

**MINUTES OF THE BOARD OF ADJUSTMENT
SEPTEMBER 21, 2005**

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

ABSENT: Ms. English, Mr. Haizel, and Ms. Holloway

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.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the **Minutes of the July 20, 2005** regular meeting were adopted as modified, Ms. Cockey abstaining.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Keith Halpern and Roberta Lazarus, 18 Norman Road** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, Keith Halpern and Roberta Lazarus, owners of property at **18 Norman 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 side yard setbacks less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of a one-story addition and new wood deck on property designated as Lot 9 in Block 1805 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by G.B. Associates, Inc., dated August 31, 2004, and a site plan, floor plans, and elevations prepared by the applicants, dated June 18, 2005; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 17, 2005 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, which measures approximately 50 feet in width by 150 feet in depth and contains a 2½-story, single-family dwelling and a detached garage at the rear of the lot.

2. The existing dwelling has a nonconforming westerly side yard setback of approximately 3.79 feet, and a nonconforming easterly side yard setback of approximately 7.70 feet.

3. The applicants' proposal is to construct a one-story addition at the rear of the dwelling, which would contain additional floor area for the existing kitchen on the first floor of the dwelling, as well as a half-bath, and a mudroom. A new wood deck is also proposed at the rear of the dwelling.

4. The proposed addition and wood deck would be aligned with the existing side walls of the dwelling and conform to the height and rear yard setback, but do not meet the side yard setback requirements of 6 feet on the westerly side and 10 feet on the easterly side.

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 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 **Keith Halpern and Roberta Lazarus** 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 application of **The Junior League of Montclair-Newark, Inc., 4 & 4A Stonebridge Road** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, The Junior League of Montclair-Newark, Inc., did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70d for permission to allow the premises at 4 and 4A Stonebridge Road to be used as a designers' show house open to the public from April 29, 2006 through June 3, 2006 for the purpose of raising funds for charities supported by the applicant on property designated as Lots 32 and 32.03 in Block 1102 on the Township

Tax Map and located in the R-0 Mountainside Zone. A variance is requested from Montclair Code Section 347-29 in that the proposed use is not listed as a permitted use in the R-O Zone; and

WHEREAS, the applicant submitted a survey of the property prepared by George R. Pronesti, P.L.S., dated June 11, 1999 and a four page undated document entitled "Schedule A To Variance Application", prepared by the applicant; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 17, 2005 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 Junior League of Montclair-Newark, Inc. has entered into an agreement with Steven and Patricia Kushner, owners of the subject property, to allow the subject premises to be used temporarily as a show house.

2. The operation of a show house involves the redecorating and furnishing of the house and landscaping of the grounds by professional decorators and landscapers, and opening of the premises to the public for a period of time to tour the house and grounds.

3. The show house is intended to be open for public viewing commencing April 29, 2006 and ending Sunday, June 3, 2006 according to the following time schedule:

10 a.m. to 4 p.m. on Tuesday, Wednesday, Friday and Saturday,

10 a.m. to 8 p.m. on Thursday,

12:00 p.m. to 4:00 p.m. on Sundays

Closed to the public on Mondays except for Memorial Day open from 10 a.m. to 4 p.m.

4. During the times of public viewing, the show house will be staffed and managed by members of the Junior League and, if required by the Montclair Police Department, by one or more off-duty policemen; and that no professional designers or landscapers associated with the initial redecorating of the show house would be present to represent their businesses.

5. During the time of public viewing, an entrance fee will be charged and a café to be located on the property will serve light food and drinks as a convenience to

viewers, and that furnishings, initially made a part of the show house, will be available for sale.

6. The proceeds from the show house which are derived from the entrance fee and a percentage of the sale of furnishings and all other exhibited items are intended to be used primarily for charitable purposes.

7. The Junior League of Montclair-Newark, Inc. has operated as a non-profit organization since 1921 and since 1936 has maintained tax exempt status as a charitable organization. Since its inception in 1921, the Junior League has contributed much time and effort to the Montclair community.

8. The show house hours of operation do not coincide with periods of peak traffic flow; and the Junior League expressed its willingness to hire off-duty police if the need should arise.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief 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;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair that the application of the Junior League of Montclair Newark, Inc. for a variance pursuant to N.J.S.A. 40:55D-70d is hereby approved subject to the following conditions:

1. The applicant shall adhere to the Montclair Police Department's recommendations in regards to parking and public safety.

2. The applicant shall adhere to the Montclair Fire Department's recommendations in regards to fire and public safety.

3. All necessary fire and building permits shall be obtained by the applicant at the applicant's expense.

4. Any tent erected on the property shall only be in place between April 19, 2006 and June 10, 2006. The placement of any temporary tent structure shall conform to all setback requirements for principal buildings (except side yard setbacks from the common property line of Lots 32 and 32.03) specified in the Township Zoning Ordinance.

5. The applicant may install one identification sign on the site for the duration of the use of the tent and which shall not exceed 12 square feet in area.

6. The applicant shall adhere to the Department of Public Works' recommendations in regards to waste removal.

7. The applicant shall adhere to the following schedule of operation for public events: April 29, 2006 through June 3, 2006, the show house shall be open to the public from 10 a.m. to 4 p.m. on Tuesday, Wednesday, Friday and Saturday; 10 a.m. to 8 p.m. on Thursday; and on Sundays from 12.00 p.m. to 4:00 p.m., and be closed to the public on Mondays except for Memorial Day when it shall be open from 10 a.m. to 4 p.m.

8. The applicant shall adhere to the following special events schedule for any functions that may take place at the subject property:

| DATE | EVENT | HOURS |
|----------------------------|---------------------------------------|----------------------------|
| March 3, 2006 Friday | Bare Beginnings Party (Sustainers) | 7:00 p.m. – 12:00 midnight |
| March 4, 2006 Saturday | Bare Beginnings Party (Actives) | 7:00 p.m. – 12:00 midnight |
| April 27, 2006 Thursday | Press Preview | 1:00 p.m. – 4:00 p.m. |
| April 29, 2006 Saturday | Patrons' Party | 6:00 p.m. – 12:00 midnight |
| May 2, 2006 Tuesday | Lecture/Lunch | 11:00 a.m. – 2:00 p.m. |
| May 3, 2006 Wednesday | Lecture/Lunch | 11:00 a.m. – 2:00 p.m. |
| May 4, 2006 Thursday | Lecture/Cocktail Party | 6:00 p.m. – 9:00 p.m. |
| May 6, 2006 Saturday | Murder Mystery Night | 6:00 p.m. – 11:00 p.m. |
| May 9, 2006 Tuesday | Lecture/Lunch | 11:00 a.m. – 2:00 p.m. |
| May 12, 2006 Friday | Cocktail Party | 7:00 p.m. – 11:00 p.m. |
| May 14, 2006 Sunday | Mother's Day Tea | 2:00 p.m. – 5:00 p.m. |
| May 16, 2006 Tuesday | Lecture/Lunch | 11:00 a.m. – 2:00 p.m. |

| | | |
|--------------------------|---------------------------------------|---|
| May 18, 2006 Thursday | Lecture/Lunch or Cocktail Party | 11:00 a.m. – 2:00 p.m. 6:00 p.m. – 9:00 p.m. |
| May 19, 2006 Friday | Wine Tasting Event | 7:00 p.m. – 11:00 p.m. |
| May 20, 2006 Saturday | Chamber Music Concert and Dinner | 7:00 p.m. – 11:00 p.m. |
| May 21, 2006 Sunday | Men's Event | 12:00 noon – 4:00 p.m. |
| May 23, 2006 Tuesday | Lecture/Lunch | 11:00 a.m. – 2:00 p.m. |
| May 25, 2006 Thursday | Lecture/Lunch or Cocktail Party | 11:00 a.m. – 2:00 p.m. 6:00 p.m. – 9:00 p.m. |
| June 3, 2006 Saturday | Auction | 6:00 p.m. – 12:00 midnight |

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

Assistant Secretary Charreun announced that at the request of the applicant, the application of **Mattie Singletary, 447 Orange Road,** has been withdrawn.

Assistant Secretary Charreun announced that at the request of the applicant, the application of **Omnipoint Communications, Inc. as agent for Omnipoint Facilities Network 2, LLC, 641 Bloomfield Avenue** for an appeal of a denial of a Certificate of Appropriateness from the Montclair Historic Preservation Commission, has been withdrawn.

Chair Harrison called the variance application of **Bernice Paschal, 5 Tuers Place.** The applicant and Agnes Rizzo, of Patio Enclosures, Inc., were sworn. Ms. Paschal described the proposed deck enclosure and stated that it would provide a four season porch for her husband who is disabled and cannot get outside very much. Ms. Rizzo stated that the existing deck would be modified slightly by removing 2 feet from the northerly side. She also stated that the fact that the property is a corner lot makes the proposed enclosure difficult to construct in full compliance with the setback requirements.

The Board questioned the applicant and Ms. Rizzo.

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 application was approved.

Chair Harrison called the variance application of **Christine Koury, 664 Ridgewood Avenue**. Bruce Simon, partner of the applicant and resident of the subject property and John Reimnitz, Architect, were sworn. Mr. Reimnitz described the existing home and stated that the home does not have an entrance foyer. He described the proposal and stated that the existing front steps and landing would be rebuilt and enclosed within a new vestibule.

The Board questioned Mr. Simon and Mr. Reimnitz. Mr. Reimnitz stated that the proposed entrance foyer would project about 1.5 feet closer to the street than the existing roofed landing at the front of the dwelling. He stated that the additional 1.5 feet is needed to accommodate a coat closet within the foyer. He also stated that the proposed vestibule would be an aesthetic enhancement to the dwelling.

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 application was approved, subject to the following condition:

1. The proposed vestibule shall not extend more than 4½ feet from the front wall of the dwelling.

Mr. Flood joined the meeting.

Chair Harrison called the variance application of **Coldwell Banker/NRT, 242 Bellevue Avenue**. Calvin O. Trevenen, Esq., appeared as attorney for the applicant and described the application.

Marked into evidence was:

A-1 Architectural drawings, on 2 sheets, prepared by Sionas Architecture. P.C., dated March 29, 2005

Mr. Trevenen called Rob Norman, manager of the real estate brokerage office located at the subject property, who was sworn. Mr. Norman stated that he has been the manager of the office at the subject property for the past 3 years and described the existing and proposed floor plans in detail. He stated that he would be interested in having the proposed area in question for the requested variance utilized for mortgage programs, which would provide the foot traffic that is expected in the N-C Zone. He continued by stating that the only exterior change would be to change the awning sign on the subject property.

The Board questioned Mr. Norman. Mr. Norman stated that presently, there are approximately 50 people employed by the office he manages, however, a maximum of 25 to 30 employees are in the existing office at any one time.

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

Mr. Trevenen called Paul Sionas, Architect, who was sworn. Mr. Sionas described the zoning ordinance requirements that relate to the application and stated that the proposal slightly reduces the off-street parking requirement for the site. He stated that the proposed changes to the existing conditions are minimal and should have a very minor impact. He also stated that the space proposed for the office expansion would retain the appearance of a retail space.

The Board questioned Mr. Sionas.

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

Mr. Trevenen called Roger DeNiscia, Professional Planner, who was sworn. Mr. DeNiscia described the application and the variance requested. He described the history of the site and stated that the space that is proposed to be incorporated into the real estate office measures 634 square feet in area. He stated that this space is rather small for a retail operation and probably has contributed to the frequent changes in tenancy of the space. He also stated that real estate offices share many characteristics with retail uses, which makes the real estate office far more acceptable in a commercial zone in comparison to other types of offices that are not open to the public or have low levels of community involvement. He further stated that the site and building are particularly suitable for the proposed office expansion.

Mr. DeNiscia stated that the existing real estate office occupies approximately 65 percent of the floor area of the building and that the proposal would increase that to 75 percent. He stated that the proposed expansion would serve to improve the function of the real estate office and continued by stating that a mortgage operation within the real estate office would also increase pedestrian traffic in the N-C Zone because of the similarities to retail uses. He further stated that the proposed expansion of the real estate office is in keeping with the intent of the zoning ordinance and achieves certain purposes of planning.

The Board questioned Mr. DeNiscia. Mr. DeNiscia clarified several of the points made in his testimony. Mr. Norman returned and stated that it is his intention to have a mortgage center in the expansion space, although it would require clearance from other corporate offices.

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

Mr. Trevenen requested to speak with his client for a brief moment and then requested that the application be continued at a subsequent meeting.

The Board discussed potential dates for the requested continuation of the application at hand, as well as the scheduling of the pending variance application of **Michael Murphy, 131 Lloyd Road**. On motion by Mr. Whipple, seconded by Mr. Fleischer, the pending application of **Michael Murphy, 131 Lloyd Road** was scheduled for a special meeting to be held on November 9, 2005, and Chair Harrison announced that the application at hand would also be continued at that special meeting.

Robert Taylor, Esq., appeared as attorney for the scheduled application of **Wallwood Gardens, Inc. 400 Orange Road**. Mr. Taylor stated that due to the late hour, and the fact that there are only 6 Board members present, he would request that the application be postponed to future date. The Board discussed potential dates for the application. Chair Harrison announced that the application would be scheduled for the November 16, 2005 regular meeting of the Board. Mr. Taylor granted the Board an extension of time.

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