



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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MINUTES OF THE BOARD OF ADJUSTMENT

MARCH 16, 2016

ORDER: The meeting was called to order at 7:35 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. Susswein, Mr. Reynolds, Ms. Baggs, Mr. Moore (arrived at 7:48pm), Mr. Sullivan, and Mr. Petto. Ms. Checca and Mr. Fleischer were excused.

APPROVAL OF MINUTES:

Mr. Harrison introduced the minutes of the February 17, 2016 Board meeting. He noted that he was not in attendance and could not take action on the minutes.

A motion to approve the minutes as submitted was offered by Mr. Susswein, seconded by Ms. Baggs. The minutes were approved unanimously with Mr. Harrison abstaining.

OLD BUSINESS:

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

Mr. Harrison introduced the resolution. A motion to approve the resolution as submitted was offered by Mr. Susswein, seconded by Ms. Baggs. The resolution was approved unanimously with Mr. Harrison abstaining.

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

Mr. Harrison introduced the resolution. A motion to approve the resolution as submitted was offered by Mr. Susswein, seconded by Ms. Baggs. The resolution was approved unanimously with Mr. Harrison abstaining.

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

Mr. Harrison introduced the resolution. Ms. Baggs provided an edit to the resolution. A motion to approve the resolution as amended was offered by Mr. Susswein, seconded by Ms. Baggs. The resolution was approved unanimously with Mr. Harrison abstaining.

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

Mr. Harrison introduced the resolution. Ms. Baggs provided an edit to the resolution. A motion to approve the resolution as amended was offered by Mr. Susswein, seconded by Ms. Baggs. The resolution was approved unanimously with Mr. Harrison abstaining.

NEW BUSINESS:

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

Mr. Harrison introduced the application. Present on behalf of the applicant was Mr. Stephen Sinisi, Esq.

Mr. Sinisi summarized the application and called Mr. Brett Skirvin of Site Enhancement Services to testify.

Mr. Skirvin summarized the proposed signage package for the subject property.

Questions from the Board were then accepted.

Mr. Susswein agreed that the existing sign that has been installed is too small for the building. He noted that the proposed sign may be too large as it is three times larger than what is permitted under the ordinance. He asked if the new sign could be the same width as the previous A&P sign.

Mr. Skirvin replied that based upon the setback of the building from Valley Road and the size of the front façade, the proposed sign is appropriate for the building. He noted that a four foot high sign would be significantly smaller.

Ms. Baggs asked if the sign would be custom made for the store or if this was a standard letter height for pre-made signs.

Mr. Skirvin replied that Site Enhancement Services does not manufacture the signs directly, however he noted that each sign is constructed in accordance with what is permitted under local regulations.

Ms. Baggs asked if there is a sign located along Valley Road. Mr. Skirvin replied that there is a multi-tenant free-standing sign for the shopping center.

Ms. Baggs asked if the sign in this location was sufficiently positioned for people driving by to identify the location of the store. Mr. Skirvin replied that yes the sign is sufficient for noting the general location of the store in the shopping complex. However, Mr. Skirvin noted that often it can be difficult to identify the location of the store within the shopping complex and that is the purpose of the wall-mounted business sign, to assist drivers in identifying the precise location.

Ms. Baggs noted that Valley Road in this area does curve and has many large trees. Mr. Skirvin agreed, noting particularly that northbound motorists have limited site. He also noted that the speed limit in this area is 35 miles per hour. He stated that these factors can lead to the building being passed quickly. Mr. Skirvin reiterated that a sign of sufficient size is important to help drivers maintain full vision of the road.

Ms. Baggs asked if there were any additional benefits that the larger sign offers to the store. Mr. Skirvin stated that the benefits are in wayfinding, visibility and motorist safety.

He noted that there are not direct economic benefits of the larger sign. He noted that the current 24 inch sign is not proportional to the façade.

Mr. Moore asked if there is a standard size for signage of this type. Mr. Skirvin stated that the signage presented in the application is a typical size for the building. He noted that full size letter height is needed for this location.

Mr. Moore asked if this sign is larger than other ACME signs. Mr. Skirvin noted that the sign is a consistent logo and the proportions of the signs are consistent.

Mr. Harrison asked where the ACME sign is located on the freestanding sign along Valley Road. Mr. Skirvin noted that the sign is at the top of this sign.

Mr. Harrison asked what the square footage of this ACME sign was on the freestanding sign. Mr. Skirvin replied that was not known.

Mr. Harrison asked at which point the free-standing sign is visible for motorists. Mr. Skirvin noted that the sign is visible when rounding the bend on Valley Road traveling both north and southbound before the building is visible.

Mr. Harrison agreed that the conforming sign located on the building is insufficient. He noted that the prior A&P sign was 91 square feet in area. He asked if the new sign could be the same area as the previous sign. Mr. Skirvin stated that the sign as presented in the application represents the best case scenario for installation.

Mr. Susswein noted that the area calculation for the sign. He asked if the building storefront width was 187 feet. Mr. Skirvin replied yes.

Mr. Sinisi then called Ms. Megan Hunscher, professional planner for the applicant.

Ms. Hunscher reviewed the subject property in relation to the Township Master Plan and zoning ordinance. She noted the location of the site and noted that the setback of the building warrants a larger sign than permitted under the ordinance. She further noted that the location of the building on the subject property presents a hardship with compliance of the ordinance requirements.

Questions from the Board were then accepted.

Mr. Harrison asked if there was a distinction for what would be considered too big, be it 6, 8 or 10 feet. Ms. Hunscher stated that it should be considered what is reasonable with respect to the unique big-box style development of the subject property. She noted that the proposed sign, in relation to the previous sign, is reasonable for the building.

Mr. Harrison noted that the goal of the ordinance is to control signage. He noted that the proposed sign in the application is more than 40 square feet larger than the previous sign.

Mr. Sinisi noted that the proposed sign is reasonable and justifiable. He stated that in balance, the proposal should not be considered unreasonable.

Mr. Susswein asked about the area of the existing sign. Ms. Hunscher stated that was not known. Mr. Susswein asked if it was perhaps 4 to 5 times larger. Ms. Hunscher stated that it was not known.

Mr. Harrison noted that the property consists of multiple tax lots and asked for clarification of the applicant regarding the property. Mr. Petto noted that notice was provided for the appropriate tax lot. Mr. Harrison requested clarification by the applicant as a condition of approval.

Final comments from the Board were then accepted.

Mr. Moore stated that the previous A&P sign was dim and difficult to see. He noted that the proposed sign was easier to see given the size and lighting. He noted that the sign could potentially be smaller in scale. However, overall the proposed sign is an improvement and will help to brighten the property given the large setback.

Mr. Susswein stated that the proposed "Pharmacy" sign is acceptable. He stated that he had reservations about the proposed 132 square foot size of the "ACME" sign. He noted that the current, conforming sign on the building is undersized. He recommended the new proposed sign be revised to be only 91 square feet in size, which is consistent with the previous A&P sign on the subject property. Mr. Susswein stated that the proposed lighting would be sufficient. He requested a condition that the sign not exceed 91 square feet in area.

Mr. Reynolds stated that he agreed with previous comments by Board members. He noted that he would also be in favor of limiting the sign area to 91 square feet.

Ms. Baggs stated that the Pharmacy sign as presented does not raise any concerns. She noted concern over the increased size of the proposed sign from the previous sign on the building. Ms. Baggs also stated that the proposed sign is more balanced and that the applicant is constrained by branding of the logo. She noted that there is limited opportunity to modify the logo. Ms. Baggs stated that the proposed sign is acceptable as presented.

Mr. Harrison stated that he has no problem with the Pharmacy Sign. He noted that the entrance/exit signs along Valley Road as well as the freestanding sign along Valley Road provide good visibility. He stated that a limit of 91 square feet of sign area would still provide easy visibility from Valley Road. He agreed to support such a condition.

Ms. Baggs asked if limiting the sign to 91 square feet would reduce the height of the sign to four feet two inches. Mr. Reynolds replied yes.

Ms. Baggs stated that in trying to visualize the reduced height of the sign. She suggested that the height of the sign be limited to 5 feet to better compliment the architectural placement on the building. Mr. Susswein noted that a sign of 5 feet in height would be 12.5 feet in width, in compliance with a 91 square foot area limit.

Mr. Harrison summarized the conditions of approval:

1. The "ACME" sign shall not exceed 5 feet in height and 91 square feet in area.
2. The applicant shall provide proof of payment of any outstanding property taxes for the property.
3. The applicant shall be bound by its own representations as well as representations made on its behalf by its attorney and professionals during the course of the public hearing.

4. 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.

Mr. Susswein offered a motion to approve the application with the conditions as stated. Ms. Baggs seconded the motion. The application was approved unanimously.

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 application. Mr. Alan Trembulak represented the applicant.

Mr. Trembulak summarized the application which plans to convert a portion of the first floor to medical office use. He noted that retail would also be located on the first floor.

Mr. Trembulak introduce Ms. Linda Robbins of Montclair Homeopathy, LLC.

Mr. Trembulak questioned Ms. Robbins regarding the operation of the business. Ms. Robbins discussed the homeopathy process and noted that the office would see patients on Tuesday, Wednesday and Thursday between 7am and noon. She also noted that the office would see patients on two Sundays per month between noon and 5pm. She stated that 2 half time employees would staff the reception desk and that a maximum of one patient would be in the waiting area at a time.

Ms. Robbins stated that the retail space would sell products to support homeopathy and would be open Monday through Friday between 8am and 4pm. She noted that 2 employees would work in the retail space.

Questions from the Board were the accepted.

Mr. Susswein asked if the services provided would be covered by medical insurance. Ms. Robbins stated that the services provided are rarely covered by insurance.

Mr. Susswein asked about clarification of the six rooms shown on the plans. Ms. Robbins reviewed the rooms and noted their use as follows:

- Room 1: Wisdom room
- Room 2: Reception room
- Room 3: Meeting room
- Room 4: Staff room for retail space
- Room 5 & 6: Product displays/retail

Mr. Susswein asked about signage for the proposed business. Ms. Robbins noted that there is an existing free-standing sign in front of the building that is to be re-used.

Mr. Moore asked if there were windows in room 5. Ms. Robbins replied yes. Mr. Moore asked which rooms would be most visible to the public. Mr. Robbins replied that rooms 1 and 6 were most visible.

Mr. Harrison asked to review the number of people that could potentially be on-site. Ms. Robbins reviewed the staff and patient figures.

Mr. Harrison noted that the previous resolution for the property indicated that 2 owner permit spaces were located in the parking area. Ms. Robbins stated that she was unsure of that condition.

Mr. Harrison noted the shared parking arrangement for the property and asked how parking for the homeopathy would be accommodated on Sundays. Ms. Robbins stated that the lease agreement allows use of the parking area 7 days per week between 8:30am and 6:30pm.

Mr. Reynolds clarified that the most active spaces would be Room 1 and Room 6. Ms. Robbins replied yes.

Mr. Trembulak then introduced Mr. Peter Steck, professional planner for the applicant.

Mr. Steck introduced Exhibit A-1, a series of photos and notes on the subject property.

MR. Steck reviewed the site and the existing conditions. He noted that the non-traditional building, which is designed as a residential home, presents a hardship for the applicant. He noted that there is also on-street metered parking in front of the building. He stated that the use is particularly suited for the site.

Questions from the Board were then accepted.

Ms. Baggs asked Mr. Steck to review the required number of parking spaces. Mr. Steck reviewed and noted that the use would be both retail and medical office. He noted that 4.5 spaces would be required for the medical office use and 3.375 spaces would be required for the retail use; resulting in a total of 7.8 spaces. Mr. Steck further noted that the proposed homeopathy use is not as intensive as a traditional medical office use.

Mr. Harrison stated that the parking is in context of the proposed use in this application. He asked Mr. Steck how future, perhaps more intensive, medical office uses on the subject property could be managed. Mr. Steck stated that a condition to restrict the use to the proposed could be considered.

Mr. Susswein asked if the medical office use could be limited to a portion of the first floor only. Mr. Steck replied yes.

Mr. Harrison asked if the applicant would accept a condition to this limit. Mr. Trembulak replied yes and stated that no more than 1 medical practitioner could also be considered.

Ms. Baggs noted that the variance goes with the subject property. She asked if another more intensive homeopathic use could be located at the property. Mr. Trembulak replied that a condition to hours of operation could be considered to address this point.

Mr. Moore asked about the square footage of the retail component. Mr. Steck noted that 675 square feet of the first floor would be allocated to each of the retail and medical uses.

Mr. Moore asked if the retail uses could be located in Room 1 and Room 6 which both front onto Church Street. Mr. Steck stated that no matter the configuration, the property will still appear as a house. He noted that as Ms. Robbins testified, the configuration as presented is best suited for the building. Mr. Steck noted that there is no true street frontage of the building, as there is a front porch and window displays are not possible.

Comments from the public were then accepted.

Luther Flurry, 14 Madison Avenue, noted a long history with the applicant in trying to identify a suitable space in Montclair. He stated that the combination of the homeopathy practice, retail component and vacancy at the subject property are a great match. He stated support for the variance request and noted that the layout of the building on the subject property is not conducive to street retail.

Following public comment, Mr. Trembulak informed the Board that despite only 5 members being present, the applicant would like to proceed with a vote.

Mr. Trembulak summarized the application.

Final comments from the Board were then accepted.

Mr. Susswein stated that he would be in favor of the variances requested by the applicant. He noted that the location of the subject property is on the edge of the N-C: Neighborhood Commercial zone. He also noted that the proposed use will have little impact. Mr. Susswein offered the following conditions of approval:

1. No more than half of the first floor will be used for medical office
2. Only 1 professional practitioner may use the medical office
3. Maximum hours of operation of 30 hours per week

Finally, Mr. Susswein noted that the proposed use was a good solution for the vacant space.

Mr. Reynolds stated that he was generally in favor of the relief requested. He noted that the building on the subject property does not orient towards traditional commercial, storefront uses.

Ms. Baggs stated that she would be in favor as well. She supported comments of the other Board members. She noted that the parking situation is not substantially detrimental and will maintain the shared parking arrangement of the prior approval.

Mr. Moore stated that he would be in favor of the application. He noted that the business will add diversity to the commercial area.

Mr. Harrison stated that he would be in favor of the application. He noted that the subject property is separated from the rest of the Neighborhood Commercial zone to the east. He noted that the building on the subject property is not clearly visible from the street. He also noted that the proposed use is less intensive than the previous use at the property. He noted that there would be no substantial impairment or detriment to the zone/plan.

Mr. Harrison re-summarized the conditions of approval:

1. The rear parking lot shall be striped to accommodate five vehicles.
2. The commercial and residential leases shall maintain the existing shared parking arrangement referenced in paragraph 7 above, so that the parking for the residential and commercial uses shall not overlap.
3. The medical office use shall be limited to the easterly half of the first floor with not more than one practitioner utilizing the office at the same time.

4. The applicant shall be bound by its own representations as well as representations made on its behalf by its attorney and professionals during the course of the public hearing.
5. 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 to approve the application with the conditions as stated was offered by Mr. Susswein, seconded by Mr. Reynolds. The application was approved unanimously.

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 application. Present for the application were Ms. Karen Cahn and Mr. George Held, architect for the applicant.

Mr. Held summarized the application and introduced Exhibit A-1, a colored site plan of the proposed project.

Questions from the Board were then accepted.

Mr. Susswein asked about the date of the aerial photos, noting discrepancies of the existence of the shrubs. Mr. Held clarified that the shrubs are existing around the yard of the property and that a decorative fence is to be added.

Mr. Harrison noted the plans indicate 4-6 foot plantings and asked if these would be in addition. Ms. Cahn noted that the plantings are all existing around the yard.

Mr. Harrison asked for a description of the proposed fence. Ms. Cahn stated that a final determination had not been made, but either a white picket fence or a decorative black rod iron fence.

Mr. Harrison noted that the plans indicate an aluminum solid fence. Mr. Held stated that it would be an open fence per the code requirements.

Mr. Harrison asked about the design of the proposed shed to be located next to the pool. Mr. Held stated that it would be designed similar to the style of the house on the subject property.

Ms. Baggs asked about landscaping along the western property line and if any screening was proposed in this area. Ms. Cahn stated that there is some existing planting in this area and that more is to be placed in this area.

Ms. Baggs asked if the proposed pool installation would impact any trees on the subject property. Ms. Cahn stated that all trees were to remain.

Mr. Moore asked if the pool would be shaded. Ms. Cahn stated no.

Questions/comments from the public were then accepted.

Jay Fastow, 349 Park Street, noted that the equipment area should be enclosed to conceal any noise from the equipment. Mr. Fastow also noted that the shrubs and trees that currently exist are insufficient to screen the proposed pool. He asked that additional planting be added to shield the view.

Mr. Harrison asked about the height and roof of the shed. Mr. Held stated that the roof would mimic that of the house on the property and the height of the shed may not be the full 15 foot height permitted by the zoning ordinance.

Mr. Harrison asked if the pool equipment could be relocated to the north side of the shed to reduce visibility from the street and adjacent properties. Mr. Held replied yes.

Ms. Bags asked about lot coverage impacts of the proposed pool. Mr. Held noted that the pool is not subjected to lot coverage requirements.

Final comments from the Board were then accepted.

Mr. Reynolds stated that he would be in favor of the application. He noted that the situation of the corner lot does present a hardship. He stated that the concerns of the neighbor should be addressed. He noted that a condition to locate the pool equipment on the north side of the shed should be added to the approval.

Ms. Baggs agreed that the corner lot does present a hardship. She noted that she would also be in favor of the application with a condition to locate the pool equipment on the north side of the shed. She noted that screening of the pool equipment with landscaping should also be a condition. She noted that the landscaping should be 10 feet tall at mature height.

Mr. Moore stated that he would be in favor of the variance request. He stated that the conditions should mitigate the impact to the neighbors and that the fence enclosure should be aesthetic. He also noted that noise from the pool equipment should be mitigated.

Mr. Susswein stated that he would also be in favor of the application with explicit conditions.

Mr. Harrison also stated that he would be in favor of the variance due to the corner lot hardship. He noted that the proposal would not be detrimental to the public nor the zone/plan. Mr. Harrison summarized the conditions as follows:

1. The height of the proposed shed is not to exceed twelve feet in height.
2. The proposed fence is to be a decorative fence and is to comply with requirements set forth in **Montclair Code § 305-12**.
3. The landscaped screening shall be installed along the fence proposed to be installed along the driveway, comparable to that proposed along the road frontage.
4. The proposed pool mechanical equipment is to be located on the northern side of the proposed shed.
5. There is to be no lighting around the pool, only ambient lighting is to be permitted.
6. All trees on the property are to remain and none are to be removed.

Mr. Susswein offered a motion to approve the application with the conditions stated, seconded by Ms. Baggs. The application as approved unanimously.

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

Mr. Harrison introduced the application. Present for the application were Ms. Ruth Davis and Mr. Val Divincenzo, architect for the applicant.

Mr. DiVincenzo reviewed the proposed addition to the dwelling on the subject property, which he also noted is located on the corner of Clinton Avenue and Myrtle Avenue. He also noted that the lot is undersized for the R-O: Mountainside zone district.

There were no questions from the Board.

Final comments from the Board were then accepted.

Ms. Baggs stated that a hardship due to the corner lot is present. She agreed that conformance would be difficult. She noted that the proposed addition maintains the character and quality of the historic house. She noted that the application represents a benefit to increase the value of the historic property. She stated she would be in favor.

Mr. Moore stated that he would also be in favor. He noted that the addition will maintain the historic look of the house.

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

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

Mr. Harrison stated he would be in favor of the application. He noted that the existing dwelling encroaches into the required setback. He noted that the proposed addition would be less encroaching.

Mr. Harrison asked the applicant if they would agree to the recommendation condition from the Historic Preservation Commission. Ms. Davis replied yes.

Mr. Harrison noted that a condition from the HPC would be added as follows:

1. The applicant is to return to the Historic Preservation Commission for review of all final materials and finishes.

A motion was made by Mr. Susswein to approve the application with the stated condition, seconded by Mr. Reynolds. The application was approved unanimously.

ADJOURNMENT

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

Respectfully submitted,



Graham Petto, AICP
Zoning Board of Adjustment Assistant Secretary