

MINUTES OF THE BOARD OF ADJUSTMENT
April 28, 2004

PRESENT: Chair Harrison, Vice Chair Fleischer, Mr. Gallardo, Ms. Rock-Bailey, and Mr. Susswein; also, Mr. Trembulak, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey, Ms. English, Mr. Flood, and Mr. Haizel

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.

Chair Harrison called the site plan and variance application of **Montclair Homes, LLC, 8 South Mountain Avenue**. David Owen, Esq., appeared as attorney for the applicant and Owen T. Hughes, Esq., appeared as attorney for an interested party who is objecting to the site plan and variance application.

Marked into evidence were:

A-1 Proof of Publication of the public notice from the Montclair Times

A-2 Affidavit of Service

Mr. Owen described the application and described the existing multifamily uses in the vicinity of the subject property. He described the revisions and amendments to the application and plans since the initial December 10, 2003 hearing and stated that the applicant has prepared an amended design that would contain a total of 5 dwelling units. He described the variances requested and stated that they are supported by purposes of zoning and special reasons, primarily the preservation of the existing dwelling while providing a complimentary development on the site. He also stated that the variances could be granted without substantial detriment to the public good or without substantial detriment to the Master Plan and zoning ordinance and further stated that certain conforming developments would have a greater negative impact than the proposed development.

Mr. Hughes questioned the Board's jurisdiction regarding the amended application and stated the applicant is seeking a rezoning of the property through their proposed development. He also stated that the applicant is essentially seeking a subdivision of the property, which should be before the Planning Board.

Mr. Owen stated that the applicant is not seeking a subdivision of the property. He also stated that a rezoning occurs when a variance power is used to radically alter an entire district, typically when variance relief is sought for a piece of land that comprises most or all of a particular zoning district. He continued by citing case law examples in New Jersey and stated that the rezoning issue does not apply to the proposed development because the subject property is not a particularly large lot in the

R-3 Zone, the subject property does not comprise most of the R-3 Zone within Montclair, the proposed development is a residential use in a residential zone, and the zoning would permit a higher density than what is proposed.

Mr. Hughes stated that in the R-3 Zone, single-family and two-family dwellings must be located on a particular lot size with public frontage and that the proposed development circumvents the bulk requirements for single-family and two-family dwellings in the R-3 Zone. He also stated that the case law is not limited to large tract developments and that the Board should not consider testimony regarding potential multifamily developments of a higher density, which may not be possible due to certain site constraints.

Chair Harrison stated that proposed development does not amount to a request to rezone the subject property because the subject property is not so large a parcel in the particular R-3 zoning district in which it is located that the requested variances would substantially alter the character of that R-3 zoning district. He also stated that the applicant has not opted for a subdivision of the property and instead has chosen to request a "d" variance, for which the Board has jurisdiction.

Mr. Hughes stated that he and his client were recently made aware of the amended application presently before the Board and that he may request an adjournment of the application to a later date to allow him more time to review the amended plans.

Mr. Owen called Peter Steck, who was sworn and stated his qualifications as a Licensed Professional Planner in the State of New Jersey.

Marked into evidence was:

A-3 Site Plan, Sheet 4 of 8, with color, on a board, prepared by PPE Corporation, revised through April 5, 2004

Mr. Steck described the site and stated that the property contains 0.886 acres and has an average slope of approximately 14 percent. He also described the existing dwelling on the property and stated that it was built in 1887 and is referred in the Community Resource Survey as a Classical Revival house. He stated that the proposed development has a conforming residential density, preserves the existing dwelling, preserves open space in front of the existing dwelling, and is complimentary to the existing dwelling while providing a reasonable and viable multifamily development in a multifamily zone. He continued by describing the area in the vicinity of the subject property.

Marked into evidence were:

A-4 A portion of the Zoning Map and Sanborn Map containing the subject property, prepared by Peter G. Steck, P.P., dated April 28, 2004

- A-5 Sixteen (16) digital photographs of the subject property and of views from the subject property, on two sheets, prepared by Peter G. Steck, P.P., taken March 7, 2004

Mr. Steck described Exhibits A-4 and A-5 and the surrounding land uses. He stated that an R-3 Zone designation, at 18 units per acre and 2½ stories in height, was recommended for the subject property by the last comprehensive Master Plan from 1987. He also stated that a prior comprehensive Master Plan from 1978 recommended an R-M Zone designation, which was also a multifamily residential zone. He further stated that a Historic Preservation Element of the Master Plan was adopted in 1993, and that although the subject property was not referenced as having historic merit, the adjoining Stagecoach House on Bloomfield Avenue and the Montclair Art Museum were referenced as having historic merit. He continued by stating that the 1999 Master Plan Re-examination Report recommended the addition of the Steep Slope Ordinance and the establishment of a Historic Preservation Ordinance and the Historic Preservation Commission.

Mr. Steck described the zoning ordinance and stated that the subject property has been located in a multifamily residential zone for over 50 years. He described the permitted uses in the R-3 zone and stated that the subject property has a permitted residential density of 15.95 dwelling units. He stated that for single-family and two-family dwellings in the R-3 Zone, the zoning ordinance prescribes the principal structure bulk requirements of the R-1 Zone. He also stated that the requirements for accessory structures, garages and driveways in the R-3 Zone are intended to be applicable to multifamily dwellings rather than single-family or two-family dwellings in the R-3 Zone. He continued by stating that the driveway and off-street parking for proposed development meet the requirements of both the zoning ordinance and the New Jersey Residential Site Improvement Standards.

Mr. Steck described the variances requested. He stated that the proposed use is permitted and that the "d" variance is required because more than 1 principal building is proposed on the lot in connection with one and two-family dwellings, which is classified as a variance for a structure or structures that are not permitted. He also stated that the proposed development is more compatible with and complimentary to the existing historic dwelling on the site than a permitted multifamily development because of its design and low density. He continued by stating that the application is supported by special reasons because of the preservation of the historic dwelling and open space on the property. He further stated that the existing historic dwelling on the property creates a unique situation where the aesthetic and historic preservation benefits provided by the application relate to the site's particular suitability for the proposed development. He also stated that approving the application would advance the purposes of the Municipal Land Use Law.

Mr. Steck stated that the variance requested for the front yard setback on South Mountain Avenue should be granted because a multifamily development consisting of a multifamily dwelling or dwellings could be as close as 40 feet to South Mountain Avenue and that it would be illogical to penalize the applicant for electing a lower density

development that is required to have a larger front yard setback. He stated that the variance requested to maintain the existing rear yard setback of the existing dwelling should be approved because it is an existing condition, which is a hardship and also because the benefits of granting the variance outweigh the detriments in that the applicant is preserving the existing historic dwelling. He also stated that the variances requested for the height of certain garages above grade should be approved because the design of these units is in keeping with traditional one or two-family dwellings, while depressing the garages further below grade would create steep driveways with accompanying safety issues. He further stated that the variance requested for the off-street parking located between historic dwelling and South Mountain Avenue should be granted because it is to be utilized as guest parking, so it would rarely be occupied and it would also be screened with landscaping to shield it from the view from South Mountain Avenue. He continued by stating that the variances requested for central air-conditioning units on the site should be approved because the units are located in the most logical location for each unit, and the benefits of the energy conservation provided by proper placement of the units outweigh any visual detriments, which are mitigated by landscaped screening.

The Board questioned Mr. Steck.

Mr. Steck stated that the applicant has developed a drawing that illustrate what a 15-unit multifamily building with an accessory parking area would appear like on the site with conforming setbacks.

Marked into evidence was:

A-6 Line Drawing, prepared by Peter Meyer, P.E., undated, depicting a hypothetical site plan of a 15-unit multifamily building on the subject property

Mr. Steck described Exhibit A-6.

Mr. Hughes objected to the submission of Exhibit A-6 and stated that the Board should only consider the application that is before them and not consider a hypothetical site plan for an alternative development.

Chair Harrison stated that Exhibit A-6 should be marked for identification only and that Exhibit A-6 was submitted in response to a legitimate question regarding the alternatives that the applicant has explored.

Mr. Steck stated that straight trucks, such as fire trucks or garage trucks, would be able to do a K-turn in the driveway between Units A and B in order to exit the site without backing out of the driveway. He also stated that the Board cannot require site improvements that the New Jersey Residential Site Improvement Standards does not require, however, unless the applicant is amenable to those improvements.

Mr. Hughes cross-examined Mr. Steck.

Chair Harrison called for a short recess at 9:30 p.m. Mr. Gallardo left the meeting.

The Board reconvened at 9:35 p.m.

Chair Harrison called for questions from the public for Mr. Steck.

Frank Gerard Godlewski, 10 Crestmont Road, asked how the proposed development on the site maintains and develops an appropriate setting for nearby historic structures.

David Bershad, 28 South Mountain Avenue, asked if the economic viability of a project or an alternative project is permitted as criteria for the Board in considering an application.

Jean Strahan, 99 Lloyd Road, asked if the applicant has or would consider a fair market value offer to sell the property.

Mr. Owen objected to the question and stated that it was not relevant.

Mr. Owen called Harold Maltz, who was sworn and stated his qualifications as a Licensed Professional Engineer in the State of New Jersey, specializing in Traffic Engineering.

Mr. Hughes asked Mr. Maltz if a traffic report has been prepared for the proposed development. Mr. Maltz stated that a traffic report was not done for the proposed project.

Mr. Maltz stated that he has evaluated the traffic queuing that occurs on South Mountain Avenue for vehicles traveling northbound approaching the signalized intersection of Bloomfield Avenue, the ability of vehicles to make left turns exiting the site taking into account both directions of traffic flow on South Mountain Avenue, the trip generation for the proposed development, and the available off-site parking in the area. He described the existing conditions on South Mountain Avenue in terms of traffic controls and the existing street and off-street parking in the vicinity of the site.

Mr. Maltz stated that he has determined the trip generation for the proposed development with 5 dwelling units and that the trip generation information was gathered utilizing the publication from the Institute of Transportation Engineering, *Trip Generation*, 7th Edition, which is the most current edition of that manual. He also stated that the New Jersey Residential Site Improvement Standards identifies this source to calculate trip generation for a residential site. He stated that each dwelling unit was considered a single-family dwelling unit, which has the highest trip generation number of any residential use and that the A.M. peak hour produced 4 total trips including 1 inbound trip and 3 outbound trips, while the P.M. peak hour produced 5 total trips including 3 inbound trips and 2 outbound trips.

Mr. Maltz stated that he performed two vehicle queuing surveys on South Mountain Avenue for northbound vehicles queuing at the Bloomfield Avenue signal. He stated that in order to allow a vehicle to exit the site with a left turn, the maximum number of vehicles that could be queued in the left turn lane of northbound South Mountain Avenue is 2 and the maximum for the right lane is 3. He described the queuing survey performed on Friday December 5, 2003, from 7:45 a.m. to 8:45 a.m. and stated that he observed 40 cycles of the traffic signal at the intersection. He stated that of the 40 green light cycles, there were 22 cycles or 55 percent during the A.M. peak hour that had 2 or less vehicles queued in the left turn lane, and the right lane had 11 cycles during the A.M. peak that had 3 or less vehicles queued. He continued by stating that of the 40 red light cycles during the A.M. peak hour, 24 cycles or 60 percent had 0 vehicles queued in either lane, 36 cycles or 90 percent had 2 or less vehicles queued in either lane, and 38 cycles or 95 percent of 3 or less cars in either lane. He stated that traffic was served very well during the A.M. peak hour.

Mr. Maltz described the queuing survey performed on Wednesday, December 3, 2003, from 4:30 p.m. to 6:00 p.m. and stated that he observed 60 cycles of the traffic signal at the intersection. He stated that of the 60 green light cycles, there were 36 cycles or 60 percent during the P.M. peak hour that had 2 or less vehicles queued in the left turn lane, and the right lane had 21 cycles during the P.M. peak that had 3 or less vehicles queued. He continued by stating that of the 60 red light cycles during the P.M. peak hour, 39 cycles had 0 vehicles queued in either lane, and 58 cycles or 97 percent had 2 or less vehicles queued in either lane. He stated that traffic was served very well during the P.M. peak hour.

Mr. Maltz described the vehicle gap studies he performed for the site. He stated that he measured the number of vehicle gaps of 7.1 seconds or greater for the two-way traffic flow on South Mountain Avenue during a P.M. peak hour and an A.M. peak hour. He stated that Highway Capacity Manual, 2000 Edition, states that the minimum gap to allow 1 vehicle to make a left turn over a two-way road is 7.1 seconds and 10.6 seconds for 2 queued vehicles making that left turn. He stated that the gap study performed on Monday, March 15, 2004 for the 4:45 to 5:45 peak P.M. hour indicated that 75 gaps of 7.1 seconds or more were available during the P.M. peak hour and that that the gap study performed on Thursday, April 22, 2004 for the 7:45 to 8:45 peak A.M. hour indicated that 78 gaps of 7.1 seconds or more were available during the A.M. peak hour.

Mr. Maltz stated that the vehicle sight distance looking south into northbound traffic is 580 feet and that the vehicle sight distance looking north into southbound traffic is 250 feet. He stated that the sight distances provided in both direction of oncoming traffic meet industry standards. He continued by describing available off-street parking in the area for visitors to the subject property and stated that the ingress and egress of vehicular traffic to and from the sight is safe and efficient.

The Board questioned Mr. Maltz.

Mr. Maltz stated that the no parking sign on the westerly side of South Mountain Avenue is approximately 196 feet from the driveway to the subject property.

Marked into evidence were:

- A-7 Photograph of South Mountain Avenue looking south from the driveway of the subject property
- A-8 Photograph of South Mountain Avenue looking north from the driveway of the subject property

Mr. Maltz stated that the plantings near the front property line could be moved back in order to increase the sight distances.

Mr. Hughes cross-examined Mr. Maltz and requested to see Mr. Maltz's notes for his review.

The Board questioned Mr. Maltz.

Mr. Maltz stated that he has not reviewed turning templates for fire truck access to the site.

Chair Harrison called for questions from the public for Mr. Maltz.

Dickson Lane, 11 North Mountain Avenue, asked if pedestrian traffic was studied and were weather conditions considered in the traffic studies.

David Bershada, 28 South Mountain Avenue, asked if the proposed development would impact available street parking.

Rod Kennedy, 74 South Mountain Avenue, asked what speed 100 feet of sight distance would accommodate.

Emily Rodin-McGrath asked if the speed of vehicles was monitored, and if the gap study takes into account the size of vehicles. She also asked Mr. Maltz if he was aware that Montclair public schools were closed on Thursday, April 22, 2004.

Frank Gerard Godlewski, 10 Crestmont Road, asked if off-street parking is available on Walden Place and how vehicles using the proposed driveway would be kept off of the lawn areas on the subject property.

Mr. Hughes requested a copy of Mr. Maltz's notes. Mr. Owen agreed to provide a copy of those notes.

The Board questioned Mr. Maltz.

Mr. Maltz stated that he did not investigate the traffic accident history in front of the subject property.

Chair Harrison announced that the application would be continued at a special meeting of the Board to be held on May 26, 2004 and that no further notice would be given.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey, the meeting was adjourned.