



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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MINUTES OF THE BOARD OF ADJUSTMENT

APRIL 20, 2016

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, Mr. Susswein, Ms. Checca, Mr. Reynolds, Mr. Moore, Mr. LaVail, Mr. Sullivan, and Mr. Petto. Ms. Baggs was absent.

APPROVAL OF MINUTES:

Mr. Harrison introduced the minutes of the March 16, 2016 Board meeting. He noted a few edits to the minutes as presented.

A motion to approve the minutes as amended was offered by Mr. Susswein, seconded by Mr. Reynolds. The minutes were approved unanimously with Ms. Checca and Mr. Fleischer abstaining.

OLD BUSINESS:

Resolution for App 2443: ACME Supermarket. 510 Valley Road. Bulk variance for wall-mounted business sign exceedance

Mr. Harrison introduced the resolution. He noted a few edits to the resolution as presented.

A motion to approve the resolution as amended was offered by Mr. Susswein, seconded by Mr. Reynolds. The resolution was approved unanimously with Ms. Checca and Mr. Fleischer abstaining.

Resolution for App 2444: Montclair Homeopathy, LLC. 92 Church Street. Use variance for a medical office on the first floor in the N-C zone.

Mr. Harrison introduced the resolution. He noted a few edits to the resolution as presented.

A motion to approve the resolution as amended was offered by Mr. Susswein, seconded by Mr. Reynolds. The resolution was approved unanimously with Ms. Checca and Mr. Fleischer abstaining.

Resolution for App. 2445: Karen Cahn. 356 Park Street. Bulk variance for a front yard setback and accessory structure in a front yard.

Mr. Harrison introduced the resolution. He noted a few edits to the resolution as presented.

A motion to approve the resolution as amended was offered by Mr. Susswein, seconded by Mr. Reynolds. The resolution was approved unanimously with Ms. Checca and Mr. Fleischer abstaining.

Resolution for App. 2447: Ruth Davis. 2 Clinton Avenue. *Bulk variance for a front yard setback.*

Mr. Harrison introduced the resolution.

A motion to approve the resolution as submitted was offered by Mr. Reynolds, seconded by Mr. Susswein. The resolution was approved unanimously with Ms. Checca and Mr. Fleischer abstaining.

Request for Extension - App. 2398: Zecchino/Nicolo's Bakery. 8 Baldwin Street. *Use variance and site plan application for 995 square foot addition.*

Mr. Harrison introduced the correspondence from the applicant. A motion to extend the variance for one year was offered by Mr. Fleischer, seconded by Mr. Susswein. The extension was granted unanimously.

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

Mr. Harrison introduced the application. Representing the applicant was Mr. John Wyciskala.

Mr. Wyciskala reviewed the project. He noted that the building currently has 43 apartment units and that the applicant seeks to create two additional units in the ground floor level of the building. He noted that the area is currently used as storage for the building.

Mr. Wyciskala introduced Rob Streker, engineer for the project. Mr. Streker reviewed the site plan and the variances sought by the applicant.

There were no questions from the Board, nor the public for Mr. Streker.

Mr. Wyciskala introduced Mr. Todd Koenig, architect for the applicant. Mr. Koenig reviewed the plans. He noted that the subject property has a significant change in grade and that the 2 ground floor units would have full height windows and ceilings. He noted that the windows would meet egress requirements and reviewed the several means of egress from the units.

Questions from the Board were the accepted.

Mr. Fleischer asked for clarification of the location of the units in the footprint of the building. Mr. Koenig noted the unit locations on the plan.

Mr. Fleischer asked how the units would be accessed from the street. Mr. Koenig noted that access to the ground floor level is provided via elevator and stairs.

Mr. Fleischer clarified that the units are not truly "walk-out" units and should be considered basement apartments given this access. Mr. Koenig reiterated that while

the access was down from the street, due to the grade change of the site, the units are at-grade level with full-height windows.

Mr. Susswein asked about use of the current storage space and who would be impacted by a loss of this space. Mr. Koenig stated that the storage space is for building management and not used by tenants.

Mr. Moore asked if the applicant had prepared any photos or illustrations to better illustrate the proposal. Mr. Koenig replied no.

Ms. Checca asked how much space of the basement level the new units would occupy. Mr. Koenig estimated the units would occupy about 10% of the basement. Ms. Checca asked if the remaining 90% would be basement. Mr. Koenig replied yes.

Mr. Fleischer referred to sheet A-1 of the submitted plans and asked if there was a step to access proposed Unit 70 as shown. Mr. Koenig replied yes.

Ms. Checca asked if there were other basement apartments in the building. Mr. Wyciskala noted that Mr. Paul Donovan, representing the building management company could best respond to that question. Mr. Donovan stated that there were 5 existing basement units.

Ms. Checca asked if there were any additional developable space beyond that for the proposed units. Mr. Donovan replied that there was no further developable space beyond the 2 proposed units. Mr. Donovan noted that while the upper floor units were older, the basement units date to the 1950s.

Mr. Fleischer asked about the ceiling height of the proposed units. Mr. Koenig noted that the height would be 9 feet.

Ms. Checca asked if the proposed units would be of similar character to the upper floor units. Mr. Donovan replied that the upper floor units have more historic detailing than the basement units, given their age.

Mr. Harrison asked if the proposed units would be comparable to the other basement units. Mr. Donovan noted that the new units would be superior and possibly slightly more expensive. He noted that the new units would be less expensive than those on the upper floors, however.

Mr. Harrison asked how many current tenants of the building park in the Municipal Building lot with an overnight permit. Mr. Donovan estimated about 50%.

Mr. Harrison asked if the units had windows on the interior courtyard and alley to the rear of the building. Mr. Koenig replied yes.

Mr. Moore asked about the square footage of the proposed units. Mr. Koenig noted that Unit 69 would be 860 sq. ft. and Unit 70 would be 770 sq. ft.

Mr. Wyciskala then call Mr. Paul Ricci, professional planner for the applicant.

Mr. Ricci reviewed submitted Exhibit A-1, map rendering of the subject property. Mr. Ricci noted the grade change of the site.

Ms. Checca asked if there would be any outside access to the proposed units. Mr. Ricci replied no, however, he noted that there were doors from the interior corridor to access the courtyard areas.

Mr. Ricci reviewed the variances sought by the applicant. Mr. Ricci noted that the site is suited to accommodate the additional density. He also noted that rising housing costs in the Township and the small number of downsizing options illustrated demand for the types of units the applicant proposes under the application.

Mr. Ricci reviewed conformance of the application with the Land Use & Circulation Elements of the Township Master Plan. He also reviewed the positive and negative criteria of the application.

Questions from the Board were then accepted.

Ms. Checca asked about the proposed rent of the new units. Mr. Donovan replied they would be between \$1,800 and \$1,900.

Mr. Fleischer asked for clarification of the proposed units on Mr. Ricci's exhibit. Mr. Ricci clarified the location.

Mr. Fleischer asked if the proposed units were below grade in relation to courtyards as well as the adjacent property to the north on North Fullerton Avenue. Mr. Koenig clarified that the subject property slopes down parallel to Claremont Avenue. Mr. Koenig reviewed the elevations on the plans and noted that the first floor elevation is 295.6 feet.

Mr. Fleischer noted that other areas of the Township have higher residential densities. He asked why this project should be justified and that he would need additional points to justify the variance request.

Mr. Ricci stated that the existing conditions report prepared as part of the update to the Township Master Plan noted that there is a need for the type of units proposed by the applicant. He noted that parking can be accommodated for these units on the Municipal Lot.

Mr. Wyciskala stated that the applicant would be agreeable to a condition that parking must be provided to the tenants in the municipal lot. He also noted that the apartments are a needed housing option in the Township.

Mr. Susswein asked for clarification on the density calculation. Mr. Reynolds noted that 18 units per acre are permitted under current zoning for the subject property. He further noted that the master plan recommends 55 units per acre in the Master Plan for the subject property, with an incentive based option for 65 units per acre. Finally, Mr. Reynolds noted that the applicant is requesting a density of 71 units per acre and the existing density of the property is 68 units per acre.

Mr. Harrison stated that he was confused on the parking. He noted that the municipal lot can be full on busy evenings when the building is in use. He asked specifically how many tenants have permits for the municipal lot. Mr. Donovan stated that the number was not known.

Mr. Harrison asked why some tenants were parking in other commercial lots. Mr. Donovan stated he was not sure.

Mr. Susswein stated that the application should be reviewed in the context of current conditions.

Mr. Harrison stated that while there is a need for this type of housing, he believed that the increase in density cannot be justified. He asked why this site is particularly suited. Mr. Ricci stated that the building is unique, dates to the 1920s and is a pre-existing apartment building with a greater density than permitted under current zoning. He noted that there is lots of new development in the Township. He also noted that the application will provide middle-market units.

Mr. Wyciskala summarized the testimony presented to the Board.

Final comments from the Board were then accepted.

Mr. Moore stated that the application is difficult to review, particularly in context with no available parking. He noted that utilizing existing interior space is a positive. He stated that the location within the building of the new units and the proposed size of the units would create livable units. He noted that a condition requiring permits to be obtained for off-street parking should be added to any approval. He noted that the Master Plan does call for an increase in housing diversity, especially near the business district. He stated that while he is generally in favor, he wanted to hear comments from the other members.

Mr. Susswein stated that he opposed the application. He noted that the proposal far exceeds the permitted density and would be further compounded by no additional parking. He stated that there was little benefit to the public by the application.

Mr. Fleischer stated that he would be opposed to the application. He noted that the site is already overdeveloped for the zone. He noted that no justification was provided beyond the anticipated additional income of the applicant. He stated that if affordable units had been proposed, the application would have been more favorable.

Ms. Checca stated that she would be in favor of the application. She noted that the existing density of the building is a pre-existing condition, particularly given the building's age. She noted that the units will be affordable to the middle class. She also noted that historically the building has never provided parking. She noted that the application will not enlarge the footprint of the building and that there are no further developable areas of the basement beyond the proposed units here. She stated that the application will create two additional dwelling units close to Montclair Center and the train station. Finally she noted that the detriments of the application are all pre-existing conditions of the site.

Mr. Reynolds stated that the existing building already exceeds the proposed density of the Master Plan. However, he noted that the application proposed to create two more moderately affordable dwelling units. He stated that he is more in favor of the application than opposed. However, he did note that the parking situation is difficult.

Mr. LaVail stated that he was also more in favor of the application than opposed. He noted that the building is an existing non-conforming density. He noted that the units would be added with little further detriment to the public.

Mr. Harrison stated that he had mixed feelings on the application. He noted that while the subject property is a logical place to promote density; which the Master Plan further promotes; the existing and proposed density of the site is greater than the future planned density. He noted that parking near the central business district is an issue. He noted that the municipal lot provides overnight off-street parking only. Mr. Harrison stated that the Master Plan does identify the need for housing for empty-nesters and many have moved out of town. He stated that variances should not be the means to address moderately priced housing of this type. Mr. Harrison further stated that parking remains an outstanding issue of the application. He noted that a detailed account of parking would have been beneficial. He noted that it was difficult to identify positive criteria that would overcome the adverse parking impact of the application. He stated if the zone/plan accommodated the proposed density, the application would be more amenable.

Mr. Wyciskala stated that the applicant would commit to provide parking permits for the 2 new units and conduct an inventory of parking for the existing units. Mr. Harrison noted this would only address 2 of the units.

A motion was offered by Mr. Susswein to deny the application, seconded by Mr. Fleischer. The application was denied with Mr. Harrison, Mr. Fleischer, Mr. Susswein and Mr. LaVail in favor of the denial. Ms. Checca, Mr. Moore and Mr. Reynolds were opposed.

NEW BUSINESS:

App 2450: Susan Tarrence & Stephen Golden. 322 Park Street. *Bulk variance for maximum building width exceedance.*

Mr. Petto announced that proper notice was not completed for the application. He noted that the applicant would notice for the May 18, 2016 meeting of the Board of Adjustment.

App 2453: Thomas & Suzie Alway. 56 Overlook Road. *Bulk variance for side yard setback.*

Mr. Harrison introduced the application. Present for the application were the applicants, Thomas & Suzie Alway.

Ms. Alway summarized the application. She noted that the application is for a rear addition to the dwelling to expand a sunroom, the kitchen and to add a powder room.

Mr. Fleischer noted that the proposed addition will follow the existing line of the house, which is not situated squarely on the lot. Therefore, he noted that the setback does narrow.

Final comments from the Board were then accepted.

Mr. Susswein stated that he would be in favor of the application. He noted that a hardship is present and that the applicant has chosen the only option available to expand while following the line of the existing house.

Mr. Fleischer stated he would be in favor of the application.

Ms. Checca stated she would be in favor of the application, noting the lot hardship.

Mr. Reynolds stated he would be in favor of the application, adding that the proposed addition will improve the rear of the dwelling.

Mr. LaVail stated he would be in favor of the application, adding that the side yard is already non-conforming.

Mr. Moore stated he would be in favor of the application.

Mr. Harrison stated he would be in favor of the application.

A motion to approve the application as submitted was offered by Mr. Fleischer, seconded by Mr. Susswein. The variance was granted unanimously.

App. 2452: Ben Swett & Amy Anderson. 43 Walnut Street. *Use variance for density exceedance in R-2: Two-Family zone.*

Mr. Harrison introduced the application. Present for the applicant was the applicant's attorney, Ronald Shaljian.

Mr. Shaljian reviewed the application. He summarized the request to create an additional dwelling unit at the subject property.

Mr. Shaljian then introduced Ms. Debra David, architect for the applicant.

Ms. David reviewed the application and the plans as submitted. She noted that currently the dwelling on the property is a 2-family with 2 two-bedroom apartments on the first and second floors. She noted that the application proposes to convert the ground floor to a third unit, which will be a studio apartment. Ms. David reviewed the Planning Considerations as noted in the Planning Department memo.

Questions from the Board were then accepted.

Mr. Reynolds asked if there were utility meters located in the proposed interior storage area of the ground floor unit. Ms. David replied yes that the existing meters were located in this area. Mr. Reynolds asked if these meters would only be accessible through the proposed new unit. Ms. David replied yes.

Mr. Susswein noted that while the plan indicates a bedroom area, the memo states the unit will be a studio. Ms. David clarified that because there is no door to the bedroom area, the unit is to be considered a studio.

Mr. Harrison referred to exhibit A-10 and asked how the units in adjacent properties was determined. Mr. Shaljian stated that the planner would provide testimony on this item.

Mr. Harrison asked for a review of the proposed fence. Ms. David noted that location along the parking spaces along the east property line. Mr. Harrison asked about the type of fence and its placement. Ms. David noted that the fence would be solid and noted there would be a lawn/landscaped area between the spaces and the fence.

Mr. Harrison asked if the garage would be left in place. Ms. David replied yes and noted that it would be reconfigured to provide storage for the units.

Mr. Fleischer asked for clarification of the definition of a basement in the ordinance. He noted that while the applicant is considering the level a ground floor, it could be considered a basement. Mr. Petto reviewed the definition of basement for the Board.

Mr. Fleischer noted that the windows in the kitchen area of the new unit appear to be quite high. Ms. David noted that window wells would be added to increase the window size. Mr. Fleischer asked about the projection of window wells into the proposed sidewalk along the dwelling, which also is adjacent to the driveway. Ms. David noted that there was sufficient space to shift the driveway to accommodate an adjustment.

Mr. Fleischer stated that he was concerned about the proposed unit in the basement and its odd configuration. He noted that this area is within the R-2: Two Family zone district. He noted that while the property is near the Walnut Street station, further justification would be needed for the proposed change to three units.

Mr. Harrison asked about the driveway, noting that the parking spaces could be impacted by any driveway relocation. Ms. David stated that there was sufficient space to accommodate the necessary adjustments.

Mr. Shaljian then called Mr. Edward Collins, professional planner for the applicant.

Mr. Collins reviewed the site. He also noted the adjacent properties and the number of units. He noted that the site is about 1,000 to 1,500 feet from the Walnut Street train station. He stated that the site is particularly suited for the conversion. He stated that the proposal is not out of character with the adjacent properties and that the two variances for the number of units and the off-street parking are inherently linked.

Questions from the Board were then accepted.

Mr. Susswein asked about the parking on the site is currently used by the existing two units. Mr. Collins stated that the tenants of the first floor currently use two spaces and the second floor tenants use one space. Mr. Collins noted that the new lot will be configured for additional cars.

Mr. Susswein asked if it would be unlikely that six cars in the lot with the addition of the studio apartment. Mr. Collins replied yes noting the walkable and transit accessible location would support a diminished need for a car.

Mr. Susswein asked if the spaces could be rented. Mr. Collins replied no. Mr. Susswein asked if the applicant would accept a condition that rental of spaces not be permitted. Mr. Shaljian replied yes.

Mr. Harrison asked if the subject property was identified for a future use in the Master Plan. Mr. Collins noted that it was not identified for a future use in the Master Plan.

Mr. Harrison asked if many multifamily dwellings existed in the area, why the zoning couldn't be changed. Mr. Collins stated that the existing area already has multifamily properties.

Comments from the Board were then accepted.

Mr. Fleischer stated that while the site can accommodate a third unit, the subject property is not uniquely different from others in the area. He noted that the area is a consistent R-2 zone district. He noted that comparable properties in the area may or may not be legal multifamily properties. He also stated there was not sufficient justification for the increased density and that reliance on proximity to the train station was not sufficient. He noted that this variance could open the door to additional variance requests.

Ms. Checca agreed with Mr. Fleischer's comments. She noted that the conversion of the property in the R-2 zone was inconsistent. She also noted that the advantage to the neighborhood and the public was not apparent. Generally she was not in favor of the application.

Mr. Reynolds noted with so many multifamily dwellings in the area, the larger area should perhaps be rezoned R-3. He stated he was not comfortable granting a variance and would not be in favor.

Mr. LaVail stated that he agreed with Ms. Checca's comments. He noted concerns about the configuration of the proposed parking area. He stated he would not be in favor.

Mr. Moore stated that he would not be in favor of the application.

Mr. Susswein stated the parking for the use would be managed entirely on the site. He noted that the applicant is following the process to request a variance for an additional unit. He stated he did not have reservations about a precedent being set with the application. He stated that he could be supportive of the application.

Mr. Shaljian requested an opportunity to inform his client of the Board's comments. He noted that he would like to present the client with an opportunity to withdraw the application, should they choose. The Board agreed to allow Mr. Shaljian to phone his client.

Mr. Shaljian stated that the applicant has requested that the application be withdrawn. Mr. Moore made a motion to accept the withdrawal, seconded by Mr. Susswein. The motion passed with Mr. Moore, Mr. Susswein, Mr. Fleischer, Ms. Checca, Mr. Reynolds and Mr. LaVail accepting the withdrawal request. Mr. Harrison voted against accepting the withdrawal.

ADJOURNMENT

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Mr. Susswein. The meeting was adjourned at 10:30pm, April 21, 2016.

Respectfully submitted,



Graham Petto, AICP
Zoning Board of Adjustment Assistant Secretary