

MINUTES OF THE BOARD OF ADJUSTMENT
January 21, 2004

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

ABSENT: Mr. Flood and Ms. Rock-Bailey

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. Gallardo, the **Minutes of the December 10, 2003** regular meeting were adopted as modified.

Election of Officers

On motion by Mr. Gallardo, seconded by Mr. Fleischer, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining.

On motion by Mr. Gallardo, seconded by Mr. Susswein, Mr. Fleischer was re-elected as Vice Chair, Mr. Fleischer abstaining.

On motion by Mr. Fleischer, seconded by Mr. Susswein, Ms. Kadus was elected as Secretary and Mr. Charreun was elected as Assistant Secretary.

Appointment of Professional Staff

On motion by Mr. Gallardo, seconded by Ms. Cockey, Mr. Sullivan was re-appointed as Board Attorney at the indicated rate for the 2004 year.

On motion by Mr. Fleischer, seconded by Mr. Susswein, Mr. Watkinson was re-appointed as Board Engineer at the indicated rate for the 2004 year, subject to the confirmation that the proposed rate does not represent an increase from 2003.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Judith Stanton, 785 Valley Road** was adopted, Chair Harrison abstaining:

WHEREAS, Judith Stanton, owner of property at **785 Valley Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJS40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(1)**, and a southerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a second floor addition on property designated as Lot 34 in Block 2801 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by William DiMarzo & Son, Inc., dated November 25, 1991 and a site plan, floor plans and elevations, prepared by Kurt H. Schmitt, Architect, dated June 20, 2003, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 10, 2003 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 subject property has a street frontage width of approximately 60 feet and contains a 2-story, single-family dwelling with a one-story section at the southerly side of the dwelling.

2. The existing dwelling on the property has a nonconforming front yard setback of approximately 25 feet due to the greater average front yard setback of approximately 31 feet of the adjacent properties on Valley Road. The existing dwelling also has a nonconforming southerly side yard setback of approximately 5.52 feet measured to the rear easterly corner of the existing one-story section at the southerly side of the dwelling.

3. The applicant's proposal is to construct a second-story addition over the existing one-story section at the southerly side of the dwelling, which conforms to the height and rear yard setback requirements but does not meet the front yard and southerly side yard setback requirement.

4. A front yard setback of 25 feet is proposed for the proposed second floor addition, which would be aligned with the existing front wall of the dwelling and would not encroach closer to the front property line than the existing dwelling.

5. Although the proposed second floor addition is aligned with the southerly side wall of the dwelling, the addition extends 2 feet 1 $\frac{3}{4}$ inches further towards the rear than the existing first floor below it, and due to the angle of the southerly side property line, the addition encroaches closer to the southerly side property line than the existing first floor, which yields a southerly side yard setback of 5.24 feet, as measured to the rear easterly corner of the proposed addition.

6. Based upon the Board's particular knowledge of local conditions, the proposed second floor addition is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 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 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 variance application of Judith Stanton is hereby approved subject to the following condition:

1. The proposed second floor addition shall be aligned with the front wall and southerly side wall of the existing first floor below it.

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. Gallardo, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the variance application of **John and Eva Callahan, 222 Upper Mountain Avenue** was adopted:

WHEREAS, **John and Eva Callahan**, owners of property at **222 Upper Mountain Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40: 55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-33B(1)** in connection with the construction of a roofed entry porch on property designated as Lot 4 in Block 602 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicants submitted a site plan, porch plans, and elevations, prepared by Sionas Architecture, P.C., dated August 6, 2003, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 10, 2003 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 subject property is an interior lot measuring approximately 66,244 square feet and contains a 2½-story single-family dwelling and a detached garage in the rear yard.

2. The existing dwelling on the property has a nonconforming front yard setback of approximately 154.2 feet measured to the existing roofed front porch due to the greater average front yard setback of approximately 197.5 feet of the adjacent properties on each side of the subject property.

3. The applicants' proposal is to enlarge the existing roofed entry porch by extending the masonry stoop, adding a masonry step, enlarging the column-supported roof over the masonry stoop, and adding new support columns. The proposed roofed front entry porch would extend an additional 2 feet towards the front property line and have a front yard setback of approximately 152.2 feet, where 197.5 feet is required. The proposed porch meets all other height and setback requirements.

4. The proposed roofed front entry porch replaces an existing deteriorated porch, represents a minimal encroachment in the front yard, is more in keeping with the scale of the existing dwelling, and is an enhancement to the property.

5. Based upon the Board's particular knowledge of local conditions, the proposed roofed front entry porch is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

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 variance application of John and Eva Callahan is hereby approved.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicants, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the denial of a height variance request and the approval of other requested variances and site plan approval for the application of **Dr. Anthony Scriffignano, 124 Watchung Avenue** was adopted as modified:

WHEREAS, Dr. Anthony Scriffignano, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct additions to the existing veterinary office building and place a temporary trailer for use during construction on property located at 124 Watchung Avenue and designated as Lot 19 in Block 2506 on the Township tax map and located in the N-C Zone; and

WHEREAS, the applicant sought relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(6) to allow building height of 28.33 feet where a maximum of 24 feet is permitted pursuant to Montclair Code Section 347-95A.

2. A variance pursuant to N.J.S.A. 40:55D-70c to allow impervious surface coverage of 99.8 percent where a maximum of 80 percent is permitted pursuant to Montclair Code Section 347-94.

3. A variance pursuant to N.J.S.A. 40:55D-70c to allow the temporary trailer to be located in the front yard contrary to Montclair Code Section 347-22A.

4. A variance pursuant to N.J.S.A. 40:55D-70c to allow a side yard setback of less than one foot in connection with the temporary trailer where a minimum of six feet is required pursuant to Montclair Code Section 347-96.

5. A variance pursuant to N.J.S.A. 40:55D-70c to allow the driveway at the westerly side of the building to be less than the eighteen foot minimum required by Montclair Code Section 281-9I.

6. A variance pursuant to N.J.S.A. 40:55D-70c to allow undersized parking stalls contrary to Montclair Code Section 281-9B.

7. A variance pursuant to N.J.S.A. 40:55D-70c to allow two of the parking stalls in the rear yard to be pull-in straight spaces contrary to Montclair Code Section 281-9D(1).

8. A variance pursuant to N.J.S.A. 40:55D-70c to allow parking areas less than a minimum of four feet from the property line and without appropriate landscaping contrary to Montclair Code Section 281-9G.

9. A variance pursuant to N.J.S.A. 40:55D-70c to allow ten parking spaces where a minimum of twenty two parking spaces are required pursuant to Montclair Code Section 347-101.

WHEREAS, the applicant submitted a property survey prepared by George R. Pronesti, P.L.S. dated May 22, 2003 as well as a site plan, floor plans and elevations dated June 20, 2003 and temporary office trailer site plan revised through September 26, 2003 prepared by Thomas F. Ercolano, A.I.A.; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 10, 2003 at which time it was established the 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 a two and one-half story building which includes the existing veterinary office use as well as a second floor apartment. The application contemplates constructing a 369 square foot addition onto the first floor of the building and a 495 square foot addition onto the second floor of the building and elimination of the residential use.

2. With respect to the requested height variance, the Board determined the applicant failed to prove any purposes of the Municipal Land Use Law would be advanced by the granting of this application. The Board specifically found the applicant's assertion that the additional height was necessary in order to provide a more aesthetically pleasing roof line was not adequately supported by the testimony.

3. The proposed location of the temporary trailer in the front yard to be utilized during construction is the most appropriate and minimizes safety concerns and provides a benefit to the community.

4. The existing impervious surface coverage on site is 97.7 percent and the proposed increase to 99.8 percent is appropriate and would not result in any significant increase in storm water run off.

5. Approval of this application will not increase the intensity of use of the site and the existing onsite parking consisting of ten spaces is adequate for the proposed use.

6. Many of the requested variances relating to parking and circulation are preexisting non-conforming conditions which are not exacerbated by this application.

7. Based on the Board's particular knowledge of local conditions, the proposed use does not present a detriment to surrounding properties.

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the requested height variance, the applicant failed to prove the requisite "special reasons" for the granting of the application for a use variance and failed to prove 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the remaining variances, 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 zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded with respect to the remaining variances, 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 Dr. Scriffignano for a height variance is hereby denied.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Dr. Scriffignano for variances relating to impervious surface coverage, placement of a temporary trailer and existing parking and circulation is hereby approved subject to the following conditions:

1. The basement shall be utilized for storage only and the third floor shall be utilized only for storage and utilities including air conditioning units.
2. The existing residential use shall be eliminated.
3. No exterior air conditioning units shall be permitted.
4. The proposed addition shall not encroach on the adjacent property owner to the north.
5. The applicant shall install soundproofing in the pet boarding areas as testified to at the public hearing.
6. During construction the property owner shall install signs prohibiting client parking on site.
7. The entrance to the trailer shall be on the Watchung Avenue side.
8. The trailer shall not be permitted on site more than six months following the date of commencement of construction. The applicant shall provide the Planning

Department with written notification of commencement of construction. Additionally, the trailer shall be removed within two weeks following the end of construction.

9. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

10. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with the 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.

Assistant Secretary Charreun announced the withdrawal of the site plan and variance application of **The Salvation Army, 159 Glenridge Avenue**, at the request of the applicant.

Assistant Secretary Charreun announced the withdrawal of the variance application of **Donna Grant and Tim Gaydos, 89 High Street**, at the request of the applicant.

Assistant Secretary Charreun announced that the variance application of **Robert Cutrona, Jr., Esq., 46 North Willow Street** has been postponed at the request of the applicant until the February 11, 2004 regular meeting of the Board of Adjustment, that the applicant has granted the Board an extension of time through February 11, 2004 for which to act on the application, and that no further notice would be given.

Chair Harrison called the variance application of **Carlos Bustios & Andrea Dobbs, 1 Mountain Place**. Carlos Bustios, owner, was sworn and described the proposed detached garage. He stated that the existing detached garage is in disrepair and that the proposed garage would be the same size and would be constructed on the same footprint as the existing garage. He stated that the size of the property and grade of his property prevents the proposed detached garage from being built with conforming setbacks in the rear and side yard.

Marked into evidence was:

A-1 Six (6) photographs of the existing detached garage

The Board questioned Mr. Bustios.

Mr. Bustios stated that a 2-foot tall retaining wall would be constructed adjacent to the garage in order to keep the higher grade from pushing against the side wall of the new garage. He also stated that the trees adjacent to the existing garage would have to be removed in order to construct the proposed garage.

Chair Harrison called for questions and comments from the public. None were offered.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the variance application was approved, subject to the following condition:

1. The proposed detached garage shall be constructed on the same footprint as the previously existing garage and shall not be any larger than the previously existing garage.

Chair Harrison called the variance application of **Douglas Milne, 116 Westview Road**. Mr. Gallardo recused himself from the Board for the application. Douglas Milne, owner, was sworn and described the proposed second floor addition. He stated that the addition would contain a bathroom and would be constructed over an existing one-story section of his dwelling, which does not meet the side yard setback requirement. He also stated that the proposed addition would be aligned with the existing one-story section of the dwelling and would not encroach any closer to any property line than the existing dwelling.

The Board questioned Mr. Milne.

Chair Harrison called for questions and comments from the public. None were offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Ms. Cockey, the variance application was approved, subject to the following condition:

1. The second floor addition shall be aligned with the westerly side wall and southerly rear wall of the existing dwelling.

Chair Harrison called the variance application of **Michael F. Emrich, 194 Bloomfield Avenue**. Michael F. Emrich, owner was sworn and stated that he operates a retail antique business at the subject property and that he has operated a similar business at 411 Bloomfield Avenue for 25 years. He stated that he opened the business at the subject property because it provided the space needed for larger items. He further stated the 6-foot tall fence across the front of the property was installed for security reasons. He stated that the property had contained a used car dealership before he opened his business and that he could not operate his business without the existing 6-foot tall fence due to vandalism and theft of the products he stores outside.

The Board questioned Mr. Emrich.

Mr. Emrich stated the 6-foot fence depicted on the drawings submitted is across the front property line of 194 Bloomfield Avenue and not 192 Bloomfield Avenue, which he also owns. He also stated that he purchased 194 Bloomfield Avenue in the beginning of 2000 and that the property contained fences along the rear and side property lines at the time of his purchase, including a 6-foot tall wood fence on the westerly side property line.

Marked into evidence was:

A-1 Fifteen (15) photographs of the subject property, taken by the applicant on September 6, 2000.

Mr. Emrich stated that he had replaced the existing 6-foot tall wood fence along the westerly side property line because it was in poor condition and was rotting. He also stated that the previously existing 6-foot tall wood fence on the westerly property line was replaced shortly after the time the photographs submitted as Exhibit A-1 were taken and that it was his understanding that an existing fence could be replaced without building permits. He also stated that the a 6-foot tall chain link fence also exists along the front property line of 192 Bloomfield Avenue, which is a residence, and that the chain link fence was also on the property when he became the owner. He continued by stating that he could not recall why he did not retrieve the building permits filed for a 4½-foot tall fence at 194 Bloomfield Avenue and that the existing 6-foot tall fence across the front of 194 Bloomfield Avenue was installed approximately 1 month after the photographs submitted as Exhibit A-1 were taken. Mr. Emrich further stated that he has noticed retail items missing from the property since he has started running the business from the site and that a 4½-foot tall fence would not prevent theft and vandalism on his property.

Chair Harrison called for questions and comments from the public for Mr. Emrich.

Jim Evers, resident of Cleveland Street in Caldwell, New Jersey, was sworn. He stated that he is the owner of 204 Bloomfield Avenue, which is immediately west of the subject property located at 194 Bloomfield Avenue. He stated that the 4½ fence in front of 192 Bloomfield Ave appears to be providing adequate security, that the plans submitted by the applicant do not show all of the fences on the property, and that the existing metal fence across the front of 194 Bloomfield Avenue is in poor condition. He also stated that the wood fence on the westerly side of the applicant's property is collapsing, encroaching onto his property, and was installed without a permit. He further stated that crime is not a large problem in the neighborhood.

Marked into evidences was:

O-1 Three (3) photographs of the applicant's property, taken by Mr. Evers on January 21, 2004

Mr. Evers stated that he is required to maintain an egress along the easterly side of his building and that the fences on the side and front of applicant's property are an impediment to that access.

The Board questioned Mr. Evers and Mr. Emrich.

Mr. Emrich stated that he would need to sell the properties at 192 and 194 Bloomfield Avenue if he were not granted a variance for the fence heights. He also stated that the subject property was in worse condition prior to his ownership and that he has upgraded the site since he has been the owner. He further stated that the existing 6-foot tall wood fence on the side property line is lawfully pre-existing and is located entirely on his property.

Mr. Evers stated that the existing 6-foot wood fence on the side property line is in violation of the zoning ordinance, never received a permit, encroaches onto his property, and should not be permitted to remain in its current state.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the variance requested for a fence height taller than permitted in the front yard and westerly side yard of the property was unanimously denied.

Mr. Emrich left the meeting with Exhibit A-1.

Chair Harrison called the variance application of **Michael Anthony Sign & Awning Co. for Montclair Bloomfield Ford, 5-15 Bloomfield Avenue**. Kenneth Porro, Esq., appeared as attorney for the applicant who has been contracted by Montclair Bloomfield Ford to provide replacement signage on the subject property, which contains an automobile dealership. Mr. Porro introduced Javier Gonzalez of Michael Anthony Sign & Awning Co., who was sworn.

Chair Harrison called for a short recess.

Mr. Porro described the application and stated that the applicant proposes to replace existing signage on the property by providing new signage atop 2 pole-mounted signs, replacing the sign panel on an existing freestanding sign and a wall-mounted sign, and replacing a wall-mounted sign made up of individually mounted letters. He stated that a variance is required for replacement signage that exceeds the heights that were established by a Board of Adjustment Resolution for the 2 pole-mounted signs and the square footage of a freestanding sign. He also stated that the square footage of the 2 pole-mounted signs would be reduced from the existing and that 2 other existing wall-mounted signs would be removed from the building.

Mr. Porro called Javier Gonzalez, who was already sworn. Mr. Gonzalez stated that the proposed replacement signage is an improvement to the site. He stated that the existing signage is over 20 years old and is need of replacement.

The Board questioned Mr. Gonzalez.

Mr. Gonzalez stated that the wall-mounted sign that reads "Montclair Bloomfield" measures approximately 100 square feet and would project a maximum of 2 inches from the building.

Chair Harrison called for questions and comments from the public. None were offered.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the variances requested for the heights of the 2 pole-mounted signs was denied, and the variance required for the height and square footage of the freestanding sign was approved, subject to the following condition:

1. The size of the replacement freestanding sign shall not exceed 22 square feet in size and 9 feet 4 inches in height.

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