



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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MINUTES OF THE BOARD OF ADJUSTMENT JULY 20, 2016

ORDER: The meeting was called to order at 7:45 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, Ms. Baggs, Ms. Checca, Mr. Moore, Mr. LaVail, Mr. Sullivan, and Mr. Petto. Ms. Chowaniec was excused. Mr. Allen and Mr. Reynolds were absent.

APPROVAL OF MINUTES:

Mr. Harrison introduced the minutes of the June 15, 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 Ms. Baggs. The minutes were approved unanimously with Ms. Checca abstaining.

OLD BUSINESS:

Resolution for App. 2461: Scott & Diane Marshall. 5 Cornell Way. Bulk variance for front and side yard setbacks, building coverage and building width.

Mr. Harrison introduced the resolution. Mr. Harrison noted edits to the resolution as presented.

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

Resolution for App. 2462: Roger & Michele Murray. 141 N. Fullerton Avenue. Bulk variance for swimming pool location on lot.

Mr. Harrison introduced the resolution. Mr. Harrison noted edits to the resolution as presented.

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

Request for Extension: App 2407: Ercument & Ikbal Tokat. 119 Upper Mountain Avenue.

The Chair introduced the request for the extension of the variance approval. Present for the applicant was attorney David Owen.

Mr. Owen stated that the applicants elected not to proceed with the construction of the new dwelling on the subject lot. He stated they had moved to an existing home in the Township and have listed the subject lot for sale.

Mr. Owen reviewed the request for an extension of the variance. He noted that the State of New Jersey recently extended the Permit Extension Act for Sandy-affected jurisdictions, with an expiration of June 30, 2017. He noted that the request for extension as presented to the Board would extend the variance to September 25, 2017.

Ms. Checca noted that a condition of approval included in the resolution for the application was that all removed trees would be replaced on-site. Ms. Checca noted that a number of large trees have been removed from the property, including trees along Upper Mountain Avenue and around the perimeter of the property. She stated that the loss of trees has changed the character of the lot. She asked if the trees would be replaced prior to the sale of the property. She stated she was concerned they will not be replaced.

Mr. Owen stated that he had no knowledge of the trees and the requirement of replacement. He stated that the approvals and variance go with the land. He stated that the current and successive owner would be bound by the resolution approved by the Board and the Township's tree ordinance.

Ms. Checca asked if the approved plans were included with the sale of the land. Mr. Owen replied yes and stated that the sooner the property is sold, the better.

Ms. Checca asked if prospective buyers were being informed of the outstanding tree ordinance compliance. Mr. Owen stated that he had no factual knowledge of the situation and noted that there is a responsibility to comply with the tree ordinance.

Ms. Checca asked if the property is sold would the new owners not be subjected to the tree ordinance. Mr. Owen stated that he has not reviewed the tree ordinance, but noted that it will be reviewed by the Township as enforcement lies with the Township.

Mr. Fleischer stated that he was concerned that if the application does not proceed with the plans as approved, there would be no enforcement of the tree replacement as a condition of the sale.

Mr. Owen stated that if the property was sold and the plans were included with the sale, the subsequent owner must comply with the tree ordinance, as any owner would be required to comply with all township ordinances.

Ms. Baggs asked if the stormwater management system that was proposed by the applicant has been installed. Mr. Owen stated that he was not certain, but given the status of the project he would doubt the system has been installed.

Ms. Baggs asked Mr. Owen if there was a specified reason for the extension and how the extension would impact the neighbors.

Mr. Owen noted the number of questions and requested that the discussion of the extension perhaps be carried to another time.

Mr. Harrison suggested that Mr. Owen contact his clients to discuss the issues raised by the Board. He stated that perhaps Mr. Owen could obtain some information and return to address the Board later in the meeting. Mr. Owen agreed.

Mr. Harrison noted that there were members of the public who would like to comment on the extension and those comments would be taken at this time.

Amy Putnam, 70 Upper Mountain Avenue, stated that the site has been left barren with only stumps of the previous trees remaining. She noted that the neighbors in the area are very upset at the state of the property. She stated that the loss of trees is very disturbing. Ms. Putnam stated that steps can be taken to mitigate the impact, such as removing the stumps and planting hedges along the street to shield the property from view. She stated that the current owners of the property should be held accountable for the site.

Mr. Harrison stated that the discussion would be continued after Mr. Owen speaks with his clients.

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

Mr. Petto announced that the applicant has provided a letter requesting an adjournment to the August 17, 2016 meeting date of the Board of Adjustment. He noted the application would be carried to this meeting and no further notice would be provided.

App. 2448: The Deron School. 130 Grove Street. Site plan approval.

The Chair introduced the application and noted there were only six board members in attendance.

Mr. Stephen Hehl, attorney for the applicant, requested an adjournment to the August 17, 2016 meeting as there were fewer than seven members present for the application.

The Board agreed to the request and carried the application to the August 17, 2016 Board of Adjustment meeting.

App. 2457: Ronald DeMyers, Sr. Agency, Inc. 119 Grove Street. Use variance for professional office on first floor in N-C: Neighborhood Commercial Zone.

The Chair introduced the application and noted there were only six board members in attendance.

Mr. Alan Trembulak, attorney for the applicant, requested an adjournment to the August 17, 2016 meeting as there were fewer than seven members present for the application.

The Board agreed to the request and carried the application to the August 17, 2016 Board of Adjustment meeting.

NEW BUSINESS:

App. 2460: Glenn & Katherine Newmark. 93 Union Street. Bulk variance for accessory structure setback.

Mr. Harrison introduced the application. Present for the application were Mr. Glenn Newmark, applicant, and Mr. Paul Sionas, architect for the applicant.

Mr. Newmark summarized the application and the proposed modifications to the carriage house on the property. He noted that the intent is to restore the structure historically and also restore it to useable space. He stated the space on the upper floor would be used as an exercise room and a cabana for the outdoor pool on the subject property. Mr. Newmark also noted that an antique stained glass window has been purchased for the east side dormer.

Mr. Harrison noted the memo received by the Board of Adjustment from the Historic Preservation Commission regarding the application. Mr. Harrison asked if the proposed conditions would be acceptable to the applicant. Mr. Newmark replied yes.

Mr. Sionas introduced Exhibit A-1, a PowerPoint presentation, detailing the existing conditions of the structure and the proposed modifications. Mr. Sionas reviewed the presentation in detail.

Following the presentation, questions from the Board were then accepted.

Mr. Fleischer asked about the height of the garage from the elevated parking lot grade of the Social Services Building to the east of the subject property. Mr. Sionas stated that he wasn't certain of the elevation, but noted that the lower portion of the wall of the carriage house was below grade in this area and would need to be rebuilt. Mr. Fleischer clarified that given the situation, the height of the carriage house appears lower than 15 feet.

Mr. Fleischer noted that the existing dormer does not align with the original frame of the house. He asked if the applicant would consider dropping the proposed dormers from the peak to reduce the impact on the height of the carriage house. Mr. Sionas replied yes, the dormers could be set off the peak of the roof.

Ms. Baggs asked what hardship was present for the applicant and what rationale for the hardship existed. Mr. Sionas stated that the structure is lawfully existing, which presents the hardship. He noted the height of the structure now exceeds to the 15 foot maximum height limit, which was imposed after the construction of the carriage house.

Mr. Harrison referred to slide 9 of Mr. Sionas' presentation. He noted that the height shown was 20 feet 7 inches and asked for clarification. Mr. Sionas noted that the average height was calculated for the structure, as required by the ordinance. He noted that the average height calculation resulted in the stated 18.7 feet.

Mr. Harrison asked if a heating system was proposed for the renovated carriage house. Mr. Newmark replied yes and stated there would be a forced hot air heating system. Mr. Sionas noted that the condensing units for the HVAC system would be located to the south of the carriage house.

Mr. Harrison noted the first condition of the HPC memo would need to be modified to reflect the stained glass window the applicant would like to install.

Mr. Harrison also noted that Condition #3 of the HPC memo should also be clarified to note that cedar should be used throughout the new dormer additions.

Mr. Fleischer stated that he would like to see a condition that no residential use be permitted in the carriage house.

Comments from the public were then accepted.

Kara Fitzsimmons, 9 Wilde Place, noted that the carriage house/garage wall is located along the rear of her property, which is adjacent to the subject property. She stated that it is also in her best interest to see the structure rehabilitated as it serves as a privacy wall to shield her yard. She stated concern about the construction and the trees in the area.

Len Cautela, 12 Wilde Place, stated concerns that the amenities proposed for the carriage house/garage, including electric, water, HVAC and a bathroom appear to constitute a dwelling unit. He stated that he was concerned the proposed space may be used as a residence. Mr. Cautela noted that the rear yard of the subject property is located at a higher elevation than other adjacent lots and noise can travel.

Deborah Juergensen, 14 Wilde Place, stated she was concerned about noise levels from the subject property. She noted that the owners of the subject property do host pool parties and she expressed concern that a new cabana area may contribute to additional noise. Ms. Juergensen asked for clarification as to what "no residence" means. Mr. Harrison stated the space could not have a dwelling unit with a cooking facility.

Comments from the Board were then accepted.

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

Ms. Baggs stated that the application is positive for the neighborhood in general. She noted that the proposed repairs to the structure were historically sensitive and would be a benefit to the public.

Mr. Moore stated that the proposed repairs to the historic carriage house justified the hardship. He stated that the view of the structure would be enhanced from the United Way building which benefits the public. He stated that a condition should be added that the carriage house could not be used as a residential unit. He stated that the proposed stained glass window is an additional asset to the project.

Mr. Fleischer stated he would be in favor with the conditions as discussed by the Board. He noted the proposed doubled glazed windows and new insulation would control and minimize any noise impact to the adjacent properties.

Ms. Checca stated she would be in favor of the application. She noted that the proposed use of the structure is a permitted accessory use. She stated that the proposed workout space and first floor mudroom meet the c(2) benefits. She noted that the view from the United Way Building would be enhanced for the public. She agreed that the situation of the historic structure does present a hardship. She noted that the applicant is undertaking good stewardship of the historic structure to restore and maintain it.

Mr. Harrison stated he would be in favor of the application. He noted that the proposed dormers do not exceed the existing height of the structure. He also noted that the proposed extension is along the existing line of the structure. Mr. Harrison stated that the existing dormer on the structure appears out of place. He stated there would be no detriment to the public good by the application.

Mr. Harrison summarized the conditions.

1. The proposed upper floor windows on the eastern façade should be similar to the windows proposed for the upper floor western façade; except for the proposed antique stained glass window to be installed on the eastern facade.
2. The proportions and divisions of all proposed windows should be consistent.
3. The applicant is to use cedar throughout the proposed new dormers.
4. The proposed roofing material is to imitate that of the existing house.
5. All original materials are to be cleaned with gentlest means possible to ensure protection.
6. Residential use of the carriage house is not permitted.
7. The proposed dormers are to be constructed on the roof one foot below the existing peak of the roof.

A motion was made by Mr. Fleischer to approve the application with the conditions stated by Mr. Harrison. Ms. Baggs seconded the motion. The application was approved unanimously.

App. 2466: Daniel Nachman. 193 Cooper Avenue. *Bulk variance for accessory structure located in front yard.*

Mr. Harrison introduced the application. Present for the application was Mr. Daniel Nachman and Ms. Jan Hoffman, owners of the subject property.

Mr. Nachman reviewed the proposal to locate a temporary garden shed in the front yard of the subject property, which is a corner lot. Mr. Nachman noted the location of gardens on the property and the desired proximity of the shed to these gardens. He also noted the property does not have a garage.

Mr. Nachman stated the proposed location of the shed would preserve the small rear yard of the subject property. He also noted that the proposed shed location is well screened by arborvitae along the property line on Northview Avenue.

Questions from the Board were then accepted.

Mr. Fleischer asked if there was a macadam driveway on the subject property from Northview Avenue. Mr. Nachman replied yes.

Mr. Fleischer asked if the shed could be located near the driveway. Mr. Nachman stated this would be further from the gardens on the property, which will require access to the shed.

Mr. Fleischer asked if the shed could be moved closer to the house. Mr. Nachman replied yes.

Mr. LaVail asked if the condensing units for the dwelling were located in the area near the house where the shed could be located. Mr. Nachman replied yes.

Ms. Baggs asked the applicant to explain the necessity of the lawn area without the shed. Mr. Nachman stated that the intent was to preserve as much open lawn area in the rear yard as possible.

Ms. Baggs asked for clarification of what landscaping was existing versus proposed as shown on the landscape plan submitted. Mr. Nachman reviewed the landscape plan

and detailed existing and proposed landscape areas. He reiterated that the intent of the overall plan and the proposed shed location was to preserve the small rear yard of the subject property, which is a corner lot.

Mr. Moore asked if the existing arborvitae along Northview would be retained for screening. Mr. Nachman replied yes and noted that some of the lost arborvitae would be replaced. He also noted that the dogwood tree in this area would be retained as well.

Mr. Harrison referred to the aerial image provided in the Planning Department memo. He noted the setback of the adjacent properties along Northview Avenue.

Mr. Harrison asked if the path along the west side of the house, in the front yard along Northview Avenue accessed the front porch of the dwelling only. Mr. Nachman replied yes.

Mr. Harrison asked Mr. Petto to clarify the definition of the front yard. Mr. Petto noted the front yard is the yard located between the principal building and the property line along the street, extending the width of the lot.

Mr. Harrison noted that the shed could be shifted closer to the house as noted by Mr. Fleischer.

Mr. LaVail asked if there was a tree located at the end of the driveway. Mr. Nachman replied that a tree was previously located in this area; however, he noted it has been removed due to disease. He stated it would be replaced.

Final comments from the Board were then accepted.

Ms. Baggs stated that she understands the predicament of the applicant due to the locations of the gardens on the property. However, she noted this hardship was self-inflicted. She noted there are other conforming locations on the property where the shed could be placed to retain the lawn area.

Mr. Moore stated he was still conflicted on the application and would like to hear additional input from other Board members before commenting.

Mr. Fleischer stated that corner properties do often lack private rear yard space. However, he noted that adjustments could be made to the applicants plan to identify a conforming location. Mr. Fleischer noted the path from the driveway to the dwelling could be modified to create additional space to place the shed in a conforming location.

Ms. Checca stated she was general in favor of the application. She noted the screening of the arborvitae along Northview Avenue would limit visibility of the shed. She noted that the shed is small in size. Ms. Checca also noted that a hardship does exist due to the situation of the lot on a corner and the lack of a garage on the property. She stated she would be in favor.

Mr. LaVail stated that while he is sympathetic to the corner lot situation, he was not in favor of the proposed location of the shed. He stated he would like the shed located further from the property line along Northview Avenue.

Mr. Harrison stated that he was not in favor of the application. He stated that he was unsure how the proposed location could be justified. He noted that other corner lots

have tried to accommodate such structures in conforming locations. Mr. Harrison reiterated his suggestion that the applicant straighten the walkway from the driveway to the house and locate the shed in this area, which would be in the rear yard.

Mr. Fleischer stated that other places on the lot do exist that could conform.

A motion was made by Ms. Baggs to deny the application.

Mr. Fleischer offered an alternative suggestion, to permit the shed in the front yard but with a required setback of 21.31 feet, as this was the closest dimension the dwelling on the property was located to the property line along Northview Avenue.

Ms. Baggs withdrew her motion.

Ms. Baggs asked if this would set a precedent and how it would impact the zone plan. Mr. Harrison stated that typically the Board does accommodate corner lots and this would not set a precedent.

Mr. Fleischer offered a motion to approve the application with a condition that no portion of the proposed shed be located any closer to the property line along Northview Avenue than the closest location of the dwelling to the same property line. Mr. Harrison added that a condition should be included that the shed is not to exceed the dimensions as submitted by the applicant.

Ms. Checca seconded the motion with the conditions stated. The application was approved unanimously.

Request for Extension: App 2407: Ercument & Ikbal Tokat. 119 Upper Mountain Avenue.

Mr. Harrison called Mr. Owen to return to discuss the extension.

Mr. Owen noted that the Permit Extension Act has indeed been extended to June 30, 2017. Mr. Harrison agreed with Mr. Owen's interpretation of the legislation.

Mr. Owen stated that he had spoken with his clients. He noted that the resolution for the variance does require a one-for-one replacement of all trees on-site. He stated that the applicant will agree to comply with the tree ordinance.

Mr. Fleischer noted that the essence of the regulation is that all construction work is parallel. He stated that the site should be cleared only when construction will proceed. He noted in this instance, the site was cleared and left in poor condition.

Mr. Owen stated that the applicant agrees to replace the perimeter trees around the property in consultation with an arborist. He also noted that the applicant agrees to re-seed the property as well. Mr. Owen noted that removal of the stumps may adversely impact the stormwater management on the site and that the applicant would not have them removed.

Ms. Checca asked Mr. Owen to explain how removal of the stumps would impact the stormwater plan. Mr. Owen stated that he is no expert in this area and could not provide any additional information.

Mr. Harrison stated that the stumps are holding soil and dirt in place on the site.

Ms. Checca stated that the stumps need to be removed to clean up the site. She noted that the root system below the ground would remain intact.

Mr. Owen reiterated that he does not have professional expertise in this area and cannot comment.

Mr. Fleischer stated many problems with the extension request. He noted that the time frame to construct the approved plans is unknown due to the sale of the property. He also noted that the application is now subject the Permit Extension Act. He stated that the Board could grant the extension and attach conditions to the extension to help manage the site. He proposed the following conditions of approval of the extension:

1. Removal of the stumps to the ground.
2. Replacement of all perimeter trees in consultation with an arborist.
3. Seeding of the property.
4. Routine maintenance to ensure continued upkeep of the property.

Ms. Baggs asked if the state law would permit an automatic extension to June 30, 2017.

Mr. Sullivan replied that the extension of the Permit Extension Act has extended approvals to June 30, 2017, in certain counties, which does include Essex County.

Mr. Owen stated that given the extension afforded to the application by the Permit Extension Act, he withdraws the request for extension.

Mr. Harrison provided two suggestion to Mr. Owen. First, he recommended that Mr. Owen review the Township tree ordinance. Second he recommended that the property be well-maintained as required by the Montclair Code.

Mr. Harrison stated that what has transpired is unfortunate. He noted that no Board member had anticipated this situation. He also recommended that other property owners in the area take steps to ensure the property is well-maintained until June 30, 2017.

ADJOURNMENT

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Ms. Checca. The meeting was adjourned at 10:15pm, July 20, 2016.

Respectfully submitted,



Graham Petto, AICP
Zoning Board of Adjustment Assistant Secretary