



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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MINUTES OF THE BOARD OF ADJUSTMENT

JULY 15, 2015

ORDER: The meeting was called to order at 7:50 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: Ms. Talley called the roll. Present were Chair Harrison, Vice Chair Fleischer, Mr. Susswein, Mr. Reynolds, Ms. Baggs, Ms. Brinkman Mr. Sullivan, and Mr. Petto. Ms. Checca, Mr. Kenney and Mr. Moore were absent

MINUTES: The minutes of the May 20, 2015 meeting were offered for any suggested changes. Mr. Harrison noted a few minor edits. Mr. Fleischer offered edits as well. Mr. Fleischer made a motion to approve the minutes, with Mr. Susswein seconding. The minutes were approved with Ms. Baggs abstaining.

OLD BUSINESS:

Resolution for App. 2367: 58 James Street – 58 James Street. Site plan application for four dwelling units.

Mr. Fleischer introduced the resolution. Mr. Fleischer provided clarifying edits to the resolution. Mr. Susswein provided some edits to the resolution. A motion to approve the resolution as modified was offered by Mr. Susswein, seconded by Mr. Reynolds. Mr. Fleischer, Mr. Reynolds, and Mr. Susswein voted to approve the resolution. Ms. Baggs, Ms. Brinkman, and Mr. Harrison abstained.

Resolution for App 2406: Valverde Building, LLC. 440-444 Bloomfield Avenue. Use variance for density increase

Mr. Harrison provided edits to the resolution. A motion to approve the resolution, as modified, was offered by Mr. Fleischer, seconded by Mr. Susswein. The resolution was approved unanimously.

App. 2400: 84 Orange Road, LLC. 84 Orange Road. Use variance and site plan application to convert church to office. (Materials previously distributed to Board members)

Mr. Harrison asked Mr. Petto to review the correspondence received from Alan Trembulak, attorney for the applicant, regarding the application. Mr. Petto read the correspondence aloud. The correspondence stated that the applicant has elected to withdraw their application pending before the Board.

App 2407: Ercument & Ikbal Tokat. 119 Upper Mountain Avenue. Use variance for height exceedance. (Materials previously distributed to Board members)

Mr. Harrison introduced the application.

David Owen, represented the applicant as the attorney. Mr. Owen introduced and summarized the application.

Mr. Owen introduced the first witness, Mr. Michael Petry of Petry Engineering.

Mr. Petry reviewed the project and the following exhibits items:

- **A – 1 Montclair Topographic Map**
- **A – 2 Existing Site Conditions**
- **A – 3 Drainage and Grading Plan**
- **A – 4 Profile of Adjoining Properties (Height Study)**
- **A – 5 Letter from Board Engineer Tom Watkinson**

Following Mr. Petry's detailed review of the project, questions from the Board were the accepted.

Mr. Fleischer asked about the retaining wall noted on the site plan. He asked why the wall is 7 feet in height and asked if the wall could be separated into two smaller walls. Mr. Petry noted that the lower wall is a short 2.5 foot wall. He noted that the wall could be raised an additional 2.5 feet and the second wall lowered by the same amount to eliminate the variance. Mr. Fleischer suggested that the variance should be eliminated by taking the approach.

Mr. Fleischer noted the slope of the driveway and the request for a variance. He asked whether the driveway could be flattened at the top for a smoother run along the driveway. He noted that this would reduce the slope of the driveway at the top. Mr. Petry replied that the approach suggested is feasible and could be accommodated.

Mr. Susswein asked about the rear retaining walls and referred to sheet A-300 of the plans provided. He noted that the pool was at 79' and the existing grade was 68'. Mr. Petry replied that the two retaining walls were seven feet in height and four feet in height to account for the grade change.

Mr. Harrison referred to the letter from Board Engineer Tom Watkinson and asked Mr. Petry about item #6. Mr. Petry noted that an open grate would be installed over the proposed detention system.

Mr. Harrison asked if the plans had been filed with the Soil Conservation District. Mr. Petry replied yes.

Mr. Harrison asked if the applicant had considered placing the proposed dwelling in the same location as the previous dwelling with respect to the front yard setback. Mr. Harrison suggested that perhaps the need for a height variance could be eliminated. Mr. Petry replied that due to the slope of the property a variance would still be required. He noted that the difference would only be about one foot.

Mr. Harrison noted that the garage location at the rear of the property is creating the height problem.

Questions from members of the public were then accepted.

Richard Tangle, 130 North Mountain Avenue, posed questions to Mr. Petry.

Mr. Tangle asked about the drainage plan for the property and if there could be any recourse if the proposed project generates flooding issues for nearby property owners. Mr. Petry noted that there would be an opportunity to discuss these concerns with the applicant. He noted that the Board Engineer would review the plans as well as the applicant's engineer. Mr. Petry noted that under the proposal, runoff will be reduced and that concerns about the system have been addressed through overdesign. Mr. Tangle noted that previously there were no problems with runoff in the area.

Mr. Tangle asked how the proposed seven foot retaining wall would be camouflaged to shield the view from his property. He noted that any landscaping will take time to grow before it is effective at camouflaging the walls. Mr. Petry noted that the seven foot wall is a permitted wall height in the zone. He stated that the wall will be tiered and that a landscape plan is being prepared by the applicant. Mr. Petry also stated that the applicant has offered supplemental landscaping for adjacent properties of the subject property.

Mr. Tangle asked how much space was between the fence on his property and the proposed retaining wall. Mr. Petry noted that the existing fence is actually located on the applicant's property by approximately two feet.

Mr. Fleischer noted that the fence is indeed on the applicant's property according to the survey provided as part of the applicant's application. He stated that there should be a resolution to this problem and suggested that other alternatives be reviewed such as shifting the landscaping or moving the pool. Mr. Fleischer also suggested that the retaining walls could each be five and a half feet in height instead of four feet and seven feet. Mr. Petry stated that the applicant would be willing to work to accommodate all needs.

Mr. Harrison asked for clarification about the location of the fence between the applicant's property and Mr. Tangle's property. Mr. Petry reviewed the survey and determined that the fence was about 2 feet on the property at the southwest end of the fence and about 3 feet on the northwest end.

Mr. Harrison asked if the proposed wall was to be placed on the property line, would this fence be removed. Mr. Petry replied yes the fence would be removed or relocated.

Mr. Harrison asked if the applicant would be willing to construct a new fence on Mr. Tangle's property. Mr. Petry replied yes.

Mr. Harrison asked Mr. Tangle if a new fence would be acceptable. Mr. Tangle noted that in addition to the fence there is lots of mature landscaping in this area. Mr. Harrison noted that the fence could be replaced at the expense of the applicant.

Mr. Harrison asked if the retaining walls would be close to or even on the property line between the applicant's property and Mr. Tangle's property. Mr. Tangle noted that he did not know about the location of the fence on the applicant's property. Mr. Petry replied that a new survey could be developed for the subject property and properties adjacent to the rear to clarify the location of structures in relationship to the three lots.

Mr. Susswein asked if the retaining walls were located at the property line, would construction equipment need access to the adjacent properties to build the retaining walls. Mr. Petry stated that they would not necessarily need to access these properties because the construction of the wall represents a "fill situation" where the wall will be constructed and filled from the subject property. Mr. Susswein noted that the nature of construction would be an added factor to reach consensus between the applicant and the two adjacent property owners to the rear.

Mr. Susswein asked Mr. Tangle about the rear landscaping on his property. Mr. Tangle stated that there is a railroad tie retaining wall on his property to the interior of his property from the fence along the property line between the subject property and his property. He stated that there is a six or seven foot wide garden in this space between the fence and the railroad tie retaining wall on his property.

Mr. Susswein asked Mr. Tangle about the type of fence located in this area. Mr. Tangle stated that it is a four foot high white picket fence. Mr. Susswein asked if both the fence and existing retaining wall would still be needed on his property. Mr. Tangle stated yes, the fence is needed because he has a dog and to camouflage any new retaining wall constructed by the applicant.

Mr. Fleischer noted that some of the mature plantings and the fence in this area would be removed for the installation of the retaining walls proposed by the applicant. He stressed that the applicant needed to work to clarify the location of structures among the properties and how it relates to the proposed plan by the applicant.

Ms. Baggs referred to A-300 of the site plan and noted that there was no guard rail shown at the top of the seven foot retaining wall. She asked if one would be required. Mr. Petry stated that the need for a guard rail would depend on the landscaping in the area at the top of the wall. Ms. Baggs asked if the combined height of the wall and a fence on top would exceed allowable height. Mr. Petry noted that if the fence is set back from the top of the wall it would conform. Ms. Baggs asked Mr. Petry to identify the area where landscaping would buffer the top of the wall. Mr. Petry stated that it would be along the entire perimeter. He noted that the landscaping plan would be completed separately.

Valerie Lynch, 136 North Mountain Avenue, posed questions to Mr. Petry.

Ms. Lynch asked Mr. Petry to identify the existing power lines in the area between the subject property and the adjacent properties to the rear. Mr. Petry noted that the power lines are five feet onto the applicant's property to the north and about eight or nine feet onto the applicant's property at the south. He noted that the applicant will have the power lines in this area buried below ground.

Ms. Lynch asked what the proposed retaining wall material would be. Mr. Petry stated that it would be modular concrete.

Ms. Lynch asked about the location of the fence on her property in relation to the property line between her lot and the applicant's lot. Mr. Petry noted that the fence on Ms. Lynch's property was about four inches onto the applicant's property. He noted that the fence would need to be removed. Ms. Lynch asked if the applicant would rebuild the fence. Mr. Petry stated yes, the fence would be rebuilt by the applicant.

Ms. Lynch noted that there would be an increase in hardscape surface as a result of the project. She asked if the proposed drainage system would handle a big rain storm. Mr. Petry stated that the system is designed to handle a 100 year storm. Ms. Lynch asked if the existing trees in the area would be compromised by runoff from the proposed dwelling. Mr. Petry stated that under the proposed system, runoff would be reduced by about 20% from existing conditions.

Brian Lynch, 136 North Mountain Avenue, then posed questions to Mr. Petry.

Mr. Lynch asked if the drainage system would be the first element to be constructed. Mr. Petry stated that the retaining wall would be constructed first, followed by the drainage system.

Mr. Lynch stated that they did not want any drainage impacts on their properties' and asked if the system allowed for any expansion in the event it was not sufficient. Mr. Petry stated yes the system could be expanded.

Mr. Lynch asked if runoff from Upper Mountain Avenue would be contained and not run down the driveway. Mr. Petry noted that the plans call for a six inch rise in the driveway along Upper Mountain Avenue to prevent runoff from traveling down the driveway.

Mr. Tangle returned to ask Mr. Petry a follow up question.

He asked Mr. Petry if withholding information about the location of the fence on the applicant's property was goodwill. Mr. Petry apologized for the misunderstanding.

Mr. Lynch returned to ask Mr. Petry a follow up question.

He asked Mr. Petry if the survey could be checked to verify the location of the fences. Mr. Petry stated that the survey would be updated and that fences would be replaced to match existing, in kind by the applicant.

Mr. Fleisher noted that the applicant could possibly consider dropping the recreational or play area lower to minimize the height impact on these adjacent properties to the rear.

Public questions of the witness were then concluded.

Mr. Owen then recalled Mr. Petry to testify as a Professional Planner.

Mr. Petry reviewed the requested variances and the criteria. He noted that the slope of the lot presents a hardship for the height of the proposed dwelling.

Questions from the Board were then accepted.

Ms. Brinkman asked if the proposed structure conformed to the 65% structure width requirement of the zone. She noted that according to the plans, the width of the structure was 54% of the width of the lot without the garage. She asked if, including the garage, the structure conformed to the zone requirement. Mr. Petry replied yes.

Mr. Harrison noted that the ordinance has changed to define the height of a structure differently. He noted that the previous definition was simpler and that currently the definition requires the height to be measured to the peak. He noted that despite this modification, the applicant is proposing to exceed the height regulation. Mr. Petry replied that the intent is to protect the composition of the neighborhood. He noted that a

lower dwelling here would be inconsistent with the adjacent dwellings and that it is important to keep this proposed dwelling in context with the neighborhood.

Ms. Baggs asked if the proposed dwelling was built with the same floor area, but fewer stories, would it cover more land area. Mr. Petry replied, yes that the dwelling would be more sprawling on the lot.

Ms. Brinkman asked if the garage was instead a detached accessory structure, would the variance not be necessary. Mr. Petry replied no that even with the garage detached the height of the structure could not meet the requirements.

At this point, Mr. Owen requested to stop the proceedings and continue the application to the August meeting of the Zoning Board of Adjustment. He noted that in light of the items that need clarification it would be best to review those items and return to the Board with more information.

Mr. Harrison agreed with Mr. Owen's assessment and stated that there should at least be agreement between the applicant and the adjacent property owners on the location of the fence and landscaping on all three properties.

Mr. Fleischer also noted that the retaining walls and step down heights should be kept away from the rear property line.

A motion to postpone the conclusion of the application to the August meeting was offered by Mr. Fleischer, seconded by Mr. Susswein. The motion was approved unanimously.

NEW BUSINESS:

App 2410: Helen & Anthony Torris. 88 Montclair Avenue. *Bulk variance for side yard setback*

Mr. Harrison introduced the application. Helen Torris represented herself as the applicant.

Ms. Torris reviewed the proposed rear addition to the dwelling and the requested variance for the Board.

Questions from the Board were then accepted.

Mr. Fleischer asked for clarification. He noted that the house is not squarely located on the property. He asked how close the corner of the proposed addition would get to the detached garage on the adjacent property. Ms. Torris noted that it would be 15 feet from the garage.

Mr. Susswein noted that there were no planned windows on the side of the proposed addition. Ms. Torris replied yes. Mr. Susswein asked if there would be any windows in the proposed kitchen. He noted that there would be no windows on the north façade, facing the adjacent property. Ms. Torris replied that the other two exterior walls would have lots of windows.

Ms. Baggs asked why the features of the lot require a variance. Ms. Torris replied that conforming the addition to the requirements of the zoning ordinance would result in a very oddly shaped addition and a bent wall in the kitchen.

Mr. Susswein noted that typically when proposed additions follow the existing setback of the property it is logical for the Board to approve. He noted that in this case the addition is 14' in length from the existing dwelling, but mitigated because it is located next to the driveway of the adjacent property.

Mr. Fleischer stated that he would also be in favor of granting the variance because it is consistent with similar past variance applications before the Board. He noted that he is pleased the second floor of the proposed addition will be set back and not extend the full length of the first floor addition.

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

Ms. Baggs stated that she appreciated the comments by the other Board members to interpret the application. She noted that she understands the constraints imposed on the existing dwelling and that the kitchen cannot be relocated within the dwelling due to the location of the stairs. She stated she would be in favor of granting the variance.

Ms. Brinkman stated that she would be in favor of granting the variance. She noted that some landscaping should be considered along the side wall that will be extended as part of the addition.

Mr. Harrison stated that he was in favor of granting the variance. He noted that the step back for the second floor of the addition would help to alleviate any impact to adjacent properties.

Mr. Fleischer offered a motion to approve the application, seconded by Mr. Reynolds. The application was approved unanimously.

App 2414: Georgette Zacharias. 31 Club Road. *Bulk variance for rear yard setback and driveway relocation*

Mr. Harrison introduced the application. Gerald Novak, the architect for the project and Georgette Zacharias were present for the application.

Mr. Novak reviewed the proposed additions to the existing dwelling. He referred to submitted Exhibit A-1, the plans for the project.

Questions from the Board were then accepted.

Mr. Fleischer asked for clarification of the garage doors and the roof over the garage. Mr. Novak reviewed the plans for the garage relocation. He noted that the roof would be raised slightly on the garage to allow for the doors to be relocated. He stated that there would be no living space above the garage.

Mr. Harrison noted that there is an existing tree and mature landscaping in the area of the proposed driveway. Ms. Baggs noted that the applicant should comply with the Township tree ordinance.

Questions and comments from the public were then accepted.

Diane Gorman, 34 Club Road, posed questions to the applicant.

Ms. Gorman noted that off-street parking on the subject property would be located in the front yard on Club Road. She stated that presently there is nice landscaping in this area. She asked the applicant if relocating the entrance to the garage from Cornell Way

was considered. Ms. Zacharias stated that the intent of the plan is to maximize the small rear and side yards behind the dwelling and along Cornell Way. She noted that cars on the property would always be kept within the garage.

Mr. Fleischer reiterated the question asked by Ms. Gorman if the driveway could be relocated to Cornell Way to enter the garage. Mr. Novak replied that the existing rear yard behind the home, which according to zoning is the side yard, is only 20 feet wide and quite small. Ms. Zacharias stated that the intent is to create a more private backyard that includes the yard along Cornell Way and a driveway in this area would limit the available yard space.

Ms. Brinkman noted the rear yard setback and asked if the applicant had considered flipping the orientation of the 2nd floor bedroom to be over the garage. She noted that this would eliminate the need for a rear yard setback variance. Mr. Novak stated that the location of the stairs in the property would make it difficult to reorient the property. Ms. Brinkman also noted that a front yard setback is required due to the nature of the second floor addition.

The Board then summarized comments.

Mr. Fleischer stated that he would be in favor of granting the variance. He noted that corner lots present a difficult situation especially in reference to the defined rear yards. He noted that there is plenty of side yard space and that the garage is equidistant from Club Road and Cornell Way, making the impact of the location of the driveway limited. He stated that the approach taken by the applicant seems reasonable.

Mr. Reynolds stated that the application is an interesting solution. He noted that the elevation view looks cleaner for the driveway and does not seem detrimental. He noted that the garage location is existing and the only change is the entrance to the garage. He stated he would be in favor of granting the variance.

Ms. Baggs stated that she would be in favor of the application. She noted that corner lots pose a difficult situation for private outdoor space. She stated that she agreed with Mr. Fleischer's comments with regard to the driveway.

Ms. Brinkman stated she would be in favor of the variance request. She noted that the re-orientation of the garage to Club Road would be mitigated by the front porch on the dwelling along Club Road.

Mr. Susswein 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 garage is already technically located within a front yard. He noted that there is lots of existing landscaping in the front yard along Cornell Way, so the driveway from Club Road would protect this landscaping. He noted that the rear yard setback is less than the existing house and that the dwelling was originally constructed with a different yard orientation in relation to the street. He stated that the impact was mitigated because the applicant was stepping back the second floor addition. He stated that he did not have any concerns with the front yard setback because it is no closer than the existing setback of the dwelling.

Mr. Fleischer made a motion to approve the application, seconded by Mr. Susswein. The application was approved unanimously.

ADJOURNMENT

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Mr. Reynolds. The meeting was adjourned at 11:00pm, Thursday July 15, 2015.

Respectfully submitted,

A handwritten signature in cursive script that reads "Graham Petto". The signature is written in black ink and is positioned above the printed name.

Graham Petto, AICP
Zoning Board of Adjustment Assistant Secretary