

MINUTES OF THE BOARD OF ADJUSTMENT
August 2, 2006

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, and Mr. Whipple; also, Ms. John, Esq., Mr. Charreun, Assistant Secretary

ABSENT: Mr. Flood, Mr. Haizel, Ms. Holloway, and Mr. Susswein

Assistant Secretary Charreun called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the application of **Kathleen Vandervoort, 35 Watchung Avenue** was adopted:

WHEREAS, Kathleen Vandervoort, owner of property at **35 Watchung Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a westerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of an addition and deck on to an existing single-family dwelling on property designated as Lot 3 in Block 1608 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by EKA Associates, dated April 8, 2003, and a site plan, partial floor plans, and partial building elevations prepared by J. Arthur Johnson Architect, dated April 13, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 21, 2006, 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 located in the R-1 One-Family Residential Zone and contains a 2½-story, single-family brick and frame dwelling with a detached frame garage. The property has 55 feet of frontage on Watchung Avenue and contains 9,296 square feet in area.

2. The existing dwelling has a nonconforming westerly side yard setback of 4.18 feet at the westerly front corner of the dwelling and 4.46 feet at the westerly rear corner of the dwelling.

3. The applicant proposes to construct a one-story addition and deck onto the rear of the dwelling which would be aligned with the westerly wall of the dwelling. The proposed addition would also be set back 4.46 feet from the westerly side property line, and due to the angle of the dwelling, the side yard setback would increase to 5 feet 2 inches at the rear corner of the addition.

4. The proposed addition conforms to the height, rear yard setback, and easterly side yard setback requirements. The proposed addition would contain an enlarged kitchen that would accommodate a more comfortable modern kitchen in the dwelling.

5. Based upon the Board's particular knowledge of local conditions, the proposed addition is consistent 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 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 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 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 variance application of Kathleen Vandervoort is hereby approved; and

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.

Assistant Secretary Charreun announced that at the request of the applicant's attorney, the application of **Ruggiero Real Estate, LLC, 98 Watchung Ave** would be carried to the regular meeting of the Board scheduled for August 16, 2006, and that no further notice would be given.

Assistant Secretary Charreun also announced that the application of **Lisa Cole, 25 Ramsay Road** would be carried to the regular meeting of the Board scheduled for

September 20, 2006, due to insufficient public notice and that new public notice would be completed.

Chair Harrison called the application of **Edmund Auw, 51 Club Road**. Edmund Auw and Gerald Novak, Architect, were sworn. Mr. Novak described the proposed additions to the dwelling and the variances requested. He stated that the existing dwelling is a ranch home that is one-story for the most part, with the only exception being the area at the easterly side of the dwelling, where an existing attached garage exists below the first floor level and where the topography of the lot slopes downward toward the east.

Marked into evidence were:

- A-1 Two (2) photographs: 1 of the front of the existing dwelling and 1 of the front of the dwelling on the adjoining property to the west
- A-2 Two (2) photographs: 1 depicting the westerly view of the property directly across Club Road from the subject property and 1 depicting the westerly view of the subject property
- A-3 Two (2) photographs: 1 depicting the easterly view of the subject property and 1 depicting the westerly view of the subject property
- A-4 Revised Elevations depicting a proposed 39-foot height measured as per ordinance requirements

Mr. Novak stated the subject property has unique characteristics in that it abuts Yantacaw Brook Park to the east, is located along a curved section of Club Road, and has sloping topography in certain areas. He described the proposed additions in detail and stated that the design is based on the existing interior layout. He stated that due to the curvature of street and the position of the dwelling on the lot, adding a level to the dwelling will not have an impact on the adjoining dwellings to the west. He stated that although the plans submitted depicted a conforming height of 35 feet, a variance is requested for a height of 39 feet, which is depicted on Exhibit A-4.

Chair Harrison stated that the proposed 39-foot height would be a 'd' variance since it exceeds the maximum permitted height of 35 feet by more than 10 percent of the permitted height, and will require 5 affirmative votes.

The Board questioned Mr. Novak. Mr. Novak clarified the calculation provided for the average grade surrounding the dwelling at 10-foot intervals. He stated that the requested variance for a 39-foot height could be approved since the real effect of the height would be felt at the gutter line, which would be similar to that of the existing 2½ story dwellings on the street. He stated that no dormers are proposed and that the attic would be unfinished space.

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 requested for building height was denied and the variances requested for the front yard setback and the number of stories were approved, subject to the following condition:

1. The proposed additions to the dwelling shall comply with the maximum principal structure height of 35 feet, measured as required by the ordinance.

Chair Harrison called the application of **Richard Shaffer and Natalka Bukalo, 34 Park Street**, however, the applicants were not present, and the Board proceeded to the next application.

Chair Harrison called the application of **Matthew and Tiffany Loncar, 136 Haddon Place**. Tiffany Loncar and Edmundo Lopez, Architect were sworn. Mr. Lopez described the application and stated that a second floor is proposed for the existing ranch dwelling. He stated that the only section of the basement that is exposed to the degree that it is considered a story above grade is the area of the garage, which is located under the first floor and faces the street, and that a variance is required for exceeding the limit of 2½ stories

Marked into evidence were:

- A-1 Photograph of the front of the dwelling on the subject property
- A-2 Photograph of the front of the dwelling on the subject property
- A-3 Photograph of the rear of the dwelling on the subject property

Mr. Lopez stated that the existing dwelling has a width of 52 feet and that a maximum principal structure width of 48.57 feet is permitted for this lot. He stated that the proposed second floor addition would be aligned with the existing dwelling and that a variance is requested. He stated that the proposed addition would not make the dwelling any wider than it already is and that all other zoning requirements are met.

The Board questioned the applicant and Mr. Lopez.

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 application was approved.

Chair Harrison called the variance application of **Mr. and Mrs. John Washington, 48 Nishuane Road**. John Washington and Vitaly Sonkin, Architect were sworn. Mr. Sonkin described the application and stated that the existing single-family

dwelling on property would be demolished and that a variance is requested for the existing lot frontage width of 50 feet in order to construct the proposed dwelling, which requires a lot frontage width of 60 feet. He stated that he has designed a single-family dwelling that complies with all of the zoning requirements, aside from the lot frontage width, for which plans have been submitted to the Board. He also stated that the applicant is requesting that the Board to consider a height of 40 feet for the dwelling rather than the newly adopted maximum height of 35 feet, and that an elevation depicting the 40-foot height is included as an alternative elevation in the plans submitted. He stated that the proposed 40-foot height would actually have a lesser impact on the massing above the second floor than the conforming 35-foot height, and would comply more with the intent of the ordinance.

Marked into evidence was:

A-1 Seven (7) photographs on a sheet, including the existing dwelling and adjoining dwellings on the same side of the street

The Board questioned Mr. Sonkin. Mr. Sonkin stated that he would reduce the requested height variance down to a height of 38.5 feet in order to classify the variance as a 'c' variance requiring a simple majority of the Board present. Mr. Sonkin also stated that the subject property is similarly sized to the lots on Nishuane Road and that majority of the lots in the neighborhood are also 50 feet in width.

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 Mr. Whipple the variance requested for lot frontage width was approved. On motion by Mr. Fleischer, seconded by Mr. Whipple the variance requested for principal structure height was denied, with Ms. English and Cockey voting in the negative on that motion.

Chair Harrison called the application of **Dr. Jody L. Ross, 22 The Crescent**. Dr. Jody Ross was sworn and described the application. She stated that she is seeking an amendment of a condition of two previously approved applications which limited the square footage of the freestanding business identification sign to 3 feet and also prohibited illumination of the sign. She stated that she is proposing a sign measuring 7.1 square feet in area with external illumination and that her proposed sign is actually smaller than the sign that has existed on the property for years in violation of the previous approvals. She stated that the area has undergone many changes in recent years and that many properties in the area have larger signs than what she is proposing and that her proposal would not have a negative impact on area properties.

Marked into evidence were:

A-1 Photograph of type of light fixture to illuminate the proposed sign

The Board questioned Dr. Ross. Dr. Ross stated that she prefers a sign that is two-sided and positioned to be visible by people using the side walk or street on either direction of The Crescent, which is a two-way street. She also stated that the purpose of the sign is to assist her patients in locating her office and that illumination for the sign would be turned off by 8:00 p.m.

Chair Harrison called for questions and comments from the public.

Joan Senerchia, 14 The Crescent was sworn and stated that she has concerns about the intensity of the proposed illumination and how late the sign will be lit

The Board discussed the legal standard that should be applied for the requested amendment of the condition of the previous approval for site plan approval and use variances and discussed the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was unanimously approved subject to the following conditions:

1. The sign shall be illuminated with non-offensive picture type lighting.
2. The sign shall not be lit after 8:00 p.m.
3. The sign shall comply with the requirements of Montclair Code Section 347-108H, including but not limited to the requirement that the sign shall not exceed 6 square feet.

Chair Harrison announced that the application of **Richard Shaffer and Natalka Bukalo, 34 Park Street**, who had not arrived, would be carried to the regular meeting of the Board scheduled for Wednesday, August 16, 2006 and that no further notice would be given.

Chair Harrison called the applications of **The Montclair Community School, 149 Forest Street and 152 Forest Street**. Mr. Whipple recused himself for these applications. Wendy Berger, Esq. appeared as attorney for the applicant and described the applications. She stated that the existing school has been located at 65 Chestnut Street since 1982. She stated that the applicant is seeking permission to use first floor commercial space located at the subject properties as specialty classrooms and meeting rooms, and that there will be no additional enrollment of students.

Marked into evidence were:

- A-1 Photograph of the existing school building at 65 Chestnut Street
- A-2 Photograph of the building located at 152 Forest Street
- A-3 Photograph of the building located at 149 Forest Street

- A-4 Exhibit prepared by Peter Steck, P.P., which includes an aerial photograph, proposed floor plan/layout, zoning analysis, etc.
- A-5 School logo sample on a sheet that would be utilized as window signage

Ms. Berger called Peter Steck, Professional Planner, who was sworn. Mr. Steck described the existing school building at 65 Chestnut Street and the property on which it is located. He stated that presently the school has 198 students and 45 adults employed either as teachers or in administration. He described the zoning ordinance for the R-2 Zone, in which schools are classified as a conditional use and stated that the ordinance was revised earlier this year.

Mr. Steck described the request to utilize first floor commercial space located at 152 Forest Street. He stated that the property contains two separate commercial storefronts and that the present application is for the northerly storefront. He stated that the Township previously allowed the applicant to occupy the southerly storefront as space for art classes for the older students at the school, which was permitted as a continuation of a lawful tutoring space belonging to a different tenant in that location that had received a variance previously and had since vacated the space. He stated that the space that is the subject of the present application for 152 Forest Street contains roughly 350 square feet and is intended for music classes for up to 10 students and that the rear of the space would contain storage areas.

Mr. Steck stated that a beauty salon had received a variance to occupy the space and presently exists in the commercial space that is proposed to be used by the applicant. He stated that the applicant would only need to do interior work in order to occupy the space and that the only visible change would be the sign on window, which would comply with the zoning ordinance requirements for window signage. He also stated that the subject property has no existing on-site parking and that the proposed use would not require additional parking. He further stated that the proposed use by the school would represent an improvement over the existing commercial use, since schools are typically located in residential zones, school hours are less obtrusive to residential uses, and the usage of street parking would be reduced during the course of the day. He continued by reviewing the conditions contained in the zoning ordinance for schools and stated that the proposal does not comply with the dimensional requirements contained in the conditional use standards.

Ms. Berger asked Mr. Steck to describe the application concerning the property at 149 Forest Street. Mr. Steck described the property at 149 Forest Street and stated that it is a residential building that contains an attached one-story commercial space at the front of the lot which has been historically used as a butcher shop and a social club, although most recently it has only been used for storage. He stated that even with its diminished commercial use, this space has retained a commercial character in that it has remained built as a storefront. He stated that the applicant is proposing to utilize this space as an archive for student records, and conference room for teacher meetings

and that only occasional student use is contemplated for special projects. He stated that the dominant use of this space would be by faculty members and that any students using this space would always be accompanied by adult. He continued by describing the floor plan for this space and analyzed the compliance of the application with conditional use standards contained in the zoning ordinance. He stated that this application, just as the application for 152 Forest Street, does not comply with the dimensional requirements contained in the conditional use standards. He stated that the storefront at 149 Forest was also clearly designed as commercial space and can not be easily used for residential use.

Mr. Steck stated that no parking study or site plan drawings have been submitted because no expansions are proposed in student enrollment or school programs, and no building additions or new parking area or driveways are proposed. He stated that the proposed school use at both properties is an inherently beneficial use and that both applications can be approved without substantial detriment to the public good, Master Plan, and zoning ordinance. He also stated that the approval of the applications would have no adverse impact to residential properties in neighborhood and that the proposed use of these commercial spaces is superior to common commercial uses within a residential zone.

The Board questioned Mr. Steck. Ms. Berger stated that there will be another witness to describe existing school programs and the use of space within the existing school building. Mr. Steck stated that the proposals arguably bring the existing facility at 65 Chestnut Street closer to conforming to conditional use requirements for schools in the zoning ordinance. Ms. Berger stated that, at this time, both commercial spaces would be leased by the applicant. Mr. Steck stated that approval of the application for 149 Forest Street would result in a potential increase in the number of people walking across Forest Street to get to 149 Forest Street, although that may not be considered a change in traffic patterns, and that the applicant utilizes a crossing guard at the intersection of Chestnut and Forest Streets. Mr. Steck also stated that although there no site changes proposed to either site, based on the language of the ordinance, it can be determined that each of the proposed applications requires site plan approval.

Chair Harrison called for questions and comments from the public. None were offered. Chair Harrison stated that the application would be continued at the regular meeting of the Board scheduled for Wednesday, August 16, 2006 and that no further notice would be given.

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