



Janice E. Talley, PP/AICP
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MINUTES OF THE BOARD OF ADJUSTMENT
January 21, 2015

ORDER: The meeting was called to order at 7:40 p.m. by Ms. Talley. Ms. Talley 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 Town website.

ROLL CALL: Chair Harrison, Mr. Kenney, Ms. Baggs, Ms. Checca, Mr. Susswein, Mr. Moore, Ms. Brinkman, Mr. Sullivan, and Ms. Talley, were present. Mr. Fleischer was excused and Mr. Reynolds was absent. Mr. Harrison welcomed new Board members Susan Baggs, Jonathan Moore and Karen Brinkman.

ELECTION OF OFFICERS: Mr. Susswein nominated William Harrison for Chairman. Mr. Susswein made a motion to appoint Mr. Harrison as Chairman, seconded by Mr. Kenney and approved unanimously. Mr. Kenney nominated Joseph Fleischer as Vice Chairman. Mr. Kenney made a motion to appoint Mr. Fleischer as Vice Chair, second by Mr. Susswein and approved unanimously. Mr. Harrison nominated Janice Talley as Board Secretary. A motion was made by Mr. Susswein, seconded Mr. Kenney and approved unanimously.

APPOINTMENT OF BOARD PROFESSIONALS. A resolution to appoint Tom Watkinson as Board Engineer was made by Mr. Susswein, seconded by Mr. Kenney and approved unanimously. A resolution to appoint Michael Sullivan as Board Attorney was made by Mr. Kenney, seconded by Mr. Susswein and approved unanimously.

APPROVAL OF THE MINUTES: On motion by Mr. Kenney, seconded by Mr. Kenney, the minutes of the December 17, 2014 meeting were approved by Mr. Kenney.

OLD BUSINESS

Application 2390 - Michael Bender, 18 Waterbury Road. The following resolution for was approved upon a motion by made, seconded and approved by Mr. Kenney.

RESOLUTION
BOARD OF ADJUSTMENT
TOWNSHIP OF MONTCLAIR

Michael Bender
18 Waterbury Road

January 21, 2015
File #2390

WHEREAS, Michael Bender, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to construct

a detached garage on property designated as Lot 24 in Block 3410 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance from Montclair Code Section 347-46.A92) for a side yard setback of less than required; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 18, 2014, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated February 8, 2011 and plans by Steven Corso, Architect dated May 19, 2014; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

1. The property is located on Waterbury Road and is located in the R-1 One-Family Zone. The proposed detached garage will be built in the same location as the existing garage which has a side yard setback of 3.7 feet. The proposed garage will be .1 inches closer to the lot line than the existing garage because of the slight change in contour of the lot line.
2. The proposed garage will be a wood frame structure with wood or fiber cement siding, which is a significant improvement over the existing metal garage on the property.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the application is hereby approved.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

Application 2396 - D. Wacs & J. Restrck, 122 Essex Avenue. The following resolution for was approved upon a motion by made, seconded and approved by Mr. Kenney.

**RESOLUTION
BOARD OF ADJUSTMENT
TOWNSHIP OF MONTCLAIR**

**D. Wacs & J. Restrck
122 Essex Avenue**

**January 21, 2015
File #2396**

WHEREAS, Darin Wacs and John Restrck, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to construct an addition on property designated as Lot 5 in Block 3407 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance from Montclair Code Section 347-45B(2) for a front yard setback of less than required; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 18, 2014, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted plans by Brinkman Architecture, LLC dated November 21, 2014; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

3. The property is a trapezoidal shaped lot located at the corner of Essex Avenue and Garden Street in the R-1 One-Family Zone. The proposed one-story addition is located 25 feet from Garden Street and the covered landing is located 19.08 feet from Garden Street
4. A variance is required because the average front yard setback on Garden Street is 36.5 feet. This setback is created because the setbacks of the adjacent houses that front on Garden Street is significantly greater than the corner house on the subject property.
5. The subject property contains a significant amount of mature landscaping that will buffer the view of the proposed addition from the street.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the application is hereby approved.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

Application 2367: 58 James Street, LLC, 58 James Street. Ms. Talley noted that a letter was submitted by the applicant granting an extension of time through February 18, 2015.

Application 2003: Wallwood Gardens, Inc., 400 Orange Road. Ms. Talley noted that a letter was submitted by the applicant granting an extension of time through March 18, 2015.

App. 2380: New York SMSA Limited Partnership d/b/a Verizon Wireless, 10 Pine Street. *Installation of rooftop wireless telecommunications equipment.* Mr. Richard Stanzione, Esq. stated that he is present to represent the applicant. Mr. Sullivan stated that Board members Baggs, Brinkman and Moore have signed certifications that they have reviewed the transcripts and exhibits for this application. Mr. Kenney and Ms. Checca signed certifications that they have reviewed the transcripts and exhibits from the September 17, 2014 meeting.

Mr. Stanzione stated that he has completed the testimony and that his witnesses are present if the Board has any questions.

Mr. Susswein asked if the building owner will permit antennas on the side of the building. Mr. Stanzione stated that the owner testified that he will not permit antennas to be installed on the side of the building.

Mr. Kenney asked if the antennas could be screened. Mr. Masters presented an exhibit showing screening. The following exhibit was marked into the record:

A-5: Three color photographs and photo simulations prepared by Rick Masters.

Mr. Masters stated the photo simulation in the middle of this exhibit shows what is proposed. The third photo in the exhibit shows how the antennas can be screened to look like a vent pipe.

Ms. Baggs asked why the applicant is proposing antennas on this particular property, as opposed to the preferred locations clearly described and noted in order of preference in 347-17.1 Section C paragraph 1 in the zoning ordinance.

Mr. Feehan referenced Exhibit A-4. He stated that the firehouse bell tower is too far south to cover the area and is partially blocked by another building. He stated that he had not studied additional structures in the C1, C2 or NC zones except for those mentioned in previous testimony. They originally thought that the subject property was in the C1 zone district. Ms. Baggs asked if they had studied nearby permitted locations across Bloomfield Avenue. Mr. Feehan said they had not.

Mr. Harrison asked if Mr. Feehan looked at the Residences at Montclair building. Mr. Feehan stated that he did, but the roof was too large.

Mr. Stanzione summarized the application.

Mr. Kenney stated that he is in favor of the application, that it is a marginal improvement.

Mr. Susswein stated that he is concerned about the proliferation of micro sites in the future and that these applications deserved heightened scrutiny. He stated that he does not support granting approval of the application, pointing out that it is a d(1) use variance, not just a d(3) variance. He stated that the applicant did not satisfy the "substantial impairment to the zone plan" section of the negative criteria.

Ms. Checca stated that she is favor of the application and that the setback from the edge of the building mitigates the nonconforming situation.

Mr. Moore stated that he is favor of the application.

Ms. Brinkman stated that she is favor of the application, but that screening is needed.

Ms. Baggs stated that she is not in favor of the d-1 variance because the need for this specific property was not clearly established by the application and she does not want to create a precedent that impairs the zoning ordinance, which currently encourages wireless telecommunication sites in preferred locations.

Mr. Harrison stated that he understands that this application requires a use variance and is located in a redevelopment area. He stated that since wireless telecommunications are not identified as a permitted use in the redevelopment plan, that there is no question that the rationale of the governing body is that this is not an appropriate area for wireless facilities.

Mr. Kenney made a motion to approve the application with the change submitted in Exhibit A-5 showing the screened antenna. The motion was seconded by Ms. Checca. Mr. Kenney, Ms. Checca, Mr. Moore and Ms. Brinkman voted in favor of the resolution. Mr. Susswein, Ms. Baggs and Mr. Harrison voted to deny the resolution. The motion failed because less than five members voted in favor of the application.

App. 2381: Willard Place Partners, 9 Willard Place. *Use variance and site plan review for grocery depot for online grocery in residential zone.* Ms. Talley noted that a letter has been received withdrawing this application.

App. 2393: New York SMSA Limited Partnership d/b/a Verizon Wireless, 208 South Mountain Avenue. *Installation of wireless telecommunications equipment on chimney and rooftop.* Mr. Schkolnick, Esq. was present on behalf of the application.

Mr. Sullivan noted that certifications have been received from Mr. Moore, Mr. Susswein, Ms. Brinkman, Mr. Reynolds and Ms. Baggs that they have read the transcript and reviewed the exhibits from the November 19, 2014 meeting.

Mr. Schkolnick summarized the application. He noted that this is a conditional use variance in the R0 Residential zone district, emphasizing that it is a permitted use, but subject to conditions. The condition that is not met is the minimum 60 foot height requirement, as the chimney is only 30 feet high.

Mr. William (Rick) Masters presented the revised photo simulations. The following exhibit was marked into the record:

A-10 – Revised photo simulations.

A-11 – Aerial map showing the locations from which the photos were taken.

Mr. Masters stated that the existing vegetation effectively screens the view of the antennas.

Mr. Phillip Burtner was presented in as the Civil Engineer for the site. He was accepted by the Board and sworn in. Mr. Burtner summarized the changes to the site plan included in the revised plans dated 1/2/15, emphasizing the relocated antennas and smaller equipment cabinet.

The Board questioned Mr. Burtner. It was noted that a variance is also required for the height of the GPS antenna, which is 3 inches wide and 6 inches high and extends above the chimney.

The public was invited to question Mr. Burtner.

Karen Berman, 200 South Mountain Avenue asked about Board procedures and notice requirements. She noted that this use variance involves a school, which is also a conditional use that was originally denied by the Board. She suggested that the applicant review the terms of the judgment to evaluate the additional use variance.

Ms. Berman asked if the cabinets will be visible from the adjacent properties to the north and northwest. Mr. Burtner stated that they are not visible from Undercliff Road, but that he did not access neighboring private properties to determine whether the proposed cabinets would be visible from their perspective. She asked about the sound created by the cabinets. Mr. Burtner said that the sound is similar to a desktop computer.

Judith Wildman, 183 South Mountain Avenue, asked why the antennas are needed at this location. She asked if there other structures that meet the 60 foot height requirement in the ordinance.

Ms. Checca asked why the cabinets are located outside the structure on the rear porch roof. She stated she is concerned about the impact to the historic architecture to the building. She asked if the cables will be visible. Mr. Burtner said the porch is on the back of the house, tucked away so that it will not be visible to neighbors. He noted that the cables will be painted white.

Anthony Handley was introduced as the RF compliance expert for the applicant. The Board accepted him as an expert and he was sworn in. Mr. Handley stated that the application complies with all federal and state regulations. The following exhibit was marked into the record:

A-12: FCC compliance report

The public was invited to question the witness.

Karen Berman, 200 South Mountain Avenue, asked about the timeframe used for measuring exposure. Mr. Rick Masters, who prepared A-11, was sworn as an expert planner to answer the question. Mr. Masters stated A-11 which shows the distance from the antennas to the adjacent properties. He stated that the Berman carriage house is 100 feet from the antennas. Mr. Handley stated that the carriage house is less than 1% of the exposure limits set by federal regulations. Mr. Handley stated that the antenna is 190 feet from the other side property line.

Judith Wildman asked what happens if people get too close to the antennas. Mr. Handley stated that he cannot answer this question only that it complies with federal and state regulations.

Chair Harrison stated that the federal government has decided what a safe level is.

Glen Pierson was introduced as the RF Engineer. The Board accepted his credentials and he was sworn in. Mr. Pierson summarized the small network node technology, which is a different design from microcells. The following exhibit was marked into the record:

A-13: Revised A-9

Mr. Kenney asked Mr. Pierson what happens if the power budget is increased. Mr. Pierson said that the system balances out. The following exhibit was marked into the record:

A-14: LTE 700 Capacity Chart East Orange Gamma 320 degrees. Mr. Pierson indicated that this exhibit shows how the system "balances out."

Mr. Pierson stated that the subject property is the best property available to address their need. He reviewed other structures in the vicinity and concluded that the proposed site is the one that can address the applicant's need. The following exhibit was marked into the record:

A-15: Exhibit E – closest nonresidential structures.

The public hearing was continued to the March 4, 2014 meeting.

App. 2394: Davis Wellness Solutions, LLC. 314-316 Orange Road. *Variance to permit a medical office use (wellness center) on the first floor in the NC zone.* The public hearing for this application has been carried to the March 18, 2015 meeting.

The meeting was adjourned at 11:00.