

**MINUTES OF THE BOARD OF ADJUSTMENT  
MAY 16, 2012**

PRESENT: Chair Harrison, Ms. Checca, Mr. Edwards, Mr. Fleischer, Mr. Kenney, Mr. Reynolds; also, Mr. Sullivan, Esq., Ms. Talley, Secretary and Mr. Charreun, Assistant Secretary

ABSENT: Vice Chair Whipple, Mr. Burr, Ms. Holloway, and Mr. Tsai

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. Edwards, seconded by Mr. Fleischer, the **Minutes of the April 18, 2012** regular meeting were adopted as modified, Ms. Checca and Mr. Kenney abstaining.

On motion by Mr. Edwards, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **360 Cycling Studio, LLC, 4 Lackawanna Plaza** was adopted, Chair Harrison, Ms. Checca, and Mr. Kenney abstaining:

WHEREAS, 3sixty Cycling Studio, LLC, did make application to the Board of Adjustment of the Township of Montclair for approval of an existing wall mounted sign at the above-captioned property designated as Lot 13 in Block 3206 on the Township Tax Map and located in the C-1 Central Business Zone; and

WHEREAS, the applicant requested variances pursuant to N.J.S.A. 40:55D-70c as follows:

1. To allow the sign to be painted directly on the building contrary to Section 347-109A(2).
2. To allow total sign area of 292.5 square feet where a maximum of 81.5 square feet is allowed pursuant to Section 347-109A(3).
3. To allow a sign in excess of 24 inches in height contrary to Section 347-109A(4).
4. To allow placement of the sign outside the required building sign location band pursuant to Section 347-109A(5).

WHEREAS, the applicant submitted a floor plan and elevation, Sheet A-101.00 prepared by Charles Jordan, Architect, dated May 13, 2010 revised through July 22, 2010 as well as undated sign detail; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on March 21 and April 18, 2012, 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 applicant's business comprised of cycling and fitness classes as well as personal training is a permitted use and occupies the front portion of the one story building. An auto repair business occupies a rear portion of the building and has a driveway/garage entry on the far right side of the building.

2. The applicant's existing sign which was constructed without required municipal approvals is approximately 5.3 feet high by 55.2 feet wide containing a sign area of 292.5 square feet. The sign exceeds the maximum allowable sign area of 81.5 square feet as well as the maximum allowable sign height of 2 feet.

3. As part of Exhibit A-2 introduced at the public hearing, the applicant provided a photo simulation of a reduced sign (hereinafter "alternate sign") approximately 2.54 feet high by 27.6 feet wide which conformed to the maximum sign area requirement. For the most part, this sign conformed to the maximum allowable sign height; however, two of the letters exceeded the requirement by approximately 6-1/2 inches.

4. The Board determined that with respect to the sign area and sign height of the existing sign, 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 area and height of the existing sign 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 Ordinance and would substantially impair the intent and purpose of the Zoning Ordinance.

5. The Ordinance requires the sign be placed within the building sign location band which is 12 feet and 8 feet, respectively, above grade level. The applicant cannot locate the sign within the required sign location band due to the existing windows and the proposed location of the sign is the only logical alternative.

6. 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.

7. With the exception of the requested sign area and height variances for the existing sign, approval of the remaining variances relating to the alternate sign, advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a) and promotes a desirable visual environment through creative development techniques and good civic design and arrangements (-2i).

8. Based upon the Board's particular knowledge of local conditions, approval of the requested variances relating to the alternate sign is not inconsistent with the character of the neighborhood and will not adversely impact the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

WHEREAS, the Board, based on the aforementioned findings, concluded that with respect to the variances relating to sign area and sign height for the existing sign, 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 with respect to the variances relating to sign area and sign height for the existing sign, 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 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 N.J.S.A. 40:55D-70c(2).

WHEREAS, the Board based on the aforementioned findings, concluded that with respect to the variances relating to the alternate sign allowing it to be painted directly on the building, sign height of 2.54 feet and placement of the sign outside the required building sign location, concluded that the applicant proved 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 3sixty Cycling Studio, LLC for variances for the existing sign relating to sign area and sign height are hereby denied.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of 3sixty Cycling Studio, LLC for

variances relating to the alternate sign allowing it to be painted directly on the building, sign height of 2.54 feet and placement of the sign outside the required building sign location, is hereby approved.

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 Mr. Edwards, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Tony Walia, 110 Haddon Place** was adopted, Ms. Checca and Mr. Kenney abstaining:

WHEREAS, Tony Walia, 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 to construct an addition onto the easterly side of the dwelling, on property designated as Lot 23 in Block 3606 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, A variance is requested from Montclair Code Section 347-45B(1) in that the front yard setback of the proposed addition would be less than the required front yard setback; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on April 18, 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 May 13, 1985 and plans prepared by Oasis Architecture revised March 5, 2012; and

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

1. The property is an interior lot located in the R-1 One-Family Zone and contains a single family dwelling with an attached garage. The lot measures 100 feet in width by 110 feet in depth.
2. An addition is proposed on the easterly side of the dwelling. 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.
3. 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.

4. 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 subject property.

5. The Board determined that the requested variance could be approved. The front yard setback average includes a large "through lot" with an address on Lorraine Avenue, but with lot frontage on Haddon Place. That dwelling 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 subject property. If not for the unusually large Lorraine Avenue front yard setback of that through lot, the applicant's proposal would be compliant with zoning; 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; 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 **Paul & Nora Carlson, 408 Upper Mountain Avenue** was announced. Nora Carlson was sworn and described the application. A roof supported by columns is proposed over the existing front entrance. Based on the average front yard setback of the 4 nearest dwellings, 2 on each side of the subject property, the required front yard setback for the new construction is approximately 71 feet 4 inches. The front yard setback of the proposed roof cover is 57 feet 3 inches and a variance is required. The Board briefly questioned the applicant. There were no questions or comments from the public. The Board discussed the application and determined that the variance could be approved. The front yard setback average is skewed by the larger front yard setback of the properties to the south of the subject property. The proposed front yard setback is in keeping with that of the properties to the north, and the proposed construction is

minimal in scale and provides functional and aesthetic benefits to the property. On motion by Mr. Edwards, seconded by Mr. Fleischer, the application was approved.

The application of **Eric Carlson & Bridget Eklund, 303 Highland Avenue** was announced. Eric Carlson was sworn and described the application. He stated that they had previously submitted an application to the Board in 2011 which was presented at one hearing, did not conclude, and was ultimately withdrawn. The current application represents a revision to the previous plan taking into account the concerns expressed by the Board and neighbors. Carmen Lenzi, Architect was sworn and described the plans. The existing attached garage and breezeway that was approved in 1980 with a variance would be demolished. An addition consisting of a new 2-car garage, mud room, and half-bath is proposed in the general area of the existing garage, but with a new design, shifted location, and with a different shape. The new garage would be connected to the dwelling with a new breezeway largely consisting of glass. The footprint of the new addition represents a reduction on square footage from the existing condition. The existing garage and connection footprint being removed is 862 square feet; the new garage and connection footprint is 842 square feet.

Exhibits marked:

- A-1 Rendering of the front view as proposed and photograph of existing conditions, by Modernlink Studio, May 16, 2012
- A-2 Section Diagram drawing, by Modernlink Studio, May 16, 2012
- A-3 Proposed First Floor Plan, by Modernlink Studio, May 16, 2012

The Board questioned the applicant. No questions were offered by the public. J. Michael Petry, Professional Engineer and Professional Planner, was sworn and described the application. The minimum permitted front yard setback for new construction on the subject property is 50 feet, since the average front yard setback of the adjoining dwellings, pursuant to the zoning ordinance, is not more than 50 feet. The applicant is proposing a 36 foot front yard setback for the addition, which is 3 feet greater than the existing 33 foot front yard setback of the existing attached garage. A variance is requested for a front yard setback less than 50 feet. The topography of the site makes it difficult to comply with 50 foot setback without disrupting the steep slope behind the dwelling and removing significant trees. The proposed construction will be set back farther than the existing garage it is replacing, and will be shorter in height with less volume within the front yard setback area. A grading and drainage plan has been designed that would greatly improve the existing storm water runoff conditions on the property, which will benefit the adjoining properties.

Exhibits marked:

- A-4 Existing Conditions Plan, by Petry Engineering, May 16, 2012
- A-5 Grading Plan, by Petry Engineering, April 23, 2012

A-6 Photographs of the subject property and adjoining areas, by Petry Engineering May 16, 2012

The Board questioned the applicant. The applicant indicated that the central air units can be relocated further back than where they are depicted on the plan. Mr. Petry addressed the Board Engineer's review letter dated May 10, 2012. No questions or comments were offered from the public. The Board discussed the application and determined that the application could be approved. The topography of the site creates difficulty in fully complying with the 50 foot front yard setback requirement. The proposal represents an improvement on any negative impact associated with the front yard setback of the existing condition and the variance that was previously granted. On motion by Mr. Fleischer, seconded by Mr. Reynolds, the application was approved, with Mr. Kenney voting against the approval, subject to the following conditions:

1. The proposed central air conditioning units on the northerly side of the proposed garage addition shall be back at least 10 feet farther from the front property line than depicted on the plans submitted.
2. The applicant shall comply with the Board Engineer's report dated May 10, 2012.

Ms. Checca arrived at the meeting. Chair Harrison was recused. The continuation of the application of **Valley National Bank, 529 and 539 Valley Road** was announced. Mr. Sullivan stated that since the Chair and Vice Chair are recused from the application, the Board must select a temporary Chair. On motion by Mr. Edwards, seconded by Mr. Kenney, Mr. Fleischer was selected as Temporary Chair for the application. Richard Toniolo, Esq. appeared as attorney for the applicant. Mr. Toniolo recognized that there were 5 eligible Board members present and proceeded with the application. The application commenced at the February 15, 2012 meeting of the Board. The applicant has returned with a revised plan and additional information. Mr. Toniolo reviewed the relief requested and stated that variances are requested to permit expansion of a nonconforming use, to permit a one foot setback for the parking area from the front property line where a 4 foot setback is required, and to permit 11 parking spaces on Lot 4 where a minimum of 31 spaces is required. A site plan exception is also requested to permit parking space dimensions of 8 feet wide by 17 feet in length where a minimum of 9 feet wide by 19 feet in length is required.

Robert Ring, Architect was sworn and provided his qualifications. Mr. Ring described the plans for the proposed installation of an underground pneumatic tube system to connect the drive-thru on Lot 3 with the branch bank on Lot 4. A 7.5 foot by 7 foot extension of the drive-thru roof canopy is proposed in order to hide the pneumatic tubes. The Board questioned Mr. Ring. He stated that the intent of the design is to have the least disturbance to the existing paved drive aisles. No questions were offered from the public.

Exhibit marked:

A-1 Architectural Plans by Stern-Ring Associates, revised July 5, 2011

Scott Koenig, Landscape Architect, was sworn and provided his qualifications. Mr. Koenig described a revised site plan that incorporates the changes requested by the Board at the last hearing. The curb opening along the northerly frontage has been eliminated. The two parking spaces partially located in the right-of-way are eliminated. A handicap parking space has been added which resulted in a loss of one parking space. Landscaping has been added around the dumpster area and north and south side of the parking areas. A five foot wide sidewalk is shown adjacent to the building entrance and the existing concrete wheel stops have been eliminated, and Belgian block curbing has been added along the south side of the parking lot. The plan can be further revised to add lawn areas in the right of way area adjoining the sidewalk, where the plan presently shows as asphalt paving. The Board questioned Mr. Koenig. No questions were offered from the public.

Exhibit marked:

A-2 Site plan by Lapatka Associates, Inc. dated May 3, 2012

Charles Huha, First Vice President Facilities Director for Valley National Bank, was still under oath. Mr. Huha stated that the revised plan has been agreed to by the property owner. The Board questioned Mr. Huha. He stated that there should be no problem in adding the lawn areas in the right of way area adjoining the sidewalk. There were no questions or comments from the public. The Board discussed the application. The Board determined this application is harmonious with existing development and will not harm the quality of life of surrounding neighborhoods consistent with the goals of the Master Plan. The site currently contains the branch bank and drive-thru and is particularly suited for the minimal expansion contemplated herein and is of sufficient size to accommodate the proposed minor changes and the testimony established safe and efficient vehicular on-site traffic circulation.

On motion by Mr. Reynolds, seconded by Mr. Kenney, the application was approved, subject to the following conditions:

1. The applicant shall comply with the following items as contained in the report issued by W. Thomas Watkinson, Montclair Zoning Board Engineer, dated May 15, 2012:

- a. The uneven concrete sidewalk slabs along the Valley Road frontage shall be reset or replaced.
- b. The applicant's engineer shall submit an itemized construction cost estimate of site improvements (exclusive of building work) for determination of inspection escrows.

2. The applicant shall obtain Essex County Planning Board approval.
3. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter

Chair Harrison rejoined the Board. The application of **54 Plymouth Street, LLC, 54 Plymouth Street** was announced. Robert Garofalo, Esq., appeared as attorney for the applicant. Dr. William Ranucci was sworn. Dr. Ranucci is part owner of the property and his dental practice exists at the property. He stated that they have owned the property since 1998. The first floor of the building consisting of 1,830 square feet is currently utilized as medical offices specifically for the practice of dental surgery. The second floor consisting of 1,410 square feet was previously used for a medical office; however, it has been vacant since January 2011 despite efforts to obtain a medical office tenant. He stated that new medical offices require handicapped access which is challenging to provide. They are seeking to modify the previous variance granted for medical office only in order to permit general/professional office use on the second floor of the building. The Board questioned Dr. Ranucci. He provided details on the trouble they have had in leasing the space to medical offices over the last 18 months.

Frank Matarazzo, Professional Engineer, was sworn and stated his qualifications. He described the existing conditions. The property is located on the southwest corner of Orange Road and Plymouth Street and is improved with a two-story office building. The site contains 21 parking spaces located to the south and west of the building. No site changes were originally proposed to the site with the application. The applicant will revise the plan in accordance with the Township Planner's memorandum to provide a handicapped accessible parking space. This modification will result in the net loss of 1 existing parking space, leaving 20 spaces on the site. The Board questioned the applicant.

Exhibit marked:

A-1 Site plan by Matarazzo Engineering, LLC dated December 8, 2011

John McDonough, Professional Planner, was sworn and stated his qualifications. He described the application and the relief requested. The property is located on the southwest corner of Orange Road and Plymouth Street and is improved with a two-story office building pursuant to a use variance for medical office use recommended by the Board of Adjustment by resolution adopted on December 7, 1971 and approved by the Board of Commissioners. The site presently contains 21 parking spaces located to the south and west of the building. The applicant is seeking to modify the 1971 use variance to permit general/professional office use on the second floor of the building. The site is particularly suited for the proposed use. The proposed change to general/professional office on the second floor of the building results in a reduction in parking demand based

upon the parking requirements contained in the zoning ordinance. The site will be corrected to add the required handicapped parking space, which will reduce the on-site parking to 20 spaces. The application advances the following purposes of the Municipal Land Use Law which encourage appropriate use of land which promotes the general welfare, encourage coordination of procedures resulting in more efficient use of land, and promotes a desirable visual environment through creative development techniques and good civic design and arrangements. Approval of the application is not inconsistent with the intent and purpose of the Master Plan or Zoning Ordinance which seeks to increase the economic viability of commercial districts and encourage a wide mix of appropriate commercial uses. The Board questioned the applicant.

Exhibit marked:

#### A-2 Planner's Photo Exhibit

Dr. Philip Echo was sworn. He is also part owner of the property and has his dental practice at the property. He reviewed their past efforts regarding what is involved with adding an elevator or mechanical lift, as well as potentially converting the second floor to residential use. All of those options have significant financial or functional drawbacks that conflict with the lawfully existing dental surgery practice. The Board questioned the applicant. Mr. Garofalo summarized the application and requested a vote from the 6 Board members present. The Board discussed the application and determined that the application could be approved subject to the conditions below. Based upon the Board's particular knowledge of area land uses and local conditions, the application is not inconsistent with the character of the development in the area and will not adversely impact the public good but rather, will result in an overall benefit to the area. On motion by Mr. Kenney, seconded by Mr. Reynolds, the application was approved subject to the following conditions:

1. The plans shall be revised to eliminate the two most easterly parking spaces and provide curbing and a planted area of at least three staggered evergreens three feet in height to shield the parking.

2. The plans shall be revised to convert three of the parking spaces to the south of the building into two handicapped spaces and convert the existing substandard handicapped space in the southwest corner to a regular parking space.

3. The second floor use is limited to general/professional office and medical offices are prohibited.

4. The applicant shall be responsible for payment of all escrow fees incurred in connection with review of this application.

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