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## MINUTES OF THE BOARD OF ADJUSTMENT June 21, 2017

**ORDER:** The meeting was called to order at 7:35 p.m. by Janice Talley. Ms. Talley read the notice of compliance with the New Jersey Open Public Meetings Act and indicated that appropriate notice was forwarded to the officially designated newspaper of Montclair and posted in the Municipal Building. The schedule of meetings is also posted on the Township website.

**ROLL CALL:** Ms. Talley called the roll. Present were Mr. Harrison, Mr. Fleischer, Mr. Reynolds, Ms. Baggs, Ms. Chowaneic, Mr. McCullough, Mr. Allen, Ms. Daye, Mr. LaVail, Mr. Sullivan and Mr. Petto. Mr. Moore was excused.

**MINUTES.** The minutes from the May 10, 2017 meeting were presented. A motion to approve the minutes as amended was made by Mr. Fleischer, seconded by Ms. Baggs and approved unanimously with Mr. Allen abstaining. The minutes from the May 22, 2017 meeting were presented. A motion to approve the minutes as amended was made by Mr. LaVail, seconded by Ms. Chowaneic and approved unanimously with Mr. Harrison abstaining.

### **OLD BUSINESS:**

**App. 2102: 210 Highland Avenue.** Mr. Cal Trevenen, Esq. appeared on behalf of the applicant and stated that this is a request for an extension of approval as indicated in his letter to the Board dated June 5. He noted that his client had received a building permit from the Building Department on June 12. The Board discussed the request and noted that the Montclair Code requires construction to have started in order to maintain the variances. A motion was made to approve the extension request with a requirement that construction be started by November 30, 2017, by Mr. Harrison. The motion was seconded and approved unanimously.

**Resolution for App. 2501: 75 Montclair Avenue. Deron & Athena Siddons.** The Board discussed the draft resolution. A motion to approve the resolution was made by Mr. Fleischer, seconded by Ms. Baggs and approved unanimously with Mr. Reynolds, Mr. Allen, Mr. LaVail and Ms. Daye abstaining.

**Resolution for App. 2493: 89 Valley Road. BG Holdings LLC.** The Board discussed the draft resolution. A motion to approve the resolution as amended was made by Mr. LeVail, seconded by Ms. Baggs and approved with Mr. Harrison, Mr. Reynolds, Mr. Allen and Mr. McCullough abstaining.

Mr. Harrison announced that the Board has received a letter from the Alan Trembulak, attorney for Application 2506 – 19-23 North Willow Street (Redeemer Church of Montclair), requesting that the matter be carried to the August 16<sup>th</sup> meeting. The Board

agreed to carry the matter and Mr. Harrison noted that the matter is carried to August 16 and that no new notice will be required.

**App. 2508: 160 Orange Road. Monika & Mido Emad.** Mr. Harrison read the public notice for the hearing. He noted that a variance is requested from **Montclair Code § 347-45(B)2** to permit a front yard setback for corner lots less than the required 25 feet. A variance is also requested from **Montclair Code § 347-45(C)2** to permit a side yard for corner lots of less than the required six feet. The applicant also requests any other variances that are required.

Karen Brinkman, AIA introduced herself as the project architect who prepared the plans and is representing the applicant. She summarized her qualifications and was accepted by the Board. She introduced the applicant, Monika and Mido Emad. She summarized the application, noting that the house is a very small house with only two bedrooms and one bathroom. The proposed addition to the house will add another bedroom and bathroom. She noted that the house was built in the late 1800's prior to the Township's zoning ordinance and therefore does not meet the zone requirements.

The following exhibit was marked into the record:

A-1 Photo board showing the existing house.

Ms. Brinkman stated that the applicant requests a c(1) variance to permit a front yard setback of less than the required 25 feet from Cross Street. The existing front yard setback of the existing dwelling is 14.4 feet. The proposed addition extends approximately 6.5 feet along the line of the existing dwelling, with a resulting front yard setback of 11.8 feet. She also stated that the applicant requests a variance of the required 6 foot side yard setback for corner lots. The existing dwelling on the subject property has a side yard setback of 3.7 feet. The proposed addition extends the rear of the dwelling 6.5 feet to the rear to align with the existing dwelling and maintains the existing 3.7 foot side yard setback. Both of these conditions are caused by the existing location of the house and the configuration of the lot.

Ms. Brinkman stated that the applicant has revised their plan to enclose the rear porch for the house in order to enlarge the kitchen. She presented revised plans showing this change. The following exhibit was marked into the record:

A-2: Revised plans dated 6/21/17.

Mr. Fleischer asked if the applicant could extend the landing at the base of the sliding glass doors to provide safer egress from the house. Ms. Brinkman stated that this change will be made.

There were no comments from the public.

The Board discussed the application and noted that the variances are created by the unique configuration of the building on the property and that they supported the proposal as it is a good solution to provide additional living space in the house.

A motion to approve the application was made by Mr. Reynolds, with a condition that the applicant revises the plans to show a landing in the rear yard where the sliding glass doors is located. The motion was seconded by Ms. Baggs and approved unanimously.

**App. 2509: 114 Upper Mountain Avenue. Nicole & Charbel Chalfoun.** Mr. Harrison read the public notice into the record. He noted that the property is located in the R-O: Mountainside Zone and that a variance is requested from **Montclair Code § 347-33(D)** to permit a rear yard setback of less than the required 30% of the depth of the lot.

George Held, AIA, presented himself as the architect for the application. He reviewed his credentials and was approved by the Board as an expert in architecture. Mr. Held stated that the existing house has a significant front yard setback, which is consistent with the other houses in the neighborhood. As a result, the existing house encroaches upon rear yard setback. He stated that the applicant proposes to replace the existing mudroom, which extends five feet from the rear façade and does not meet his client's current needs, with a new mudroom that will extend 7 feet, 2 inches from the rear façade. He stated that this is a very small addition, with a net increase of only 65 square feet. He also noted that the addition is not visible to any of the neighbors due to its location in the back of the house and the location of the existing garage, which will block the view of the addition from the neighbor to the rear.

Ms. Baggs questioned if the proposed Azek material is appropriate given the historic nature of the home. Mr. Held responded that Azek, or a similar composite material, is often used in additions to historic homes because it is maintenance free and can be designed to blend in with historic materials.

There were no comments from the public.

Mr. Harrison noted that there is a mistake in the zone chart. Mr. Held agreed that this was a mistake and that it would be corrected.

The Board discussed the application. The Board was concerned that they did not have a report from the Historic Preservation Commission on this application. Ms. Talley stated that there is no report on the application in the file and she was not aware of any comments from the Commission. A motion to approve the application was made by Mr. Fleischer, with the condition that the applicant must adhere to any conditions imposed by the Historic Preservation Commission. The motion was seconded by Mr. Reynolds and approved unanimously.

**App. 2497: 21 Plymouth Street. 21 Plymouth Street, Montclair, LLC.** Bruce Rosenberg, Esq. represented the applicant. He summarized the changes to the application, which included a reduction in the number of units from 8 to 6 and a reduction in the number of parking spaces from 14 to 7. He noted that the change in number of units eliminated the need for an affordable unit in the project.

He introduced Brigitte Bogart, a licensed professional planner. Ms. Bogart summarized her credentials and was accepted by the Board.

Ms. Bogart testified that application advances several planning benefits. She presented Exhibit A-2 which is a color photo exhibit printed on 11 x 17 inch paper. She reviewed the surrounding land uses which include an office building to the west, a church and library to the east among other residential uses. Ms. Bogart presented Exhibit A-3 which displayed the land uses and photos of the properties surrounding the subject property. She noted that the application maintains the scale of the other buildings in the neighborhood by using the existing structure. She noted that benefits of the project

include maintaining the existing 2-1/2 story building and changing the use of the site from commercial to residential, which better conforms to the neighborhood.

Ms. Bogart stated that the application requires a use variance and bulk variances that reflect existing condition. She stated that the front yard setback variance is created by the need to install a handicapped ramp to the building entrance. She stated that the handicapped ramp also created the need for the coverage variance. She stated that a parking variance is required, but that the number of parking spaces reflects trends, as noted in the American Community Survey for the census tract regarding car ownership and that residents will have no more than one car for each unit. She also noted that the application will improve existing conditions in the parking lot. Exhibit A-4, which is census data from the American Community Survey, was marked as an exhibit.

Ms. Bogart stated that the 2015 Master Plan includes this property in the C(3) Urban Edge district which permits a maximum density of 50 dwelling units per acre. She noted that the density proposed by the applicant is only 20 units per acre which less than the density proposed in the Master Plan.

Ms. Talley corrected Ms. Bogart, stating that the C(3) district permits 3 story buildings and a maximum density of 28 units per acre. Ms. Talley pointed out that the Planning Board amended the Master Plan in April 2017 which preserved the existing R-1 zoning in the area.

Ms. Bogart stated that the application meets many of the objectives stated in the Master Plan, including the need for a diverse range of housing types.

Ms. Bogart stated that the use variance meets the special reasons criteria because it provides a variety of housing types, is an appropriate location for multi-family housing and that the site is particularly suited for the proposed use. She stated that there is no substantial detriment to the public good created by the proposed use.

Ms. Bogart stated that the C(2) bulk variances meet the special reasons criteria because the property is an appropriate location for the proposed use, maintains light, air and open space, maintains an appropriate population density and is a transitional area that provides space for multifamily housing. She stated that public benefits include retaining the existing architecture, improving the parking lot, improving the lot and eliminating the nonconforming office use.

The Board questioned the witness.

Mr. Fleischer stated that the site is located at the edge of a residential district. He stated that he has a problem with the basement unit. He also pointed out that the Planning Board's decision to change the land use designation to R-1 is an important consideration. He stated that he is reluctant to erode the edge of the residential district right after the Master Plan has been amended.

Ms. Bogart stated that emphasis should be placed on the existing land uses, as required by the Municipal Land Use Law. She stated that there is only one single-family use in the zone on this block. She stated that the north side of Plymouth Street is a transitional area and that removing the commercial use provided a better transition.

Mr. Harrison questioned the number of units proposed. He asked Ms. Bogart how the applicant arrived at 6 units when there is nothing approaching that density in the R-1 zone.

Ms. Bogart stated that the Board needs to consider existing land uses in adjacent zone districts which have a much higher density. She also pointed out that she has to prove that the site can accommodate the proposed use, which she has through review of the site plan and census data.

Mr. Harrison asked for additional details about the doctor's office, including the number of doctors and patients that utilized the site. Ms. Bogart did not have an answer to this question.

Ms. Baggs stated that she is concerned about the quality of the housing units being created with this application. She questioned how the applicant would ensure that the housing units would be available to seniors, as was testified by Ms. Bogart. She also pointed out that the Plymouth Street neighborhood is defined by both sides of the street and that the residences on the south side of the street, which are primarily single-family, need to be considered in the analysis. Ms. Bogart responded that this block is a transition area.

Ms. Baggs asked how the property can be suited for higher density residential use when there is not enough parking on the site. Ms. Bogart responded that the parking requirements are established by the State and do not reflect local conditions. The statute allows reduced parking standards where conditions permit, and that the redevelopment plans adopted by the Township include reduced parking requirements.

Mr. McCullough stated that he is concerned that permitting this multi-family use on the block would create a precedent. He noted that there are single-family homes across the street and that preservation of single-family residential neighborhoods is important. He is also concerned about the loss of the affordable housing unit in the project. He also noted that the three units on the first floor will be handicapped adaptable, not accessible.

The public was invited to question the witness.

Roseanne Spandy of 12 Plymouth Street asked if the variance will lay the groundwork for additional variances on the street.

Mr. Rosenberg introduced Patrick McClellan, the project engineer. Mr. McClellan's credentials were accepted by the Board.

Mr. McClellan reviewed the changes to the site plan. He noted that in addition to reducing the number of units and the number of parking spaces, the parking area was moved from the west side to the east side of the lot. A stormwater management plan was submitted and a guardrail and fence added to the west and north property lines. He noted that the lighting plan is comprised of two building-mounted lights mounted at a height of 12 feet. He stated that the building coverage decreased from 29.9 percent to 29.4 percent with the changes.

Ms. Chowaneic asked about the size of the trash enclosure area. Mr. McClellan stated that it will meet local requirements.

Ms. Baggs asked about the speed humps in the driveway. Mr. McClellan stated that the speed humps were included at the request of the neighbors to reduce the speed of cars exiting the driveway.

Mr. Harrison asked why the applicant only proposed 7 parking spaces when 8 spaces can fit on the site. Mr. McClellan stated that the neighbors wanted only 7 parking spaces.

Mr. Harrison asked how the refuse will be collected from the property. Mr. McClellan stated that it will be removed by hand and that the building's management will ensure that the trash cans are moved to the curb on pick up days. He stated that 4 or 5 containers are proposed.

The Board was invited to question the witness.

Lisa Falcone of 25 Plymouth Street asked about the lighting. Mr. McClellan stated that only two building mounted lights are proposed to illuminate the parking lot and that these lights will be shielded so that no light will spill over to adjacent properties.

Lynn Stock of 27 The Crescent asked why is there only one handicapped parking spot when there are three ADA units. Mr. McCullough explained that the number of parking spots is dictated by federal law and that the handicapped units are designed to be adapted should a handicapped resident require an ADA-accessible unit.

Mr. Rosenberg introduced Ben Harton, the licensed architect who prepared the plans. Mr. Harton was accepted by the Board.

Exhibit A-5, which is a rendering of the building, was marked. Mr. Harton stated that the building includes a new front porch and that the existing aluminum siding will be replaced with Hardie plank siding. He stated that additional landscaping has been added and the trash enclosure relocated to help screen the parking lot.

Mr. Allen stated that he is concerned about the basement apartment. Mr. Harton stated that appropriate egress is provided through the stairs and the windows, providing multiple ways to exit the building. He stated that the building will be fully sprinklered.

Ms. Baggs stated that she is concerned about the basement apartment as well. She asked for details on the floor to ceiling height for the basement apartment. Mr. Harton stated that the height varies from 7 feet, 11 inches to 9 feet, 6 inches and that this exceeds the minimum height of 7 feet required by code.

Mr. Fleischer stated that the basement apartment should be eliminated as he is concerned that the apartment is six feet below grade.

The public was invited to question the witness and provide comments.

Lisa Falcone of 25 Plymouth Street stated that she appreciated the applicant meeting with her and other neighbors, and that their biggest concern was the size of the parking lot. She stated that the doctors were never there in the evening or on weekends and that patients parked in the street.

Roseanne Spandly of 12 Plymouth Street stated that she is concerned that the variance lays the groundwork for additional variances along the street.

Mr. Rosenberg summarized the application.

Ms. Chowaneic stated that she appreciates the effort to listen to resident's concerns. She takes issue with the inconsistency with the Master Plan, the loss of the affordable unit and the parking variance. She dislikes the basement apartment and would rather see a 3-family use on the site.

Mr. LaVail stated said that he agrees with Ms. Chowaneic and appreciates the gestures made to work with the neighbor's concerns. He stated that the proposal is overly dense for the neighborhood.

Ms. Baggs stated that she shares the concerns of her colleagues. The building does contribute to the form and scale of the neighborhood, but she can only see 3 or 4 apartments in the building. Overall, the applicant has not shown the need for luxury housing in this area of the Township because of the number of dwelling units already approved by the Township. She noted that no testimony was provided regarding traffic impacts.

Mr. Fleischer stated that he is not in favor of this application as it is too dense. He stated that the applicant should meet the parking requirement and he object to the unit in the basement. He noted that there is limited on-street parking and the units are too small.

Mr. Reynolds stated that he is concerned about the parking variance and that there is difficulty in finding on street parking in this neighborhood. He appreciates the applicant's willingness to work with the neighbors.

Mr. Allen stated that he does not support the application and that 4 units would be more appropriate.

Mr. McCullough stated that he has a problem with the basement apartment and that affordable housing would make this application much more desirable. He stated that 7 parking spaces are not enough, that additional parking spaces are needed for visitors, especially since on street parking is limited.

Ms. Daye stated that she agrees with her colleagues and that she appreciates the applicant working with the neighbors, but she opposes the basement apartment. She has no issue with parking and traffic, but feels that the applicant is putting too much into the building.

Mr. Harrison commended the applicant for working with the neighbors. He is troubled by the lack of testimony comparing the proposed use to the doctor's office use. He noted that this is a rare instance where the Board has clear guidance from the Planning Board based on the recent amendment to the Master Plan. He stated that he is willing to grant a variance, but the proposed 6 units are too intense for the site and leads to a substantial detriment to the public good. He pointed out that the property is not located near a train station and that the 7 parking spaces proposed are not sufficient for the proposed six units. Four units would be a better fit for the site.

A motion to deny the application was made by Mr. Fleischer, seconded by Ms. Baggs and approved unanimously.

Mr. Harrison left the meeting. Mr. Fleischer took over as Board Chair.

**App. 2505: 151 & 157-159 Forest Street. Erie Street Partners LLC.** Mr. Fleischer read the public notice into the record. Mr. Alan Trembulak, Esq. introduced himself as the applicant's attorney. He summarized the application. He noted that when the building at 151 Forest Street was built, the property was located in the C-2 zone. By 1986, the zone was changed to the R-2 zone, making the building a pre-existing nonconforming use. He stated that the building contains a variety of uses including auto repair, storage and distribution and offices.

Mr. Trembulak introduced Stephen Plofker, the applicant. Mr. Plofker stated that he plans to adapt the industrial building on 151 Forest Street for a variety of uses that will blend in with the community. He wants to create windows on the north side of the building. In order to do that, he has acquired the adjacent property at 157-159 Forest Street in order to resubdivide the two lots to create provide open space along the north side of the building on 151 Forest Street. Mr. Plofker stated that his plan is to use the building at 151 Forest Street for office use.

Mr. Plofker stated that the site contains 43 parking spaces, including 36 spaces on the property and 7 spaces on adjacent NJ Transit land that he is leasing from the agency. The site plan requires 59 parking spaces. Mr. Plofker stated that he has revised the plan to provide one-way ingress to the property from Forest Street, with egress to Erie Street. He stated that the revised plans include a lighting plan, a landscaping plan and show a new fence along the southern property line.

Exhibit A-1, a PowerPoint presentation, was marked into the record. Mr. Plofker showed slides of his other projects on Forest Street.

Mr. Fleischer stated that his biggest concern is traffic on Forest Street. Mr. Plofker stated that traffic issues should be addressed by the one-way traffic flow. He stated that he is willing to improve the portion of Erie Street that provides access to his property.

Mr. Trembulak introduced Paul Sionas, the licensed architect who prepared the plans. Mr. Sionas was accepted by the Board.

Mr. Sionas stated that the plan is to move the northern property line between the two lots 9 feet to the north. This will provide sufficient space to install windows on the north side of the building. An access easement will be created for 157-159 Forest Street to use this driveway that will now be located on both lots.

He stated that the revised plans show a one-way traffic flow through the property. The parking lot will be restriped and will provide 36 parking stalls. Landscaping has been added and the chain link fence along the southern property line will be replaced by a new solid wood fence that ranges between 4 feet and 6 feet in height.

Mr. Fleischer stated that he believes the adjacent building at 149 Forest Street is used by the Montclair Coop School. He wants clarification to determine if this is still the case. He also inquired as to whether the lease for the 7 parking spaces with NJ Transit is revocable. Mr. Trembulak stated that it is a 3-year renewable lease. Mr. Fleischer asked if more than 7 parking spaces can be provided on the NJ Transit property. Mr. Sionas stated that additional parking spaces cannot be provided because of grade issues.

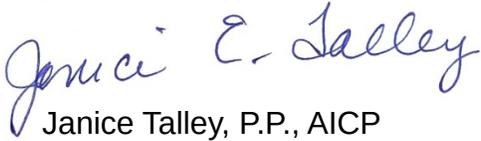
Exhibit A-2 the lease with NJ Transit was marked into the record.

The application was carried to the July 19 Board of Adjustment meeting.

**ADJOURNMENT**

A motion to adjourn was offered by Mr. LaVail, seconded by Ms. Baggs. The meeting was adjourned at 12:10pm, June 22, 2017.

Respectfully submitted,

A handwritten signature in blue ink that reads "Janice E. Talley". The signature is written in a cursive style.

Janice Talley, P.P., AICP  
Secretary  
Zoning Board of Adjustment