

MINUTES OF THE BOARD OF ADJUSTMENT
November 17, 2010

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

ABSENT: Ms. Talley, Secretary, Ms. English, and Ms. Holloway

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. Whipple, seconded by Mr. Susswein, the **Minutes of the October 20, 2010** regular meeting were adopted as modified, Mr. Fleischer abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the **Closed Session Minutes of the October 20, 2010** regular meeting were adopted, Mr. Fleischer abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Mr. & Mrs. Andrew Cohen, 119 Montclair Avenue** was adopted, Mr. Fleischer abstaining:

WHEREAS, Mr. & Mrs. Andrew Cohen, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c associated with a proposed addition to the dwelling on property designated as Lot 3 in Block 4402 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested variances from **Montclair Code Section 347-45C(1)** for a side yard setback of less than 6 feet from the southerly side property line, and from **Montclair Code Section 347-45C4(a)** for a principal structure width exceeding the maximum permitted; and

WHEREAS, the applicant submitted a property survey dated March 31, 1992 and plans prepared by George A. Held, AIA & Associates dated July 8, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 20, 2010 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 property is located in the R-1 One Family Zone, contains a single family dwelling, and measures 64 feet in width and 163 feet in depth.

2. The proposed addition would expand the second floor and attic space of the dwelling and would be positioned over an existing one story section located at the southerly side of the dwelling. The addition measures 9 feet 10½ inches by 19 feet 10 inches and would contain a bathroom and dressing room connected to the master bedroom on the second floor.

3. The southerly side yard setback of the existing dwelling is nonconforming at 4.8 feet from the rear corner of the one story section at the southerly side of the dwelling where a minimum of 6 feet is required. The addition is aligned with the existing one story section and would have the same nonconforming side yard setback from the southerly side property line which requires a variance.

4. The dwelling width is limited to 41.6 feet, or 65 percent of the 64 foot lot frontage width of the property. The existing dwelling measures 43.66 feet in overall width, which exceeds the maximum width of 41.6 feet permitted for the property by 2.06 feet. The proposed addition would extend the width of the dwelling for the areas above the first floor to the nonconforming width of 43.66 and a variance is requested.

5. The Board determined that the requested variances could be granted. The proposed addition is aligned with the existing one story section below it. The side yard setback variance is minimal and is caused by the angled positioned of the dwelling to the to the southerly side property line. The proposed widening of the second floor to match the first floor below it would also not result in the dwelling being out with character with the existing homes in the neighborhood; 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 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 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 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 application of **Mr. & Mrs. Andrew Cohen** 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.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Robert Adler & Anne-Marie Nolin, 235A Christopher Street** was adopted, Mr. Fleischer abstaining:

WHEREAS, Robert Adler & Anne-Marie Nolin, 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 associated with a proposed addition to the dwelling on property designated as Lot 12 in Block 4502 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance from **Montclair Code Section 347-45C(1)** for a side yard setback of less than 6 feet from the northerly side property line; and

WHEREAS, the applicant submitted a property survey dated October 29, 1990 and plans prepared by Stephen P. Rooney, dated August 11, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 20, 2010 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 property is located in the R-1 One Family Zone and contains a single-family dwelling. The lot is an irregularly shaped flag lot with 23.13 feet of frontage on Christopher Street and a total lot area of 10,564 square feet.
2. The proposed addition would expand a second floor area of the dwelling to provide a larger bathroom and storage space.
3. The existing dwelling has no setback from the northerly side property line. The northerly side wall in the area of the proposed addition would be extended eastward and upward under a new roof at this area of the dwelling and would be aligned with the existing northerly side wall with no setback, which requires a variance.
4. The Board determined that subject to the condition below, the requested variance could be granted. The proposed addition is small in size and is aligned with the existing northerly side wall of the existing dwelling. The dwelling would remain in keeping with the character with the existing homes in the neighborhood; 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 of **Robert Adler & Anne-Marie Nolin** is hereby approved, subject to the following condition:

1. Prior to construction of the addition, the applicant shall submit a letter from the owner of the adjoining northerly property that grants the applicant permission to access that property to the extent necessary for the construction of the addition.

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.

It was announced that at the request of the applicant, the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the December 15, 2010 regular meeting. No further notice would be given. The Board was granted an extension of time through December 31, 2010.

The application of **David Bauer, 27 Watching Avenue** was called. Mr. Bauer was sworn and described the application. The southerly rear corner of the dwelling would be squared off with a very small proposed addition associated with alterations to the kitchen. The required rear yard setback for the property is 36.3 feet or 30 percent of the lot depth. The existing dwelling has a nonconforming rear yard setback of 27.79 feet at its closest area. The area where the addition is located would have a rear setback of 32.03 feet and a variance is requested for a rear yard setback less than required. The addition would be built under an existing roof eave. The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be granted. The proposed addition is very small in size and is aligned with the existing exterior walls of at the southerly rear corner of the dwelling. The addition does not encroach any closer to the side and rear property lines than the existing dwelling and would not negatively impact any adjoining property. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved.

The application of **Mr. & Mrs. James O'Brien, 120 Chestnut Street** was called. Mr. O'Brien and George Held, Architect were sworn. Mr. Held described the application. Variances are requested for an addition proposed to the first floor of the dwelling. The property is located in the R-1 One Family Zone and contains a single-family dwelling and a detached garage. The lot measures 45.5 feet in width 139.86 feet in depth. A

previous owner of the property received a variance in 2003 for a second story addition. A one-story addition is proposed at the rear of the dwelling. The addition would contain a kitchen and mudroom. The existing dwelling has a nonconforming westerly side yard setback of 4.1 feet, where a minimum of 6 feet is required. The addition is aligned with the westerly side wall of the dwelling and requires a variance for a side yard setback less than 6 feet from the westerly side property line. The maximum permitted principal building coverage is 25 percent of the lot area. The existing coverage is at 23.4 percent of the lot. With the proposed addition and stairway, the principal building coverage proposed is 27.4 percent of the lot area and a variance is requested. The rear yard contains two detached garages and the plan calls for the removal of the smaller of the two detached garages.

Exhibits marked:

A-1 through A-5: 5 photographs of the subject property

The Board questioned the applicant. The applicant is planning to landscape the area of the rear yard where the smaller detached garage and pavement in front of that garage would be removed. The Board discussed the application and determined that the requested variances could be granted subject to the condition below. The proposed addition is aligned with the westerly side wall of the existing dwelling. The property is relatively narrower and shallower than the vast majority of properties in the neighborhood. The addition would not have a negative impact on any adjoining property, and the dwelling would remain in keeping with the character with the existing homes in the neighborhood. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved subject to the following condition:

1. The smaller of the 2 existing accessory buildings in the rear yard shall be removed and that area of the rear yard shall be landscaped and not paved.

The continuation of the application of **Hillside Square, LLC, 8 Hillside Avenue** was called. David Owen Esq. appeared as attorney for the applicant. Prior to the arrival of Ms. Cockey, Mr. Owen described the revised public notice that includes a fence height variance and introduced the following exhibits:

Exhibits marked:

A-15 Layout Sheet, revised 11/5/10, with color added, by Petry Engineering
A-16 Lighting Plan, dated 11/5/10, with color added, by Petry Engineering
A-17 Landscape Plan, revised 11/1/10, with color added, by Sionas Architecture
A-18 Stormwater Management Report, dated 8/30/10, by Petry Engineering

Ms. Cockey arrived. Mr. Owen recalled Mr. Petry to describe the revisions to the site plan. Two landscape islands have been eliminated from the plan in order to eliminate all of the compact parking spaces. As a result, the total number of proposed parking spaces on the site has been reduced from 75 to 74 parking spaces. The existing chain link fencing that runs along the rear and easterly side property lines of the

subject property is to be removed and replaced with either a solid wood fence or a solid wood fence and dry laid stone wall combination, which would help to shield the proposed parking area from the adjoining residential properties. The Kid's Green Garden has been eliminated from the corner of the site. He described the revisions to the landscaping plan. A lighting plan has been submitted that depicts the intensity of lighting throughout the parking area.

The Board questioned the witness. Mr. Petry stated that with the revisions the percentage of landscaping within the interior of the parking area went from 2.8 percent to 1.8 percent, although the outside perimeter of the parking area is proposed to be heavily landscaped. He described the location of the central air conditioning units and the proposed transformer and the landscaping that would shield the transformer. He answered additional questions about the parking area and existing mature trees along property lines. He stated that the trench to be dug for a drainage pipe would be 18 inches deep located about 6 feet away from the trunks of certain mature trees, which would not negatively affect the health of the mature trees. Chair Harrison called for questions from the public. Abe Williams, 68 Orange Road asked about the plans and the trees located near his rear property line. Algernon Bhoomz, 66 Orange Road, asked about the plans, the trees located near his rear property line, the lighting plan, noise generated by the central air conditioning units, and the stormwater drainage plan. Francisco Artigas, 64 Orange Road, asked why the location of the proposed fence bordering the rear of the Orange Road properties has to be relocated closer to the property line than the existing fence. Bob Silver, of Hillside Square, LLC, who was still under oath, indicated that the new fence could remain in the same location as the existing fence.

The Board took a short recess until 9:30 pm. Upon reconvening, Mr. Owen called Harold Maltz, P.E., who was sworn and described the traffic evaluation he completed for the application. Traffic counts were done at the intersection of Hillside Avenue and Orange Road for the morning and evening peak periods on 2 dates: Tuesday, June 8, 2010 and Wednesday, October 6, 2010. The morning traffic studies were extended to 9:30 a.m. to include traffic associated with the elementary school across the street from the subject property. He described the existing site, the proposed use and parking plan, the existing street/roadway conditions, existing traffic volumes, and traffic projections. He also described the on-street and off-street parking capacity and the site traffic circulation. Mr. Maltz concluded that existing traffic conditions are operating at a very good level of service at all peak hours. The application would only generate minimal peak hour traffic and the traffic conditions would still operate at a very good level of service. He stated that the subject application is very similar to the approved application for the office building at 33 Plymouth Street. He has recently observed the actual parking lot usage for 33 Plymouth Street and saw no indication of a parking shortage.

Exhibit marked:

A-19 Two photographs depicting street parking on both sides of Hillside Avenue including school bus parking

The Board questioned the witness. Pedestrian movements were not included in the traffic counts. Most of the new traffic generated by the application would be approaching Hillside Avenue from Orange Road. He provided additional information on the observed back up in traffic on Orange Road during a period of time after 9 a.m. that was caused by the increase in pedestrians crossing the intersection of Hillside Avenue and Orange Road associated with the elementary school. Five or four single family dwelling units would produce less peak hour traffic than the proposed use. The public questioned the witnesses. Stephanie Wood, 62 Orange Road asked several questions pertaining to the safety of pedestrians crossing Orange Road.

Frances Hall, 181 Satterthwaite Avenue, Nutley NJ, was sworn. She is the President of the Board of Trustees for First Church of Christ Scientist and provided some background on the property. The building and the property are very costly to maintain. Their congregation no longer requires a building or parking area of this size. The application is appealing to them since they would remain at the historic location of their congregation in Montclair and become a tenant of the property within an area of the building sized for their needs. There would be no change in their program, which includes a Sunday worship service and Sunday school, a Wednesday night meeting, periodic committee meetings, and a Board of Trustees meeting once a month. A secretary is present in their office during the week and they also have a Thanksgiving Day worship service. The Board questioned the witness. They have no ordained minister and no wedding and funeral services. No questions were offered from the public.

Mr. Owen called Peter Steck, Professional Planner, who was sworn. Mr. Steck described the subject property and the application. The subject property is 1.65 acres in size and contains the First Church of Christ, Scientist. It is located at the corner of Hillside Avenue and Orange Road, across the street from Hillside School. The site is bordered to the east and south by single-family homes and a one or two two-family homes and to the west by a garden apartment complex. The applicant proposes to modify the existing building and use the property for business offices, professional offices, medical offices and church use. The property is located in the R-1 zone and requires a use variance to permit commercial use of the property. The existing house of worship is a pre-existing use that is not permitted in the R-1 zone. In addition, the bulk variances are required for the number of parking spaces provided, the location of 3 parking spaces closer to Hillside Avenue than the building, the number of stories within the modified interior of the building, business signage, and fence height. A waiver is required from the site plan requirements for the percentage of landscaping within the perimeter of the parking area.

The Montclair Master Plan and re-examination reports recommended R-1 zoning for the property. The Master Plan documents do not encourage an increase in the proportion of multifamily development throughout the Township and do encourage commercial development. Although the property is not locally designated as a historic landmark, the building is architectural significant and preserving the building should be viewed as a significant benefit of the application. The existing church use is an inherently beneficial use which would remain on the site. The zoning ordinance allows

many accessory and ancillary uses on church properties by right that do not presently exist with the existing church and could exist if the property is used by another church instead of the applicant. The plan to use the large existing building for office use allows the existing church use to remain on the site in its currently limited form. The parking provided on the plan is sufficient since the church and the office tenants would not use the site simultaneously. Due to the proposed reuse of the existing building, the location of the property near to Orange Road and commercial districts, and the particular improvements associated with the plan, the proposed use would have a limited impact on the residential zone and the site is particularly suited for the proposed use.

Exhibit marked:

A-20 Planning Exhibit by Peter Steck, PP, dated October 18, 2010

The Board questioned Mr. Steck. The application does not result in a rezoning due to the overall size of the R-1 Zone in Montclair and the fact that the site presently contains a nonconforming use. A conforming development of a major subdivision to construct several single family dwellings would have a greater negative impact than the proposed application. The applicant could offer to limit the church use in the future to the existing minimal activity of the current church. No questions were offered from the public.

Chair Harrison called for public comment. Larry Englestein, 55 Myrtle Avenue, was sworn and stated his support for the application. The applicant has shown eagerness to work with the neighbors and reduce the impacts of their proposal. The Board briefly questioned Mr. Englestein. Stephanie Wood, 62 Orange Road, was sworn. She stated that the existing church is not a good neighbor and that she hopes that the current applicant would be a better neighbor. Francisco Artigas, 64 Orange Road, was sworn and stated his support for the application. The drainage improvements would benefit the neighborhood and the landscaping and screening would help to reduce some of the impacts of the parking area. Bashir Zivari, 51 Myrtle Avenue, was sworn and stated his support for the application. The preservation of the building is a benefit to the neighborhood. He prefers the stability of the application and opposed to the uncertainty of another church use or a larger residential development. Beth MacFarlane, 31 Trinity Place, was sworn and stated her support for the application. She resides across the street from the applicant's development at Academy Square on Plymouth Street. She stated that her neighborhood has benefitted from the applicant's involvement in a development project. John Falcone, 25 Plymouth Street, was sworn and stated his support for the application. He resides next door to the applicant's development at Academy Square on Plymouth Street. He stated that his neighborhood has benefitted from the applicant's involvement in a development project. Amy Dubuque, 45 Myrtle Avenue, was sworn and stated her support for the application. Algernon Bhoomz, 66 Orange Road, was sworn and stated his support for the application. The drainage improvements would benefit the neighborhood and the landscaping and screening would help to reduce some of the impacts of the parking area.

Mr. Owen stated that since there were only 6 Board members present, the applicant would like to conclude the application at the Board's next meeting. He may also call an additional witness and would also provide a summation. The Board was granted an extension of time. It was announced that the application would continue at the December 15, 2010 regular meeting of the Board. No further notice would be given. On motion by Mr. Susswein, seconded by Mr. Whipple the meeting was adjourned.