

MINUTES OF THE BOARD OF ADJUSTMENT
September 17, 2003

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

ABSENT: Mr. Gallardo, Mr. Haizel, and Ms. Rock-Bailey

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 Ms. Costello, seconded by Mr. Susswein, the **Minutes of the August 20, 2003** regular meeting were adopted as modified.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the variance application of **Mary and Thomas Panucci, 33 Macopin Road** was adopted:

WHEREAS, Mary and Thomas Panucci, owners of property at **33 Macopin Road**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for an easterly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a two-story addition on property designated as Lot 19 in Block 2802 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Surveyors, Inc., dated July 22, 1991, and a site plan, floor plans and elevations prepared by Chris Blake, Architect, dated April 7, 2003, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 20, 2003 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property has a street frontage width of approximately 50 feet and contains a 2-story single-family dwelling.
2. The existing dwelling has a nonconforming easterly side yard setback of approximately 3 feet 3½ inches.

3. The applicants' proposal is to construct a two-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 easterly side yard.

4. The proposed addition will be aligned with the existing easterly wall of the dwelling and conforms to the side yard setback requirement of 10 feet in the westerly side yard.

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 applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Mary and Thomas Panucci is hereby approved.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Glenn and Randi Metsch-Ampel, 21 Columbus Avenue** was adopted as modified:

WHEREAS, **Glenn and Randi Metsch-Ampel**, owners of property **21 Columbus 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 westerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a one-story addition on property designated as Lot

24 in Block 4407 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by James M. Helb, dated June 30, 1999, and a floor plan and elevations, with no preparer or date 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 August 20, 2003 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property has a street frontage width of approximately 50 feet and contains a 2½-story single-family dwelling.
2. The existing dwelling has a nonconforming westerly side yard setback of approximately 4.69 feet measured to the northwesterly corner of the dwelling.
3. The applicants' 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 westerly side yard.
4. The proposed addition will be aligned with the existing westerly wall of the dwelling and conforms to the side yard setback requirement of 10 feet in the easterly side yard.
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 applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would

not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Glenn and Randi Metsch-Ampel is hereby approved, subject to the following conditions:

1. The addition 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.

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 Ms. Costello, the following Resolution memorializing the approval of the amended preliminary and final site plan application of **Lorraine Confair, 32 Pleasant Avenue** was adopted as modified, Mr. Susswein abstaining:

WHEREAS, Lorraine Confair, as owner, did make application to the Board of Adjustment of the Township of Montclair for amended preliminary and final site plan and amendment to a condition of use variance approval in connection with a proposed child care center on property located at 32 Pleasant Avenue and designated as Lot 21 in Block 2903 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant originally received preliminary and final site plan and variances by resolution adopted on June 21, 2000 which was subsequently amended by resolution adopted on November 7, 2001; and

WHEREAS, the applicant submitted an amended site plan and details prepared by The Mylan Architectural Group revised through May 14, 2003 and boundary and topographic surveys prepared by Bertin Engineering Associates, Inc. dated June 21, 1999 and June 15, 1999 respectively; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 20, 2003 at which time it was established the notice was properly published and that property owner within 200 feet of subject property had been properly served with notice; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The application as originally approved provided for ingress via an existing driveway located partially on adjacent Lot 23.01 in Block 2903. Condition 3 of the June 21, 2000 resolution required the applicant to obtain and record an easement to permit use of the aforesaid driveway. The applicant now seeks to install a driveway entirely on the subject property obviating the need for the easement required by the Board.

2. The adjacent property (Lot 23.01) is now the subject of construction of a single-family home and approval of this application will eliminate any problems associated with a shared driveway.

3. The proposed use advances the purposes of the Municipal Land Use Law, in that it advances the general welfare and will provide an appropriate location in which to meet the needs of the community consistent with *N.J.S.A. 40:55D-2(a),(g)*.

4. The proposed change in the driveway location represents an improvement which will not adversely impact adjacent properties and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant met the requisite statutory proofs with respect to amendment to the condition of the use variance and granting amended preliminary and final site plan;

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair, that the within application of Lorraine Confair for amended preliminary and final site plan and amended use variance condition is hereby 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.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council and Township Clerk.

Chair Harrison announced that the variance application of **Donna Grant and Tim Gaydos, 89 High Street** has been postponed at the request of the applicants until the October 15, 2003 regular meeting of the Board of Adjustment, that the applicant has granted the Board an extension of time through October 15, 2003 for which to act on the application, and that no further notice would be given.

Chair Harrison called the variance application of **David and Virginia Block, 300 Highland Avenue**. David Block, was sworn, and described the application. Mr. Block stated the front stairway and porch needs to be repaired and that a new attached garage bay is proposed underneath the new front porch decking. He stated that the footprint of the stairway and porch entrance would be slightly enlarged in order to accommodate the proposed garage bay under the porch.

The Board questioned Mr. Block.

Mr. Block stated that the average front yard setback of adjacent dwellings on Highland Avenue is approximately 45.33 feet, and that the required front yard setback for the proposed garage bay and porch entrance is 50 feet. He also stated that the dwelling contains 2 existing attached garage bays and that the proposed attached garage bay would be the third garage bay. He continued by stating that the proposed second floor addition is a dormer for the entrance hall on the first floor and would be set back 51 feet from the front property line. Mr. Block stated that no new construction would be closer to Highland Avenue than the existing dwelling.

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. Cockey, the variance application was approved, subject to the following conditions:

1. The proposed dormer addition onto the dwelling shall conform to the 50-foot front yard setback requirement.
2. The proposed attached garage shall not encroach closer to Highland Avenue than the existing walls of the front entrance porch.

Chair Harrison called the variance application of **Mike Berlin, 27 James Street**. Mike Berlin was sworn and described the proposed addition to the third floor of the dwelling. He stated that the existing dwelling has a nonconforming side yard setback of approximately 3 feet in the westerly side yard and that the proposed addition to the third floor would not encroach closer to the westerly side property line than the existing dwelling. He stated that the proposed addition is a dormer for a third floor bedroom and that the addition has little effect on the view of the dwelling from the street and would have no adverse impact on the community.

Marked into evidence were:

- A-1 Two (2) photographs of the westerly side view of the subject property
- A-2 Two (2) photographs of the front view of the subject property
- A-3 One (1) photographs of the easterly side view of the subject property
- A-4 Two (2) photographs of the rear view of the subject property

Mr. Berlin stated that the proposed outdoor deck is modestly sized and would extend 5 feet from the existing covered porch at the rear of the dwelling.

The Board questioned Mr. Berlin.

Mr. Berlin stated that the proposed addition to the third floor would be aligned with the existing westerly wall of the dwelling. He also stated that the proposed outdoor deck would encroach slightly closer to the westerly side property line due to the slightly angled position of the dwelling to the westerly side property line.

Chair Harrison called for questions and comments from the public.

Jonathan Sander, 28 James Street, was sworn. Mr. Sander asked if the roofline of the third floor addition at the rear of the dwelling would match the existing roofline at

the front of the dwelling. Mr. Sander stated that the proposal would have a negative visual impact on the neighboring properties. He asked if the dwelling would remain a two-family dwelling.

Mr. Berlin stated that the dwelling is to remain as a two-family dwelling.

Marked into evidence were:

- O-1 Photograph of subject property taken from the sidewalk across the street
- O-2 Photograph of subject property taken from the sidewalk across the street
- O-3 Photograph of subject property taken from the sidewalk across the street
- O-4 Photograph of subject property taken from the sidewalk across the street
- O-5 Photograph of subject property taken from the sidewalk across the street

Ellen Sander, 28 James Street, asked to see the front elevation drawing of the proposed addition.

The Board discussed the application.

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

1. The third floor addition and outdoor deck shall be aligned with the westerly side wall of the existing dwelling.

Chair Harrison called the variance application of **Anthony Martinez, Member of AAAM Investments, LLC, 132 Forest Street**. Edward Seradzky, Esq., appeared as attorney for the applicant. Mr. Seradzky stated that the applicant, Mr. Martinez, could not attend the hearing because he is hospitalized recovering from injuries suffered in a fall.

Mr. Seradzky called Pedro Campos, who was sworn and stated his qualifications as an Architect. Mr. Campos stated that he prepared the plans submitted for the application.

Marked into evidence were:

- A-1 Photographs of the existing dwelling on the subject property
- A-2 Photographs of the existing dwelling on the subject property

Mr. Campos stated that he took the photographs of the property himself and described the existing dwelling. He described the proposed two-story addition and stated that the front wall of the addition would be aligned with the front wall of the existing dwelling. He also described the proposed modifications to the front entrance porch and stated that the new porch would be located 1 foot closer to Forest Street than the existing front entrance. He continued by stating that the proposed front yard setback is consistent with the front yard setbacks of adjoining properties. He stated that the property currently contains a driveway with parking for 2 vehicles and that the proposed driveway would also contain parking for 2 vehicles. He continued by describing the new wood deck at the rear of the dwelling.

The Board questioned Mr. Campos.

Mr. Campos stated that the new driveway would be 9 feet wide and that the proposed second-floor balcony on the southerly side of the proposed addition is set back approximately 9 feet 3 inches from the southerly property line. He also stated that there is no room on the property for additional parking and that an environmental permit may be required because of the proximity of the subject property to Toney's Brook. He described the site lighting and stated that a 4-foot tall gate is proposed across the driveway for security reasons. He continued by stating that the proposed rear wood deck wraps around the northerly rear corner of the dwelling due to the location of existing doorways and that the proposed balcony could be redesigned to meet the required 10-foot southerly side yard setback.

Chair Harrison called for questions and comments from the public.

Andrew Frazier, resident of 373 Orange Road, and owner of Forest I, LLC, which owns 130 Forest Street and 115 Forest Street, was sworn. Mr. Frazier asked how far the proposed addition would be from the southerly side property line and how long the applicant has owned the property. He also asked if the dwelling would be exclusively tenant occupied, if the on-site parking could be located in a different location on the property, and if the proposed project would exacerbate flooding. Mr. Frazier stated that he was concerned about the impacts during construction and asked how long the construction period would last. He also stated that street parking is very limited on Forest Street and that the area currently has problems with flooding.

Mr. Seradzky delivered his closing remarks and stated that the proposed project is an improvement to the neighborhood that benefits the community and has no detrimental impact on the community.

The Board discussed the application.

On motion by Mr. Susswein, seconded by Ms. Costello, the variance application was approved, Vice Chair Fleischer voting in the negative, subject to the following conditions:

1. The driveway, which is used for parking, shall be set back the 4 feet minimum required from the southerly side property line, and that setback area shall be appropriately landscaped, as required by **Montclair Code Section 347-104**.
2. The plans shall be revised in order to depict all floodplain information and the applicant shall obtain any required approvals from the New Jersey State Department of Environmental Protection. Should any such approval require any substantial changes to the plan, the applicant shall be required to return to the Board, as determined by the Planning Department.
3. The applicant shall provide drainage calculations for review and approval by the Board Engineer.
4. A detail for the proposed paving on the site shall be provided on the plan and submitted to the Board Engineer.
5. All broken sidewalk sections shall be replaced with an appropriate material as determined by the Township Engineering Department.
6. Any exterior lighting shall be shielded from adjoining properties.
7. The plans shall be corrected to indicate the correct address of the subject property.
8. The applicant shall be responsible for all inspection fees required pursuant to **Montclair Code Section 202-27**.

Chair Harrison called the variance application of **Verizon, New Jersey, Inc., 50 Montclair Avenue**. Allan Reddy, Esq., appeared as attorney for the applicant. Mr. Reddy called Paul Bauman, Professional Engineer and Professional Planner, who was sworn and stated his qualifications. He stated that that he is the Manager of Land Use Matters for Verizon New Jersey, Inc. and that he would only be providing planning testimony.

Mr. Bauman described the previous application for a proposed cable distribution cabinet on the subject property which was denied by the Board, and stated that the applicant has revised the plan with a new location for the cabinet. He stated that a new easement has been negotiated with the owner of the subject property and described the new location of the cabinet. He continued by stating that the cabinet would be located adjacent to the detached garage on the property and is smaller in size and less visible than the previously proposed cabinet. Mr. Bauman stated that the variances requested for rear and side setbacks could be granted because the benefits provided by the service outweigh any detriments caused by the proposed setback distances. He further stated that the proposed cabinet would replace a pole-mounted cabinet on the subject

property, which would provide an aesthetic benefit to the community. He also stated that the requested use variance could be granted because the basic installation of telecommunication equipment is considered by case law as a critical element of an essential service provided to the public. Mr. Bauman continued by stating that the screening of the cabinet with existing landscaping would be fortified by the installation of a picket fence along the northwesterly property line.

The Board questioned Mr. Bauman.

Mr. Bauman stated that the proposed picket fence would be 6 feet tall. He also stated that the proposed easement would total approximately 485 square feet, from the cabinet installation area to the street, which would allow the cabinet to be serviced through the subject property.

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 Ms. Costello, seconded by Ms. Cockey, it was resolved to approve the variance application of **Verizon New Jersey, Inc., 50 Montclair Avenue**, subject to the following conditions:

1. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
2. The applicant shall notify the Township when the new equipment cabinet is operational and shall remove the aerial cabinet within 6 months thereafter.
3. The proposed picket fence shall be extended an additional 10 feet towards the front of the property to connect to the existing hedge row.

On motion by Vice Chair Fleischer, seconded by Mr. Susswein, an extension of time was granted on the approval of the minor subdivision and variance application of **Homecorp, 16 Miller Street**, until January 15, 2004.

On motion by Ms. Costello, seconded by Mr. Fleischer, Chair Harrison was appointed to the Town Center Redevelopment Plan Steering Committee, with Mr. Susswein acting as an alternate.

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