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MINUTES OF THE BOARD OF ADJUSTMENT September 27, 2017

ORDER: The meeting was called to order at 7:40 p.m. by Graham Petto. Mr. Petto 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: Mr. Petto called the roll. Present were Mr. Harrison, Mr. Fleischer, Ms. Baggs, Mr. Allen, Mr. LaVail, Mr. McCullough, Ms. Daye, Mr. Sullivan and Mr. Petto. Ms. Chowaneic, Mr. Moore and Mr. Reynolds were excused.

MINUTES: The minutes from the September 13, 2017 meeting were presented. A motion to approve the minutes as amended was made by Mr. Fleischer, seconded by Mr. LaVail and approved unanimously, with Mr. Allen abstaining.

OLD BUSINESS:

Resolution for App. 2506: 19-23 North Willow Street. Redeemer Church of Montclair. *Conditional use variance and bulk variances for expansion of a church in the R-2 zone district.*

Mr. Harrison introduced the resolution to the Board. He noted a few edits to the resolution as presented. A motion was made by Mr. Fleischer, seconded by Mr. Harrison to approve the resolution as amended. The resolution was approved with Ms. Baggs, Mr. Allen, Mr. LaVail, Mr. McCullough and Ms. Daye abstaining.

Resolution for App. 2521: 105 Bellevue Avenue. Jeff Somerstein & Susan Mazo. *Bulk variance for accessory structure setback*

Mr. Harrison introduced the resolution to the Board. A motion was made by Mr. Fleischer, seconded by Mr. LaVail to approve the resolution as drafted. The resolution was approved unanimously, with Mr. Allen abstaining.

App. 2515: 237-249 Lorraine Avenue. NJ Metro Group LLC t/a Keller Williams. *Continued hearing from August 16, 2017 for use variance to locate professional office (real estate) on first floor in the N-C zone district.*

Mr. LaVail recused himself from the application.

Mr. Harrison introduced the application. Present for the applicant was attorney Alan Trembulak.

Mr. Sullivan noted that the Board only has 6 eligible members to hear the application. Mr. Trembulak requested that the application be postponed to the October 11 meeting of the Board.

The Board agreed to carry the application to the October 11 meeting with no further notice.

NEW BUSINESS:

App. 2516: 594 Valley Road. P and D Zimmerman Family Limited Partnership.
Residential density variance and site plan approval for expansion of a building in the N-C zone.

Mr. Harrison introduced the application. Present for the application was David Owen, attorney for the applicant.

Mr. Owen reviewed and summarized the proposed development under the application for the Board. He noted that the proposed residential development would retain the existing pedestrian walkway and open air Montclair Mews. Mr. Owen also noted that the rear building would be removed and a new building would be constructed in its place. He stated that the existing building fronting Valley Road would remain with some minor updates to restore the historic appearance. In addition, he noted it would include the first affordable housing unit in Upper Montclair. Mr. Owen reviewed the variances sought under the application, including residential density and parking.

Mr. Owen then introduced Paul Sionas, architect for the applicant. Mr. Sionas presented a PowerPoint presentation to the Board reviewing the proposed development in detail for the Board.

Following Mr. Sionas' presentation, questions from the Board were then accepted.

Mr. Fleischer noted only one stair serving the proposed building and the six residential units. Mr. Sionas stated that this was compliant with building codes and noted that the building would be served by sprinklers.

Ms. Daye asked about the bedroom configuration of the units. Mr. Sionas stated they would all be one-bedroom.

Mr. McCullough asked about the proposed apartments with windows only onto the Montclair Mews. He noted that residences would be located in close proximity to the Mews area and the open air dining below. Mr. Sionas noted that the building would be new construction and would be well insulated. He stated that insulated glass could also be incorporated to further shield any noise. He also stated that window treatments would help to retain privacy of the residents. He also noted that the apartment units would be best suited for tenants interested in an active urban environment.

Mr. McCullough asked about any impact of food preparation from the restaurant on the apartment units. Mr. Sionas stated that the ventilation from the restaurant was through the roof of the existing building, that is to remain on the site.

Mr. McCullough asked about the discrepancy of the storefronts on the front façade. Mr. Sionas noted that the storefronts are to remain and that the upper façade and piers between the storefront would be rehabilitated.

Ms. Daye asked about the hours of the restaurant. Mr. Sionas stated that the building owner could respond to that question.

Mr. LaVail asked if the engineer comments had been addressed. Mr. Sionas replied yes.

Mr. Sionas also reviewed the memo from the HPC and noted that the applicant would comply with all items except the requested wood entry doors in the retail spaces fronting the Mews and the requested taller landscaping in the Mews.

Ms. Baggs asked about trash collection for the new residential units. Mr. Owen stated that he spoke with Craig Brandon of the Township's Department of Community Services regarding collection. He stated that the non-residential uses in the building would be served by a private hauler as required under the Township ordinance. He also noted that the residential units would receive Township collection services, per Mr. Brandon. He stated that recycling would also be collected by the Township for the residential units.

Ms. Baggs asked about the proposed sunshades on the rear of the building and the projection over Township property. Mr. Petto reviewed the ordinance language regarding awnings from Montclair Code Chapter 297 – Streets & Sidewalks, Article V: Awnings, Canopies and Marquees. He noted that the Code states that fixed awnings shall extend no less than 2 feet 6 inches, and no more than 4 feet into the public right of way.

Ms. Baggs asked about the location of HVAC equipment on the site. Mr. Sionas noted that the equipment would be roof mounted on the new building and would be accessed by a roof hatch from the top of the proposed stairwell.

Ms. Baggs asked if the apartments would have operable windows. Mr. Sionas replied yes.

Ms. Baggs asked if the rear yard setback could be increased for the proposed building. Mr. Sionas stated that the building is designed to align with those adjacent buildings, which also abut the property line. He noted that the first floor would be in-set by about 5 feet to accommodate a sidewalk area in front of the proposed retail space.

Mr. Fleischer asked about the requested parking variance and the lack of parking provided under the application. Mr. Owen stated that there is no parking change of the existing uses and noted that the requested variance is only for 11 parking spaces for the proposed dwelling units. Mr. Sionas noted that the location is well served by public transportation options and has many nearby amenities within walking distance.

Mr. Fleischer stated that the Township has not changed any parking requirements to reflect the location's proximity to transit and walkable amenities. He stated that justification needs to be made for the requested parking variance.

Mr. McCullough referred to Slide 13 of Mr. Sionas' presentation and asked about the location of the affordable unit. Mr. Sionas stated that it has not yet been identified, but noted that all units are consistent in configuration. Mr. McCullough stated that the consistency with other units was a benefit of the application.

Mr. Harrison referred to the zoning chart on the submitted plan set, and noted a slight increase in square footage of retail use in the existing building, fronting on Valley Road. Mr. Sionas noted that the retail space for Barbara Eclectic would increase in size slightly to account for a reconfigured door at the rear of the space.

Mr. Harrison asked if occupancy of the basement of the existing building to remain would continue. Mr. Sionas replied yes.

Mr. Harrison noted that the retail space in the proposed rear building would be less than the existing rear building, to be removed. Mr. Sionas replied yes, noting that the elevator and stair to the upper floors would reduce the lower level retail space.

Mr. Harrison referred to the Board Engineer's memo and asked the applicant would comply with the conditions. Mr. Sionas stated that a stormwater management system would not be needed as there is no change in the impervious surface. He also noted that the applicant comply with the other conditions of the memo.

Mr. Harrison reviewed the memo from the Historic Preservation Commission on the application. Mr. Harrison noted that the applicant has stated compliance with items 1, 4, 5 and 6 of the memo. He also noted that the applicant stated they will not comply with item 2. Mr. Harrison asked about item 3 which requested taller landscaping in the Mews. Mr. Sionas stated that there is sufficient landscaping and that the area is well landscaped with three large planters.

Ms. Daye asked about amenities for the apartment units, including outdoor space laundry. Mr. Sionas stated that there would be bike storage and general storage for the units. He stated there would be no private outdoor space and no on-site laundry facility.

Questions from the public were then accepted.

Donald Felber, part owner of Barbara Eclectic, stated that the plans represent an improvement for the property. He stated that the new apartments will help to beautify the rear of the property. Mr. Felber referred to slide 1 of Mr. Sionas' presentation and asked if there would be any changes to the footprint of the existing building, to be retained, that fronts Valley Road. Mr. Sionas stated there would be no change.

Mr. Felber asked if there were any plans to update the HVAC equipment for the existing building to remain. Mr. Sionas replied no, stating the existing system would remain.

Mr. Felber noted that a new tenant recently occupied the one existing apartment unit in the existing building front Valley Road. He noted that this tenant does not own a car and does not need parking.

The Board took a brief recess from 9:30 to 9:35.

Upon return from the recess, Mr. Owen asked if the Board would accept a public comment at this time, as the member of the public could not stay for the remainder of the meeting. The Board agreed to the request.

Mr. Michael Pavel of Caldwell, addressed the Board. He stated that he was excited about the project. He noted that he recently completed the redevelopment of the 50 Upper Montclair Plaza building, located across the parking area from the subject property. He stated that the Plaza area is becoming a destination in Upper Montclair.

He noted that the project will be an asset to the area and that the existing rear of the subject property is an eyesore. He stated that while there are parking issues in the immediate area, they are not significant to prevent the development of this property.

Mr. Owen then called Paul Zimmerman, applicant, to testify.

The Board questioned Mr. Zimmerman.

Mr. Fleischer asked about the hours of the existing restaurant on the property. Mr. Zimmerman stated that they are open from lunch through dinner until about 9 or 9:30pm.

Mr. Harrison asked if the lease for the restaurant included use of the Mews courtyard area. Mr. Zimmerman replied yes, but noted that there are allowances for use of the courtyard by other tenants. He stated that the courtyard would be available for use by the apartment units as well.

Ms. Baggs asked about trash removal from the site. Mr. Zimmerman stated that there is a private service for the removal of trash from the property, as required under the Township ordinance.

Ms. Daye asked about trash removal for the one existing dwelling unit at the property. Mr. Zimmerman stated he was not aware how this unit disposed of trash.

There were no questions from the public for Mr. Zimmerman.

Mr. Owen then called Peter Steck, professional planner for the applicant.

Mr. Steck introduced Exhibit A-2, a 5 page plan report with graphics and photos for review by the Board.

Mr. Steck reviewed the Exhibit in detail for the Board. He noted that the site provides a public benefit due to the pedestrian walkway and the Mews. He stated that most buildings in the area do not have on-site parking and that there are many amenities within walking distance. Mr. Steck reviewed the Master Plan for the area and the proposed development's consistency with the Plan.

Mr. Steck reviewed the requested variances sought by the applicant. Mr. Steck reviewed the negative and positive criteria of the applicant.

Questions from members of the Board were then accepted.

Mr. Allen asked about the HVAC units on the proposed building and if they would be screened from view of adjacent buildings. Mr. Steck noted that the new building is to the rear on the site and not adjacent to the taller building just north along Valley Road.

Mr. Fleischer asked about the availability of overnight parking permits in Upper Montclair. Mr. Steck stated overnight and weekend permits were available for the Upper Montclair Lots. Mr. Owen stated that they cost \$270 for a 6-month period.

Mr. Fleischer stated that some daytime permits would be needed for these tenants. Mr. Sionas stated that daytime permits are not available in Upper Montclair. Mr. Fleischer noted that daytime permits are available in other areas of the Township. He stated that the parking issue is a larger issue for the Township and should be addressed by the Council, not through zoning variances.

Mr. Harrison noted that Mr. Steck indicated that the Township requirement for residential parking is from the Residential Site Improvement Standards, which is not truly a variance.

Mr. Harrison asked if day permits were available for portions of the Upper Montclair Plaza Parking Lot. Mr. Steck replied yes, however he noted that there is a four-year waitlist for daytime permits. He stated that overnight permits are now available from the Parking Utility.

Mr. Harrison asked if overnight permits would be sufficient for a potential tenant that would drive to work during the day. Mr. Steck replied yes.

Mr. Harrison asked if the meters in the Upper Montclair Plaza Parking Lot could be converted from meters to permit spaces. Mr. Steck stated that these could be changed if the Township chose to do so.

Mr. Harrison asked about the sign variance for the proposed signs facing the Mews courtyard. Mr. Steck stated this would be a hardship as the proposed retail space in this area has no public street frontage so a sign is needed.

Mr. Harrison asked about the density of the mixed-use building at the corner of Valley Road and Bellevue Avenue. Mr. Steck stated there were approximately 8 dwelling units in this building with no-on site parking and no affordable dwelling unit.

Mr. Steck stated that the application provides a variety of public benefits to the area.

Mr. Fleischer stated that the applicant could have considered providing on-site parking in the rear of the building, perhaps at grade below the new construction. Mr. Steck stated that this would be inconsistent with other buildings in the area that do not have on-site parking. Mr. Owen noted that providing such on-site parking would require the removal of two, possibly three, parking spaces in the Township's Upper Montclair Plaza Parking Lot.

Comments from the public were then accepted.

Ms. Jamie Smith, 29 Northview Avenue, stated that she was in support of the plan. She urged the Board to think outside the box on the application, as current development is very car-centric. She stated that new families that are locating to the area have fewer vehicles. She stated that the immediate residential neighborhood is an ideal area to encourage walking in Upper Montclair and that this project will also encourage walking. She stated that the parking meters are not always full and that conversion to some daytime permits would be good for the area. She stated that the Township should encourage thinking about public transportation options and to better develop a culture of walking.

Mr. Owen then summarized the application for the Board. He noted that there are many public benefits of the application, including the public walkway, the Mews courtyard and the addition of an affordable housing unit in Upper Montclair. Mr. Owen reviewed the variances sought by the applicant and stated that there would be no substantial detriment to the zone plan. He stated that the applicant would agree to provide overnight permits as a condition of approval.

Final comments from the Board were then accepted.

Ms. Daye stated that the application does have positive benefits and she believes that the project will improve the aesthetic of the area. She stated that it is also consistent with the Master Plan's goals on walkability and also notes this proposal is a transit-oriented development. However, Ms. Daye noted concerns about the residential aspect of the project, noting that there is no on-site laundry facility, no parking and limited amenities for residents. She stated concern that the units would not be suitable for senior citizens as there is no laundry facilities in the building nor in the units. She stated that more data on vehicle ownership in the area should have been presented. She stated that she would like to hear more from her colleagues.

Mr. LaVail stated that the application has many benefits including the renovation of the historic façade on Valley Road, the preservation of the walkway and the Mews and the creation of an affordable housing unit in addition to the nice design. However, he stated he has concerns regarding the lack of parking and noted that there are many apartments in the area that already do not have parking.

Ms. Baggs stated that she would be more agreeable to the application if fewer units were proposed with an affordable unit. Mr. Sullivan clarified that the ordinance requires one affordable unit for every 5 new units developed. He noted, as the existing building contains one dwelling unit currently, limiting the applicant to only 5 units, a net of 4 new units, would eliminate the need for an affordable unit to be developed by the applicant.

Ms. Baggs stated that she is generally supportive of the application. She noted that parking is a difficult issue in the area. She also noted that she would like to see a condition that drainage be addressed for the site.

Mr. Fleischer stated that the project overall was good. He stated that off-site parking arrangements should be made for the property. He stated that people in the area take the need for parking seriously. He stated that the increased use of the site should be sensitive to parking needs and they should be addressed. He stated that the applicant's proposal to provide overnight permits was good. He recommended this be a condition of approval.

Mr. Allen stated that he appreciated the testimony about transportation options in the area including train, bus and on-demand car services. He stated that the building will be an improvement for the area and that the affordable housing unit is a good addition to the area. He stated that there is a new trend in transportation in the Township.

Mr. McCullough stated that he agreed with previous comments on the benefits of the proposed affordable housing unit. He stated that this application is very positive and important for the community. He stated that the parking discussion is quite complicated. He noted that there is often greater daytime traffic in Montclair, and that the problem is throughout the Township. He noted that retail spaces can attract a lot of visitors. He stated that the development should be viewed in context of future development. He stated that there is an increasing trend of younger people not having cars and using car sharing services. Mr. McCullough noted that the proposed dwelling units do look like a hotel but that the applicant has paid attention to mitigate noise and privacy. He also stated that the proposed rehabilitation of the Valley Road façade was also a benefit. He stated he would be in favor.

Mr. Harrison stated that he would be in favor of the application. He stated that parking is a problem throughout the Township. He stated that he is concerned about precedent of parking variances and noted that they should be changed through ordinances. However, he stated that the site does represent a unique situation in the Township which could allow variances to be granted. He stated that the public benefits of the application are unique and few other sites would be able to provide such benefits. He stated that the applicant proposes to maintain the pedestrian walkway connection between Valley Road and the Upper Montclair Plaza Parking Lot, which is an important connection in Upper Montclair. He stated that the applicant proposes to maintain the Montclair Mews, an open space and community amenity in Upper Montclair which is a good asset to preserve. Mr. Harrison also noted that the proposed commercial activity on the Upper Montclair Parking Plaza is good for the other businesses that front the parking lot to increase activity in the area and promote economic activity. Finally, he noted that the restoration of the historic façade is another benefit of the application.

Mr. Harrison also noted that there is no concern with the impact of the sign variance sought by the applicant. He noted that the affordable unit to be provided would be a low-income affordable unit, which is a greater benefit to the Township. He stated that the transportation trend as discussed is interesting yet the parking shortage cannot be ignored at this time. Mr. Harrison also noted that the rear yard variance sought by the applicant could be approved as the adjacent buildings have no rear yard setback and the rear yard in fact fronts onto a public parking lot. He stated there would be no impairment to the zone plan.

Mr. Harrison then summarized the recommended conditions of approval:

1. The applicant shall apply for two daytime parking permits, and obtain them as soon as they are available, for use by the residential tenants; in addition, two nighttime parking permits are to also be obtained for use by the residential tenants. Said permits shall continue to be available for use by the residential tenants.
2. The applicant shall comply with and satisfy recommendations 1, 4, 5 and 6 contained in the Historic Preservation Commission report dated July 27, 2017.
3. The applicant shall comply with and satisfy comment 1 contained in the September 2, 2017 review memorandum prepared by W. Thomas Watkinson, P.E., Board Engineer, and shall repair the existing yard drain or install a trench drain in front of the stairs to capture runoff and address drainage adjacent to the walkway closest to Valley Road subject to review and approval by Mr. Watkinson.
4. All new signs on the front façade of the front building shall conform with the zoning ordinance and be located within the sign band.
5. Garbage and recycling on site shall comply with Township requirements.
6. The wall-mounted signs for the commercial spaces facing The Mews courtyard on the interior of the property which received variances pursuant to Montclair Code Section 347-110.1(A)3 shall otherwise comply with the zoning ordinance.

7. All signs on the new rear building that face the municipal parking lot shall conform with the zoning ordinance.
8. Public access through The Mews between Valley Road and the Upper Montclair Plaza municipal parking lot shall be maintained.
9. The plans shall be revised to designate the affordable housing unit.
10. The applicant shall be bound by its own representations as well as those made on its behalf by its attorney and professionals during the course of the public hearing.
11. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

A motion was made by Mr. Fleischer, seconded by Ms. Baggs to approve the application with the conditions as stated by the Chair. The application was approved unanimously.

App. 2522: 40 South Fullerton Avenue. Willow Street Partners. *Use variance application for townhome development in the R-1 zone district.*

Mr. Harrison and Mr. Allen recused themselves from the application.

Mr. Fleischer introduced the application. Present for the applicant was attorney Alan Trembulak.

Mr. Sullivan noted that the Board only has 5 eligible members to hear the application. Mr. Trembulak requested that the application be postponed to the November 8 meeting of the Board.

The Board agreed to carry the application to the November 8 meeting with no further notice.

ADJOURNMENT

A motion to adjourn was offered by Mr. Fleischer, seconded by Mr. LaVail. The meeting was adjourned at 12:05am, September 28, 2017.

Respectfully submitted,



Graham Petto, P.P., AICP
Assistant Secretary
Zoning Board of Adjustment