

MINUTES OF THE BOARD OF ADJUSTMENT
May 26, 2010

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

ABSENT: Ms. Cockey and Ms. Holloway

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

Chair Harrison announced the continuation of the application of **The Mental Health Association of Essex County, Inc., 354 Orange Road**. The application was last before the Board on May 26, 2010. Craig Alexander, Esq. appeared as attorney for the applicant. James Key, Esq. appeared as attorney for objectors to the application. Mr. Key indicated that he would call his final two witnesses. He called William Scott, 23 Cedar Avenue, who was sworn. Mr. Scott stated that he is co-Chair of the Montclair Parks and Recreation Advisory Committee, a member of the Montclair Housing Commission, a member of the Montclair branch of the NAACP, co-Chair of the Montclair Affordable Housing Commission, a member of the NAACP Health and Wellness Committee, a member of the NAACP Freedom Fund, and a member of the NAACP Political Action Committee. Mr. Scott stated that Montclair has received their third round COAH certification. Mr. Scott referred to Exhibit O-4, which is a Ward Map of Montclair depicting the location of affordable housing facilities, senior citizen housing facilities, and other types of supportive housing facilities per Ward. There are a total of 73 overall of these types of facilities in Montclair that include a total of 651 affordable housing units. Two (2) of the facilities are located in the First Ward, 9 of the facilities are located in the Second Ward which include 8 affordable housing units, 22 of the facilities are located in the Third Ward which include 118 affordable housing units, and 40 of the facilities are located in the Fourth Ward including 525 affordable housing units. The vast majority of affordable housing units in Montclair are located in the Fourth Ward, and the proposed dwelling units should be located in another area of Montclair.

Mr. Scott referred to Exhibits O-5 through O-8 and described the zoning background and application history of the subject property and the adjoining property located at 340 Orange Road. He referred to the previous denial of an application to build townhouses on the subject property, and that a proposed rezoning of the area to a higher density commercial zone was not successful. He also referred to a letter sent by DH Development, LLC, dated January 19, 2010, to the Montclair Council, Planning Board, and Board of Adjustment which is included on O-5. Mr. Sullivan indicated that the letter was not admissible with Mr. Scott's testimony, although the Board could acknowledge the receipt of the letter.

The Board questioned Mr. Scott. Chair Harrison called for questions from the public.

Milt Horowitz, 17 Madison Avenue, asked questions

John Washington, Montclair, asked

David Woods, Pine Street,

Mr. Alexander questioned Mr. Scott. The Board took a short recess.

Mr. Key called Jason Kasler, P.P., who was sworn and stated his qualifications as a Professional Planner.

The Board questioned Mr. Kasler.

Chair Harrison called for questions from the public. Mr. Alexander questioned Mr. Scott. Carmel Loughman, 26 Walnut Street asked about the increased need for safety in the design and management of the site as a result of the fact that the occupants are deemed to be individuals suffering from some form of mental illness. Milt Horowitz, 17 Madison Avenue, asked if there are potential situations where water sprinklers actually make fires worse. Mr. Key questioned Mr. Hawley and asked if the fact that 2 multiple unit dwellings are proposed creates the need for increased fire safety in the design and management of the site.

There was some brief discussion. Mr. Key stated that he would call one more witness this evening. The Board then selected June 23, 2010 at 7:30 pm to continue the application, which would be announced again at the end of the hearing. Mr. Key called Audrey Cathy Hawley, 16 Grenada Place, who was sworn. Ms. Hawley described her previous work experience in the Montclair Building Department and as a Housing & Zoning inspector. She also described her previous course work that lead to certifications as a fire inspector and fire official, and as a State licensed inspector of hotels and multiple dwellings. She described Exhibit O-3 and stated that there are many properties in Montclair and in areas near to Montclair that are available for the applicant for the proposed use that would either not require the requested use variance or are better suited for the use for a variety of reasons. She also described the photographs and her observations of the existing facilities owned and operated by the applicant in other towns in Essex County.

Mr. Alexander did not question Ms. Hawley. The Board questioned Ms. Hawley. No questions were offered from the public. There was some brief discussion and Chair Harrison announced that the application would be continued at a special meeting on June 23, 2010 at 7:30 pm and that no further notice would be given. The Board was granted an extension of time. Chair Harrison called for public comment from those who could not attend on June 23, 2010. Luther Flurry, 14 Madison Avenue, was sworn and stated his opposition to the application. Mr. Flurry stated that the project should not be considered an inherently beneficial use and should be denied due to the negative impacts it would have on the single family zone district it is located in. Granting the variance would go against the Master Plan and the zoning ordinance and the project

should be located in a zone where it is a permitted use. The Board briefly questioned Mr. Flurry.

Steve Sprung, 9 Gardiner Place, asked if the proposed residential density of the project would have a negative impact on the neighborhood which already has many nonconforming uses and undersized properties.

Stanley White, 439 Orange Road, asked if the project could be expected to negatively impact the infrastructure of the neighborhood.

Luther Flurry, 14 Madison Avenue, asked about the chronology of the "Homes of Hope" case law and the recent amendment to the MLUL that was cited by Mr Steck in his testimony. Mr. Sullivan clarified that "Homes of Hope" is dated August 24, 2009, and the amendment to the definition of "inherently beneficial use" is dated November 20, 2009.

Dave Herman, 136 Lincoln Street, asked about the nearby commercial district and asked if it provides the conveniences necessary for people who may lack automobiles.

Mr. Key cross-examined Mr. Steck. Mr. Key asked several questions regarding traffic impacts, the nearby commercial zone, the ability of pedestrians to cross Orange Road, the impact of the project of the infrastructure of the neighborhood, and the impacts of the development on the residential density of the neighborhood. Mr. Steck also answered questions regarding the plans that have been presented, including the originally submitted plans and the currently proposed plans. The originally submitted architectural plan was not in the application file, and was provided by Mr. Fleischer at the meeting for Mr. Steck's reference; therefore it was marked as evidence and placed in the file. Mr. Steck reiterated that the proposed use of the property is not a group home and reiterated his testimony that the proposed use should be considered an inherently beneficial use.

Exhibit submitted:

O-12 Architectural Plans prepared by Julie Anne Cecere Architect, Sheet A1 and A-4 revised through November 9, 2009; Sheet A2 and A-3 revised through December 2, 2009

Milt Horowitz, 17 Madison Avenue, asked questions regarding his personal experiences with certain zoning decisions of Mr Steck when Mr. Steck was the Township Planner. Mr Sullivan informed Mr Horowitz that his questions were not relevant to the application. Ana Giron, 442 Washington Avenue, asked about the nearby commercial district and asked if it provides the conveniences necessary for people who may lack automobiles. Gail Johnson, 91 Harrison Avenue, John Curtis, 15 Hollywood Avenue, Scott Morelli, 6 Cedar Avenue, each asked questions about the section of Orange Road in the area of the subject property and whether it poses a hazard to the residents of the proposed development.

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