

MINUTES OF THE BOARD OF ADJUSTMENT
December 13, 2006

PRESENT: Chair Harrison, Ms. English, Ms. Holloway, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq., Mr. Franco, Assistant Planner and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey, Vice Chair Fleischer, Mr. Haizel, and Mr. Flood

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. Whipple, seconded by Ms. English, the **Minutes of the August 2, 2006** special meeting were adopted, Ms. Holloway, and Mr. Susswein abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the **2007 Schedule of Regular Meetings** was adopted.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Ayalnesh Ghebremicael, 37 Enfield Avenue** was adopted:

WHEREAS, Ayalnesh Ghebremicael, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct a full second story addition over the first floor of her existing one-story single-family dwelling on property designated as Lot 44 in Block 2903 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant sought variances pursuant to N.J.S.A. 40:55D-70c as follows:

1. A variance from **Montclair Code Section 347-45B(1)** in that a minimum front yard setback in keeping with the average front yard setback of the 4 nearest principal structures, which is 65.21 feet, is required and a lesser front yard setback of 29.42 feet is proposed; and

2. A variance from **Montclair Code Section 347-45C(1)** in that minimum side yard setbacks of 6 feet for one yard and 10 feet for the other yard are required and 7.75 feet and 5.99 feet are proposed; and

3. A variance from **Montclair Code Section 347-45C(4)** in that the width of the dwelling is not permitted to exceed 65 percent of the lot frontage width and 72.6 percent is proposed; and

WHEREAS, the applicant submitted a property survey prepared by Richard, Lupo & Pronesti, with a revision date of September 22, 1992; and architectural drawings

on 6 sheets which include a site plan, demolition plan, floor plans, and elevations, prepared by Plus Architecture, dated August 28, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 15, 2006, 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 is an interior lot located in the R-1 One Family Residential Zone and contains a one-story single family dwelling with a detached garage at the rear of the lot. The subject property measures 50 feet in width along Enfield Ave and contains 6,858 square feet of lot area.

2. An addition is proposed to create a second floor for the dwelling. The new second level is proposed over all areas of the existing dwelling, with the exception of the front entrance porch and an enclosed rear basement stairwell. The proposal complies with the height limit of 35 feet and the limit of 2½ stories.

3. The plan indicates that the average front yard setback of the 4 nearest principal structures, 2 on either side, of the subject dwelling, is 65.21 feet and a lesser front yard setback of 29.42 feet is proposed. The Board determined that this variance could be granted since the second floor addition would not encroach closer to Enfield Avenue than the existing dwelling and the average front yard setback is skewed by the 2 lots to the north of the subject property, each of which contains a principal building that is setback an unusually large distance from Enfield Avenue.

4. The existing dwelling has a nonconforming northerly side yard setback of 7.75 feet and 7.86 feet, measured to the northerly corners of the dwelling, and a nonconforming southerly side yard setback of 5.99 feet. The Board determined that this variance was acceptable since the proposed second story addition will be situated directly upon the lower level and would have the same side yard setbacks.

5. The width of the existing single-story dwelling measures 36 feet 4 inches, which equals 72.6 percent of the lot frontage width of 50 feet. The width of the proposed second floor would match that of the existing dwelling and a variance is requested in that the width of the dwelling is not permitted to exceed 65 percent of the lot frontage width and 72.6 percent is proposed. The Board determined that this variance was also acceptable being that the width of the proposed second floor is based on the width of the existing first floor.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested 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); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant did prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan 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 Ayalnesh Ghebremicael is approved, subject to the condition that any outstanding property taxes be paid; and

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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of 16 Portland, LLC, 16 Portland Place was adopted, as modified:

WHEREAS, 16 Portland, LLC, as owner, did make application to the Board of Adjustment of the Township of Montclair to utilize the existing building as a professional office, on property designated as Lot 1.01 in Block 2211 on the Township Tax Map and located in the "Center Area" of the C-1 Central Business Zone; and

WHEREAS, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70d(1) to permit professional office use on the first floor which is not a permitted use pursuant to Montclair Code Section 347-80B(3); and

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Dassa Haines, Architects, dated July 27, 2006; and

WHEREAS, this matter came to be heard at a regular meeting of the Board of Adjustment held on November 15, 2006 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 is situated at the corner of Portland Place and Maple Place and consists of approximately 1,068 sq. ft. in area. The property is improved with a two story brick building formerly used as a Township fire house which is in substantial disrepair.

2. The applicant seeks to renovate the exterior and interior of the building and utilize the first and second floors which contain a total of 1,526 sq. ft. of floor area as an architect's office which is classified as a professional office. The proposed improvements include restoring the exterior of the structure, replacing windows and doors and various interior renovations.

3. By resolution adopted September 21, 2006 the Historic Preservation Commission authorized the issuance of a Certificate of Appropriateness subject to conditions contained in Paragraph 8 therein. The applicant indicated it would be seeking a modification of Condition 2 from the HPC to allow the wall replacing the large garage bay on the rear of the east elevation to be flush with the building rather than recessed.

4. The subject property is located at the periphery of the C-1 Zone with the R-2 Zone to the north and the OR-3 Zone to the east. The predominant uses along Portland Place are residential and professional office. The intent of the ordinance in prohibiting professional office space on the first floor is to promote pedestrian activity on the sidewalk level. The Board, however, determined that goal was not appropriate based upon the location of this property within the zone and the nature of existing area uses.

5. The subject property is unique with the existing building approximately 20 ft. by 37 ft. which was never intended for retail use and contains no on-site parking, and, as a result, is particularly suited for the proposed professional office use.

6. Approval of this application will advance various purposes contained in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. specifically it will encourage appropriate municipal action in a manner which promotes the general welfare (-2a); provides sufficient space in an appropriate location for the proposed use (-2g); promotes a desirable visual environment (-2i); and promotes the conservation of historic sites (-2j).

7. Based upon the Board's particular knowledge of local conditions, approval of this application will 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 within application of 16 Portland, LLC for a use variance to utilize the first and second floor of the existing building as a professional office is hereby approved subject to the following condition:

1. The applicant shall comply with Conditions 1 and 3 contained in Paragraph 8 of the HPC resolution adopted September 21, 2006. Additionally, the applicant shall comply with Condition 2 contained therein or, if approved by the HPC, construct the wall replacing the large garage bay on the rear of the east elevation to be flush with the building rather than recessed.

NOW, THEREFORE, 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 applicants, the application of **Matthew and Wendy Foley, 178 Alexander Avenue** would be postponed to the February 21, 2007 meeting of the Board, that the mailing of the notice will be required for that meeting since it has not been done to date, and that no further notice would be published in the newspaper.

Chair Harrison called the application of **Thomas Russo, 5 Inwood Terrace**. Mr. Russo was sworn and described the application. He stated that a tree limb had fallen onto his dwelling and badly damaged the one-story sunroom on the side of the dwelling, which he is seeking to reconstruct at a larger size. He stated that the existing sunroom is 6 feet wide and also has a chimney inside of it further reducing its size, and that it is not a usable room. He stated that the proposed 3 feet 1 inches of width added to the room would allow for furniture that makes the room more comfortable and usable. He also stated that he has observed that there are many dwellings in his neighborhood that are similar in size in terms of their width.

The Board questioned the applicant. Mr. Russo stated that he has taken photographs to illustrate the width of dwellings in his neighborhood.

Marked into evidence were:

A-1 - A-7 Photographs of dwellings in the neighborhood of 5 Inwood
Terrace

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The Board noted that the proposal is consistent with the existing dwellings in the neighborhood. On motion by Ms. English, seconded by Mr. Susswein, the application was approved, subject to the following conditions:

1. The addition shall be limited to one story maximum.
2. The existing landscaping in the area of the addition shall be maintained, and to the extent that the addition requires the removal of any landscaping, it shall be replaced in kind in the area to front of the addition.

Chair Harrison called the application of **Robert Perdue, 54 North Mountain Avenue**. Robert and Connie Perdue, owners, and Mark Giessen, who designed the proposed garage addition, were sworn. Mr. Perdue stated that he is seeking to construct an attached garage addition onto the front of the dwelling. He stated that he and his wife have lived at the property for 50 years and have never had a garage to park their vehicles. He stated that the garage would provide many conveniences to them and would also provide an aesthetic benefit to the neighborhood as it would provide covered parking. Mr. Giessen stated that a front yard setback of 28 feet 10 inches is proposed, and that the required front yard setback is 45 feet 7 inches. He stated that the adjacent property to the north is the Van Vleck Gardens property and the Van Dyke Nursing Home adjoins the property on the south.

Marked into evidence were:

- A-1 Panoramic photograph looking west at the subject property from across the street
- A-2 Side elevation drawings

The Board questioned the applicants and Mr. Giessen. Mr. Giessen stated that garage has been designed to be parallel with the street to allow for easier vehicle access from the driveway. Ms. Perdue stated that a brook exists on southerly side of the dwelling and that they have a porch and a walkway on northerly side of the dwelling, and that there is no way to get a driveway into rear of lot.

Marked into evidence were:

- A-3 Drainage Plan prepared by McCumsey, LLC
- A-4 Photograph of the front of the dwelling

Mr. Giessen stated that the garage is 34 feet 1 inch deep on its longer side. Mr. Perdue stated that the driveway would be paved and that no trees would need to be removed if the existing curb opening is utilized as proposed.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application and it was determined that application could be approved with certain modifications. On motion by Mr. Susswein, seconded by Ms. English, the application was approved subject to the following conditions:

1. The garage addition shall be rectangular in shape, with the front wall parallel to the front wall of the dwelling, and shall not be closer than 28 feet 10 inches from front property line.
2. The revised engineering drawings and drainage calculations shall be approved by the Board Engineer.

Chair Harrison called the continuation of the application of **The Michael Malinowski Family Trust, 192-194 Bloomfield Avenue**. David Owen, Esq., appeared as attorney for the applicant and stated that he would recall 2 witnesses. He also stated that he would not seek a vote until there are more eligible Board members present at a subsequent meeting.

Mr. Owen recalled Jeffrey Morris, Professional Engineer, who was still under oath. Mr. Morris stated that revised engineering plans have been prepared. He described the traffic analysis that was done to determine the safety of making left turns into the proposed garage from Bloomfield Avenue, and stated that in the worst case scenario, a vehicle would have to wait 15 to 20 seconds for east bound traffic to clear in order to make the left turn. He stated that immediately to the west of the subject property are 2 apartment properties that have driveways that require similar left turns, except that those properties are closer to the Bloomfield Avenue and Grove Street intersection. He stated that the driveway apron would be constructed with stamped concrete to make it noticeably different from the sidewalk pavement, which will aid in pedestrian safety across the driveway and described the stop bar and speed bump at garage exit. He stated that the Board Engineer's recommendations have been incorporated into the revised plans and that there is no parking permitted on the southerly side of Bloomfield Avenue for 120 to the west of the subject property. He continued by describing the lighting and landscaping plan in detail and stated that all fences would comply with the height limitations of the ordinance.

Marked into evidence was:

A-13 Revised Engineering Plans, dated December 1, 2006

The Board questioned Mr. Morris. Chair Harrison called for questions from the public. None were offered.

Mr. Owen recalled Martin Dassa, Architect, who was still under oath. Mr. Dassa stated that historic marker of some type could be placed on the two-family dwelling, or on the proposed iron fence in front of that dwelling. He also described the proposed garage door in detail. He stated that the mechanism used to operate the garage door has been designed to be quiet since they are typically proposed below a dwelling unit and that there is no noise impact to off-site properties. He also stated that the garage door opens fully in 8 to 12 seconds.

Marked into evidence were:

A-14 Revised Architectural Plans, dated December 1, 2006

A-15 Automatic Garage Door information and specifications

The Board questioned Mr. Dassa. Mr. Dassa stated that they considered not having a garage door, but that security issues and aesthetic considerations make it necessary. He stated that the garage door closes automatically and has safety controls

to avoid injury to people or damage to property. Chair Harrison called for questions from the public. None were offered. Chair Harrison stated that the application would be continued at the regular meeting of the Board scheduled on January 17, 2007, and that no further notice would be given. Mr. Owen granted an extension of time to the Board.

Chair Harrison called the application of **Carlos Montoya and Penny Weissman, 27 Columbus Avenue**. Carlos Montoya and Penny Weissman, owners, and Ann Sears, Architect, were sworn. Ms. Sears described the application and the variances requested. She stated that all of the proposed additions are aligned with the existing side walls of the dwelling and that the dwelling is positioned at an angle to the side lines, which adds difficulty in complying with the side yard setback requirements. She also stated that required front yard setback is 41 feet 1 inches and that the proposed front yard setback is 38 feet 2 inches.

Marked into evidence were:

- A-1 Correspondence from Ann Sears, Architect, to the Planning Department, dated December 13, 2006 indicating the required front yard setback average of 41 feet 1 inch

Ms. Sears stated that the proposed front porch encroaches into the required front setback by 2 feet 11 inches at one corner. She described the interior of the dwelling and the problems solved with the proposed additions. Ms. Weissman stated that it is not possible to get a new washer and dryer into the existing basement because the basement stairway is too narrow. She also stated that the additional bathroom would be useful as her 2 daughters grow in age.

The Board questioned the applicant. Ms. Sears stated that the additions would not impact the driveway width. She also described why windows aren't proposed on the front wall and side wall of the second story addition. She stated that she looked at shortening the width of the porch, but that it was not possible to do it and have the porch remain symmetrical in appearance due to existing features on the house, such as windows.

Marked into evidence was:

- A-2 Photograph looking west from the subject property showing curvature on Columbus Avenue and front setbacks of dwellings on the street

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved.

Chair Harrison called the application of **Roger and Mary Ann Cucci, 20 Columbus Avenue**. Mary Ann Cucci, owner, and Mark Bess, Architect, were sworn. Mr. Bess described the application and the variances requested. He stated that a rear shed dormer is proposed to construct a bedroom in the attic and a front porch is

proposed. He stated that the proposed front porch encroaches 1 foot 11 inches into the required front yard setback at one corner of the porch. He also stated that the overall height of the dwelling would not change as a result of the proposed dormer. He stated that the curvature of road and the relatively large front setbacks on the street makes the proposed front setback variance a minor encroachment. He also stated that the full width porch helps to aesthetically balance the narrow appearance of dwelling,

The Board questioned the applicant and Mr. Bess. Ms. Cucci stated she originally wanted the porch to be 6 feet deep, but that it was reduced to 5 feet to try and minimize the encroachment. She stated that the existing 2nd floor of the dwelling has 2 bedrooms and another small room, which is more like a large closet that is currently used by her daughter as a bedroom. She also stated that the existing dwelling also has only 1 bathroom.

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Ms. English, seconded by Mr. Susswein, the application was approved, subject to the following condition:

1. The proposed front porch may be modified in shape; however, the front setback shall not be less than 57 feet 5 inches, and the size of the area of the porch that will be located closer than 59 feet 4 inches to the front property line shall not exceed the size of the area located closer than 59 feet 4 inches to the front property line shown on the plan submitted to the Board of Adjustment.

The Board was provided with a copy of Mr. Sullivan's proposed agreement for professional services for 2007. Mr. Sullivan stated that no changes are proposed to his hourly rate, and that an increase is proposed in his retainer, which hasn't been increased in years. He stated that the Board could review the proposed agreement and that they could vote on the re-appointment in January. Chair Harrison stated that any substantive discussion by the Board would require a motion to go into closed session. Mr. Susswein and Ms. Holloway each asked a question, which was answered by the Chair.

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