

MINUTES OF THE BOARD OF ADJUSTMENT
June 23, 2010

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

ABSENT: Vice Chair Fleischer, Ms. Holloway, and Mr. Kenney

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-11 and described the zoning background and application history of the subject property, the adjoining property located at 340 Orange Road, and nearby areas on Orange Road. He referred to the previous denial of an application to build townhouses on the subject property, and that the proposed rezoning of the area and nearby areas of Orange Road to a higher density commercial zone has also not been successful. He also referred 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. Scott stated that the letter indicates that approval of the subject application would have the effect of spot zoning. Mr. Sullivan indicated that the letter was not admissible with Mr. Scott's testimony, although the Board could acknowledge the receipt of the letter. Mr. Scott also described the history of the zoning changes that allowed the senior housing on the adjoining property located at 340 Orange Road and provided details on the COAH certification of Montclair. He stated that the proposed one bedroom affordable housing units do not

address the lack of multiple bedroom affordable housing units in Montclair noted by COAH.

Exhibits previously marked and referenced by Mr. Scott:

- O-4 Ward Map of Montclair depicting the location of affordable housing
- O-5 Chronological display of information on a board regarding use variances granted in the area of the subject property
- O-6 Chronological display of information on a board regarding background of the application of the senior citizen housing located at 340 Orange Road
- O-7 Chronological display of information on a board regarding background of the application of the senior citizen housing located at 340 Orange Road
- O-8 Chronological display of information on a board regarding background of the application of the senior citizen housing located at 340 Orange Road
- O-9 Chronological display of information on a board regarding the COAH certification of Montclair
- O-10 Chronological display of information on a board regarding the COAH certification of Montclair
- O-11 Chronological display of information on a board regarding the COAH certification of Montclair

The Board questioned Mr. Scott who answered several questions regarding his testimony on COAH, certain zoning issues, and the background of the zoning and applications for the subject property and other properties and areas near the subject property. Chair Harrison called for questions from the public. Milt Horowitz, 17 Madison Avenue, asked whether the people that would be served by the proposed 12 dwelling units could possibly find affordable and supportive housing within existing dwelling units in Montclair. Mr. Alexander questioned Mr. Scott about his qualifications and background. He also questioned Mr. Scott regarding the details on the information provided on Exhibits O-4 through O-11. Mr. Scott clarified that he is not a Township employee or official. John Washington, Montclair, asked Mr. Scott about the demographic characteristics of the Fourth Ward and about his experience with affordable housing. David Woods, 50 Pine Street, asked Mr Scott about his background as an advocate for affordable housing in Montclair. The Board took a short recess.

Mr. Key called Jason Kasler, P.P., who was sworn and stated his qualifications as a Professional Planner. Mr. Kasler stated that while the proposed used in an inherently beneficial use, the proposed multiple dwelling unit buildings would cause substantial detriment to the R-1 Zone the property. He stated that the history of the property shows that it has either contained a single family home or was proposed and approved to be developed with up to 3 detached single family homes. An approval of the application by the Board would result in a rezoning of this area of the R-1 Zone. Approving the variance request is contrary to the intent and purpose of the Master Plan, which has called for single family zoning for the subject property and the area. If the Board agreed

with the applicant that the area and the property are not suitable for single family development, the Board should still not grant the variance, and the Planning Board and Township Council would then need to reevaluate the area to be potentially rezoned to a different zoning district. Mr. Key questioned the witness. Mr. Kasler answered several detailed questions about the plans and the variances requested.

The Board questioned the witness. Mr. Kasler stated that the application fails on the negative criteria. The Master Plan Reexamination Report calls for the distribution of affordable housing throughout the Township and also calls for affordable housing units containing more than one bedroom. Approval of this application creates a situation where a use variance for multiple dwelling units would virtually have to be permitted on adjoining vacant lot to the south. Mr. Alexander questioned Mr. Kasler. Mr. Kasler stated that he had no specific knowledge about the applicant's funding. He answered several questions on the proofs required for the subject application. He stated that the fact that the project complies with many bulk standards does not alone work to satisfy the negative criteria. Chair Harrison called for questions from the public. Lorena White, 13 Garden Street, asked whether the affordable housing units proposed would be deed restricted as required by COAH. Dave Herman, 136 Lincoln Street, asked several questions about zoning, variances, and affordable housing. Mr. Key also questioned Mr. Kasler again.

Mr. Key and Mr. Alexander stated that they had no further witnesses. There was some brief discussion. The next meeting would be for public comment and for the Board's discussion and vote on the application. Chair Harrison announced that the application would be continued at a special meeting on July 14, 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 July 14, 2010. John Curtis, 15 Hollywood Avenue, was sworn and stated his opposition to the application. He stated that Orange Road in the area of the application is already overburdened with traffic and is hazardous and the proposed development only adds to those problems. Virginia Cornue, 129 Lincoln Street, was sworn and stated her opposition to the application. She stated that the development of one bedroom apartments in the neighborhood is not in keeping with the neighborhood that consists of family style dwellings. She stated that the development of affordable housing needs to be distributed throughout Montclair. Nettie Curry, 10 Hitchcock Place, was sworn, made several statements and stated her opposition to the application. She stated that the proposed development would have a negative impact on the neighborhood. Craig Levine, 47 Madison Avenue, was sworn and stated his support for the application. He has personal experience working with affordable housing and civil rights issues and stated that the proposed development would benefit the neighborhood.

Chair Harrison again announced that the application would be continued at a special meeting on July 14, 2010 at 7:30 pm and that no further notice would be given. On motion by Mr. Susswein, seconded by Mr. Whipple the meeting was adjourned.