



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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## **MINUTES OF THE BOARD OF ADJUSTMENT MAY 18, 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. Fleischer, Mr. Susswein, Ms. Checca (arrived at 7:40pm), Mr. Reynolds (arrived at 7:45pm), Ms. Baggs, Mr. Moore (arrived at 7:48pm), Mr. LaVail, Mr. Sullivan, and Mr. Petto.

### **APPROVAL OF MINUTES:**

Mr. Harrison introduced the minutes of the April 20, 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. Fleischer, seconded by Mr. Susswein. The minutes were approved unanimously with Ms. Baggs abstaining.

### **OLD BUSINESS:**

**Resolution for App 2432: Kent Home Associates, LLC. 65 N Fullerton Ave. Use variance for density exceedance**

Mr. Harrison introduced the resolution. He noted a minor edit to the resolution as presented.

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

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

Mr. Harrison introduced the resolution.

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

**Request for Extension – App 2102: 210 Highland Avenue Partners. 210 Highland Avenue**

Chair Harrison introduced the request for extension. Mr. Cal Trevenen represented the requestor.

Mr. Trevenen summarized the prior approval by the Board and noted that the property was sold to the current owner/requestor of the extension in November 2015.

Mr. Trevenen noted that the current owner intends to proceed with the plans as approved.

Mr. Sullivan asked how long of an extension the current owner would like. Mr. Trevenen stated that the extension would be for between 12 and 18 months, but that the decision is up to the Board.

Mr. Sullivan asked when construction would be begin on the project. Mr. Trevenen noted that the architect is present and can best answer those questions.

Erik Maran, architect for the requestor, addressed the board. He noted that construction drawings would be completed at the end of June with permit filing soon after. He stated that construction would likely begin in the fall, however he noted that the winter months would be difficult for construction work given the situation of the property on the hillside.

Mr. Fleischer stated that an 18 month extension seems quite long. He noted concerns with clearing of the site well in advance of the start of construction. He asked how long would be needed to clear the property for construction work. Mr. Maran stated about one month.

Mr. Fleischer made a motion to grant a one year extension of the approval with a condition that the site may be cleared only one month prior to the start of construction. The motion was seconded by Mr. Susswein. The extension was granted unanimously.

**App 2437: Mark & Kristy Iannarelli. 225 Park Street. Bulk variance for a rear yard setback. (Materials previously distributed)**

Chair Harrison introduced the application. Present were Mr. Mark Iannarelli and Mr. Jonathan Perlstein, architect for the applicant.

Mr. Perlstein reviewed the project to install a roof over the stairs to the rear entry on the property. He noted the unique configuration of the lot with respect to the railroad tracks.

There were no questions from the Board.

Final comments from the Board were the provided.

Mr. Moore stated that he would be in favor of the applicant because there is no detriment to the neighborhood.

Mr. Susswein agreed with Mr. Moore and noted that the size and configuration of the lot and the situation of the dwelling on the lot constitute a hardship. He stated he would be in favor.

Mr. Fleischer agreed with the previous comments and stated he would be in favor.

Ms. Checca agreed with the previous comments and stated she would be in favor.

Mr. Reynolds agreed with the previous comments and stated he would be in favor.

Ms. Baggs agreed with previous comments and noted that the rear yard abuts the railroad. She also noted that the style of the proposed roof is in keeping with the character of the existing dwelling. She stated she would be in favor.

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

Mr. Harrison stated he would be in favor of the applicant. He noted that there would be no impairment to the zone plan by the application and no detriment to the public.

A motion was offered by Mr. Fleischer to approve the application as submitted, seconded by Ms. Baggs.

The application was approved unanimously.

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

Chair Harrison introduced the application. Present was Ms. Susan Tarrence and Mr. Paul Sionas, architect for the applicant.

Ms. Tarrence introduced the project, noting that the home has been undergoing renovations for years. She noted that the final project is to restore the porch to the dwelling.

Mr. Sionas introduced Exhibit A-1, a PowerPoint presentation detailing the proposed porch addition.

Mr. Sionas reviewed the requested variance under the application.

Questions from members of the Board were then accepted.

Mr. Fleischer referred to the historic photo shown on slide 9 of Mr. Sionas' presentation. He noted that the proposed porch under the applicants plan is different from the historic porch shown in the photo. He stated that the previous porch was essentially two separate covered porches separated by an uncovered terrace. He also noted that it appears the lot has been subdivided which changes the context of the dwelling on the lot. He noted that new proposed porch is larger than the historic porch.

Mr. Sionas noted that the location of the proposed porch is adjacent to the staff portion of the flag lot located south of the subject property. He noted that this area is about 40 feet in width and contains only a driveway to the dwelling located to the rear of this flag lot.

Mr. Fleischer stated that he needed additional justification why the porch needs to extend the length of the side of the house, which is not consistent with the historic porch. He noted that the extension of the porch along the side will also be screened, which presents additional mass of the building in this area.

Ms. Tarrence explained that the purpose of the screened porch was to provide an area to sit outdoors during summer evenings. Mr. Sionas also noted that the purpose was to have an outside seating area that is more private.

Mr. Fleischer asked if the proposed screened portion of the porch could be adjusted rearward so the entire front portion of the porch remains open. Ms. Tarrence replied yes.

Ms. Baggs asked what hardship was presented by the applicant. Mr. Sionas noted that the applicant is seeking to locate the porch where it previously stood.

Ms. Baggs noted that this is difficult given that the location of the previous property line is unknown. Mr. Sionas stated that previously the property was larger in size.

Ms. Baggs asked if the front yard setback would be maintained under the application. Mr. Sionas replied yes. Ms. Baggs asked if the porch could be enlarged in the front yard instead of the side yard. Mr. Sionas stated it may be possible, however he noted that a deeper front porch may be out of context with the building.

Mr. Fleischer noted the history of the house and asked why the proposed porch here needed to be extended along the side of the house. He also asked why the porch needed to extend across the entire front façade, which is also not historically accurate.

Ms. Tarrence stated that the extension of the front porch to the north along the front façade is not critical to the application. She noted, however, that the porch may look off-balance on the house if it only extended to one side. She stated that they would consider removing this portion of the porch.

Ms. Checca asked Mr. Sionas if porches add depth to houses and visual interest. Mr. Sionas stated yes and that the house could use additional interest and depth.

Mr. Sionas stated that the extension of the porch along the south façade of the dwelling was a good location to complement the front porch expansion. He stated that the location of the porch would not be a detriment.

Ms. Checca asked if the proposed screens would be permanent or removable in the screened portion of the porch. Mr. Sionas said that had yet to be determined. Ms. Tarrence stated it was a good suggestion to have removable screens.

Mr. Harrison asked about the hardship presented by the application and how the variance could be justified. He noted that the porch as presented exceeds what historically existed on the house and as a result would be hard to justify.

Mr. Sionas reiterated that there would be no negative impact due to the location of the porch extension to the adjacent staff portion of the flag lot.

Ms. Checca asked if the lot meets the required minimum lot width of 70 feet.

Mr. Fleischer stated that the minimum lot width of the lot as it stands today was self-inflicted by a previous lot owner.

Ms. Checca stated that the conditions of any prior subdivision of the property are not know at this time. She noted that the proposed porch projects less into the side yard than the historic porch.

Ms. Baggs asked if the lot was unusually narrow for the area. Mr. Sionas reviewed adjacent lots and noted that the subject lot was similar in relation to other lots in the area.

Final discussion by the Board was then conducted.

Mr. Susswein stated that he could be in favor of the application, given that the proposed enlargement of the porch only impacts the driveway and meets the required minimum side yard setback. However, he noted that the maximum permitted width requirement was placed into the ordinance to regulate the width of properties in the zone. He noted

that the existing dwelling already exceeds the permitted width and the proposed porch addition will exceed the requirement by about 20%, which could be considered substantial. He stated that the expansion appears to be discretionary in use. Mr. Susswein stated that there are other opportunities on the property to create a screened area. He stated that there did not seem to be justification presented for granting the variance.

Mr. Fleischer stated that, as shown in the historic photos, the dwelling had two covered porches separated by an uncovered terrace. He noted that under the current application, these two elements are now connected and appear as one large porch which changes the dwelling. He stated that the justification for the proposed porch was not presented and that he is uncomfortable with the scale of the proposal. He stated that a plan to replicate the original design would have been more amenable.

Ms. Checca stated that she was generally in favor of the application. She noted that the porch is an improvement to the property. She noted that the extension is adjacent to the staff portion of the flag lot to the south of the subject property. She stated that the porch would be an asset to the house with no detriment to the neighbors. Finally, she proposed that a condition that the porch remain an open porch be added.

Mr. Reynolds stated that he was in favor of the application. He stated that the porch would be an asset to the property.

Ms. Baggs stated that she agreed with Mr. Susswein's comments. She agreed that no justification for the variance was presented. She also noted that the new porch as proposed does not replicate the historic porch.

Mr. LaVail stated that he would not be in favor of the application. He noted there was no justification for the variance. He also noted concern about the potential loss of the tree.

Mr. Moore stated that he has heard good comments by fellow Board members in favor and opposed to the application. He stated that the application balances historic preservation and more contemporary updates of the property. Mr. Moore stated that the mass of the new porch could be a significant impact, but the adjacent flag lot does mitigate. He stated that he would be in favor of the application.

Mr. Sionas made a request of the Board to continue the application to the June 15, 2016 meeting. He stated that the applicant would like to make adjustments to the plan based on the feedback and present new plans at the June meeting.

Mr. Harrison asked for a review of the calculation of width of building with respect to the lot before discussing the requested continuation. Mr. Petto informed the Board of the Department's review process of building width in accordance with the Ordinance.

Ms. Checca asked for clarification on lot width with respect to the proposed porch addition and the minimum lot width standard when the application returns to the Board.

A motion to carry the application to the June 15, 2016 meeting of the Board was offered by Mr. Susswein, seconded by Mr. Fleischer.

The motion passed unanimously.

**NEW BUSINESS:**

**App 2451: Yimin You & Larry Qiu. 767 Valley Road. Bulk variance for accessory structure setback.**

Chair Harrison introduced the application. Present were Ms. Yimin You and Mr. Paul Sionas, architect for the applicant.

Ms. You explained that the garage and two vehicles on the property were destroyed by a fallen tree during Superstorm Sandy. She stated that the intent of the application is to reconstruct the garage. She also noted that the garage would be enlarged slightly to better fit modern size vehicles. She stated that the original pad area and portions of the foundation would be reused.

Mr. Sionas introduced Exhibit A-1, a PowerPoint presentation of the plan. Mr. Sionas reviewed the plans and presentation for the Board.

Questions from the Board were the accepted.

Mr. Fleischer asked for clarification that the adjacent property owner could not build behind the proposed garage. Mr. Sionas stated that given the situation of the dwelling on that lot, it would be unlikely that anything would be built to the adjacent the proposed garage.

Mr. Fleischer noted in the photos of the exhibit, the foundation wall is shown on the existing slab. Mr. Sionas noted that the rear foundation wall would be moved forward and adjusted to accommodate the new garage.

Mr. Reynolds asked if there would be any buffer between the properties. Mr. Sionas replied no and noted that there is a grade change between the properties.

Mr. LaVail asked why the applicant could not comply with the required six foot setback. Ms. You stated that a conforming location would be too close to the house. She noted that children play in the yard area which also includes the driveway. Mr. Sionas added that the spacing between the house and the garage was needed to maintain sufficient light, air and open space.

Ms. Baggs asked if the grade of the property sloped or if it was level in non-paved areas of the yard. Ms. You stated that the yard was level and that the adjacent property to the rear was sloped.

Comments from the Board were then accepted.

Mr. Fleischer stated that he would be in favor of the application. He noted that particularly when the garage is reconstructed in the same location as previous. He stated that the proposed garage was shifted to accommodate maintenance, which was an improvement. He also noted that the property behind slopes away so the proposed location will not encroach on the adjacent property.

Ms. Checca stated that she was not in favor of the application. She stated that there was no testimony presented that would prevent the applicant from conforming to the required setback. She noted that the garage could be moved three feet and would not impact light, air and open space due to the height of the garage. She also stated that the yard is large in size and moving the garage an additional three feet to conform would not negatively impact the yard.

Mr. Reynolds noted that the adjustment to a three foot setback under the application would accommodate space for maintenance of the garage that would be reasonable. He stated he is generally in favor of the application.

Ms. Baggs stated that she was not yet decided on the application. She noted that the driveway and yard are all level and not sloped. She stated that there was no testimony that landscaping in the yard would prevent use of the yard. She added that the increased setback area seemed appropriate to accommodate maintenance. She stated that the application does not appear to cause a substantial detriment under the increased setback.

Mr. LaVail stated that it was not a significant request of the applicant to adjust the garage an additional three feet to meet the required setback. He stated he would not be in favor of the application.

Mr. Moore stated he would be in favor of the application as there is no detriment to the community. He also stated that the loss of the garage by the fallen tree presents a hardship.

Mr. Susswein stated that he would be in favor of the application as submitted, which is considered a rebuild of the former garage. He noted that the Board has a history of approving applications of this type.

Mr. Harrison stated that the Board has approved many replacement garages with non-conforming setbacks. He stated traditionally the Board has asked for a minimum setback of three feet. He also noted that typically the alignment of the driveway or play areas in the yard have been used by applicants to justify location of the garage. He stated that the subject lot under this application has significant area to meet the required setback. He stated the situation of the house on the adjacent lot that fronts on Alexander Avenue may change. He noted that the application here is different from others considered by the Board.

Mr. Fleischer stated that the garage depth could be reduced to 22 feet to get closer to conformance. Mr. Fleischer stated that the foundation of the previous garage would not entirely be re-used. He noted that no unique problem is created by the application and that a new garage will be constructed, not necessarily replaced.

Mr. Susswein stated that the applicant purchased the property with an existing garage that was subsequently destroyed. He stated that by not granting the variance, the Board would then be removing three feet from their rear yard, on top of what has already been lost.

Mr. LaVail asked if the previous garage was a one- or two-car garage. Mr. Sionas stated that it was a two-car garage, but was quite small for today's standards.

A motion was made by Mr. Susswein to approve the application, seconded by Mr. Reynolds. The application was approved with Mr. Fleischer, Mr. Reynolds, Mr. Susswein and Mr. Moore voting in favor of the application. Mr. Harrison, Ms. Checca and Ms. Baggs voted against the application.

**App 2454: Matthew & Nicole Masso. 553 Grove Street. Bulk variance for fence height exceedance.**

Chair Harrison introduced the application. Present for the application were Matthew and Nicole Masso.

Mr. Masso reviewed the application. He noted that the home was purchased in 2013. He stated that the existing fence is approximately 25 years old and is in need of repair/replacement. He stated the existing fence is six feet in height and that the proposed replacement fence would also be a six foot privacy fence. Mr. Masso noted that the adjacent property owner is supportive of the fence replacement.

Ms. Baggs asked the applicant to review the height of the fence in relation to the adjacent properties. Mr. Masso stated that the intent was to match the other six foot fence heights around their property.

Ms. Checca asked for clarification of the location of the proposed new fence. Mr. Masso noted that it would be along the southern property line between the subject property and the adjacent property.

Mr. Reynolds asked about the height of the gate across the driveway. Mr. Masso stated it was lower than the fence, about four feet.

Ms. Baggs stated that based on the evidence, the current non-conforming fence height actually completes the enclosure of the neighbor's yard.

Mr. Fleischer asked about the grade change of the property. Ms. Masso noted that the property slopes down from Grove Street and the fence is not visible from the street as it is well screened by landscaping.

Mr. Fleischer and Mr. Harrison noted the intent of the ordinance as written regarding the height of fences.

Final comments from the Board were then accepted.

Ms. Checca stated she would not be in favor of the application. She noted that conformance of the ordinance is important because the duration of ownership and the neighbors is not known by the Board.

Mr. Reynolds stated that he would be in favor of the application. He noted that the applicant proposes to replace an existing non-conforming fence. He also stated that the slope of the property diminishes the impact of the fence. He stated that the replacement would not detrimentally impact the area.

Ms. Baggs stated that based upon the testimony by the applicant, there is support from the adjacent property owner. She noted that unique conditions of the property will diminish the impact of the taller fence. She added that the applicant is rebuilding an existing fence and will not be a substantial detriment to the public. Finally, she stated that approval of the variance would encourage positive property maintenance.

Mr. LaVail stated he would not be in favor of the application and agreed with the comments by Ms. Checca.

Mr. Moore stated he would be in favor of the application. He noted the situation of the fence is not a detriment due to the grade change of the property. He noted the dwelling is setback deeper on the lot than other adjacent dwellings, which creates a unique situation.

Mr. Susswein stated he would be in favor of the applicant. He noted that the applicant proposes to rebuild an existing non-conforming fence. He stated it would not be visible from the street. He added that the situation of the house on the site further from the street makes the application unique.

Mr. Fleischer stated that he would not be in favor. He noted that a six foot stockade or privacy fence in the front area of the home would be a detriment to the public. He stated that the fence as presented was inappropriate for the front yard.

Mr. Harrison stated that he was concerned that the fence appears to have been installed improperly and may in fact have been installed by the adjacent property owner given the situation of the fence. He noted that the Board has reviewed applications for the replacement of deteriorated garages, and in this case the fence is in need of repair. He stated that the nature of the property with the slope downward from Grove Street will reduce visibility of the fence. He noted that a condition that the six foot fence not extend towards Grove Street beyond the front-most corner of the house along the southern property line. He stated that there would be no detriment to the public good and that the property does present a unique circumstance.

A motion was made by Mr. Susswein to approve the application, seconded by Mr. Reynolds. The application was approved with Mr. Harrison, Mr. Reynolds, Ms. Baggs, Mr. Susswein and Mr. Moore voting in favor. Mr. Fleischer and Ms. Checca voted against the application.

### **Executive Session**

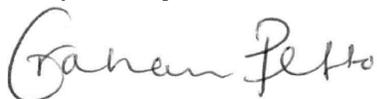
Mr. Sullivan stated the Board need not enter into Executive Session if no specific discussion of the matter would take place. He stated that the Board had received a correspondence regarding the denial of an application. He requested a motion by the Board authorizing the Board Attorney to defend the matter on behalf of the Board.

A motion was offered by Mr. Fleischer to defend the matter on behalf of the Board, seconded by Mr. Susswein.

### **ADJOURNMENT**

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Ms. Baggs. The meeting was adjourned at 10:30pm, May 18, 2016.

Respectfully submitted,



Graham Petto, AICP  
Zoning Board of Adjustment Assistant Secretary