

MINUTES OF THE BOARD OF ADJUSTMENT
August 18, 2004

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

ABSENT: Mr. Flood, Mr. Gallardo, Ms. Rock-Bailey, and Mr. Susswein

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.

Election of Officer

On motion by Mr. Fleischer, seconded by Ms. Cockey, Mr. Mellon was elected as Secretary to replace Ms. Kadus.

On motion by Mr. Fleischer, seconded by Mr. Haizel, the **Minutes of the July 21, 2004** regular meeting were adopted, as modified, Ms. Cockey abstaining.

On motion by Mr. Fleischer, seconded by Mr. Haizel, the following Resolution memorializing the approval of the site plan and variance application of **Montclair Homes, LLC, 8 South Mountain Avenue** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, Montclair Homes, LLC (hereinafter "the applicant"), owner of property located at 8 South Mountain Avenue and designated as Block 304, Lot 16 on the Montclair Township Tax Maps (hereinafter "the property"), filed an application with the Montclair Township Zoning Board of Adjustment for variances and site plan approval, including a variance from Montclair Code Section 347-20 to retain the existing single-family dwelling on the property and to construct four new dwelling units in two separate two-unit buildings, with related site improvements; and

WHEREAS, the applicant also applied for the following additional variances:

(a) a variance from Montclair Code Section 347-45B(2) to permit a front yard setback of 42.5 feet from South Mountain Avenue whereas the ordinance requires a minimum front yard setback of 121.75 feet;

(b) a variance from Montclair Code Section 347-45D to retain the existing 3.7 foot rear yard setback of the existing dwelling whereas the ordinance requires a minimum rear yard setback of 25 feet;

(c) a variance from Montclair Code Section 347-58A to permit certain garages to be located at or near adjoining grade level whereas the ordinance requires

that at least one-half of the height of garages located under principal buildings be below adjoining grade level;

(d) a variance from Montclair Code Section 347-58D to permit parking spaces and central air-conditioning units to be located between main buildings and the street on which the buildings front, whereas the ordinance provides that no accessory structure or off-street parking area may be located in such front yard areas;

(e) a variance from Montclair Code Section 347-58D to permit central air-conditioning units to be located within 6 feet of the new dwelling units whereas the ordinance requires that accessory structures be set back at least 6 feet from principal buildings; and

WHEREAS, the applicant submitted a site plan prepared by Professional Planning & Engineering Corporation, revised through April 5, 2004; a drainage report, also prepared by Professional Planning & Engineering Corporation and revised through April 2, 2004; and architectural drawings prepared by William G. Brown, Architects, revised through April 5, 2004; and

WHEREAS, the Board of Adjustment conducted public hearings on the applicant's amended application on April 28, 2004, May 26, 2004 and July 21, 2004, at which time it was established that notice of the amended application had been properly published and that property owners within 200 feet of the property had been properly served with notice; and

WHEREAS, the Board carefully considered the site plan, architectural plans, exhibits and other evidence presented in support of and in opposition to the application, and made the following findings of fact:

1. The property is an irregularly shaped corner lot consisting of .886 acres located in the R-3 Garden Group Zone at the southwest corner of Bloomfield Avenue and South Mountain Avenue. The property has 79.27 feet of frontage on Bloomfield Avenue and 158.97 feet of frontage on South Mountain Avenue.

2. Permitted principal uses in the R-3 Zone include one-family detached dwellings and two-family detached dwellings. The R-3 Zone also permits multi-family dwellings at a density of 18 dwelling units per acre. The property is located in an area which contains a number of multifamily developments, including the South Mountain Garden Apartments to the south of the property and the Walden Apartments to the north.

3. The property contains a single-family dwelling constructed near the end of the 19th century. Although the dwelling is not listed on the Federal or State registers of historic properties and is not identified in the historic preservation element of the Montclair Master Plan, it has been surveyed by the New Jersey Office of Cultural and Environmental Services and has been generally regarded as a structure with historical, cultural, scenic, and/or architectural significance.

4. The applicant initially proposed to preserve the existing single-family home and to construct four new dwelling units, a configuration of 5 dwelling units depicted on Exhibit A-14 consisting of three freestanding dwelling units and two attached dwelling units. The applicant thereafter amended its plan and proposed to retain the existing dwelling but to construct two multifamily buildings, a configuration of 6 dwelling units depicted on Exhibit A-15 with one multi-family building containing the existing home plus two new dwelling units and another multi-family building with three new dwelling units. The applicant subsequently amended its application a second time and submitted a revised site plan which proposed to preserve the existing building as a single-family home and to construct four new dwelling units in 2 new two-unit buildings for a total of five dwelling units in three principal buildings on the property.

5. The applicant's revised plans provide for a residential density of 5 dwelling units on the property whereas if the applicant were to demolish the existing home and construct one or more multi-family buildings, the zoning ordinance would permit up to 15 dwelling units on the property.

6. As part of its revised site plan, the applicant agreed to widen or flare the existing driveway opening on South Mountain Avenue in order to assist fire truck entry, to install an additional fire hydrant on the proposed new driveway, to implement a snow removal plan (Exhibit A-18); to trim vegetation as directed by the Board; to use a private refuse service; to comply with the requirements of the Essex County Planning Board; and to comply with the Board Engineer's report, dated April 29, 2004.

7. The applicant's site plan requires a variance under N.J.S.A. 40:55D-70d(1) in that it proposes a total of three principal one-family and two-family buildings on the same lot whereas Montclair Code Section 347-20 provides that "for one and two-family dwellings, there shall be no more than one principal building per lot."

8. The Board finds that there are special reasons to grant the requested variance under N.J.S.A. 40:55D-70d(1) primarily due to the zoning purpose set forth in N.J.S.A. 40:55D-2j, namely, conservation of the existing single-family home on the property. The applicant could have chosen to demolish the existing home, eliminate the variance and construct a conforming development of one or more multi-family buildings with a maximum density of 15 dwelling units – a plan which neither the applicant nor the Board favored.

9. The requested d(1) variance is further justified by other special reasons and zoning purposes set forth in N.J.S.A. 40:55D-2e and i, namely, promotion of a population density of one-third the permitted density and provision of a desirable visual environment through creative development techniques and good civic design and arrangements. The variance also promotes the general welfare because the site is particularly suitable for the proposed development in that the site plan preserves the existing home and provides for residential uses well within the permitted residential density.

10. The Board also finds that granting the d(1) variance will not cause any substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance. The proposed development is for permitted one-family and two-family dwellings and provides only one-third the permitted residential density. Moreover, the property is located in the R-3 Zone which contains many multi-family developments on both sides of Bloomfield Avenue, including properties to the immediate south and north of the property. In addition, the proposed use will have less impact on Township resources than a much denser, but legally permissible, multi-family development on the property. In addition, both the master plan and the zoning ordinance have for many years recommended multi-family use of the property, and accordingly, the proposed plan for five dwelling units will not substantially impair the intent and purpose of either the zone plan or the zoning ordinance.

11. With reference to site ingress and egress, the applicant's traffic engineer evaluated sight distances looking north and south on South Mountain Avenue, the ability to make turns exiting the site, and the trip generation volumes to and from the site. His studies demonstrated that sight distances were adequate, that vehicles leaving the site would be able to make left and right turns in a safe and efficient manner, and that there would be insignificant and acceptable increases in the amount of cars entering and exiting the site, based on established ITE trip generation standards. He also concluded that the ingress and egress are safe and that there was more than sufficient capacity to accommodate the amount of traffic generated by the proposed use of the property. No expert testimony was offered to rebut the applicant's traffic expert and the Board finds that his conclusions were reasonable and supported by reliable data.

12. The applicant also requires bulk variances under N.J.S.A. 40:55D-70c from Montclair Code Section 347-45B(2) for the front yard setback from South Mountain Avenue (121.75 feet required versus 42.5 feet provided for Units D and E), from Montclair Code Section 347-45D for the rear yard setback for the existing house (25 feet required versus 3.70 feet existing), from Montclair Code Section 347-58A to permit the location of garages for Units B and C at or near adjoining grade level, from Montclair Code Section 347-58D to permit the location of certain parking spaces and central air conditioning units between the main buildings and the streets on which the buildings front, and from Montclair Code Section 347-58D to permit the location of central air conditioning units (accessory structures) within 6 feet of a principal building.

13. The foregoing variances may be granted under N.J.S.A. 40:55D-70c(2) because in each case the variance will advance the purposes of the Municipal Land Use Law and the benefits of granting the variance will substantially outweigh any detriment. All of the variances promote the purpose of zoning set forth in N.J.S.A. 40:55D-2j, namely, conservation of the existing single-family home on the property. The variances also promote the purposes of zoning set forth in N.J.S.A. 40:55D-2e and i, namely, the promotion of appropriate population densities and the creation of a desirable visual environment through creative development techniques and good civic design and arrangements.

14. In addition, the variance for locating the two garages at or near adjoining grade level promotes the purpose of zoning set forth in N.J.S.A. 40:55D-2b in that it provides for proper and safe drainage, diverting stormwater away from Units B and C, and also promotes pedestrian and vehicular safety in adverse weather conditions.

15. The variance for locating central air conditioning units within 6 feet of principal buildings promotes the purpose of zoning set forth in N.J.S.A. 40:55D-2j in that the air conditioning units will use less electricity when placed closer to the dwelling units.

16. Granting the aforementioned bulk variances will not cause any substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance. The considerations as to the public good, zone plan and zoning ordinance (the "negative criteria") set forth in paragraphs 11 and 12 above apply with equal force to the bulk variances.

17. Regarding the front yard setback variance, because the R-3 Zone allows 3-unit residential buildings with 40-foot front yard setbacks, a 2-unit residential building with a 42.50-foot front yard setback will not create a substantial detriment in this zoning district. As for the rear yard setback variance, the 3.7 foot setback for the existing dwelling is an pre-existing condition that will not be increased or exacerbated by the approval of the applicant's plan.

18. With regard to the location of certain garages at or near grade level, those garages are setback a substantial distance from the adjoining streets and will appear no different than the vast majority of other garages in the Township. Moreover, garages provide a significant parking benefit for this and most other residential developments.

19. As for the location of certain parking spaces and air conditioning units, the parking spaces in question will be either located within garages or fully screened beyond the requirements of the applicable ordinances, and the air conditioning units will be located behind a bay window and will be similarly screened. The placement of the screened air conditioning units within 6 feet of the dwelling units is similar to the location of many other air conditioning units in the Township.

WHEREAS, based on the foregoing findings, the Board concluded that with respect to the variance from Montclair Code Section 347-20 the applicant proved the requisite special reasons for granting the variance under N.J.S.A. 40:55D-70d(1) and proved that the variance would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan or zoning ordinance; and

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the bulk variances that 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 or zoning ordinance pursuant to N.J.S.A. 40:55D-70c(2);

WHEREAS, the Board, based on the foregoing findings, concluded that the site plan adequately addresses all of the issues raised by the Board and also complies with the standards set forth in the Site Plan Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Montclair Homes, LLC for variances and preliminary and final site plan approval be and is hereby granted in strict accordance with the site plan prepared by Professional Planning & Engineering Corporation, revised through April 5, 2004, and the architectural drawings prepared by William G. Brown, Architects, revised through April 5, 2004, subject to the following conditions:

1. Garbage shall be collected at each dwelling unit by a private garbage collection service.
2. Snow removal shall be provided in accordance with the snow removal plan admitted depicted on Exhibit A-18.
3. The kitchen facility located on the third floor of the existing single-family home shall be eliminated prior to the issuance of construction permits.
4. The line of sight between the driveway entrance and Bloomfield Avenue shall be maintained, for pedestrian and vehicular safety, by trimming existing and new groundcover as necessary and by removing tree branches lower than 8 feet from the ground.
5. The applicant shall plant evergreen shrubs to the east of Unit E and between the drip line of the proposed Red Oak tree and the drip line of the existing 30-inch Maple tree (as shown on the landscape plan) which shrubs shall be planted no further than 5 feet apart and will grow to a height of at least 6 feet;
6. The applicant shall comply with the comments contained in Paragraphs 1 and 3 of the Board Engineer's report, dated April 29, 2004.
7. The applicant shall install a fire hydrant on the driveway in accordance with the Montclair Fire Department's request.
8. The width of the driveway apron shall be increased in accordance with Exhibit A-18.
9. The applicant shall install a "hidden driveway" sign between Bloomfield Avenue and the driveway entrance, in a location to be approved by the Township Engineer, in order to alert vehicles proceeding south on South Mountain Avenue.

10. Prior to any land disturbance on the property, the applicant shall conduct testing for underground tunnels in the presence of an archeologist who has been qualified in court as an expert in archeology, at no more than 5-foot intervals around the northerly and westerly sides of the storage structure, and if any tunnels are discovered, said archeologist shall record the location of same and the applicant shall continue testing to the extent of any tunnels but not further than the boundary lines of the property. The applicant shall provide the results of the testing to the Planning Department and the Montclair Historical Society.

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

12. The applicant shall be responsible for all inspection fees required pursuant to Montclair Code Section 202-27.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the applicant, the Township Manager, the Township Council, the Township Clerk, the Township Engineer, the Township Tax Assessor, and the Construction Code Official.

Assistant Secretary Charreun announced that the application **of Omnipoint Communications, Inc., 2 Bloomfield Avenue** has been withdrawn at the request of the applicant's attorney.

Chair Harrison called the variance application of **Frank T. Shane, LLC, 201 Bellevue Avenue.** John Beyel, Esq., appeared as attorney for the applicant and described the application. Mr. Beyel stated that the planned building for the subject property has already been approved by the Planning Board for site plan approval and bulk variances, and that the applicant is presently before the Board of Adjustment seeking a use variance to allow a bank to occupy more than the permitted amount of floor space within the planned mixed use building. He also stated that he might request a postponement of the Board's vote on the application since there is not a full Board at the hearing this evening.

Chair Harrison stated that if there is a postponement on the vote of the application this evening, the applicant should have all of the witnesses who testify tonight at the next meeting so that any questions the absent Board members have can be addressed.

Mr. Beyel called John H. Wessling, president, Chief Executive Officer, and member of the Board for Haven Savings Bank, who was sworn. Mr. Wessling described the operations and staffing of other northern New Jersey branches of Haven Savings Bank and stated that the main branch is located in Hoboken and that other northern New Jersey branches are located in Westwood, Westfield, and Livingston. He stated that the latter 3 branches are staffed by 5 employees each and continued by describing the products offered by the subject bank. He stated that Haven Savings Bank is directed towards servicing the public with walk-in personal banking service and does very little commercial banking. He described the subject bank's participation in the

communities in which they are located and stated that Haven Savings Bank is a community bank which is distinctive from a commercial bank. He further stated that the proposed bank would not have a drive-through window or an exterior ATM because the footprint of the planned building will not allow for these features typically found in new banks.

Mr. Wessling stated the first floor area available for the proposed bank in the planned building on the subject property measures approximately 1800 square feet, which would allow for a teller counter for 5 bank tellers and a customer service area with 3 desks. He stated that the typical hours of operation for the subject bank are 9 a.m. to 4 p.m. during the weekdays, also being open on one weekday evening and Saturday. He further stated that all administrative functions for the proposed Montclair branch would be accomplished at the Hoboken office.

The Board questioned Mr. Wessling.

Mr. Wessling stated that Haven Savings Bank has been looking for a suitable location in Montclair since 1998. He also stated that the proposed bank would be their smallest bank in comparison to their existing banks in northern New Jersey and that it would not be possible for the first floor of the planned building to house another commercial tenant since the bank cannot utilize a space smaller than what is proposed. He further stated that the subject bank is a mutual savings bank, which is not publicly held, therefore no branches have been sold and no other banks have been acquired by Haven Savings Bank.

Chair Harrison called for questions from the public.

Richard Tietjen, owner of 198 Bellevue Avenue, asked how the site would accommodate the required parking for the proposed bank.

Mr. Wessling stated that of the 16 off-street parking spaces that are to be located on the site, 10 would be dedicated to the bank, with 5 of those 10 reserved for the employees of the bank. He also stated that, based on his knowledge of the operations of similar branches in northern New Jersey, the parking provided on the site is sufficient.

Mr. Beyel called Dennis Mylan, who was sworn and stated his qualifications as Licensed Professional Architect and Licensed Professional Planner in the State of New Jersey. Mr. Mylan described the subject property, zoning, and land uses of the area in the vicinity of the subject property.

Marked into evidence was:

- A-1 Portion of the Montclair Tax Map highlighting the subject property and the land adjoining land uses

Mr. Mylan stated that the subject property contained an automobile service station, which is a nonconforming use in the N-C zone, and that the site is completely

paved with impervious surface. He referred to Sheet SP-2, Site Plan, of the plans and described an existing easement on the site and continued by describing the zoning ordinances relative to the applicant's proposal. He also described the various improvements to the site that the planned building and site work would provide and stated that 16 off-street parking spaces are provided, including 1 barrier-free space and 2 garaged spaces associated with the residential portion of the planned mixed use building.

Mr. Mylan stated that the proposed bank would utilize approximately two-thirds of the first floor of the planned building and that the remaining one-third of the first floor, located at the rear of the planned building would be occupied by the 2 garaged parking spaces, restroom, utility room, and a lobby and staircase leading up to the residential units. He also stated that the basement of the planned building would contain storage and mechanical space. He addressed the variance requested and stated that the Zoning Ordinance for the N-C Zone requires that in order to permit a bank, business office, or nonmedical professional office within a mixed use building, there must be retail, personal service uses, medical offices, or restaurants equivalent in gross floor area to at the least the gross floor area used for the bank. He stated that the purpose of this ordinance is to discourage uses that do not promote pedestrian traffic in the N-C Zone. He also stated that the proposed bank would generate more pedestrian traffic than the previous use of the site and that in 1997 the Board of Adjustment granted a variance to an insurance company to utilize the entire first floor of a mixed use building located at 210 Bellevue Avenue as their office. He stated that within that approval the Board found that the proposed insurance office was not a typical office use, in that at least 50 percent of its business involved selling insurance to individuals who could obtain services on the premises, consequently the insurance office was unique in that has some components of a non-office use and its location in the N-C Zone would not contradict the intent and purpose of the Master Plan and Zoning Ordinance.

Mr. Mylan stated that the proposed bank is even more in keeping with retail or personal service use than an insurance office and that the nature of bank service is similar to retail service although with a different end product. He stated that a bank deals with customers on a one-on one basis and that its services are rendered almost exclusively on the site. He also stated that a bank generates more walk-in traffic than many permitted uses in the N-C zone and that the proposed bank would not have a rear entrance, so bank customers must walk to front of the building on Bellevue Avenue to access the bank. He further stated that bank customers do not need appointments and that bank customers would typically stop at the bank as part of other errands in the commercial area. He stated that the proposed bank is an appropriate use for a mixed use building with residential uses because a banking facility produces less nuisances, such as noise and odors, than many permitted uses. He stated that the requested variance can be granted without a substantial detriment to the public good and without a substantial impairment to the intent and purpose of the Master Plan and Zoning Ordinance and continued by stating that the nature of the operation of the proposed bank with no drive-through, provides the requisite special reasons, justifying the granting of the requested variance.

The Board questioned Mr. Mylan.

Mr. Mylan stated that the off-street parking requirement for the proposed bank is the same as it would be for retail uses and that the 16 parking spaces provided for the planned building including the proposed bank meets the requirements of the Zoning Ordinance. He also stated that the only changes to the site plan are the changes required by the Planning Board as part of their approval.

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

Mr. Beyel called Frank Shane, owner of 201 Bellevue Avenue, who was sworn. Mr. Shane stated he had considered the possibility of leasing the first floor space to other commercial tenants, which included a number of restaurants and nail salons, but decided against it because those uses would not have been compatible with the residential use of the second and third floors of the planned building. He stated that the proposed bank is a benign use that would not interfere with the residential use of the site.

The Board questioned Mr. Shane.

Mr. Shane stated that the proposed bank use compliments the business district in the N-C Zone and would promote residential stability on the subject property by making the site a comfortable place to live.

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

Chair Harrison called for public comment.

Mayor Remsen was sworn and stated that given the limited number of on-site parking spaces for the planned building, the applicant should take measures to manage the parking area at times when the parking area is full.

Kate Heston, co-owner of a business located at 208 Bellevue Avenue, was sworn and stated her support for the application. She stated that she is a member of the Upper Montclair Business Association and that the business district needs anchors like the proposed bank. She further stated that the proposed bank would generate foot traffic that would help businesses located on Bellevue Avenue and that banks like the one proposed are historically active in the community and help to improve a community.

Grace Caravello, owner of a business located on Bellevue Avenue, was sworn and stated her support for the application. She stated that the proposed bank would generate the foot traffic needed for the businesses located on Bellevue Avenue.

Mr. Beyel gave his closing arguments. He stated that the special reasons that support the application are best understood using the concept provided by the New Jersey Supreme Court in 1987 for a certain case, where a determination was made that, for applications where special reasons must be demonstrated, each case must turn

upon its own circumstances. He stated that this determination passed down by the New Jersey Supreme Court makes an applicant's demonstration of special reasons a fluid concept, where specific circumstances of an application can be considered. He further stated that a bank should be considered a particularly suitable and compatible use for the site due to the fact that the second and third floors of the planned building would have residential uses and the proposed bank would contribute far less to typical nuisances caused by other types of commercial uses in mixed commercial residential buildings. He continued by stating that the application can be granted without substantial detriment on the intent and purpose of the Master Plan or Zoning Ordinance. He stated that the purpose of the ordinance regulating offices and banks in the N-C Zone is to prevent land use in the N-C Zone that do not promote pedestrian traffic or service a customer on the site where the business is conducted. He also stated that the proposed bank would generate pedestrian traffic because it is oriented towards the consumer and would complement the business district it is located in. Mr. Beyel then requested that the vote on the application be postponed until the next meeting when perhaps a full Board would be present.

Chair Harrison announced that the application would be continued at the September 22, 2004 regular meeting of the Board, in order for 2 additional members of the Board, who are not present at tonight's meeting, to listen to the recording the testimony provided this evening and be eligible to vote on the application.

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