursuant to N.J.S.A. 40:55D-70c for failure to provide 14 additional on-site parking spaces as required by Montclair Code Section 347-101, and a variance pursuant to N.J.S.A. 40:55D-70c to permit a sign which does not face a public street or public parking lot contrary to Montclair Code Section 347-110.

Marked into evidence was:

A-6 Aerial photograph of the area

The subject property contains a two story mixed use commercial and residential building with detached garage at the rear of the property. The property is 21.1 feet wide and measures 2,488 square feet in area. The rear property line abuts a municipal parking lot. The height of the building additions matches the height of the existing building and provides adequate light, air and open space as well as a dramatic aesthetic improvement. The building has a preexisting nonconforming rear yard setback of 11.04 feet. The proposed additions will result in a rear yard setback of 11.04 feet at the first floor and 8.58 feet at the second floor bay extension. The additional intrusion into the rear yard is de minimis and the location is appropriate based upon the existing development of the site and its proximity to the adjacent municipal parking lot. The application does not provide any additional on-site parking spaces despite the fact that the development requires 14 additional spaces as per Section 347-101. There are a number of public lots in the area in addition to the adjacent municipal lot to the rear of the subject property which can accommodate the parking demand generated by this application. Although the building mounted sign on the southern façade does not face a public street or public parking lot as required by Section 347-110, it does facilitate identification of the site in a manner which avoids any adverse impact and is appropriate given the layout of the site. The Board questioned Mr. Petry. The Board called for questions from the public. None were offered.

Mr. Trevenen requested that the Board hold off on the discussion and vote and public comment and that the application be adjourned to the next meeting. He indicated that his client would like to consider the Board's concerns regarding the design of the addition and the easement issues. Mr. Press agreed to withhold further comment until the next hearing. Chair Harrison called for any comment from any other member of the public. None was offered. The application was carried to the June 18, 2008 regular meeting of the Board. No further notice would be given. The Board was granted an extension of time.

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