

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**August 20, 2003**

PRESENT: Chair Harrison, Ms. Cockey, Ms. Costello, Vice Chair Fleischer, Mr. Flood, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey, and Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: None

Secretary Sammet 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. Susswein, the **Minutes of the July 16, 2003** regular meeting were adopted as modified, Ms. Cockey, Ms. Costello, Mr. Flood, and Mr. Haizel abstaining.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **The Fortunato Group, 127 Pine Street** was adopted, Ms. Cockey, Ms. Costello, Mr. Flood, and Mr. Haizel abstaining:

**WHEREAS, The Fortunato Group**, owner of property at **127 Pine Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A.40:55D-70c to install a wall-mounted business sign at a greater mounting height than permitted by **Montclair Code Section 347-109A(5)**. The property is designated as Lot 17 in Block 4207 on the Township Tax Map and located in the C-2 General Business and Light Manufacturing Zone; and

**WHEREAS**, the applicant submitted a building elevation drawing depicting the proposed signage, prepared by Signright, Inc., which is undated; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on July 16, 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 adjacent to a railroad track and contains a two-story office building and an accessory parking lot.

2. The applicant proposes to install a wall-mounted business sign on the front wall of the building on the property, which would be mounted at approximate heights of 28 feet and 26 feet above grade, respectively, as measured to the top and bottom of the proposed sign. The proposed wall-mounted business sign meets all other zoning requirements.

3. The narrow frontage of the lot and considerable depth of the office building from the street makes the subject property difficult to locate.

4. The façade and window design at the front of the two-story office building does not allow the applicant to place the proposed wall mounted signs within the required sign band location.

5. Based upon the Board's particular knowledge of local conditions, the proposed wall-mounted business sign will not adversely impact the public good.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance for a taller sign mounting height 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 N.J.S.A. 40:55D-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 for a taller sign mounting height 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 NJSA 40:55D-70c(2); and

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of The Fortunato Group for a variance pursuant to N.J.S.A. 40:55D-70c 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 and Township Clerk.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Cynthia Brendzel, 588 Grove Street** was adopted, Ms. Cockey, Ms. Costello, Mr. Flood, and Mr. Haizel abstaining:

**WHEREAS, Cynthia Brendzel**, owner of property at **588 Grove Street**, 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 northerly side yard setback less than that

required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of an addition on property designated as Lot 13 in Block 3702 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Casey & Keller, Inc., dated February 18, 2000, and a site plan, neighborhood plan, floor plans, and elevations, with various dates or undated, and no preparer indicated, that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on July 16, 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 measures approximately 8,483 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 non-conforming northerly side yard setback of approximately 5.38 feet measured from the northwesterly corner of the dwelling.
3. The applicant's proposal is to construct a one-story addition at the rear of the dwelling, which conforms to the height and rear yard setback requirements but does not meet the side yard setback requirement of 6 feet in the northerly side yard.
4. The proposed addition will be aligned with the existing northerly wall of the dwelling and will not encroach further into the northerly side yard than the existing dwelling.
5. Based upon the Board's particular knowledge of local conditions, the proposed 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 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 Cynthia Brendzel is hereby approved, subject to the following condition:

1. The exterior walls and roof overhang of the proposed addition shall be aligned with that of the existing dwelling.

**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. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Anne Stallman, 360 Upper Mountain Avenue** was adopted, Ms. Cockey, Ms. Costello, Mr. Flood, and Mr. Haizel abstaining:

**WHEREAS, Anne Stallman**, owner of property at **360 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 347-45B(2)** in connection with the construction of an addition and deck on property designated as Lot 7 in Block 705 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Behre Associates, P.C., dated November 8, 2000, a magnified site plan view and elevation drawings prepared by George L. Stallman, III, dated April 18, 2003, and a site plan on a copy of the survey and a floor plan with no preparer or date indicated, that depict the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on July 16, 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 a corner lot located at the intersection of Upper Mountain Avenue and Bradford Avenue, measuring approximately 21,304 square feet and contains a 2-story single-family dwelling and an attached garage.

2. The existing dwelling on the property has a nonconforming front yard

setback of approximately 31 feet along Bradford Avenue measured to the northernmost corner of the existing dwelling, which is due to the greater average front yard setback of approximately 40.03 feet of the two nearest dwellings fronting on Bradford Avenue.

3. The applicant's proposal is to construct a one-story addition at the rear of the dwelling, which conforms to the height, side yard, and rear yard setback requirements but does not meet the front yard setback requirement of 40.03 feet in the Bradford Avenue front yard. The proposed deck meets all height and setback requirements.

4. The plans for the proposed one-story addition depict that the addition would be positioned in a manner so as not to encroach further into the Bradford Avenue front yard than the existing dwelling.

5. Based upon the Board's particular knowledge of local conditions, the proposed 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 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 Anne Stallman is hereby approved, subject to the following condition:

1. The northerly wall of the proposed bathroom addition shall join the existing rear wall of the dwelling at a point that is two feet further from Bradford Avenue than the existing northerly rear corner of the dwelling, and shall be oriented parallel to the existing side wall and perpendicular to the existing rear wall of the dwelling.

**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.

Chair Harrison called the variance application of **James Proios, 70-72 Forest Street**, and the applicant was not present. Chair Harrison stated that the public notice for the application was not completed and that the time for the Board to act on the application will expire prior to the Board's next meeting.

On motion by Mr. Fleischer, seconded by Ms. Costello, the variance application of **James Proios, 70-72 Forest Street** was dismissed without prejudice for lack of prosecution.

Chair Harrison announced the request for an extension of time on the site plan and variance approval of **Senior Care and Activities Center, 105 Walnut Street**. Robert Pansulla, Esq., appeared as attorney for the applicant and described the circumstances surrounding the request for the extension of time on the Board's previous site plan and variance approval.

On motion by Mr. Gallardo, seconded by Mr. Haizel, an extension of time was granted on the approval of the site plan and variance application of **Senior Care and Activities Center, 105 Walnut Street**, until February 27, 2004.

Chair Harrison called the site plan and variance application of **The Salvation Army, 159 Glenridge Avenue**. David Owen, Esq., appeared as attorney for the applicant and requested a postponement of the application to a future date so that a new public notice could be completed that describes the revised plans that the applicant intends to present to the Board. Mr. Owen also stated that the applicant grants the Board an extension of time for which to act on the application.

Chair Harrison announced that the application of **The Salvation Army, 159 Glenridge Avenue** would be carried to a special meeting of the Board, to be held on October 1, 2003, and that a new public notice shall be completed by the applicant.

Chair Harrison called the variance application of **Mary & Thomas Panucci, 33 Macopin Avenue**. Mary and Thomas Panucci, were sworn, and described the proposed two-story addition. Mr. Panucci stated that a side yard setback of 3 feet 3½ inches is proposed for the easterly side yard. Ms. Panucci stated that the addition would be aligned with the existing easterly side wall of the dwelling and would not encroach further into the easterly side yard than the existing dwelling. She also stated that the additional space provided by the proposed addition is necessary for their family to remain in the home while their children grow.

The Board questioned the applicants.

Mr. Panucci stated that the existing deck would be modified to accommodate the addition. Ms. Panucci stated that a new stairway is proposed at the westerly side of the deck that meets the setback requirements.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Gallardo, seconded by Ms. Costello, the variance application was approved.

Chair Harrison called the variance application of **Glenn & Randi Metsch-Ampel, 21 Columbus Avenue**. Glenn and Randi Metsch-Ampel were sworn and described the proposed one-story addition. Mr. Metsch-Ampel described the floor plan of the proposed addition and stated that the westerly wall of the addition would be aligned with the westerly wall of the existing dwelling and that the westerly side yard setback of the addition would not be less than the existing setback of the dwelling.

The Board questioned the applicants.

Mr. Metsch-Ampel stated that the exterior stairway proposed at the westerly side of the addition could be moved to the rear wall of the addition.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey, the variance application was approved, subject to the following conditions:

1. The addition and shall be aligned with the westerly side wall of the existing dwelling.
2. No exterior stairs shall be constructed on the westerly side of the addition.

Chair Harrison called the amended site plan application of **Lorraine Confair/Over the Rainbow, 32 Pleasant Avenue**. Grant Gille, Esq., appeared as attorney for the applicant. Mr. Haizel and Mr. Susswein stepped down for this application. Mr. Gille summarized the previous site plan and variance approvals for the property and described the current application for amended site plan approval. He stated that the proposed relocation of the ingress driveway onto the applicant's property would require the amendment of a condition of approval contained in the Board resolution dated June 21, 2000, which called for the applicant to obtain and record an easement from the adjoining property owner to the north. He also stated that the owner of the adjoining property to the north has not agreed to an easement with the applicant and that a single-family dwelling has been constructed on the adjoining property to the north. He continued by stating that the applicant has decided to construct a new

ingress driveway, that would be located entirely on the subject property and would not require an easement from the owner of the adjoining property to the north, however, does require amended site plan approval and the amendment of a condition of a previous Board resolution.

Mr. Gille called Dennis Mylan, who was sworn and stated his qualifications as an Architect and Professional Planner. Mr. Mylan stated that he prepared the plans that were previously approved by the Board and the revised site plan for the current application.

Marked into evidence were:

- A-1 Revised site plan on a board, prepared by The Mylan Architectural Group, revised to May 14, 2003
- A-2 A section of the revised site plan, with color, that depicts the existing ingress driveway and the proposed ingress driveway

Mr. Mylan described the changes to the site plan. He stated that the existing ingress driveway is partially located on the adjoining property to the north and that the amended site plan calls for the construction of a new ingress driveway that would be located entirely on the applicant's property, thereby not requiring an easement from the owner of the adjoining property. He stated that the new one-way ingress driveway would be 15 feet wide and set back 5 feet from the northerly side property line. He also stated that the existing brick wall along the front property line would be removed in areas to allow for the new driveway. He continued by stating that one tree would be removed to accommodate the new driveway and would be replaced by a new tree, of a similar species, planted in an area between the driveways on the property.

Mr. Mylan stated that the applicant would remove the existing driveway pavement on the subject property that is within the proposed 5-foot wide setback area of the new driveway. He also stated the proposed driveway is wider than the existing driveway and that the Township Fire Department would need to review the new site plan. He continued by stating that the 4-foot tall fence along the northerly side property line would be extended down to the front property line. Mr. Mylan stated that the revised site plan complies with all of the conditions of the Board's previous resolutions, except for the Condition 3 of the June 21, 2000 resolution, which required an easement for the existing driveway located on the adjoining property.

The Board questioned Mr. Mylan.

Mr. Mylan stated that a portion of the existing brick wall could be retained at the north side of the proposed ingress driveway.

Chair Harrison called for questions from the public.

Mary Jones, 10 Pleasant Avenue, asked if the contaminated soil on the property had been removed.

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the amended site plan application was approved, subject to the following conditions:

1. All conditions contained in the Board's November 7, 2001 resolution (except for condition 3 of the June 21, 2000 resolution which is deleted) shall remain in full force and effect.
2. The area of the subject property where asphalt is designated to be removed shall be reseeded or replaced with sod to provide a grassed area.
3. The four-foot high solid wood fence along the northerly side property line shall be extended to the wall at the front of the property.
4. No more than 3 feet 6 inches of the existing wall shall be removed from the northerly side of the exit drive.
5. The applicant shall make its best efforts to retain at least 2 feet 6 inches of the wall on the subject property on the northerly side of the entrance drive.
6. The applicant shall submit the plans to the Fire Department for review and approval.
7. The entire width of the entrance driveway shall be 15 feet and in the area of the tulip tree, the widening shall occur on side of the driveway that is opposite from the tree.
8. The turn in the entrance driveway shall be softened in the area adjacent to the tulip tree.
9. 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.
10. All graffiti on the wall in the front of the property shall be removed.

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