

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**August 19, 2009**

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

ABSENT: Mr. Burr, Mr. Whipple, 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. Vice Chair Fleischer indicated that the Township failed to send the public notice for the scheduled applications to the Montclair Times, and that as a result, the applications could not be heard at this meeting. He apologized to the applicants for the inconvenience. During the discussion about this, the Board Chair telephoned in and was updated on the situation. Mr. Sullivan announced that the applications should be carried to a special meeting, for which a public notice will be sent to the Newark Star Ledger. The mailing of the notice that was already completed by each applicant would carry to the special meeting date. On motion by Ms. Cockey, seconded by Ms. English, the applications of **Craftco, 14 No. Willow Street and 173 Glenridge Avenue; Doug & Melissa Legters, 18 Edgecliff Road; Anne Caldas & Mark Wyville; 15 Macopin Road; William Beren and JoAnn Katzban, 98 Gordonhurst Avenue; and Joshua Feldman and Miranda Sherwin, 35 Woodmont Road** were carried to a special meeting scheduled for September 2, 2009.

On motion by Mr. Susswein, seconded by Ms. English, the **Minutes of the June 17, 2009** regular meeting were adopted as modified, Ms. Holloway abstaining. On motion by Mr. Susswein, seconded by Ms. English, the **Minutes of the July 8, 2009** special meeting were adopted as modified.

On motion by Mr. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Steve Marshall, 200 Claremont Avenue** was adopted, Vice Chair Fleischer abstaining:

**WHEREAS**, Steve Marshall, as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval, use variance, bulk variances and waivers to convert the existing multi-family residential building to a mixed use building containing a realtor's office and dwelling unit on property designated as Lot 7 in Block 2310 on the Montclair Township Tax Map and located in the OR-3 Garden Apartment and Office Building Zone; and

**WHEREAS**, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(3) for failure to comply with the requirement that front yard areas shall have a residential appearance as required by Montclair Code Section 347-60B(1).

2. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit an unenclosed exterior fire escape contrary to Montclair Code Section 347-60B(2).
3. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit six off-street parking spaces where a minimum of eleven are required pursuant to Montclair Code Section 347-60B(3).
4. Variances pursuant to N.J.S.A. 40:55D-70c to allow lot width of 72 feet and lot area of 7,817 square feet where a minimum of 75 feet and 12,000 square feet respectively are required pursuant to Montclair Code Section 347-62.
5. A variance pursuant to N.J.S.A. 40:55D-70c to allow a setback of 26.5 feet from North Fullerton Avenue where a minimum of 30 feet is required pursuant to Montclair Code Section 347-64B.
6. Variances pursuant to N.J.S.A. 40:55D-70c to allow three parking spaces within the required 30 foot front yard setback from North Fullerton and failure to provide a 3 foot separation from the building to an off-street parking space contrary to Montclair Code Section 347-65.
7. A waiver pursuant to N.J.S.A. 40:55D-51 to allow parking stalls with less than the required 19 feet in length.
8. A waiver pursuant to N.J.S.A. 40:55D-51 to permit less than the required 5 foot wide landscaped screen abutting an off-street parking area.

**WHEREAS**, the applicant submitted a site plan, floor plans and elevations prepared by Alan Feld, Architect, Sheets A-1 through A-4 dated October 29, 2008 revised July 8, 2009, and a Grading and Drainage Plan prepared by Beardslee Engineering dated July 8, 2009; and

**WHEREAS**, this matter came on to be heard at regular meetings of the Board of Adjustment held on April 15 and July 15, 2009, 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 subject property is a corner lot located at the intersection of Claremont Avenue and North Fullerton Avenue and contains 7,817 square feet of lot area. The property is improved with a residential building containing eight apartments and no on-site parking.
2. The application contemplates conversion of the first and second floors of the building to a real estate office which will occupy 2,815 square feet including the proposed enclosed stairway. A one bedroom dwelling unit containing 903 square feet of

floor area is proposed on the third floor. A total of six on-site parking spaces will be provided.

3. The primary access to the third floor dwelling unit is through a new enclosed staircase. An unenclosed external fire escape will provide an emergency access which represents a public benefit.

4. The application contemplates the installation of six on-site parking spaces where none currently exist. The testimony established the real estate office generates limited demand for on-site parking. Based upon topographic conditions, the applicant is unable to provide additional on-site parking due to the location of the building, existing improvements and topographic conditions on site which result in peculiar and exceptional practical difficulties and undue hardship upon the applicant. Although the parking area intrudes into the front yard setback from North Fullerton Avenue, the benefits of providing the parking substantially outweigh any aesthetic detriments.

5. Based upon the aforementioned peculiar and exceptional practical difficulties, the applicant's request for variances relating to lot width, area and setbacks represent only minor deviations from the Ordinance without any adverse impact on adjacent properties.

6. The proposed conversion from multi-family residential without any parking to the real estate office and dwelling unit with six on-site parking spaces 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); provides sufficient space in an appropriate location for the proposed use (-2g) and promotes a desirable visual environment (-2i).

7. The Board is cognizant of the practical difficulties in developing the property due to existing improvements and the physical conditions of the property identified herein. The applicant's request for waivers relating to length of parking stalls and landscaped screen abutting an adjacent parking area are reasonable and the literal enforcement of the Ordinance is impractical and will exact undue hardship on the applicant because of the aforementioned peculiar conditions pertaining to the development.

8. The applicant initially proposed a wood fence along the westerly side property line measuring 6 feet in height. 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 Montclair Code Section 347-27A(2).

9. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

10. The application complies with the conditional use standards contained in Section 347-60B except for a front yard parking area, insufficient on-site parking and an exterior fire escape. Despite the deviations from the aforementioned conditional use standard, the Board determined the site continues to be appropriate for the conditional use consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved 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 proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant proved that 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 Steve Marshall, for site plan approval, use variance, bulk variances and waivers is hereby 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.

**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. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Brenda King, DVM, 200 Claremont Avenue** was adopted, Vice Chair Fleischer abstaining:

**WHEREAS**, Brenda King, DVM, as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval and variances to construct an addition to the existing veterinarian office on the subject property, designated as Lot 34.01 in Block 3201 on the Montclair Township Tax Map and located in the "Center Area" of the C-1 Zone; and

**WHEREAS**, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to expand the preexisting nonconforming veterinarian use contrary to Montclair Code Section 347-112.
2. A variance pursuant to N.J.S.A. 40:55D-70c 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 contrary to Montclair Code Section 347-83B(2).
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit a wall sign 7 feet above grade which is outside of the building sign location band required by Montclair Code Section 347-109A(5).

**WHEREAS**, the applicant submitted a site plan, floor plans and elevations prepared by the Mylan Architectural Group, Sheets SP-1, SP-2, A-1 and A-2 revised through March 25, 2009 and a topographic survey prepared by Stewart Surveying & Engineering, LLC dated June 21, 2006; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on July 15, 2009, at which time it was established that notice was properly published and that 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 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.

2. The application contemplates expansion of the veterinarian office by virtue of 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.

3. The applicant initially proposed a 9 foot 8 inch wide by 2 foot high wall sign on the southern façade of the building identifying the veterinarian use. At the public hearing, the applicant agreed to reduce the size of the sign to 6 feet wide by 2 feet high. 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 lies between 8 and 12 feet above grade. 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.

4. 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.

5. 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 contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a); provides adequate light, air and open space (-2c); provides sufficient space in an appropriate location for the proposed use (-2g) and promotes a desirable visual environment (-2i).

6. Based upon the Board's particular knowledge of local conditions, 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. Consequently, the Board finds there will be no substantial detriment to the public good in approving this application.

7. Based upon the nature and scope of the addition, approval of this application is not inconsistent with the intent and purpose of the Zoning Ordinance and Master Plan.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved 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 proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant proved that 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 Brenda King, DVM, for site plan approval and variances relating to use, building setback and sign location is hereby 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.

**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. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Phoenix Partnership, 363-367 Bloomfield Avenue** was adopted, Vice Chair Fleischer abstaining:

**WHEREAS**, Phoenix Partnership, as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70d(1) to occupy a portion of the first floor building as an adult ballroom dance studio contrary to Montclair Code Section 347-80B(2) on property designated as Lot 1 in Block 3206 on the Montclair Township Tax Map and located in the "Center Area" of the C-1 Central Business Zone; and

**WHEREAS**, the applicant submitted a floor plan prepared by Sionas Architecture, Sheet D1 dated June 3, 2009 and a property survey prepared by P<sup>2</sup> Land Surveying Inc. dated May 29, 2007; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on July 15, 2009, at which time it was established that notice was properly published and that 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 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.

2. 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.

3. 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. 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. Limited display and retail sale of ballroom dance wear, shoes and jewelry is also proposed.

4. 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.

5. 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.

6. 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 (-2a); provides sufficient space in an appropriate location for the proposed use (-2g) and promotes a desirable visual environment (-2i).

7. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

8. It is anticipated that patrons of the adult ballroom dance studio will avail themselves of the restaurants and shopping opportunities in the downtown thus further encouraging the revitalization of the Central Business District consistent with the intent and purpose of the Master Plan and Zoning Ordinance.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved 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.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair, that the within application of Phoenix Partnership for a variance pursuant to N.J.S.A. 40:55D-70d(1) to allow an adult ballroom dance studio is hereby 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.

**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 scheduling of special meeting dates to continue the application of **Omnipoint Communications, Inc., 153 Park Street**, 2009 was postponed until the September 16, 2009 regular meeting of the Board at the request of the applicant. No further notice would be given. The Board had been granted an extension of time on the application. On motion by Ms. English, seconded by Mr. Susswein, the continuation of the application of **Joseph & Holly Christovao, 22 Macopin Avenue** was postponed to the September 16, 2009 regular meeting of the Board, at the request of the applicants. No further notice would be given. The Board was granted an extension of time on the application.

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