

MINUTES OF THE BOARD OF ADJUSTMENT
December 19, 2012

PRESENT: Chair Harrison, Mr. Burr, Ms. Checca, Mr. Edwards, Mr. Fleischer, Mr. Reynolds, and Vice Chair Whipple; also, Mr. Sullivan, Esq., Ms. Talley, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Kenney and Mr. Tsai

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. Fleischer, seconded by Mr. Whipple, the **Minutes of the November 14, 2012** regular meeting were adopted as modified, Mr. Burr and Mr. Reynolds abstaining.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following resolution memorializing the Board's decision on the application of **Montclair Kimberley Academy Foundation, 40 Upper Mountain Avenue** was adopted as modified, Mr. Burr and Mr. Reynolds abstaining:

WHEREAS, Montclair Kimberley Academy Foundation, (hereinafter "MKA") did make application, as amended, to the Board of Adjustment of the Township of Montclair for site plan approval to install a new turf athletic field, field house and parking area on property designated as Lot 2 in Block 405 on the Township Tax Map and located in the R-O Mountainside Zone; and

WHEREAS, the applicant requested variances pursuant to N.J.S.A. 40:55D-70d(3) as follows:

1. To permit street width of 28 feet on which the lot has frontage where a minimum of 35 feet is required pursuant to Montclair Code Section 347-12A(4).
2. To permit one driveway where a minimum of two separate driveways are required pursuant to Montclair Code Section 347-12A(6).
3. To allow a rear yard setback of 32 feet measured to the field house where a minimum of 100 feet is required pursuant to Montclair Code Section 347-12A(7).
4. To allow a northerly setback of 27 feet, westerly setback of 37 feet and easterly setback of 25 feet measured to the outdoor play area where a minimum of 50 feet is required pursuant to Montclair Code Section 347-12A(8).

WHEREAS, the applicant submitted a site plan consisting of Sheet LT-1 (cover) undated, Sheet S-1 dated June 30, 2012 and Sheets EP-1, R-1, L-1, G-1, P-1, SD-1,

SD-2, C-1 and C-2 dated August 14, 2012 prepared by MKW & Associates, LLC, floor plans and elevations consisting of Sheet A1.00 dated July 5, 2012 prepared by NK Architects and a stormwater management report prepared by Cityscape dated July 2012; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 14, 2012, 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 contains approximately 2.974 acres with approximately 480 feet of frontage on Upper Mountain Avenue. It is improved with a natural grass playing field, two story building with garage and gravel parking area. West of the subject property are single family homes that front on Prospect Avenue. North and south of the subject property are single family homes. Van Vleck Gardens, a single family residential home and an apartment building are located east of the subject property across Upper Mountain Avenue.

2. MKA operates an independent school with grades from pre-kindergarten through twelfth grade on three campuses. MKA received approval to construct an athletic field at the subject property by resolution adopted by the Montclair Planning Board on November 3, 1986.

3. The applicant's proposal includes the following:

A. Enlarge the existing athletic field and convert it to synthetic turf primarily for girls field hockey, boys and girls lacrosse practices and competitive games against other schools in those sports.

B. The property will be regraded and retaining walls installed and the existing berm at the southern end of the field will be eliminated and replaced by a paved parking area consisting of 23 spaces including two handicap spaces, curbing, lighting and a gravel area to allow for buses to turn around.

C. Portable bleachers on wheels will be located behind the benches.

D. The existing two story, 3,700 square foot building which is deteriorating and utilized for bathroom facilities and storage will be demolished and replaced with a new 3,810 square foot one story field house containing changing rooms, bathroom facilities and storage.

E. A concrete plaza will be built around the field house, with a concrete sidewalk extending from the field house to the bleacher area.

F. The existing driveway will be relocated 20 feet south from its present location.

G. Substantial plantings including deciduous and evergreen trees shall be added around the perimeter of the site.

4. The subject property fronts on Upper Mountain Avenue which is 28 feet wide and does not comply with the 35 foot width requirement contained in the conditional use standards. This is a preexisting nonconforming condition which will not be exacerbated by approval of this application.

5. The conditional use standards require two separate driveways where one driveway is existing on the site. The Board determined that one driveway is adequate and allows for safe access to the proposed parking area.

6. The rear yard setback to the new field house is 32 feet where 16 feet is existing and a minimum of 100 feet is required in the conditional use standards. The Board determined the location of the field house is the most appropriate, is adequately screened and provides adequate light, air and open space.

7. The conditional use standards require a minimum setback of 50 feet to the outdoor play area where the proposal provides a northerly setback of 27 feet, westerly setback of 37 feet and easterly setback of 25 feet. The Board determined the proposed setbacks are appropriate given the layout of the site and combined with the substantial screening will not substantially adverse area properties.

8. 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.

9. Approval of the application replaces an existing gravel parking area with a fully improved paved parking area facilitating safe and efficient on-site traffic associated with the turf athletic field resulting in benefits to the general public. Despite the deviations from the conditional use standards proposed by this application, 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.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair, that the within application of Montclair Kimberley Academy

Foundation for site plan and variances is hereby approved subject to the following conditions:

1. No goal posts or other permanent structures shall be installed on the subject property, other than those shown on the site plan.
2. No athletic activities shall be permitted on Saturdays or Sundays except for reasons of scheduling emergencies.
3. Competitive games against other schools shall be limited to lacrosse and field hockey, except for reasons of scheduling emergencies; however, under no circumstances shall competitive football games against other schools be permitted at any time.
4. The applicant shall comply with comments 2 through 14 contained in the report dated September 20, 2012 from W. Thomas Watkinson, P.E., P. P., Board Engineer.
5. No temporary or permanent lighting of the athletic field shall be permitted.
6. The applicant shall provide detail of the new portable bleachers to the Planning Department within thirty days of adoption of this resolution in order to confirm no enlargement of the size of the existing portable bleachers.
7. A permanent scoreboard shall not be permitted on site.
8. Parking lot lights shall be on timers and turned off two hours after sunset.
9. The applicant shall adhere to the lighting plan marked as Exhibit A-3 (Sheet SL-1 Site Lighting Plan, dated November 14, 2012, prepared by MKW & Associates, LLC) at the public hearing.
10. The applicant shall adhere to the landscaping plans marked as Exhibits A-2 (Sheet L-1 Plan Rendering, dated November 14, 2012, prepared by MKW & Associates, LLC) and A-6 (Sheet SK-2 Adjacent Building Offset From Property Line, dated November 14, 2012, prepared by MKW & Associates, LLC) at the public hearing.
11. All retaining walls shall conform to Ordinance standards.
12. Setbacks from the playing field shall be a minimum of 37 feet on the westerly side, 25 feet on the easterly side and 27 feet on the northerly side.
13. The plans shall be revised to reflect the tic marks at the northerly and southerly ends of the field shall be moved in ten feet from their current location.

14. The applicant shall comply with all applicable stormwater quality standards subject to the review and approval of Board Engineer Watkinson.

15. No permanent sound amplification system shall be permitted.

16. The applicant shall be responsible for payment of all escrow fees incurred in connection with review of this matter.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council and Township Clerk.

The Board discussed the **2013 Schedule of Regular Meetings**. On motion by Mr. Whipple, seconded by Mr. Fleischer, the 2013 Schedule of Regular Meetings was adopted. It was announced that at the request of the applicant, the site plan application of **Wallwood Gardens, Inc, 400 Orange Road** was postponed until the February 20, 2013 meeting of the Board. The Board was granted an extension of time and the applicant would be required to complete a full public notice for that pending date. It was announced that at the request of the applicant, the continuation of the application of **Montclair Child Development Center, Inc., 33 Fulton Street** was postponed until the January 16, 2013 meeting of the Board. The Board was granted an extension of time.

The Board remained in open session and briefly discussed the proposals from Mr. Sullivan as **Board Attorney for 2013** and Mr. Watkinson as **Board Engineer for 2013**. On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolutions appointing Mr. Sullivan as Board Attorney and Mr. Watkinson as Board Engineer at the indicated rates for the 2013 year were unanimously approved:

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-71b, provides that the Board may employ legal counsel, experts and staff as it may deem necessary, not exceeding, the amount appropriated by the governing body for its use; and

WHEREAS, the Board has determined it has the need to retain an attorney to provide legal services including, but not limited to advice and consultation, attendance at meetings, preparation of documents and representation of the Board in suits and other proceedings and other services as may be required from time to time; and

WHEREAS, the appointment of the attorney may be made without public bidding as an exception to the bidding requirements of the Local Public Contracts Law, as provided in N.J.S.A. 40A:11-5(1)(a)(i) as a professional service because legal services are rendered by persons authorized by law to practice their recognized profession, whose practice is registered by law and because such services are of a qualitative nature which will not reasonably permit the drawing of specifications or the receipt of competitive bid; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that it does hereby appoint Michael D. Sullivan, Esq. as Board Attorney to serve from January 1, 2013 to December 31, 2013 or until a successor is appointed; and

BE IT FURTHER RESOLVED that the officers of the Board of Adjustment are hereby authorized and directed to sign an Agreement in connection with such services, which agreement shall be on file with the Township Clerk; and

BE IT FURTHER RESOLVED that the Secretary of the Board is hereby directed to cause to be printed once, in an official newspaper of the municipality, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and the contract are on file and available for public inspection in the office of the Township Clerk.

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-71b, provides that the Board may employ legal counsel, experts and staff as it may deem necessary, not exceeding, the amount appropriated by the governing body for its use; and

WHEREAS, the Board has determined it has the need to retain an engineer to provide engineering services including, but not limited to advice and consultation, attendance at meetings, preparation of reports and other services as may be required from time to time; and

WHEREAS, the appointment of the engineer may be made without public bidding as an exception to the bidding requirements of the Local Public Contracts Law, as provided in N.J.S.A. 40A:11-5(1)(a)(i) as a professional service because engineering services are rendered by persons authorized by law to practice their recognized profession, whose practice is registered by law and because such services are of a qualitative nature which will not reasonably permit the drawing of specifications or the receipt of competitive bid.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that it does hereby appoint W. Thomas Watkinson as Board Engineer to serve from January 1, 2013 to December 31, 2013 or until a successor is appointed; and

BE IT FURTHER RESOLVED that the officers of the Board of Adjustment are hereby authorized and directed to sign an Agreement in connection with such services, which agreement shall be on file with the Township Clerk; and

BE IT FURTHER RESOLVED that the Secretary of the Board is hereby directed to cause to be printed once, in an official newspaper of the municipality, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and the contract are on file and available for public inspection in the office of the Township Clerk.

Ms. Checca arrived at the meeting. The application of **Patricia Sullivan, 97 Wildwood Avenue** was announced. The applicant was sworn and described the application to construct a new detached garage to replace an existing detached garage that was recently destroyed by a fallen tree. The existing nonconforming westerly side yard setback of 4.72 foot is proposed for the new garage and requires a variance. The footprint and location of the proposed garage will be the same as the existing garage.

The Board briefly questioned the applicant. She stated that the existing foundation is being utilized. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. The location and size of the proposed garage matches that of the garage that existed on the property prior to its recent destruction, and the proposed westerly side yard setback does not pose a detriment to the neighboring property. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

The application of **Joni Bronander, 97 Wildwood Avenue** was announced. The applicant and George Held, Architect, were sworn. Mr. Held described the application. The property is located in the R-1 One-Family Zone and contains a single family dwelling. The lot measures 62.50 feet in width and a lot depth of approximately 167 feet. A one story addition and wood decking is proposed at the rear of the dwelling. The addition would contain part of an expanded kitchen, a den, and a mudroom. New decking is also proposed to connect to existing decking that is aligned with easterly side of the dwelling. The maximum permitted width of the proposed construction is limited to 65% of the lot frontage width. For the subject property the width limitation is 40.63 feet. The addition and deck together are viewed as the new construction and measures approximately 44 feet in width across its entirety. A variance is requested from to allow the width of the new construction to exceed the maximum permitted width.

Exhibits marked:

- A-1 Photograph of the subject property
- A-2 Photograph of the subject property

The Board briefly questioned Mr. Held about the plan. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. The addition and decking are either aligned with or slightly set in from the existing sides of the dwelling and would not negatively impact a neighboring property or the streetscape. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

The application of **Sal & Barbara Taibi, 144 Buckingham Road** was announced. Barbara Taibi was sworn and described the application to construct a new detached garage to replace an existing detached garage that was recently destroyed by a fallen tree. The footprint and location of the proposed garage will be the same as the existing garage. The footprint measures 18 feet 10 inches in width by 19 feet in length.

The existing easterly side yard setback of 3.35 and 3.45 feet at the garage corners, and existing rear yard setback of 5.58 and 8.16 feet at the garage corners, are proposed for the new garage and require variances. The proposed garage would be approximately 2 feet taller at the ridge than the existing garage. The garage is built into the sloping topography of the rear yard and would meet the maximum permitted accessory structure height of 15 feet as defined in the zoning ordinance.

Exhibit marked:

A-1 Two photographs of the existing garage prior to the damage

The Board briefly questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved. The Board determined that the requested variances could be granted subject to the condition below. The location and size of the proposed garage matches that of the garage that existed on the property prior to its recent destruction, and the side yard and rear yard setbacks do not pose a detriment to the neighboring property. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved, subject to the following condition:

1. Roof leaders on the easterly side of the garage shall be directed away from the easterly side property line and directed onto the applicants' driveway.

The application of **Frank & Mary Ann Cerino, 665 Bloomfield Avenue** was called. Mr. Sullivan stated that the application is for an appeal of the decision of a zoning administrative officer and provided some information about the Board's role in this type of application. Steven Greenberg, Esq., appeared as attorney for the applicant and described the application appealing the determination that the previously existing nonconforming automobile dealership on the property has been abandoned. Frank Cerino, property owner was sworn.

Through direct questioning by Mr. Greenberg, Mr. Cerino provided the information below about the property and the application. On or about September 2012, Mr. Cerino applied for a business license to permit the sale of new and used automobiles to reestablish his DeCozen Chrysler, Jeep, Dodge automobile dealership at the property. The application was denied by correspondence dated October 4, 2012 from Janice Talley, Director of Planning and Community Development, who found that while the property was previously used as a car dealership, the use was abandoned pursuant to §347-114 of the zoning ordinance when the car dealership was relocated to a new location and the existing building sign on the building was removed. In 1987, the applicants purchased the property and established DeCozen Chrysler Plymouth automobile dealership which involved the sale of new and used vehicles as well as the servicing of vehicles. By virtue of a zoning amendment applicable to the property in 2006, new and used automobile sales and repair establishments were prohibited uses. The applicants' use of the property continued as a nonconforming use until between October 2007 and July 2008 when the dealership moved to Verona.

The Board questioned the applicant. Mr. Cerino testified that the move to Verona was due to the fact that the existing building in Montclair was over 75 years old and in need of substantial upgrades. In early 2009, the building was gutted and renovations commenced. Substantial renovations continued on a piecemeal basis to the present time due to financial constraints. Mr. Cerino testified that renovations are anticipated to be completed in January 2013. In October 2011 the "DeCozen" sign, which the applicants testified was in poor condition, was removed at the time the building was refaced. Mr. Cerino testified that the sign no longer had the proper Chrysler logo and was obsolete. Mr. Cerino testified that while he considered various options to use the property between 2008 and the present, at no time did he intend to abandon the use for the sale of new and used vehicles. He presented evidence to the Board establishing that in 2010 and 2011 he was in discussions with Lotus and Lamborghini to bring a dealership to this location.

The Board discussed the application. The Board concluded that the actions of the applicants cannot be construed to constitute an abandonment of the use of the property for the sale of new and used automobiles. Abandonment requires (1) some overt act or some failure to act which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment and (2) an intention to abandon. With respect to the servicing of automobiles at the property, the applicants removed the automobile lifts as part of the renovation process. Mr. Cerino testified that it was his intention to reestablish the use of the property for the sale of new and used automobiles, however, he did not intend to service vehicles. Consequently, the Board determined that Mr. Cerino's actions constituted an abandonment of the service use.

A motion affirming the decision of the Administrative Officer that the use of the property for the servicing automobiles is hereby abandoned was approved, by a vote of 4 to 3, with Mr. Fleischer, Mr. Edwards, and Mr. Reynolds voting against the motion.

A motion reversing the decision of the Administrative Officer that the use of the property for the sale of new and used vehicles is abandoned and was unanimously approved.

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