

**MINUTES OF THE MONTCLAIR PLANNING BOARD – February 9, 2009**

**PRESENT:** Chair Wynn, Mayor Fried, Councilor Africk, Ms. Ross, Ms. Nadler, Messrs. Haimbach, Allen, Board Attorney Karasick, Board Engineer Watkinson, Board Secretary Kadus and Assistant Secretary Franco

**ABSENT:** Vice Chair Talley, Messrs. Nachman and Rabinovitch

**Order and Announcements**. Chair Wynn called the meeting to order and announced that it had been properly noticed pursuant to the Open Public Meetings Act.

**Approval of Minutes of January 12, 2009**. On motion by Ms. Ross, seconded by Ms. Nadler, the Minutes of the meeting were approved.

**Adoption of Memorializing Resolution of Glen Ridge and North Willow Construction Company, Inc., 161-167 Glenridge Avenue**. On motion by Ms. Ross, seconded by Mr. Haimbach, the following Resolution was adopted:

**WHEREAS**, Glen Ridge and North Willow Construction Company, Inc. (hereinafter “the applicant”), as owner of property located at 161-167 Glenridge Avenue and designated as Block 3208, Lot 1 on the Montclair Township tax maps (hereinafter “the property”), filed an application with the Montclair Township Planning Board (hereinafter “the Board”) for preliminary and final site plan approval and variances required to construct on the property a new residential building with ground floor non-residential space, accessory parking, and related site improvements; and

**WHEREAS**, the applicant sought the following variances and other relief:

1. A variance pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Section 347-82A to allow a parking deck below a building in the C-1 Central Business Zone;
2. A variance pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Section 347-83C(1) to permit certain parking spaces to be set back less than 4 feet from a property line;
3. A variance pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Section 347-27A(2) to permit a fence to exceed 4.5 feet in height;
4. A variance pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Section 347-101 to permit less than the required number of on-site parking spaces; and
5. A New Jersey Residential Site Improvement Standards (hereinafter “RSIS”) de minimus exception under N.J.A.C. 5:21-4.14 and Table 4.4 to permit less than the prescribed number of on-site parking spaces; and

**WHEREAS**, the applicant submitted architectural plans prepared by Larry Johnson, A.I.A. revised through December 30, 2008 and site and engineering plans prepared by Matarazzo Engineering, LLC revised through December 30, 2008; and

**WHEREAS**, this matter came on to be heard at meetings of the Board held on December 8, 2008 and January 12, 2009, at which time it was established that notice was properly published and that property owners within 200 feet of the property had been properly served with notice; and

**WHEREAS**, the Board carefully considered the plans, the exhibits (A1 through A16), the testimony of the witnesses, the questions and comments presented at the public hearings, and all evidence presented; and

**WHEREAS**, the Board made the following findings of fact and conclusions of law:

1. The property is located at the northeast corner of Glenridge Avenue and North Willow Street in the C-1 Central Business Zone. It is a corner lot consisting of 14,704 square feet. A house of worship adjoins the property to the north, and the YMCA adjoins the property to the east. Presently, the property is vacant and bordered by chain link fence. A brook runs through the property partly in an open channel and partly in a box culvert. The property contains the remains of several buildings that housed a pet supply store, two auto shops, and an apartment until those buildings and uses were destroyed by fire in January 2000;

2. The applicant proposes a new 5-story residential building with ground floor non-residential space proposed to be occupied by a nonprofit institutional use, Studio Montclair (a nonprofit association of professional visual artists and persons interested in the visual arts) and with accessory parking below and alongside the building. The building consists of 15 dwelling units, including four 3-bedroom units, seven 2-bedroom units, and four 1-bedroom units. The dwelling units vary in size from 925 square feet to 2640 square feet. The non-residential space is 1,200 square feet. There are 29 on-site parking spaces, with 18 of these spaces partly or fully below the building and 11 of these spaces outside the footprint of the building. The building meets both height and density standards;

3. The building footprint and the on-site parking spaces are subject to and are represented to be in accordance with a New Jersey Department of Environmental Protection stream encroachment permit issued in July 2007. The building lies to the south and west of the brook on the property and the parking spaces are below and to the east of the building.

4. The proposed improvements reduce impervious coverage as compared to the prior use by about 2,260 square feet;

5. The applicant has agreed to provide one three-bedroom unit on the second floor and one three-bedroom unit on the third floor as affordable housing units under the Township's Inclusionary Zoning Ordinance;

6. The building features a brick facade on the ground floor level and a stucco facade on the upper floor levels. It also features lighted display boxes (for changeable works of art) and permanent awnings on the ground floor level and brick and glass components on the upper floor levels. There are pedestrian entrances to the residential units on Glenridge Avenue and North Willow Street, and there is a pedestrian entrance to the non-residential space at the corner of Glenridge Avenue and North Willow Street;

7. The plans provide for a telescoping gate along the entrance to the parking area. The gate will remain open from approximately 7:00a.m. to approximately 9:00p.m.; the gate will be closed between approximately 9:00p.m. and approximately 7:00a.m. and during those night hours will be operated by remote control;

8. The plans provide for a refuse and recycling area at the northeast corner of the parking area, and this location has been approved by the Township's Department of Community Services;

9. The plans further provide for nine roof-mounted light fixtures above the covered parking area and six bollard-style light fixtures around the uncovered parking area;

10. The new plantings on the property are a combination of Junipers and Azaleas;

11. Based upon the testimony of the applicant's traffic engineer, the sight distances upon exiting the property by vehicle are adequate to both the east and the west and comport with professional engineering standards;

12. The dwelling units require a total of 30 on-site parking spaces under RSIS Table 4.4, whereas the applicant proposes 29 on-site parking spaces. In addition, the non-residential space, or a retail use, requires five to six on-site parking spaces. The contemplated tenant for this non-residential space, Studio Montclair, plans to be open Tuesday through Saturday from 10:00a.m. to 5:00p.m. and Friday and Saturday evenings until 9:00p.m. It anticipates one to two employees and approximately 25 visitors per day. It also anticipates show openings, lectures, and potentially other programs that will have greater but undetermined visitors during evening hours at various points throughout the year. In accordance with shared parking principles set forth in RSIS, N.J.A.C. 5:21-4.14(e), the applicant proposes to reserve two of the 29 parking spaces for Studio Montclair (or other user) between 10:00a.m. and 5:00p.m. and, based upon a series of on-street parking surveys performed by the applicant's traffic engineer, to utilize on-street parking spaces for the balance of parking;

13. The applicant requires a variance under N.J.S.A. 40:55D-70c and from Montclair Code Section 347-82a to allow a parking deck below a building in the C-1 Central Business Zone. The applicant has designed parking below the building in such a way that parking spaces are incorporated into the building and wrapped by the building's street facades so that they are kept out of public view and thereby meet the intent and purpose of the zoning ordinance to prevent parking spaces under a building supported by columns or stilts with parked vehicles open to public view. Under N.J.S.A. 40:55D-70c(2), the variance promotes zoning purpose 2(i) because it promotes a desirable visual environment through creative development technique and good civic design and arrangement, zoning purpose 2(a) because it promotes the appropriate use of land, zoning purpose 2(g) because it provides sufficient space at an appropriate location for parking, and zoning purpose 2(m) because it promotes the more efficient use of land. In addition, the variance will not cause any substantial detriment to the public good and in fact will keep parked vehicles out of public view. Furthermore, the variance will not cause any substantial impairment of the intent and purpose of the zone plan and zoning ordinance because it promotes the master plan, the master plan reexamination report, and the zoning ordinance policies of introducing permitted uses in place of non-conforming uses, revitalizing vacant property in the Central Business Zone, encouraging downtown residential, business, art, and economic activity, and meeting affordable housing needs, because it meets the intent and purpose of the zoning ordinance as set forth above. The Board also acknowledges that the zoning ordinance specifically recognizes at Montclair Code Section 347-79D the difficulty in providing on-site parking spaces in the Central Business Zone;

14. The applicant requires a variance under N.J.S.A. 40:55D-70c and from Montclair Code Section 347-83C(1) to permit approximately four of 29 parking spaces located at the southeast corner of the parking area to be set back from 1.22 feet to 4 feet from the rear property line. Under N.J.S.A. 40:55D-70c(1), the brook that runs through the property, fill limitations, and the irregular shape of the property result in peculiar and exceptional practical difficulties or exceptional and undue hardship. Under N.J.S.A. 40:55D-70c(2), the variance promotes zoning purpose 2(g) because it provides sufficient space at an appropriate location for parking and zoning purpose 2(m) because it promotes the more efficient use of land. The variance will not cause any substantial detriment to surrounding properties because it involves a limited number of parking spaces in a limited area that is buffered by a wood fence and plantings and that is not visible to the public. Moreover, the variance will not cause any substantial impairment of the intent and purpose of the zone plan and zoning ordinance for the reasons set forth above and because the variance represents minor relief under the zoning ordinance;

15. The applicant requires a variance under N.J.S.A. 40:55D-70c and from Montclair Code Section 347-27A(2) to permit a wood fence along the north and east property lines to be 6 feet in height. Under N.J.S.A. 40:55D-70c(2), the variance promotes zoning purpose 2(i) because it promotes a desirable visual environment. In addition, the variance will not cause any substantial detriment to the public good because it matches the adjoining YMCA fence, provides a slightly taller and better buffer around the parking area, and is at most only 1 \_ feet taller than permitted. Furthermore, the variance will not cause any substantial impairment of the intent and purpose of the zone plan and zoning ordinance for the reasons set forth above and because the variance represents minor relief under the zoning ordinance;

16. Finally, the applicant requires a variance under N.J.S.A. 40:55D-70c and from Montclair Code Section 347-101 to permit less than the required number of on-site parking spaces, as set forth in paragraph 12 above. Under N.J.S.A. 40:55D-70c(1), the brook that runs through the property, fill limitations, and the irregular shape of the property result in peculiar and exceptionable practical difficulties or exceptionable and undue hardship. Under N.J.S.A. 40:55D-70c(2), the variance promotes zoning purpose 2(a) because the non-residential space that triggers the variance is proposed to be occupied by a use that promotes the arts and the general welfare, zoning purpose 2(g) because the variance provides sufficient space for parking for both the proposed residential use and the proposed non-residential use, zoning purpose 2(i) because the variance promotes a desirable visual environment by promoting economic revitalization and the arts, and zoning purpose 2(m) because the variance promotes the more efficient use of land. In addition, the variance will not cause any substantial detriment to the public good because there is adequate and sufficient parking for the proposed residential use and the proposed non-residential use, as testified to by the applicant's traffic engineer. Furthermore, the variance will not cause any substantial impairment of the intent and purpose of the zone plan and zoning ordinance for the reasons set forth above and because RSIS, the 2006 Master Plan Reexamination Report, and the Glen Ridge Redevelopment Plan (not presently adopted) allow shared parking, especially in the area of the Township that is a more urban environment with mass transit, and because the zoning ordinance specifically recognizes at Montclair Code Section 347-79D the difficulty in providing on-site parking spaces in the Central Business Zone;

17. Under N.J.S.A. 40:55D-70c(2), the benefits of the variances substantially outweigh any detriment, for the foregoing reasons;

18. The applicant also requires an RSIS de minimus exception to permit less than the prescribed number of on-site parking spaces. Under RSIS, the applicant is required to provide 30 on-site parking spaces for the fifteen dwelling units, whereas the applicant is providing 29 on-site parking spaces for these dwelling units. The RSIS de minimus exception is justified because of local conditions, including urban versus suburban location and availability of mass transit. Under N.J.A.C. 5:21-3.1, the RSIS de minimus exception is reasonable and within the general purpose and intent of RSIS and literal enforcement of the applicable RSIS is impracticable or will exact undue hardship because of peculiar conditions pertaining to the property. The exception is consistent with RSIS, is reasonable and limited and not unduly burdensome, meets the needs of public health and safety, and takes into account surrounding conditions;

19. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good;

20. The Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances can be granted without substantial detriment to the public good and without substantial

impairment of the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1);

21. The Board, based on the foregoing findings, concluded with respect to the variances that the applicant proved 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 substantially outweigh any detriment and do not cause substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(2).

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Montclair, that the within application of Glen Ridge and North Willow Construction Company, Inc. for preliminary and final site plan approval, variances, and an RSIS de minimus exception is hereby approved and granted, subject to the following conditions:

1. The applicant shall provide internal bicycle storage for up to six bicycles;
2. The applicant shall design the new curb cut along Glenridge Avenue so as to protect the sight lines by assuring that on-street parked cars do not encroach upon the driveway and shall revise the site plan to reflect such design. The Board recommends that if on-street metered parking spaces are created along Glenridge Avenue, that they be located closest to the street intersection and farthest from the new driveway.
3. The applicant shall comply with the Board Engineer's report dated November 29, 2008;
4. The lighted display boxes for changeable works of art shall be limited to fine arts.
5. The applicant shall reserve two on-site parking spaces for use by the tenant of the non-residential space at the property.
6. The applicant shall submit samples of the EIFS materials to the Board's Revisions Subcommittee for review.
7. The applicant shall submit an application to the Essex County Planning Board, if required by law, and obtain all necessary approvals.
8. The applicant shall develop, prepare, improve and construct the subject site strictly in conformance with this resolution and the plans submitted, which are incorporated herein, and including any revised plans to be submitted and approved.
9. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
10. The applicant shall be responsible for all escrow fees incurred pursuant to Montclair Code Section 202-27 as well as inspection fees.
11. The applicant, notwithstanding the terms and conditions of this approval, shall comply with all applicable statutes, regulations, codes and ordinances of the State of New Jersey, County of Essex and Township of Montclair, and their respective agencies.
12. The Applicant shall maintain the stream bed and culvert located on the Property as required by law.

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

**Request for Extension of Time, Homes of Montclair Ecumenical Corp, 19 Elmwood Ave.** Cal Trevenen, Esq., requested a 60 day extension of time for the minor subdivision approval of 19 Elmwood Ave due to a delay in the closing and vacation of the home by the prior owner.

On motion by Chairman Wynn, seconded by Ms. Nadler, it was resolved to grant a 60 day extension of time to file the subdivision deed with the County.

**Request for Extension of Time, Dennis Kurtti, 44 Harvard Street.** Cal Trevenen, Esq., stated that the Appellate Court will hear the Kurtti matter on February 10, 2009, and the deadline for filing the subdivision deed with Essex County is February 22, 2009. Mr. Trevenen requested an extension of 6 months after the full legal process has run its course to file a subdivision deed with the County.

On motion by Chairman Wynn, seconded by Ms. Nadler, it was resolved to grant a 6 month extension of time to file the subdivision deed with the County.

**Discussion of pending Site Plan, Subdivision, and Variance Application of Bernard Kohout, N. Mountain and Claremont Avenue.** Mr. Karasick, Esq., recommended that the Board dismiss the application without prejudice because the applicant has not responded to a letter from Ms. Kadus inquiring as to his intentions to proceed. The application was to develop townhouses at the Georgian Inn property.

On a motion by Chairman Wynn, seconded by Ms. Ross, the application was dismissed without prejudice.

**Discussion of Pending Site Plan and Variance Application of Herod Church Street Holding Company, LLC, 65 Church Street.** Ms. Kadus stated the applicant is seeking an amendment to the Redevelopment Plan from the Township Council before proceeding with the site plan and variance application which was filed last year with the Planning Board but not yet scheduled for hearing. The applicant wishes to keep the application pending with the Board while he seeks a Plan Amendment from the Township Council.

On a motion by Ms. Nadler, seconded by Chairman Wynn, the Board granted a 6 month extension from the conclusion of the Township Council proceedings.

**Site Plan and Variance Application of Phoenix Montclair Partnership, LP, 363-367 Bloomfield Avenue.** David Owen, Esq., appeared as the attorney for the applicant. The applicant proposes to expand the partial third story by adding 3,537 square feet of floor space for office use.

Marked into evidence were:

- A-1 Site Plan Application
- A-2 Notice of Hearing
- A-3 Tax Statement
- A-4 Floor plans and Elevations prepared by Sionas Architecture, dated October 3, 2008
- A-5 Streetscape Photograph with Rendering dated November 2008
- A-6 Affidavit of Service

Paul Sionas, architect, was sworn. Mr. Sionas stated that the applicant has recently converted the second and third stories from residential to office use which did not require any Board approval. Historic Preservation Commission approval was granted in August because it involved substantial exterior changes.

Marked into evidence were:

- A-7 Colored SP-1
- A-8 Colored A-1
- A-9 Colored A-2
- A-10 Photo Montage and Rendering
- A-11 Photo Montage

Mr. Sionas stated that the first floor will remain retail. The second and third floors will remain office. An addition will provide 3,537 square feet of additional office space by the enclosure of an existing third floor open roof deck area. The proposed building height is 46 feet and 4 stories which comply with the zoning ordinance. The new construction's rear yard setback of 0 feet does not meet the 10 foot minimum, and a variance is required. There is a partial level below grade with 14 existing parking spaces which will be redesigned to accommodate 1 additional parking space.

Chairman Wynn asked how far the HVAC equipment is set back. Mr. Sionas stated that it was 12 feet from the outer edge of the building.

Peter Steck, planner, was sworn.

Marked into evidence were:

- A-12 Zoning Analysis and Photos prepared by Peter Steck, dated January 12, 2009
- A-13 Square Footage Analysis prepared by David Owen

Mr. Steck stated that the property is located in the C1 Central Business Zone which permits office and retail uses. The first floor contains 7314 square feet of retail space, the second floor contains 7314 square feet of office space, and the proposed third floor would contain 5798 square feet of office space. Mr. Steck stated that the addition of an elevator upgrades the building from 3<sup>rd</sup> Class office space to 1<sup>st</sup> Class office space. Mr. Steck stated that the applicant's position in seeking a parking deficiency variance is that parking is required only for the 1,004 square feet of new office floor area over the 15% (the first 15% of the new addition is exempt).

Ms. Kadus stated that the Department has historically taken the position that building additions in excess of 15% trigger the parking requirement, and no "credit" is given for the first 15%.

Steven Plofker, property owner, was sworn. Mr. Plofker stated that the building is between 80-90 percent complete. Mr. Plofker stated that in his estimation, offices typically use between 1\_ - 2 spaces per 1,000 square feet of floor area. Mr. Plofker

stated that he is a partial owner of the adjacent property and can dedicate a number of the deficient spaces for the office building.

Public questioning of the witness:

Dan Prochillo, Montclair Times, asked how many retailers he expects. Mr. Plofker stated that he didn't know.

On motion by Chairman Wynn, seconded by Mr. Haimbach, the site plan and variance application was approved with the following conditions:

1. The applicant shall provide 10 off-site parking spaces within the Central Business District which shall be demonstrated by submission of a letter to the Department of Planning identifying the location of such spaces before the issuance of any Certificate of Occupancy; and
2. The applicant shall have its recycling plan approved by the Department of Community Services(DCS) and provide written communication that such approval is granted.
3. The applicant shall comply with the recommendations set forth in the report of the Board Engineer dated January 29, 2008; and
4. The air conditioning units shall be installed either between the enlarged building and parking space number 1 or between the enlarged building and the adjoining DeCamp Bus property (Block 3210, Lot 3).
5. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
6. The applicant shall be responsible for all escrow fees incurred pursuant to Montclair Code Section 202-27 as well as inspection fees.
7. The applicant, notwithstanding the terms and conditions of this approval, shall comply with all applicable statutes, regulations, codes and ordinances of the State of New Jersey, County of Essex and Township of Montclair, and their respective agencies.
8. The applicant shall submit a site plan application to the Essex County Planning Board, if required by law.
9. The applicant shall develop, prepare, improve and construct the subject site strictly in conformance with this resolution and the plans as submitted and approved.

**Payment of Bills.** On motion by Chair Wynn, seconded by Ms. Nadler, the Board approved the bills of its professionals.

**Discussion of proposed Bicycle Parking/Storage ordinance.** At the request of Mayor Fried, Mr. Karasick had prepared a bicycle ordinance for the Board's consideration. The Board briefly discussed the ordinance and determined that additional research was necessary, and the opinion of those with knowledge of bicycling must be obtained. Mr. Franco stated that he will reach out to the NJ Bicycle Advisory Group at Rutgers University for input, and the Mayor would consult with Bike Montclair. The matter was carried to the March meeting for further discussion.

**Adjournment.** The meeting was adjourned at 11:30 p.m.