

**MINUTES OF THE BOARD OF ADJUSTMENT
NOVEMBER 16, 2005**

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

ABSENT: Mr. Haizel, Ms. Cockey, and Mr. Flood

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

On motion by Mr. Susswein, seconded by Ms. English, the **Minutes of the October 19, 2005** regular meeting were adopted, Vice Chair Fleischer, and Mr. Whipple abstaining.

On motion by Ms. English, the following Resolution memorializing the denial of the application of **Pablo and Christen Arbelo, 55 Wildwood Avenue** was adopted, Chair Harrison, Vice Chair Fleischer, Ms. Holloway, Mr. Susswein, and Mr. Whipple abstaining:

WHEREAS, Pablo and Christen Arbelo, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct an addition and rear deck to their legal preexisting nonconforming two family dwelling on property designated as Lot 78 in Block 4601 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Zone; and

WHEREAS, the applicants sought variances as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to expand the preexisting nonconforming two family use contrary to Montclair Code Section 347-112.
2. A variance pursuant to N.J.S.A. 40:55D-70c to allow a westerly side yard setback of 8.5 feet where a minimum of 10 feet is required pursuant to Montclair Code Section 347-45C.
3. A variance pursuant to N.J.S.A. 40:55D-70c to allow an easterly side yard setback of 5.7 feet where a minimum of 6 feet is required pursuant to Montclair Code Section 347-45C.

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by Howard Dobelle, AIA revised through August 5, 2005 as well as a property survey prepared by Donald P. Sweeney and Assoc., dated August 30, 1999;

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 19, 2005, at which time it was established that notice was

properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property consists of 4,500 square feet in area and is 45 feet in width and contains a lawful preexisting nonconforming two and one half story two family dwelling.

2. The applicants propose to construct an addition to the northeasterly corner and rear of the dwelling that would enlarge the second floor and attic by extending towards the rear yard with a two foot cantilevered extension and squaring off the northeasterly corner of the second and attic floors. The plan indicated the new deck would encroach into the 25 foot rear yard setback requirement, however, at the public hearing the applicants indicated the plan would be revised to comply with the setback requirement.

3. The applicants failed to offer sufficient proof of "special reasons" or that any purposes of the Municipal Land Use Law would be advanced by the granting of this application.

4. The applicants' planner opined that the property was "particularly suited" for the expansion, however, little or no factual support was offered for this conclusion. The Board determined there was nothing particularly unique about this property and approval of the expansion would open the door for other similarly situated nonconforming properties to expand without sufficient justification.

5. The Board recognized expansion of nonconforming uses is generally disfavored and approval of this application would run contrary to the important goal of bringing such nonconforming uses into conformity as soon as possible.

6. Expansion of the nonconforming use is contrary to the intent and purpose of the Zoning Ordinance and Master Plan which seeks to protect the character of existing residential neighborhoods.

7. Based upon the Board's particular knowledge of local conditions, approval of this application would reduce light, air and open space and exacerbate the negative effects from the nonconforming use which would result in substantial detriment to the public good.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants failed to prove the requisite special reasons for the granting of this application; and failed to prove 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;

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variances 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 N.J.S.A. 40:55D-70c(1);

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variances 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 N.J.S.A. 40:55D-70c(2).

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Pablo and Christen Arbelo for variances to expand a preexisting nonconforming use and allow insufficient side yard setbacks is hereby denied;

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

On motion by Mr. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Janet Jackson-Curtis & John Curtis Jr., 15 Hollywood Avenue** was adopted, Vice Chair Fleischer and Mr. Whipple abstaining:

WHEREAS, John and Janet Curtis, Jr., owners of property at **15 Hollywood Avenue**, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of a detached garage on property designated as Lot 30 in Block 3907 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a site plan and elevations prepared by DAL Design Group, dated August 10, 2005, and a property survey prepared by Herbert G. McDonald Associates, Inc., dated July 18, 2005; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on October 19, 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 measures 50 feet in width and approximately 3,995 square feet in area. The property contains a 2-story dwelling and a concrete slab at the northwesterly corner of the property where a detached garage had previously existed.

2. The property survey indicates that the concrete slab, which represents the footprint of the original detached garage, had a nonconforming westerly side yard setback that ranged between 1.5 and 2 feet and a nonconforming rear yard setback of 2 feet.

3. The applicants propose to construct a new detached garage in the same area of the property, however, with a larger footprint. The original footprint of the detached garage, based on the dimensions of the concrete slab on the property survey, measured 10 feet in width by 18 feet in length. The proposed detached garage would measure 15 feet in width by 24 feet in length.

4. A westerly side yard setback of 3 feet is proposed for the new garage, which requires a variance from **Montclair Code Section 347-46A(2)(a)** in that a minimum side yard setback of 6 feet is required in the westerly side yard. A rear yard setback of 3.5 feet is proposed for the new garage, which requires a variance from **Montclair Code Section 347-46A(3)** in that a minimum rear yard setback of 6 feet is required. The proposed garage complies with the height limit.

5. The Board determined that the variances requested are justified, however, that the footprint of the proposed garage should be modified to reduce the length from 24 feet to 20 feet, in order to be more consistent with the pattern of development in the neighborhood and minimize the impact on the deficient side yard setback.

6. Based upon the Board's particular knowledge of local conditions, the proposed detached garage, modified as proposed above, 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 variances 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 variances 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 John and Janet Curtis, Jr. is hereby approved, subject to the following condition:

1. The footprint of the proposed detached garage shall be modified to reduce the length from 24 feet to 20 feet.

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

On motion by Mr. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Dr. Dennis J. Melillo, 22 The Crescent** was adopted, Vice Chair Fleischer and Mr. Whipple abstaining:

WHEREAS, Dr. Dennis J. Melillo, as owner, did make application to the Board of Adjustment of the Township of Montclair pursuant to N.J.S.A. 40:55D-70d to modify a previous approval to eliminate the requirement that occupancy of the dwelling unit be limited to the medical practitioner utilizing the office space on site on property located at 22 The Crescent and designated as Lot 6 in Block 2203 on the Township Tax Map and located in the R-4 Three-Story Apartment Zone; and

WHEREAS, the applicant submitted an undated property survey prepared by McCumsey Associates; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 19, 2005 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. By resolution adopted on September 19, 1984 the Board granted site plan approval and variances pursuant to N.J.S.A. 40:55D-70c and d to convert the first floor of the building into a medical office and to convert the second and third floors into a dwelling unit for the applicant's use.

2. The testimony established that following the aforementioned approval, the applicant resided in the dwelling unit and utilized the first floor in connection with his chiropractic office. Sometime on or around 1988, Dr. Melillo vacated the dwelling unit and rented it to a third party.

3. Approval of this application will eliminate the requirement that the occupancy of the dwelling unit be limited to the medical practitioner and will provide sufficient space in an appropriate location for residential and medical office use consistent with the purposes of the Municipal Land Use Law.

4. Since the original approval in 1984, the neighborhood has undergone significant change including the introduction of more intense uses and construction of a parking deck. As a result, it is clear the approval sought by this application would not adversely impact area properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing 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 Dr. Dennis J. Melillo to modify a previous approval to eliminate the requirement that occupancy of the dwelling unit be limited to the medical practitioner is hereby approved subject to the following conditions:

1. The freestanding sign shall be no more than three square feet in area and non illuminated.
2. This approval is limited to one medical office on the first floor and one dwelling unit occupying the second and third floors.

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

Chair Harrison called the variance application of **Clayton Bauer, 4 Valley Place**. Clayton Bauer was sworn and described the application. Mr. Bauer stated that he is proposing a deck at the rear of his dwelling and that the dwelling has a nonconforming setback of 3.1 feet. He stated that due to the angle of the dwelling, the deck would have a set back of 2 feet 5 inches at its closest point. He also stated that the proposed deck would follow the line of the dwelling.

The Board questioned Mr. Bauer.

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

The Board discussed the application. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved, subject to the following condition:

1. The proposed deck shall be aligned with the existing northerly side wall of the dwelling and shall not be constructed closer than 29 inches from the northerly side property line.

Assistant Secretary Charreun announced that at the request of the applicant, the continuation of the application of **Coldwell Banker/NRT, 242 Bellevue Avenue**, would

be carried to the December 14, 2005 regular meeting of the Board, that the applicant has granted the Board an extension of time, and that no further notice would be given.

Chair Harrison called the variance application of **Damien and Dasha Dwin, 222 Upper Mountain Avenue**. Calvin Trevenen, Esq., appeared as attorney for the applicant. Mr. Trevenen stated that he is appearing for the applicant in replacement of Grant Gille, Esq., who is ill and could not attend the meeting.

Mr. Trevenen called Francis Klein, Architect and Planner, who was sworn and stated his qualifications. Mr. Klein described the site, the existing dwelling, and the proposed additions. He stated that the steep topography of the site limits the ability of the applicant to construct additions at the rear of the dwelling and that the dwelling is positioned on the southerly side of the lot. He also stated that the existing interior configuration requires that the proposed additions be located where they are proposed.

The Board questioned Mr. Klein. He stated that the proposed additions would be aligned with the walls of the existing 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 Mr. Susswein, the application was approved, subject to the following conditions:

1. The proposed additions shall be aligned with the walls of the existing dwelling.
2. The plan shall be approved by the Board Engineer for Steep Slope construction.

Chair Harrison called the application of **PAAG, LLC, 7 Fidelity Place**. Laurence Olive, Esq. appeared as attorney for the applicant and called Andy Ayala, shareholder of PAAG, LLC, who was sworn. He described the subject property and referred to Exhibit A-1 and also described typical front yard setbacks in the neighborhood. He stated that he resides at 25 Fidelity Place and stated that the proposed addition at the subject property would be similar in appearance to his home. He continued by describing the interior of the existing dwelling at the subject property and stated that the home is very small single-family dwelling.

Marked into evidence were:

- A-1 Photographs (labeled pictures 1 through 24) of the subject property and neighborhood on 6 sheets
- A-2 Photograph of the dwelling located at 25 Fidelity Place (labeled picture 25)
- A-3 Basement Floor Plan

Mr. Ayala described the proposed basement expansion. He stated that there is a mature Chinese Maple in the rear yard that would have to be removed if the proposed addition were moved back to align with the front wall of the dwelling rather than the front porch as proposed.

The Board questioned Mr. Ayala. Mr. Ayala stated that he has no photographs of the Chinese Maple in the rear yard and stated that it is located right in the center of the existing concrete patio that is depicted on the survey.

Assistant Secretary Charreun stated that the average setback of 14 feet was provided by the applicant's surveyor on a separate property survey that was submitted with the application. Secretary Mellon clarified the new height ordinance for the Board and the applicant.

Marked into evidence was:

- A-4 Property survey of the subject property prepared by Richard J. Hingos Inc. with the average front yard setback of the 2 nearest dwellings located to west on Fidelity Place

Mr. Ayala stated that setting the 2-story addition back to align with the main wall of the existing dwelling would be a last resort because he believes the interior space provided by the addition as proposed is badly needed for the dwelling.

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

Mr. Olive requested that the Board postpone their discussion and vote on the application until a seventh member of the Board was eligible to vote. Chair Harrison announced that the Board's discussion and vote on the application would be carried to the special meeting to be held on Monday, November 28, 2005.

Chair Harrison called the application of **Wallwood Gardens, Inc., 400 Orange Road**. Robert Taylor, Esq., appeared as attorney for the applicant and called Rocco Orlando, Architect, who was sworn and stated his qualifications. Mr. Orlando described the existing site and its background.

Marked into evidence were:

- A-1 Site Plan with color on a board, from the previously approved application in 1996 for a garden center on the subject property
- A-2 Sheet 2 of 6, Proposed Landscaping Plan, prepared by Rocco P. Orlando, Jr., AIA, with color added, on a board

Mr. Orlando stated that the proposed residential use eliminates the existing nonconforming commercial use and described the proposed development and the parking layout. He continued by describing the variances and waivers requested and also described the proposed landscaping on the site. He stated that the plans were designed prior to the adoption of the revised height ordinance which limits principal structure height to 2.5 stories and that 3.5 stories is proposed because attached garages are included on the ground level of each dwelling unit. He also stated that at the present time the applicant is focusing on obtaining the required variances prior to submitting the engineering documents requested by the Board Engineer for site plan approval.

Marked into evidence was:

A-3 Sheet 4 of 6, Proposed Townhouse Elevations, prepared by Rocco P. Orlando, Jr., AIA, with color added, on a board

Mr. Orlando described the elevations and the exterior of the proposed townhouse structures. He also described the floor plans of the proposed townhouse units.

The Board questioned Mr. Orlando. In response to a question concerning impervious coverage, Chair Harrison stated that, although there is no impervious coverage limit imposed by ordinance for the proposed development, the Board could consider this a factor when determining whether the application satisfies the negative criteria. Mr. Orlando stated that each dwelling unit proposed contains approximately 2600 square feet of interior floor space. He also stated that constructing smaller scale detached single-family homes on the site was not considered.

Chair Harrison called for questions from the public.

Adrienne Moore, 351 Orange Road, asked for an indication of the architectural style of the proposed townhouses. She also asked whether the effect that the proposed height of the structures would have on the residents nearby was considered.

Chair Harrison called for a short recess.

Mr. Taylor called Megan Hunscher, who was sworn and stated her qualifications as a Professional Planner. Ms. Hunscher described the zoning of the subject property and stated that the area is zoned for single-family homes.

Marked into evidence were:

A-4 Aerial photograph of the area, on a board, depicting the existing conditions on the site and the area

A-5 Aerial photograph with the proposed development depicted, on a board

Ms. Hunscher stated that the aerial photographs show that the footprint of the proposed townhouse structures is similar in scale to many existing structures in the area.

Marked into evidence were:

A-6 Board containing 6 photographs of the existing conditions on the site

A-7 Board containing 6 photographs of the existing conditions on the neighborhood

Ms. Hunscher stated that the photographs depict the cemetery that exists across Pleasant Way from the site and also depict some of the multifamily uses on the adjoining streets.

A-8 Aerial photograph depicting a larger land area than the aerial photograph used in Exhibits A-4 and A-5

Ms. Hunscher stated that A-8 depicts other multifamily developments in the area, such as the garden apartment development that exists on Orange Road north of the subject property. She described the variances requested and stated that "d" variances are required for the proposed use and height and that several bulk variances are also requested. She stated that, since the natural grade rises moving west on Ward Place and Pleasant Way, the height of the proposed structures would not have a significant impact on the properties located on Ward Place and Pleasant Way.

Ms. Hunscher stated that the site is particularly suitable for the proposed use because it is a large corner lot on a major road and also because of the commercial history of the site and the existing mixed use character of the neighborhood. She stated that the proposal would introduce new residential development to an area that has not experienced upgrades in residential construction and would lead to revitalization of other underutilized properties in the area. She continued by citing points from a 2001 report by the National Association of Home Builders that illustrates the benefits that would arise out of the proposed development compared to single family dwellings. She also stated that the area is located in an area targeted for growth in the State's Plan for Development and Redevelopment and that the proposed development is consistent with the goals of the State Plan

The Board questioned Ms. Hunscher. Ms. Hunscher stated that the front yard setback of the adjoining property on Pleasant Way is 22 feet. She stated that she did not do a feasibility study of any other development option, including a conforming development.

Chair Harrison called for questions from the public.

Renee Baskerville, 371 Orange Road, asked what the parking requirement per unit is for townhomes and whether a plan is in place to make up for the deficiency of 5

spaces. She also asked which Master Plan she reviewed, what the length of the building is along Orange Road and whether that length is comparable to any buildings in the area. Ms. Hunscher stated that she reviewed the Master Plan Re-examination Report, dated December 13, 1999 and that the building measures 135 feet along Orange Road and that no other building in the area has a comparable length along a street.

Bill Carr, 10 Pierpont Drive, inquired about different options, including lower density development options. Ms. Hunscher stated that the proposed development is the only development option that she has reviewed.

Daphne Harris, 17 Ward Place, inquired whether a study was done on the infrastructure replacement costs for this type of development compared to a lower density detached single-family development. Ms. Hunscher stated that this type of study has not been done.

Stanley White, 439 Orange Road, asked whether any studies have been done on how many units have been created in the area in recent years. Ms. Hunscher stated that this type of study has not been done.

Rev. James Dargan, 391 Orange Road, asked if the subject property is the largest lot in the area.

Janet Hubert-Kraft, 5 Ward Place, inquired about the commercial history of the subject property and also asked whether any detailed studies were done on the existing multifamily dwellings in the area.

Lillie White, 77 Pleasant Way, and owner of 69 Pleasant Way, asked what factors go into the determination that an area is in need of an upgrade in residential construction.

Sybil Smith-Darlington, 67 Pleasant Way, asked what the height of the balconies would be from the ground.

Chair Harrison stated that the application would be continued at the January 18, 2006 regular meeting of the Board and that no further notice would be given.

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