

MINUTES OF THE BOARD OF ADJUSTMENT
July 15, 2009

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

ABSENT: Vice Chair Fleischer 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. Chair Harrison was not yet in attendance and Vice Chair Fleischer was absent. On motion by Ms. English, seconded by Ms. Holloway, Mr. Susswein was elected as the temporary Chair to start the meeting. Mr. Susswein would later act as Chair, as Chair Harrison would be recused from the final application.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Mark Haefeli, 129 Llewellyn Road** was adopted, Ms. Holloway and Mr. Burr abstaining:

WHEREAS, Mark Haefeli, owner of property at **129 Llewellyn Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a westerly side yard setback less than required pursuant to **Montclair Code Section 347-34A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-34A(3)** in connection with the proposed construction of a detached garage on property designated as Lot 56 in Block 1102 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant submitted a property survey dated October 13, 1999 and a site plan, floor plans, and elevations prepared by John Thomas Collins, Architect, dated April 2009; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 17, 2009 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 measures 57.17 feet in width across its frontage; the rear portion of the lot measures 55.67 feet in width. The lot is 175 feet deep and measures 9,634 square feet in area. The property is located in the R-0 Mountainside Zone, and contains a 2½-story, single-family dwelling. There is presently no garage on the property and the existing driveway from Llewellyn Road does not extend into the rear yard. In the R-0 Zone, accessory structures, such as detached garages, require minimum side yard setbacks of 12 feet and 18 feet, and a minimum rear setback of 10 feet.

2. On December 10, 2003, the Board of Adjustment approved a variance application for a westerly side setback and a rear yard setback less than required for a detached garage. The applicant did not construct that proposed garage and variances granted in 2003 have since expired.

3. The previously approved plan for a detached garage depicted a 20 foot by 20 foot garage with a westerly side yard and rear yard setback of 4 feet. The height of that proposed garage was 16 feet 9 inches. The current proposal is also for a 20 foot by 20 foot garage, however, the westerly side yard and rear yard setbacks have been increased from 4 feet to 6 feet and the height of the proposed garage has been reduced to a zoning compliant 15 feet. The driveway would be extended up to the proposed garage.

4. A variance is requested in that a minimum side yard setback of 12 feet is required and a side yard setback of 6 feet is proposed. A variance is also requested in that a minimum rear yard setback of 10 feet is required and a lesser rear yard setback of 6 feet is proposed. The proposed detached garage meets all other setback and height requirements.

5. The relatively small size of the property in the R-0 Zone, limits the ability of the applicant to provide the required setbacks for the proposed detached garage. Maps of the property depict that a detached garage previously existed in the same area of the rear yard and the proposed plan calls for a shorter height and larger setbacks than what was previously proposed in 2003.

6. Based upon the Board's particular knowledge of local conditions, the proposed detached garage is consistent with the character of the neighborhood and will not adversely impact the public good.

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 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 the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned 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 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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Mark Haefeli 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 continuation of the application of **Joseph & Holly Christovao, 22 Macopin Avenue** was postponed to the August 19, 2009 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. On motion by Mr. Whipple, seconded by Ms. English, the **Minutes of the May 20, 2009** regular meeting were adopted as modified, Mr. Burr and Ms. Cockey abstaining. Chair Harrison arrived.

Chair Harrison called the continuation of the application of **Steve Marshall, 200 Claremont Avenue**. The application was previously bifurcated and the conditional use variance was approved at the April 15, 2009 meeting of the Board, subject to site plan review, and requirements that the proposed stairway to access the third floor dwelling unit be enclosed, and that a minimum of 7 on-site parking spaces be provided. The applicant, Steve Marshall and his brother, Hubert Marshall, who were still under oath, stated that a revised plan has been submitted to the Board. The revised plan does not provide the 7 spaces required by the Board, so the conditional use variance remains pending.

Alan Feld, Architect, who was still under oath, described the revised plan. The stairway on the rear of the building that provides access to the third floor apartment has been designed to be fully enclosed, which complies with one of the conditional use requirements. Mr. Feld further described the revised plan. The Board questioned the witnesses. Mr. Marshall stated that the interior stairway would not provide access to the third floor apartment. An existing fire escape will remain in the westerly side of the building. Mr. Feld stated that the driveway has been widened to meet the 18-foot minimum width, and the driveway gradient has been reduced to comply with the maximum slope of 10 percent. The revisions to the site plan cause the number of parking spaces to be reduced from 7 to 6 spaces. The applicant is unable to provide additional on-site parking due to the location of the building and topographic conditions on the site. The applicant agreed to reduce the height of the fence to 4.5 feet along the side line from the rear corner of the building to the Claremont Avenue front property line in order to comply with the ordinance. The pole mounted light fixtures would be 15 feet tall and all light fixtures would be shielded. The Planning staff confirmed that the ordinance requires that parking spaces not be closer than 3 feet to a building, and that relief is required for the parking space that abuts the building. No questions were offered from the public.

William Beardslee, P.E., was sworn and provided his qualifications. He further described the topographic conditions that present problems for the applicant in providing additional on-site parking. He confirmed that the comments of the Board Engineer and Township Engineer would be incorporated into the plan and the proposed barrier free parking space conforms to ADA requirements. Yvonne Donna Marshall was sworn. She stated that she is the broker of record for proposed realtor's office. The real estate office is currently located at 559 Bloomfield Avenue and exists without any on-site parking. She stated that there would typically be two people in the office on a fairly consistent basis, and the other agents come and go throughout the day, with not more

than two agents typically being there at the same time. The real estate office generates limited demand for on-site parking. The Board questioned the witnesses. No questions or comments were offered from the public. The Board discussed the application. Mr. Sullivan reviewed the relief required by the applicant at the present time based on the modifications to the plan. On motion, by Mr. Whipple, seconded by Ms. English, the application for site plan approval, use variance, bulk variances and waivers was approved subject to the following conditions:

1. This approval is limited to use of the property as a real estate office and one residential dwelling unit.
2. The applicant shall comply with the recommendations contained in a memorandum from W. Thomas Watkinson, Montclair Zoning Board Engineer, dated July 13, 2009.
3. The applicant shall comply with the comments contained in a memorandum from Christine Baptista, Engineering Department, dated July 15, 2009.
4. The proposed wood fence shall be reduced in height to conform to the Ordinance.
5. Air conditioning units, if any, shall conform to the Ordinance.
6. All lighting shall conform to the Ordinance and shall be shielded to prevent light from shining on adjacent properties.

Chair Harrison called the application of **Brenda King, DVM, 2 Forest Street**. Cal Trevenen, Esq. appeared as attorney for the applicant and described the application. Dennis Mylan, Architect and Professional Planner, was sworn and described the application for site plan approval and variances to construct an addition to the existing veterinarian office on the subject property. The applicant is requesting a use variance to expand the preexisting nonconforming veterinarian use, a variance to permit the covered porch to be set back approximately 2 feet further from the Glenridge Avenue front property line than the adjoining building to the west, and a variance to permit a wall sign 7 feet above grade which is outside of the required building sign location band.

Marked into evidence were:

- A-1 Plans prepared by the Mylan Architectural Group, March 25, 2009
- A-2 11 photographs of the subject property

The subject property is a corner lot located at the intersection of Forest Street and Glenridge Avenue and contains lot area of 4,416 square feet. The property is improved with a preexisting nonconforming veterinarian office on the first floor and a three bedroom apartment occupying the second and third floors. The application contemplates expansion of the veterinarian office with a one story addition to the westerly side of the building and partial expansion into the second floor. The first floor addition will accommodate a new reception area, waiting area and bathroom. The

remaining first floor space will be reconfigured and includes an existing office, an exam room, an exam/lab room, an x-ray room, a surgery room and a kennel. The second floor includes a new break room and file storage room for the veterinarian office and a kitchen, living room, and bathroom for the apartment use. The third floor which contains two bedrooms remains unchanged. The three bedroom apartment will be reduced to a two bedroom apartment. The sign is proposed to be placed 7 feet above grade which requires a variance because it falls outside the building sign location band which is between 8 and 12 feet above grade. The covered porch is set back approximately 2 feet further from the Glenridge Avenue front property line than the adjoining building to the west. Although nonconforming with the ordinance, this deviation is minimal and is barely discernable to the public. The Board questioned Mr. Mylan. Mr. Trevenen indicated that he has spoken with Township Engineer and Township Attorney regarding the 4 foot high decorative fence proposed in the Right of Way along the Glenridge Avenue and Forest Street property lines. No questions were offered by the public.

The Board took a short recess. After the break the Board continued the application. Brenda King, DVM, was sworn. She stated that she has owned the property since 1986. The proposed modifications will improve the functionality of her practice. The ADA accessible ramp leading to a covered porch on the southwest corner of the proposed addition would provide much improved access for people and pets that have difficulty with large stairways. There are 4 employees, including herself. The 2 on-site parking spaces are utilized by the employees during office hours. The apartment utilizes the parking spaces after 8 pm. There is available public parking on the street and municipal lot. The applicant agreed to reduce the size of the sign to 6 feet wide by 2 feet high. The Board questioned Dr. King. No questions or comments were offered by the public. Mr. Trevenen summarized the application.

The Board discussed the application. The proposed expansion of the veterinarian office will increase functionality and constitutes appropriate modernization of the facility and advances the purposes of the Municipal Land Use Law. Based upon the roof line and configuration of the southern elevation combined with the reduced sign size, the proposed location of the sign is the most appropriate and will facilitate identification of the site in an aesthetically pleasing manner. Approval of this application will have no adverse impact on area properties as there will be no increase in intensification of the veterinarian office use. The Board finds there will be no substantial detriment to the public good in approving this application. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved, subject to the following conditions:

1. The applicant shall comply with the recommendations contained in a memorandum from W. Thomas Watkinson, Montclair Zoning Board Engineer, dated June 11, 2009.
2. The applicant shall obtain approval from the Township Council to install a proposed fence in the right-of-way along the Glenridge Avenue and Forest Street property lines.
3. The plans shall be revised to reduce the wall mounted sign on the southern façade of the building to 6 feet wide by 2 feet high.

4. Boarding of animals shall be prohibited.

Chair Harrison was recused. Temporary Chair Susswein called the application of **Phoenix Partnership, 365 Bloomfield Avenue**. Cal Trevenen, Esq. appeared as attorney for the applicant and described the application for a use variance to occupy a portion of the first floor building as an adult ballroom dance studio. Paul Sionas, Architect and Professional Planner, was sworn. He proceeded with his testimony as an Architect.

Marked into evidence were:

- A-1 Site plan drawing in color, prepared by Sionas Architecture
- A-2 2 photographs of the building on the subject property
- A-3 4 photographs of the building on the subject property
- A-4 Lower level and first floor plan, prepared by Sionas Architecture
- A-5 First floor plan depicting proposed dance studio
- A-6 1 photograph of the building on the subject property

The subject property is a corner lot located at the intersection of Bloomfield Avenue and North Willow Street and contains lot area of 7,372 square feet. The property is improved with a three-story building and parking garage below the building. The building was constructed in 1905 and was badly damaged by fire in the mid 1980's and was substantially reconstructed as "The Phoenix" on or about 1988. By resolution adopted March 9, 2009 the Planning Board granted site plan and variance approval to construct a third story addition to the building. . The application contemplates utilization of 3,201 square feet of the first floor as an adult ballroom dance studio which includes a reception area, two activity rooms, three offices, a kitchenette and rear doorway leading to a common area. The Board questioned Mr. Sionas. No questions were offered by the public.

Lori Soderholm was sworn. She stated that she is one of 2 principals of Simpatico Rhythms LLC and explained the business relationship to Arthur Murray Dance Studios. The anticipated hours of operation are 1:00 p.m. to 10:00 p.m. Monday through Friday and 9:00 a.m. to 2:00 p.m. on Saturday, with occasional extended hours on Saturday evenings. There would be a limited display and retail sale of ballroom dance wear, shoes and jewelry. The use is strictly limited to an adult ballroom dance studio and the storefront would remain open, as they prefer public visibility of their studio. The Board questioned the witness. No questions or comments were offered by the public. Tom Lonergan, Executive Director of the Montclair Business Improvement District, was sworn. He stated that the organization, known as the Montclair BID, is a public/private partnership with the goal of revitalizing the downtown commercial district through a wide variety of projects and programs. He stated that he is present on behalf of the organization in support of the application. It is anticipated that patrons of the adult ballroom dance studio will avail themselves of the restaurants and shopping opportunities in the downtown and the unobstructed windows contemplated by the dance studio benefit the downtown business environment.

Marked into evidence were:

A-7 Letter of support, from the Montclair Business Improvement District

The Board questioned the witness. Mr. Lonergan stated that the support of the Montclair Business Improvement District is limited to the particularly proposed use due to its unique characteristics. No questions or comments were offered by the public.

Steven Plofker, majority member of the Phoenix Partnership, was sworn. Mr. Plofker stated that there are approximately 65 parking spaces total on the subject property and nearby properties that are under the control of the same ownership. They utilize a shared parking arrangement for the various tenants and visitors. The majority of the tenants utilizing these parking spaces are offices, and that parking is highly available after 5 pm on weekdays. The staff of the proposed dance studio would have access to the secure garage parking in the lower level of the subject property, while the customers would utilize the available surface parking on the nearby surface lots. The Board questioned the witness. He stated that there has not been significant interest in the first floor space from typical retailers. No questions or comments were offered by the public.

Mr. Sionas was recalled and provided testimony as a Professional Planner. The proposed adult ballroom dance studio on a portion of the first floor will complement the existing office uses on the second and third floors. There is available on-site parking and peak parking demand varies from the existing office uses. It is anticipated that patrons of the adult ballroom dance studio will avail themselves of the restaurants and shopping opportunities in the downtown. Approval of this application is consistent with the goals contained in the Master Plan Reexamination Report (2006) specifically, seeking to revitalize the town center and marketing the town center as an arts and entertainment district. The proposed use 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; provides sufficient space in an appropriate location for the proposed use and promotes a desirable visual environment. The application is not inconsistent with the character of the neighborhood and will not adversely impact the public good. The Board questioned the witness. No questions or comments were offered by the public.

Mr. Trevenen summarized the application. The Board discussed the application. On motion by Mr. Whipple, seconded by Ms. Cockey, the application was approved, subject to the following condition:

1. As stipulated by the applicant, the use is strictly limited to an adult ballroom dance studio which shall maintain an open store front.

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