

MINUTES OF THE BOARD OF ADJUSTMENT
December 16, 2009

PRESENT: Chair Harrison, 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 (recused), Mr. Burr (recused), 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.

On motion by Mr. Susswein, seconded by Mr. Whipple, the **Minutes of the September 9, 2009** special meeting were adopted as modified, Ms. Holloway, abstaining. On motion by Mr. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the Board's decision on the application of **Stephen M. Twomey & Kathleen Carroll, 217 Inwood Avenue** was adopted, Ms. Cockey and Ms. English abstaining:

WHEREAS, Stephen M. Twomey & Kathleen Carroll, as owners, 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 from **Montclair Code Section 347-46A(2)(a)** for an easterly side yard setback less than required for a detached garage proposed on property designated as Lot 5 in Block 1807 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated June 19, 1995, and a plot plan, first floor plan, elevations, and details prepared by Downtown Group, Architects, dated October 21, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 18, 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 property is an interior lot located in the R-1 One-Family Zone and contains a 2½-story single-family dwelling with a detached one-car garage located at the northeasterly rear corner of the lot. The property measures 75 feet in width by 150 feet in depth. The existing detached one-car garage is to be demolished.

2. The existing detached garage measures approximately 13 wide by 20 feet long, and has a nonconforming side yard setback 0.50 and 0.90 feet from the easterly side property line, as measured from the front and rear corners on the easterly side of

the garage, respectively. The existing garage has a rear yard setback of slightly more than 10 feet.

3. The proposed garage is for 2 cars, would measure 20 feet wide by 24 feet long, and would be shifted to the west to increase the easterly side yard setback to 3 feet. A variance is requested in that a side yard setback of no less than 6 feet is required and a side yard setback of 3 feet is proposed from the easterly side property line.

4. A conforming rear yard setback of 10 feet and a conforming height of 14 feet 9 inches are proposed. The existing driveway would be modified to accommodate the relocated and enlarged garage. The plan also depicts an existing drywell that would be relocated closer to the center of the yard with the proposed construction.

5. The Board determined that the requested variance could be granted. The existing easterly setback is being improved by the application which results in a benefit to the adjacent neighbor. The proposed easterly side yard setback is in keeping with or greater than that of similar properties in the neighborhood. Subject to the conditions imposed below, the application would have no substantial detriment to the public good; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 applicants 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 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 **Stephen M. Twomey & Kathleen Carroll** is hereby approved, subject to the following conditions:

1. All roof leaders on the proposed garage shall be directed away from the easterly side yard, and shall be directed towards the rear yard, the westerly side yard, or any underground drywells constructed in the rear yard by the applicant.

2. The ground surface of the easterly side yard setback of the proposed garage shall be landscaped with vegetation and not paved or surfaced with gravel.

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. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the Board's decision on the application of **Dennis Ramsammy, 10 Maple Avenue** was adopted as modified, Ms. Cockey and Ms. English abstaining:

WHEREAS, Dennis Ramsammy, as owner, 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 from **Montclair Code Section 347-51** for side yard setbacks less than permitted, to exceed the maximum permitted principal structure width, and to exceed the maximum permitted principal structure lot coverage for a two-story addition onto an existing dwelling on property designated as Lot 42 in Block 4107 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a property survey dated October 6, 2009, and a plot plan, a floor plan, and elevations, prepared by MBA Architects, revised October 26, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 18, 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 property is an interior lot measuring 35 feet wide by 100 feet deep, is located in the R-2 Two-Family Zone, and contains a two-story, two-family dwelling and a detached garage in the rear yard. A two-story addition has been constructed at the rear of the dwelling without obtaining the required construction permits and zoning review from the Township. The applicant is seeking variances associated with the addition.

2. The existing dwelling has nonconforming side yard setbacks of 2.9 feet from the southerly side line and 7.5 feet from the northerly side line. A variance is requested in that minimum side yard setbacks of 6 feet and 10 feet are required for the addition and lesser side yard setbacks of 2 feet 11 inches from the southerly side line and 7 feet 9 inches from the northerly side line are proposed for the addition.

3. The existing dwelling has a nonconforming width of 24.5 feet. The addition does not widen the dwelling, but the ordinance limits the addition to a maximum of 22 feet 9 inches in width, or 65 percent of the lot width. A variance is requested in that the width of the addition measures 24 feet 1 inch in width.

4. The existing dwelling, excluding the addition, has a nonconforming principal structure lot coverage of approximately 25.5 percent where a maximum of 25 percent of the lot area is permitted. A variance is requested in that a principal structure lot coverage of approximately 28.5 percent is proposed.

5. The Board determined that the requested variances could be granted. The lot is undersized in terms of lot area and lot width. Regarding the variances requested for the side yard setbacks and the principal structure width, the addition slightly improves upon the existing nonconformity of the existing dwelling. Regarding the variance requested for principal structure lot coverage, while the dwelling was very close to conformity prior to the addition, the addition is small in size, and based on the Board's knowledge of local conditions, the resulting principal structure lot coverage would be in keeping with or less than that of the majority of nearby properties in the same zone.

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 **Dennis Ramsammy** is hereby approved, subject to the following conditions:

1. Any fences, wall, or pillars constructed in replacement of the wall and pillars recently constructed in the public right-of-way shall be located only on the subject property and shall conform to zoning requirements.

2. All central air-conditioning units on the subject property shall conform to zoning requirements.

3. The southerly side yard of the existing detached garage shall not be used for parking vehicles.

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 application of **David & Carrie Greenbaum, 91 Lloyd Road** was postponed until the January 20, 2010 regular meeting of the Board, as requested by the applicants. No extension of time was required at this time. On motion by Mr. Whipple, seconded by Mr. Susswein, the application of **The Mental Health Association of Essex County, Inc., 354 Orange**

Road was postponed until the January 20, 2010 regular meeting of the Board, as requested by the applicant. No extension of time was required at this time.

Ms. Cockey joined the meeting. Chair Harrison called the continuation of the application of **Immaculate Conception High School, Codey Field - 267 Orange Road**. James Lott, Esq. appeared as attorney for the applicant. On September 9, 2009 a use variance was granted subject to conditions. The applicant is now seeking certain bulk variances and site plan approval. Mr. Lott stated that a revised site plan would be presented at this hearing. Architectural plans dated December 4, 2009 were previously submitted on December 8, 2009 and already distributed to Board members. Mr. Lott described the applicant's pre-application conference with the New Jersey Department of Environmental Protection on December 3, 2009.

Marked into evidence was:

A-26 Memorandum of record, dated December 9, 2009, prepared by James Lott, Esq., summarizing the applicant's pre-application conference with the New Jersey Department of Environmental Protection (NJDEP). Also attached is an email response to the memorandum of record from the NJDEP agreeing with the summary information.

Mr. Lott recalled George Siller, Professional Engineer, who was still under oath. Mr. Siller also described the applicant's pre-application conference with the New Jersey Department of Environmental Protection on December 3, 2009, and stated that the DEP confirmed Immaculate's position that the existing field house can be demolished and rebuilt at its current location in the floodway, but only if all construction takes place in the existing footprint. Additionally, DEP advised that reconstruction at the current location in the floodway would require the field house to be elevated at least one foot above the flood hazard area design flood elevation. Reconstruction of the field house at its current location in the floodway would be cost-prohibitive and impractical. Elevating the building would significantly increase construction costs and reconstruction in the existing footprint would limit Immaculate to a two-story field house which is not practical for the use. Moreover, development in the flood hazard area should be avoided, especially where a feasible and practicable alternative exists. The flood hazard elevations were delineated in accordance with the Flood Hazard Control Act rules using Method 3 (FEMA fluvial method). DEP confirmed that this is an acceptable method to calculate flood hazard elevations and stated that DEP will not, and legally could not, require a stream study. This determination of the flood hazard area is substantially accurate and that an additional stream study is unnecessary and cost-prohibitive. The stream study cost is approximately \$45,000 and would take several months.

Mr. Siller stated that because any proposed access from Orange Road would cross the floodway, it would be subject to the Flood Hazard Control Act rules. Accordingly, any proposed access from Orange Road would have to be elevated one foot above the flood hazard area elevation and have no change to the existing floodway elevations. Essentially a bridge would be required for the portion of the access roadway that crosses the floodway, which would be cost-prohibitive. Additionally, DEP confirmed that any location within the flood plain would require the building footprint to be

constructed one foot above the flood plain's elevation and any fill to be compensated by removal of material within the flood plain. This would be cost prohibitive. The most suitable location for the proposed field house is the easterly side of the property closest to Sears Place, not the flood hazard area.

The Board questioned the witness. Chair Harrison called for questions from the public. Michael Manning, 16 Sears Place, asked several questions about the NJDEP rules and the permitting process. Mark Janifer, 15 Madison Avenue, asked several questions about the NJDEP rules and the permitting process. William Scott, 23 Cedar Avenue, asked several questions about the NJDEP rules and the permitting process. Michael Manning, 16 Sears Place, asked several more questions about the NJDEP rules and the permitting process. Mark Janifer, 15 Madison Avenue, asked several more questions about the NJDEP rules and the permitting process.

Mr. Siller submitted Sheet C-2 of the site plan drawings dated December 16, 2009, which was marked as an Exhibit. Reduced size copies were then distributed to Board members. Mr. Siller described the revised site plan and stated that it is not substantially different than the previous site plan. The Board's prior approval permitted a two story 4,045 square foot field house and requested the submission of plans for both a one story and a two story field house. The applicant elected to present only a one story proposal. It depicts a reduced floor plan on one-story measuring 3,696 square feet. He stated that the development of a two story structure was impractical and would not meet the applicant's needs. The drainage basin has been redesigned to avoid the removal of certain trees as requested by the Board. The driveway has been widened as it approaches the proposed building as requested by the Fire Department.

Marked into evidence was:

A-27 Amended Sheet C-2 of the site plan drawings revised through December 16, 2009 prepared by B. F. Langan Consultants, LLC.

The Board questioned the witness. The revised plan has not been submitted to the Board Engineer yet. He stated that the results of the calculations in the drainage report will not change as a result of the drainage basin redesign. The driveway is located at least 1 foot from any adjoining property and no variance is requested. The building is 26 feet away from the easterly property line.

Chair Harrison called for questions from the public. Leon Leach, 59 Madison Avenue, asked several questions about the revised site plan and the details provided. Mark Janifer, 15 Madison Avenue, objected to the submission of the revised site plan at the hearing. Mr. Lott stated that the changes reflected on the revised site plan are not substantial in nature. The revised plan is a supplement to the plan which was not necessary to be filed 10 days in advance of the hearing. Chair Harrison agreed that the changes made to the site plan were minor in nature and that Mr. Lott was legally correct. Mr. Sullivan agreed as well. The objection was overruled. Chair Harrison also stated that he was disappointed, however, that the applicant did not submit the plan further in advance than this evening and that the Board could have benefited from seeing the revisions sooner and having the Board Engineer's comments as well. Mr.

Janifer asked why a plan for a two-story alternative was not submitted. He also asked how spectators at football games will be able to walk through the narrow area between the playing field and Mr. Manning's property line when walking back and forth from the stands to the concession and restrooms during the game. Michael Manning, 16 Sears Place, asked several questions about the revised site plan and the details provided. He asked if the Engineer was aware that there was discrepancy between the square footage indicated on the architect plan and the actual measurement of the building depicted on the site plan. Mr. Siller stated that he plotted the footprint of the square footage provided to him by the Architect, who would testify later.

Mr. Lott called Peter Steck, Professional Planner, who was still under oath. Mr. Steck described the revised plan and the variances requested. Mr. Steck further described his opinions on the subject property being a through lot, how the property lines and required setbacks should be designated, and how to consider the appropriate minimum setbacks. He stated that the lot is unusually shaped and should be treated as a through lot. He clarified how the side lot lines should be identified and that there is no rear yard or rear line on the lot. He stated that due to the irregular shape of property, flood regulations on the property, and the low profile design of the field house, the proposed location and proposed setbacks are appropriate in any case. The requested fence height is approvable since the benefits to the public outweigh the detriments. The waiver for the driveway width is acceptable due to site constraints and hardship. The driveway will have very limited use and there is no functional reason to require a two-way width. Since the last meeting held on September 9, 2009, new State legislation has been enacted, and the Municipal Land Use Law has been changed. Schools are now specifically referenced as an inherently beneficial use. While the use variance has already been granted, the legislative change adds additional merit to the requested site plan waiver and bulk variance relief. The field and the proposed field house are fundamentally related to the school which is an inherently beneficial use. There are no substantial negative impacts associated with the application.

The Board questioned the witness. Mr. Steck provided additional information about the legislative change to the Municipal Land Use Law regarding schools as an inherently beneficial use. The Fire Department only requested the 20 foot width where the driveway approaches the building, which has been accomplished on the plan and is in keeping with their request. The waiver is requested for the width of the driveway as it first enters the property. Chair Harrison called for questions from the public. Mark Janifer, 15 Madison Avenue, asked several questions and asked how the plan promotes the goal of preserving open space. He also asked for further information on the classification of the use as an inherently beneficial use.

Mr. Lott recalled Joseph Haines, Architect who was still under oath. Mr. Haines described the revised architectural plans, dated December 4, 2009. The floor area was reduced further from 4,045 square feet to 3,696 square feet. The field house proposed by the applicant continues to be proposed as a single story for a number of reasons but mostly due to the need for required supervision of the students. Adding a second story also creates many other impractical conditions regarding accessibility issues and code compliance. The height remains at 22 feet 9 inches from grade to the peak of the roof. He described how the floor area reduction was achieved. No rooms were eliminated.

Certain rooms were reduced in size. The building could be fully sprinklered if required by code. A Knox box could be added to the driveway gate as requested by the Fire Department.

Marked into evidence was:

A-28 Architectural plan, prepared by Dassa Haines, dated December 4, 2009

The Board questioned Mr. Haines. Mr. Haines stated that he designed the building with a floor area to comply with the resolution condition limiting the building to 3,700 square feet. The footprint of the building as measured to the outside walls would actually measure 3,772 square feet. The interior could be further redesigned to reduce the overall outside footprint to 3,700 without much of a problem. He would need to take a few minutes to review this. The Board took a short recess. Upon returning, Mr. Haines described how the building could be redesigned so that the overall footprint would not exceed 3,700 square feet. An area measuring 3 feet by 24 feet that comprises parts of the concession and storage areas could be eliminated to achieve this.

Chair Harrison called for questions from the public. Milt Horowitz, 17 Madison Avenue, asked several questions about the accuracy of the floor plan. Mr. Haines addressed errors in the dimensions of the sub-varsity locker room and the weight room. Michael Manning, 16 Sears Place, asked if the footprint could be reduced further. He also asked several other questions about the design of the building. Mark Janifer, 15 Madison Avenue, asked why a basement is not utilized to reduce the footprint further. He also asked why a concession stand is necessary within the field house. He also asked why a two-story option wasn't further researched.

Mr. Lott stated that he had no further witnesses. Chair Harrison called for public comment. Leon Leach, 59 Madison Avenue, was sworn, made several comments, and stated his opposition to the application. The plans submitted had too many errors to be approved. Michael Manning, 16 Sears Place, was sworn, made several comments, and stated his opposition to the application. The proposed driveway poses a hazard to his family. The proposed driveway will be located very close to his front yard area and he has concerns about delivery trucks driving that close to his front yard. He also stated that the applicant has not done their due diligence on the DEP regulations. Mark Janifer, 15 Madison Avenue, was sworn, made several comments, and stated his opposition to the application. The plans submitted had too many errors to be approved. The applicant was supposed to significantly revise the plan and submit it earlier and the applicant has not done their due diligence on the DEP regulations. Milt Horowitz, 17 Madison Avenue, was sworn, made several comments, and stated his opposition to the application. The plans submitted had too many errors to be approved and a smaller building could have easily been designed.

Mr. Lott stated that he had nothing further and requested that the Board vote on site plan approval and the bulk variances. The Board discussed the application. In considering the variance requested for the rear yard setback of the proposed building, the Board determined the location of the proposed field house was the most appropriate given the unique shape of the property, flood hazard constraints and the existing

location of the field results in peculiar and exceptional practical difficulties and exceptional and undue hardship upon the applicant. Except for his testimony concerning the through lot and the fence, the Board adopted the conclusions of the applicant's planning witness who found the proposed location of the field house is the most appropriate and is consistent with the intent and purpose of the 1985 Master Plan and 2006 Master Plan Reexamination Report and Zoning Ordinance. Specifically, approval of this unique application provides for the long term preservation of open space and protection of the stream buffer. In reviewing the variance requested for the fence height, the Board determined that with the exception of the area around the dumpster, the applicant failed to prove any purposes of the Municipal Land Use Law would be advanced and no public benefit would result. In considering the waiver requested for the width of the two-way driveway as it enters the site, the Board determined that based upon the unique circumstances relating to the driveway, compliance with the Ordinance is impracticable and unnecessary and will exact undue hardship upon the applicant and the requested exception is reasonable and within the general purpose and intent of the Site Plan Ordinance. The Board also discussed a variety of conditions that could be imposed.

On motion by Mr. Susswein, seconded by Mr. Kenney, the application for site plan approval to demolish the existing field house and construct a new field house, rear yard setback variance and waiver relating to driveway width is hereby approved subject to the conditions below, and the requested variance for fence height was denied with the exception of the fence used as the dumpster enclosure, with Ms. English and Ms Cockey voting against the motion:

1. Access to the subject property from Sears Place shall be limited to service vehicles and emergency vehicles only.
2. The applicant shall provide for trash pick-up in the area of the field, bleachers and field house after all football games and at least once a week otherwise.
3. With the exception of the bathrooms that are accessible from the exterior of the building, use of the field house shall be limited to the school owner of the subject property.
4. Use of the field house shall be limited to 8:00 a.m. to 8:00 p.m. exclusive of coaches.
5. Lighting of the field is prohibited.
6. Use of the field shall be limited to daylight hours from 8:00 a.m. to 8:00 p.m.
7. The proposed light fixture adjacent to the Manning residence at 16 Sears Place shall be eliminated.
8. The area of the existing field house including the adjacent paved area shall be revegetated including the planting of shrubs and trees.

9. Prior to construction, the applicant shall obtain approval from the Township to make improvements in the right-of-way.

10. The applicant shall provide an Operations and Maintenance Manual for the proposed stormwater management system subject to review and approval by the Board Engineer.

11. No advertisements shall be permitted on the scoreboard.

12. The parking of construction vehicles and equipment shall not be permitted on the public streets.

13. The plans shall be revised to reduce the size of the field house not to exceed a 3,700 square foot building footprint measured to the outside faces of the exterior walls.

14. The proposed paved turnaround area shall be set back a minimum of 4 feet from the property line.

15. The applicant shall comply with conditions 1 through 4, 6 and 7 contained in the Board Engineer's review memorandum dated August 31, 2009. With reference to condition 5, the outlet structure shall be designed so as not to create a wet basin.

16. The proposed dumpster shall be relocated between the paved area and field house.

17. Additional landscaping including trees and shrubs shall be placed on the easterly side of the paved driveway area.

18. The southernmost red maple along the easterly property line shall be relocated further to the north outside the root zone of the adjacent tree.

19. The applicant shall comply with the recommendations contained in the memorandum from the Montclair Fire Department dated December 7, 2009.

20. The site plan shall be revised to be consistent with Sheet C-2 dated April 15, 2008 revised December 16, 2009 prepared by B. F. Langan Consultants, LLC and marked as Exhibit A-27 at the public hearing said revisions are subject to review and approval by the Board Engineer.

21. The security gate at the Sears Place driveway access shall be closed and locked at all times except to provide access for service vehicles and emergency vehicles only.

22. Lighting associated with the field house shall be shielded so as not to spill onto adjacent properties and shall be turned off daily no later than 8:30 p.m.

23. The plans shall be revised to provide a conforming fence except around the dumpster.

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