

MINUTES OF THE BOARD OF ADJUSTMENT
December 9, 2009

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

ABSENT: Ms. Cockey (recused), Ms. English, Mr. Whipple, and Mr. Franco, Secretary

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.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the **Minutes of the September 2, 2009** special meeting were adopted as modified, Mr. Burr and Ms. Holloway abstaining. On motion by Mr. Fleischer, seconded by Mr. Burr, the **2010 Schedule of Regular Meetings** was adopted. Mr. Kenney arrived.

Chair Harrison called the continuation of the application of **Falad Properties, LLC, 39-41 North Fullerton Avenue** and **David A. Faloni, Sr. and Molly Cotton, 30 Forest Street** and **Cofal Properties, LLC, 32 Forest Street and 43 North Fullerton Avenue**. David Owen, Esq. appeared as attorney for the applicants. On November 24, 2009, revised site plan drawings, prepared by Sionas Architecture, P.C., dated November 19, 2009 were submitted for the application. The property at 45 North Fullerton Avenue has been added to the application for site plan and variance approval. The lots containing 43 and 45 North Fullerton Avenue are to be merged into one lot. Mr. Owen stated that the 68th apartment located at 39-41 North Fullerton Avenue would be eliminated by the owner, although that they would need 6 to 8 months to do so. He also stated that the revised plans will not require the variance for exceeding the maximum allowed impervious surface coverage for the North Fullerton lots.

Mr. Owen recalled Peter Steck, P.P., and Professional Planner, who was still under oath. Mr. Steck described the revised application. The proposed major subdivision is unchanged. 45 North Fullerton Avenue is located in the OR-3 Garden Apartment and Office Building Zone and contains a 4-story residential building that contains 26 dwelling units. The existing driveway utilized to access the area behind 43 and 39-41 North Fullerton Avenue is partially located on this property as well as several parking spaces located alongside the driveway. The OR-3 Zone permits multiple dwelling units in 2½ story buildings at not more than 18 units per acre. The existing residential density on 45 North Fullerton Avenue is an existing nonconforming use, as 5.9 dwelling units are permitted on this site at its current lot size of 14,500 square feet. The building at 45 North Fullerton Avenue is also nonconforming to many bulk limitations for multifamily dwellings in the OR-3 Zone. The enlarged property formed by merging 43 and 45 North Fullerton Avenue yields a permitted residential density of 11.6 dwelling units. The combined number of dwelling units would be 29 on that property, which is a nonconforming use. A residential density 14.6 units is permitted on the

enlarged lot of 39-41 North Fullerton Avenue, where 67 units exist, also making it a nonconforming use.

Marked into evidence were:

- A-11 Exhibit consisting of an aerial photograph and diagram of site plan, prepared by Peter G. Steck, P.P., dated December 9, 2009
- A-12 Superior Court of New Jersey decision, dated May 31, 2006
- A-13 Planning Evaluation, prepared by Peter G. Steck, P.P., dated July 28, 2004

Mr. Steck described the subject properties in detail and the background of the rezoning in detail. The rezoning provides an opportunity for the creation of much needed off-street parking for the apartment buildings and office buildings on North Fullerton Avenue. Mr. Steck described how the proposed parking spaces are to be utilized by the residents of the subject North Fullerton Avenue properties. He stated that the tandem parking spaces proposed would be utilized by the households within the subject North Fullerton Avenue properties that own 2 cars. He described the revised plan and the variances, exceptions, and waivers requested. Use variances are requested in that the residential density of the properties located at 39-41 North Fullerton Avenue and the proposed merged lot containing 43 and 45 North Fullerton Avenue exceed the permitted residential density in the OR-3 Zone and are a nonconforming uses, and the proposed accessory parking areas each property constitute an expansion of the nonconforming use.

A variance is requested insofar as the proposed lot depths for the said Forest Street properties are less than the prescribed lot depths for those properties. Mr. Steck described the background of the rezoning and that that the proposed lot depth resulting from the proposed subdivision was considered acceptable by the Township Council considering the benefits of the application to provide and improve off-street parking for the North Fullerton properties. The zoning ordinance for accessory uses such as parking in the OR-3 Zone, promotes shared parking between properties containing permitted uses in the zone, although a variance is requested since the uses on the North Fullerton properties are not permitted in terms of their residential density. Mr. Steck cited the purposes of municipal land use law are advanced by the application and the special reasons supporting the use variances. The application reduces the residential density for the subject North Fullerton Avenue lots, provides more and improved parking that is properly constructed, allows for a more efficient use of land with shared parking and driveways, and provides aesthetic improvements with the proposed landscaping and site improvements. He also stated that the dimensional variances, exceptions and waivers are justifiable in the context of the plan as submitted due to existing site constraints or since the benefits outweigh the detriments. The application carries out the public purpose set forth by the governing body when the zone boundary was shifted, which satisfies the negative criteria. The Board questioned the Mr. Steck extensively. No questions were offered by the public.

Mr. Owen recalled Paul Sionas, Architect and Landscape Architect, who was still under oath. Mr. Sionas described the revised plan in detail. A total of 43 parking spaces

are proposed to be constructed. 22 of the parking spaces would be located on the merged lot, and 21 spaces are proposed on the enlarged lot of 39-41 North Fullerton Avenue. The two-way driveway providing access from North Fullerton Avenue to the proposed parking areas has been redesigned. The parking spaces along the side wall of the building at 45 North Fullerton Avenue have been removed allowing for an improved width through more of the driveway. The proposed driveway measures 16.5 feet at its narrowest point and a waiver is required, although the majority of the driveway does provide at least an 18-foot width. The driveway also requires a variance in that a driveway must be at least 6 feet away from a principal building, and the driveway abuts 43 and 45 North Fullerton Avenue. All other driveways on the properties comply with the width and setback requirements. Parking space number 1 on the plan is 8 feet wide by 22 feet long and is a barrier-free parking space. This parking space is located in the front yard of 43 North Fullerton Avenue abutting the 2½-story building on the property. The parking space meets the standards for barrier-free parking. This parking space requires a variance in that parking is not permitted in a front yard, and must be at least 6 feet away from a principal building.

Marked into evidence were:

- A-14 Site Plan Details, sheet SP-1, color added, prepared by Sionas Architecture, P.C., dated November 19, 2009
- A-15 Site Plan Details, sheet SP-2, color added, prepared by Sionas Architecture, P.C., dated November 19, 2009
- A-16 Site Plan Details, sheet SP-3, color added, prepared by Sionas Architecture, P.C., dated November 19, 2009
- A-17 Enlarged portion of the Site Plan, sheet SP-2
- A-18 Letter from Richard J. Hingos, Jr., Licensed Surveyor, dated October 16, 2009, indicating setback and coverage information for 30 and 32 Forest Street

Mr. Sionas continued to describe the application. The parking area behind 43 North Fullerton Avenue has been significantly redesigned. A new parking area for 6 cars is behind 45 North Fullerton Avenue. These spaces are 9 feet by 18 feet each and are designed as tandem spaces, so that 3 spaces are in front of 3 other spaces. A variance is requested from in that that each parking space is required to be directly accessible from the aisle. Spaces 8 through 12 on this property conform to zoning and site plan requirements, except that no landscaping is depicted in the setback as required. Parking paces 13 through 22 comply with the 9-foot by 18-foot size requirement, although there are 3 tandem spaces included in this group as well which require a variance. The parking area on the proposed enlarged property of 39-41 North Fullerton Avenue has also been significantly redesigned. All 21 spaces comply with the size requirements of 9 feet by 18 feet required by the New Jersey Residential Site Improvement Standards, N.J.A.C. 5:21-4.15. All aisle widths and driveway widths also conform. The lot containing 39-41 North Fullerton Avenue would be at 69.7% impervious coverage, and the lot containing 43 and 45 North Fullerton Avenue would be at 68.3% impervious coverage. A total of 7 bollard-type light fixtures at 3 feet 4½ inches tall are proposed. A dumpster is located at the rear of the building at 39-41 North Fullerton Avenue that is enclosed with a 6-foot tall wood fence/gate. An existing trash enclosure

located between 39-41 North Fullerton Avenue and 43 North Fullerton Avenue is proposed to be removed. The Board questioned Mr. Sionas extensively. No questions were offered from the public.

The Board took a short recess. Mr. Owen stated that the applicants would like to revise the plan further and requested to continue at an upcoming meeting. Chair Harrison announced that the application would be continued at the January 20, 2010 regular meeting of the Board. There would be no requirement for additional public notice. The applicant may complete a public notice for the upcoming meeting if necessary based on the revised plan. The Board was granted an extension of time on the application. Chair Harrison stated that the members of the public that are present can provide their comments at the present time or attend the upcoming hearing and provide their comments at that time.

Jim Wallace, 39 North Fullerton Avenue, was sworn, and stated his support for the application.

Theresa Reed, 39 North Fullerton Avenue, was sworn and stated her support for the application, but also stated that the parking lot should be restricted for use by residents of the subject properties only.

Jonathan Meyer, 41 North Fullerton Avenue, was sworn and stated his support for the application.

Lawrence Olive, Esq., gave his appearance on behalf of Barbara Lombardi, 33 Forest, James Brunson 38 Forest Street, and Ene Smith, 34 Forest Street. He provided a legal argument against the application and stated that the application should be denied. There are plentiful parking spaces available off-site and the application negatively affects the Forest Street properties in the vicinity of the proposed parking area.

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