



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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## MINUTES OF THE BOARD OF ADJUSTMENT FEBRUARY 17, 2016

**ORDER:** The meeting was called to order at 7:30 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. Fleischer, Mr. Susswein, Ms. Checca, Mr. Reynolds, Ms. Baggs, Mr. Moore, Mr. Sullivan, and Mr. Petto. Mr. Harrison was excused.

**APPROVAL OF MINUTES:** Mr. Fleischer announced that the agenda of the meeting would be adjusted to shift the approval of minutes after the scheduled applications for the evening.

### **OLD BUSINESS:**

**Resolution for App 2429: Montclair Town Center, LLC. 319 & 323 Claremont Avenue.** *Use variance for event space in R-3 zone.*

Mr. Fleischer announced that the resolution would be reviewed by the Board following the scheduled applications of the evening.

**App 2438: JAS Montclair, LLC. 71-81 Walnut Street.** *Site Plan, use variance for density exceedance in N-C zone and bulk variance for height exceedance.*

Mr. Fleischer announced that the application would be continued to the April 20, 2016 meeting of the Board of Adjustment.

**App 2440: JAS Montclair, LLC. 133 Grove Street.** *Site Plan, use variance for density exceedance in N-C zone and bulk variance for height exceedance.*

Mr. Fleischer announced that the application would be continued to the April 20, 2016 meeting of the Board of Adjustment.

**App 2432: Kent Home Associates, LLC. 65 N Fullerton Ave.** *Use variance for density exceedance (Materials previously distributed)*

Mr. Petto noted that the applicant has requested that the application be carried to the April 20, 2016 meeting of the Board of Adjustment.

Mr. Fleischer announced that the application would be continued to the April 20, 2016 meeting of the Board of Adjustment.

**NEW BUSINESS:**

**App 2434: Jennifer Bakshi. 91 South Mountain Avenue. *Bulk variance for a rear yard setback***

Mr. Fleischer introduced the application and reviewed the notice of hearing.

Representing the applicant was Ms. Jennifer Bakshi. Ms. Bakshi reviewed the proposal to construct a sunroom addition to her property.

Ms. Bakshi distributed Exhibit A-1, a series of images and renderings of the proposal to the Board. She reviewed the exhibit and noted the unique configuration of the lot. Ms. Bakshi also noted the limited visibility of her property from adjacent properties.

Questions from the Board were then accepted.

Ms. Baggs asked if the house as it is currently situated on the property conforms to the rear yard setback requirement of the zone. Ms. Bakshi replied that the house does not conform to the rear yard setback requirement and is an existing, non-conforming condition.

Ms. Baggs asked if there was any other conforming location where the sunroom addition could be added. Ms. Bakshi replied no.

Mr. Susswein noted that the survey depicts the garage on a separate lot. Ms. Bakshi replied that the garage is shared with other properties and that one bay of the garage is located on her lot.

Mr. Moore asked what is currently located in the area where the proposed sunroom is to be constructed. Ms. Bakshi stated that a patio is currently located in the area and that the sunroom will be no larger than this current patio.

Mr. Moore asked how close the proposed addition would be to the nearest neighbor. Ms. Bakshi stated that she was not exactly sure, but that visibility of her property from adjacent properties was limited. Mr. Fleischer noted that Lot 30 appears to be nearest the subject property.

Final comments from the Board were then accepted.

Mr. Moore stated that based on the testimony presented, the proposed location of the addition appears isolated and will be hidden from the neighbors. He noted that the proposed sunroom will complement the design of the house.

Mr. Susswein stated that he would be in favor of the application as there is no impact on the surrounding properties.

Ms. Checca stated that she would be in favor of the application. She noted that the yard situation is unusual and that the side yard is really back land for adjacent properties. She stated there would be no impact. She also noted that the reuse of the existing patio was favorable. Overall she stated the unusual lot lines create the hardship situation.

Mr. Reynolds stated that he would be in favor of the application.

Ms. Baggs stated that she would be in favor of the application due to the hardship of the lot configuration.

Mr. Fleischer stated that he would be in favor of the application as well. He noted the comments received by the Board Engineer and asked if the applicant would comply. Ms. Bakshi stated yes.

Mr. Susswein made a motion to grant the variance as presented, seconded by Mr. Reynolds. The motion passed unanimously.

**App 2436: Nicholas & Jessica Tamburri. 14 Elston Road. Bulk variance for a front yard setback**

Mr. Fleischer introduced the application and reviewed the notice. Present for the applicant were Mike Sweebe, architect and Ms. Jessica Tamburri, homeowner.

Mr. Sweebe introduced the application and summarized the proposal to construct an addition to the front porch of the dwelling on the subject property. Mr. Sweebe reviewed the setbacks under the proposed addition.

Questions from the Board were then accepted.

Mr. Moore asked if the porch would be open or closed. Mr. Sweebe stated that the porch is currently open and would remain an open porch.

Ms. Checca asked for clarification of the existing setbacks and the allowable setbacks for the front and side yard of the property in the area of the proposed addition. Mr. Sweebe reviewed the setbacks.

Mr. Susswein asked the applicant if a modification to the porch addition to eliminate the projecting octagon extension of the porch would be acceptable. He noted that the porch would still be larger than the existing. Mr. Sweebe stated that such a modification would not allow for a dining table to be placed on the porch as desired by the applicant.

Mr. Susswein noted that there is a large patio in the rear yard of the dwelling where a table for outdoor dining could be located. Ms. Tamburri stated that many neighbors on the block have front porches and congregate in front yards. She noted that there is a lot of activity on front porches on this street and they desire to have the same opportunity.

Mr. Susswein asked what the depth of the porch would be without the octagon extension. Mr. Sweebe stated that the porch would be 11 feet in depth. Mr. Sweebe stated that more depth would be needed for appropriate circulation around a dining table on this porch.

Mr. Susswein stated that there could be plenty of room for a table and circulation if seating was placed against the house wall.

Mr. Fleischer stated that there are very few 11 foot depth porches. He noted that a table on the porch could be oriented in a number of ways and that 11 feet of depth would allow the applicant to meet the objective. He noted that the proposed extension as submitted will project into the front yard greater than other adjacent dwellings. He stated that while he understands the design, he noted that the variance seemed excessive.

Mr. Sweebe noted that the entry door to the house is a bay door which extends into the porch. Therefore, he noted that a table could only be located on one half of the porch.

Mr. Fleischer stated that while he understands that in design three feet is need on all sides of a table, he noted that it is not practical for this front porch. He stated that he would be in favor of a condition that the front porch be extended along the existing porch line.

Ms. Checca asked what the depth of the porch would be at the octagon extension. Mr. Sweebe replied that it would be 17 feet.

Ms. Checca asked if the variance was granted for this extension of the porch could it be enclosed in the future without an additional variance. Mr. Petto noted that an extended porch could be enclosed.

Mr. Susswein noted that the existing setbacks of three adjacent properties are about 32 or 33 feet. He stated that the proposal in this applicant is to reduce that 32-33 foot setback by an additional six feet. He stated that this would not be in keeping with the neighborhood. He stated that he would not be in favor of the variance as presented. He stated that he would be in favor of granting a variance to extend the addition to the porch along the existing front yard setback of the existing front porch. He noted that this addition area would provide room for the applicant to meet their needs.

Ms. Checca stated she would be in favor of the extension as discussed by Mr. Susswein.

Mr. Reynolds stated that while he understands the reasons for the octagon extension of the front porch, it will be difficult to permit such an extension into the front yard. He noted that the octagon extension could be reduced to align with the projection of the steps, which extend 2 feet from the existing front edge of the porch.

Ms. Baggs stated that she would not be in favor of the application as presented. She noted that she is in favor of the variance as noted by Mr. Susswein.

Mr. Moore agreed with the other Board members comments in keeping the addition to the porch along the existing front yard setback of the existing front porch. He stated this would keep the house consistent with the other houses in the neighborhood.

Mr. Fleischer agreed that the extension should be limited to the main body of the porch. He noted that the overhang above the steps do project an additional 2 feet 2 inches into the front yard. However, he stated that the porch extension should be limited to an extension of the front of the main body of the existing porch. He noted that the bay door entry could be eliminated to make additional space on the porch.

The Board noted an additional condition that the porch is to remain open should be added to the approval.

Mr. Susswein made a motion to grant the variance with the conditions as follows:

1. The porch is to be extended along the existing front of the main body of the existing porch only.
2. The porch is to be an open porch and not enclosed.

Ms. Baggs seconded the motion. The motion passed unanimously.

**App 2437: Mark & Kristy Iannarelli. 225 Park Street. Bulk variance for a rear yard setback.**

Mr. Petto informed the Board that the applicant has requested the application be carried to the March 18, 2016 meeting of the Board of Adjustment. Mr. Fleischer announced the application would be carried to the March meeting.

**App. 2441: Marco Giancaspro & Lorraine Paul. 190 Fernwood Avenue. Bulk variance for an accessory structure setback**

Mr. Fleischer introduced the application and reviewed the notice. The applicants, Marco Giancaspro and Lorraine Paul were present along with John Guadagnoli, architect for the applicants.

Mr. Guadagnoli summarized the proposal. He noted that the previous garage on the property was destroyed by a fallen tree during a storm in July 2015. He noted that the previous garage was non-conforming with respect to side and rear yard setback requirements.

Mr. Guadagnoli noted that the proposal is to improve upon the existing non-conforming condition and expand the side and rear yard setbacks. He also noted the plan is to size the garage for more practical use. He noted that many trees have been lost on the property and the driveway location was retained so as not to impact one of the few remaining trees.

Questions from the Board were then accepted.

Ms. Baggs asked about the cluster of four trees near the driveway if they were the ones Mr. Guadagnoli cited in his testimony that would be retained. Mr. Guadagnoli replied yes.

Ms. Baggs asked if the applicant was aware of the requirements of the Township tree replacement ordinance. Mr. Guadagnoli replied yes.

Ms. Baggs asked about the property to the east of the subject property and what was located on that property near the proposed garage. Mr. Guadagnoli stated that the owners would address that.

Mr. Reynolds asked if the plans could be modified so that the new garage would conform to the rear yard setback requirement. Mr. Guadagnoli stated the owners would address this question.

Mr. Fleischer stated that a 24 foot garage, as proposed, is very deep. He stated that most garages are 22 feet in depth. He noted that if the garage was reduced to 22 feet in depth, the rear yard setback would conform. Mr. Fleischer stated that he would need an explanation as to why the 24 foot depth was needed.

Ms. Paul addressed the Board and presented additional testimony on the loss of the garage and the need for a new one. She noted that there would be additional hardships in the even the variance is not granted. Ms. Paul stated that the garage was positioned on the plans to ensure ease of maneuvering for vehicles in the driveway. She noted that trash will be stored in the garage, which is why it needs to be of a larger size.

Questions from the Board were then accepted.

Mr. Susswein asked what structure is located on the property to the south of the subject property. Mr. Guadagnoli noted that a garage is located in that space.

Mr. Reynolds stated that he appreciated the testimony on the need for the setbacks so far. However, he asked if space could be found in the plans to respect the rear yard setback of the garage.

Ms. Baggs asked the applicant to consider reducing the depth of the garage. She also asked what is located on the property to the east of the subject property near the proposed garage. Ms. Paul stated that a garden and trees are located in this area.

Mr. Fleischer asked the applicant if the garage could be modified to address the Board's questions. Mr. Guadagnoli requested a brief moment to discuss an alternative with the applicant.

Following a discussion, Mr. Guadagnoli stated that the applicant would conform to the required rear yard setback and a variance would not be needed for this setback.

The Board then discussed the application.

Ms. Checca stated that while she was sorry for the applicant's loss, the reconstruction of the garage represents an opportunity to rebuild the structure within the required setbacks. She noted that a grass paver turnaround area could be installed to provide additional area to maneuver vehicles while maintaining rear lawn space. She stated that she would not be in favor of the application and noted a hardship was not presented by the applicant.

Mr. Reynolds stated the elimination of the rear yard setback variance was a positive for the application. He stated he would be in favor of the application with only the side yard variance.

Ms. Baggs stated that the existing driveway aligns with the proposed garage location. She noted that maintaining this alignment on the eastern side will minimize work on the property and protect the existing trees. She stated she would be in favor of the side yard variance.

Mr. Moore stated that he would be in favor of granting the side yard variance.

Mr. Susswein stated that he would be in favor of granting the side yard variance only. He noted that many garages are located far back on the lot. He stated that the application represents an improvement of a previous non-conforming condition.

Mr. Fleischer stated that he would be in favor of the side yard variance only. He also noted that a condition that the gutters and leaders be directed onto the applicants' property, and not the adjacent properties, be added.

Mr. Susswein made a motion to grant the variance with the conditions as stated. The motion was seconded by Mr. Reynolds. The motion passed with Mr. Fleischer, Mr. Reynolds, Ms. Baggs, Mr. Susswein and Mr. Moore voting yes. Ms. Checca voted no.3

**App. 2442: Keith Furer. 192 Fernwood Avenue. Bulk variance for an accessory structure setback**

Mr. Fleischer introduced the application and reviewed the notice. The applicant, Keith Furer was present along with John Guadagnoli, architect for the applicant.

Mr. Guadagnoli summarized the proposal. He noted that the previous garage on the property was destroyed by a fallen tree during a storm in July 2015. He noted that the previous garage was non-conforming with respect to side and rear yard setback requirements. He also noted that the rear yard is small, with only 30 feet between the main house and the proposed garage and a narrow driveway around the corner of the house.

Questions from the Board were then accepted.

Mr. Moore asked if there was a storage area within the previous garage that was destroyed. Mr. Guadagnoli replied no, noting that the outline of the previous garage structure is shown on the plan.

Ms. Checca asked if the intent was to reuse previous slab and add the extension for a storage area that would conform to the required setbacks. Mr. Guadagnoli replied yes.

Mr. Susswein reiterated and asked if the slab would be re-poured in the previous location or if the former slab would be reused. Mr. Guadagnoli stated that the slab would be re-poured.

Mr. Reynolds asked if the side yard setback variance could be eliminated by shifting the garage. Mr. Furer replied that the driveway along the left side is very tight as you pass the house on the property. He noted that it is presently very difficult to navigate into the rear yard and towards the garage given this configuration. He stated that shifting the garage away from the driveway to meet the side yard setback requirement would make navigating the garage even more difficult.

Mr. Fleischer stated that the decision to add the storage component to the garage is up to the applicant. He noted that a 24 foot depth garage is large and that a 30 foot distance between the garage and the house for a turnaround is sufficient. He stated that the garage depth could be reduced by 2 feet to respect the rear yard setback or the garage could be moved forward on the lot to respect the setback. Mr. Fleischer stated that based on the testimony he could support the side yard setback variance.

Mr. Reynolds stated that he would prefer to eliminate one of the variances requested under the application. He noted that the rear yard setback variance may be easier to eliminate.

Mr. Susswein stated that the side yard presents greater hardship due to the configuration of the driveway and difficulty for maneuverability. He noted that respecting the rear yard setback would straighten the rear wall of the proposed garage/storage area.

Ms. Checca agreed that the side yard setback variance presents a hardship situation, but not the rear yard setback variance.

Mr. Furer stated that the garage needs to be bigger to meet his needs. He noted that moving the garage forward would reduce space on the driveway to turn around.

Mr. Fleischer stated that there would be plenty of space to accommodate the movement of cars and for the setback to be respected.

Discussion by the Board was then conducted.

Mr. Reynolds stated that he appreciated the applicant's testimony and that he would be in favor of granting the side yard setback variance only.

Ms. Baggs stated that she would be in favor of the side yard setback variance only and would like a condition that the drainage from the garage structure be directed onto the applicant's property and not any neighboring property.

Mr. Moore stated he would be in favor of granting the side yard setback variance only. He noted that this variance would be sufficient for the applicant to achieve their goals.

Mr. Susswein stated that the rear yard setback should be respected and that the storage area could be enlarged to further accommodate any of the applicants needs without a variance. He stated he would be in favor of granting the side yard setback variance only.

Ms. Checca stated that she would be in favor of the side yard setback variance only. She agreed that a hardship condition exists with respect to the side yard.

Msr Susswein made a motion to grant the variance with the condition as noted by Ms. Baggs. The motion was seconded by Ms. Baggs. The motion passed unanimously.

**OLD BUSINESS:**

**Resolution for App 2429: Montclair Town Center, LLC. 319 & 323 Claremont Avenue. Use variance for event space in R-3 zone.**

Mr. Fleischer introduced the resolution and asked Mr. Sullivan to summarize the resolution and actions taking by the Board regarding the application.

Mr. Sullivan reviewed the variances sought by the applicant. He noted that in reviewing the meeting, the motion made by the Board was to take action on all of the variances, minor subdivision, and conditional use approval while the site plan would be deferred. He noted that under the 4-2 vote by the Board, the use variance has been denied and all other variances, the minor subdivision and the conditional use approval have been granted.

Mr. Fleischer reviewed the subdivision history of the property in context of the current application.

The Board reviewed the draft resolution and proposed edits and clarification.

Mr. Sullvian noted that the applicant has 190 days to complete the subdivision of the property.

The Board then took two separate votes to approve the resolution in relation to each member's vote on the application.

A motion was offered by Ms. Baggs to approve the resolution denying the use variance, seconded by Mr. Susswein. The resolution was adopted with Ms. Baggs and Mr. Susswein voting yes. Mr. Fleischer, Mr. Reynolds, Ms. Checca and Mr. Moore abstained.

A motion was offered by Ms. Fleischer to approve the resolution as amended with respect to the approval of the minor subdivision and related setback variances, and the conditional use, seconded by Mr. Moore. The resolution was adopted with Mr. Fleischer, Mr. Reynolds, Ms. Checca and Mr. Moore voting yes. Ms. Baggs and Mr. Susswein abstained.

**APPROVAL OF MINUTES:**

Mr. Fleischer introduced the minutes of the January 20, 2016 meeting for review by the Board. Ms. Baggs and Mr. Fleischer noted a few edits. A motion to adopt the minutes as amended was offered and seconded. The minutes were adopted unanimously with Mr. Reynolds abstaining.

Mr. Fleischer introduced the minutes of the January 28, 2016 meeting for review by the Board. Ms. Baggs and Mr. Fleischer noted a few edits. A motion to adopt the minutes as amended was offered and seconded. The minutes were adopted unanimously with Mr. Reynolds abstaining.

**ADJOURNMENT**

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Mr. Susswein. The meeting was adjourned at 9:45pm, February 17, 2016.

Respectfully submitted,



Graham Petto, AICP  
Zoning Board of Adjustment Assistant Secretary