



Township of Montclair

205 Claremont Avenue

Montclair, NJ 07042

tel: 973-509-4954

fax: 973-509-4943

MONTCLAIR ZONING BOARD OF ADJUSTMENT



Graham Petto, AICP
Assistant Planner

Department of Planning and Community Development
gpetto@montclairnjusa.org

MINUTES OF THE BOARD OF ADJUSTMENT AUGUST 19, 2015

ORDER: The meeting was called to order at 7:46 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 Chair Harrison, Vice Chair Fleischer, Ms. Checca, Mr. Kenney, Mr. Susswein, Mr. Reynolds, Ms. Baggs, Ms. Brinkman, Mr. Moore, Mr. Sullivan, and Mr. Petto.

MINUTES: The minutes of the June 17, 2015 meeting were offered for any suggested changes. Mr. Harrison noted some edits to the minutes. Ms. Baggs offered some edits to the minutes. A motion to approve the minutes as edited was offered by Mr. Fleischer, seconded by Mr. Susswein. The motion passed unanimously with Ms. Checca and Mr. Kenney abstaining.

OLD BUSINESS:

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

Mr. Harrison introduced the resolution. A motion to approve the resolution as submitted was offered by Mr. Fleischer, seconded by Mr. Susswein. The resolution was passed unanimously with Ms. Checca and Mr. Kenney abstaining.

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

Mr. Harrison introduced the resolution. A motion to approve the resolution as submitted was offered by Mr. Fleischer, seconded by Mr. Susswein. The resolution was passed unanimously with Ms. Checca and Mr. Kenney abstaining.

App 2407: Ercument & Ikbal Tokat. 119 Upper Mountain Avenue. *Use variance for height exceedance.*

Mr. Harrison called the applicant to continue proceedings. Mr. David Owen represented the applicant.

Mr. Owen summarized the application and previous proceedings. Mr. Owen clarified the exhibits that have been presented.

Mr. Owen then recalled Mr. Petry, engineer for the project to testify.

Mr. Petry noted that a new survey had been developed for the subject property and the two adjacent properties to the east. He noted that the applicant has engaged in discussions with these adjacent neighbors. Mr. Petry stated that the surveys of the adjacent properties were provided to complete this new survey.

Mr. Petry reviewed the new survey. He noted that the fence along the edge of the Lynch property is in fact located on the Lynch property. However, he noted that the fence at the rear of the Tangle property was in fact located on the applicant's property.

Mr. Petry noted that the Lynch fence will remain in place on the Lynch property. Mr. Petry further noted that the applicant agrees to construct a new fence on the Tangle property, as the existing fence is in fact located on the applicant's property.

Mr. Petry stated that the proposed retaining wall has been shifted to be situated one foot off of the property line between the applicant's property and the two adjacent properties to the east.

Mr. Petry noted that the requested variance for the driveway has been eliminated.

Mr. Petry noted that the walls near the patio have been adjusted to meet the permitted combined wall height. He also noted that fencing has been added around the rear yard, set back from the retaining walls to avoid an additional variance, for safety.

Questions from the Board were then accepted.

Mr. Harrison asked if the applicant would comply with the Planning Department memo regarding fencing for the swimming pool. Mr. Petry replied yes.

Mr. Harrison asked if the applicant would comply with the memo from the Board Engineer. Mr. Petry replied yes.

Mr. Petry noted compliance with the tree replacement ordinance and stated that all replacements would be made on-site.

Mr. Harrison asked if the only outstanding variances were the height of the structure and the number of stories. Mr. Owen replied yes and noted that the cooking facility would be removed from the lower level of the structure as well.

Ms. Checca asked if removal of the cooking facility was sufficient to ensure the lower level would not constitute a separate dwelling unit. Mr. Owen stated that the kitchen on this level is intended to serve outdoor dining on the property only. He noted that it was never the intent of the applicant to create an additional dwelling unit. He stated that the applicant would be open to a condition stating a second dwelling on the property would not be permitted.

Questions from members of the public were then accepted.

Richard Tangle, 130 North Mountain Avenue, posed questions.

Mr. Tangle noted that the fence was discussed with the applicant and a copy of the property survey was provided. Mr. Tangle asked if he would have input into the replacement fence. Mr. Petry stated that the new fence could be whatever Mr. Tangle would like.

Mr. Tangle asked about the walls setback from the property line. He asked if the 1 foot setback area would be hard ground and unable to drain. Mr. Petry noted that this area could be porous. Mr. Tangle noted that he is concerned about drainage in this area. Mr. Fleischer stated that the ground should be porous in this one foot space. Mr. Tangle noted he is concerned as the drainage is not able to be tested prior to completion.

Valerie Lynch, 136 North Mountain Avenue, asked where the replacement trees would be located on the property. Mr. Petry noted that they could be placed anywhere on the property.

Comments from the public were then accepted.

Valerie Lynch, 136 North Mountain Avenue, provided comment.

Ms. Lynch noted that she is concerned about runoff from the site. She also noted that there are existing trees on the site that do provide privacy between the adjacent properties. Ms. Lynch also stated that these mature trees provide shade and help reduce runoff in the area as they absorb water. She noted that there is potential for disaster due to all of the proposed hardscaping by the applicant.

Ms. Lynch continued that the trees along the existing tree canopy in the neighborhood should be replaced. She stated that Montclair is a tree city and that trees do add value. She noted that there should be assurance that the tree line will be replaced and not just anywhere on the property.

No further comments from the public were provided.

Mr. Owen then summarized the application.

Comments from the board were then accepted.

Mr. Susswein thanked the applicant for addressing all of the Board's comments, including adjustments to the driveway, retaining walls and the fence on the adjacent properties. He noted that the only remaining variance were d(6) and c for the height and story exceedance. Mr. Susswein noted that the height study prepared by the applicant provided a good illustration of the proposed dwelling in context with the neighborhood. He stated that he was in favor of the variance with a condition to restrict a second dwelling unit on the lower level.

Mr. Fleischer stated that he also was in favor of the application and thanked the applicant for their work.

Ms. Checca concurred with the previous comments. She noted that the consideration of the Board's comments and the neighbor's concerns was very good. She stated that she was also in favor of the application with an additional condition that the applicant hire an arborist to consult in the location and spacing of trees on the property to ensure the trees will grow to mature height and aid in stormwater management.

Mr. Reynolds stated that he was in favor of the application. He noted that there are some concerns about the drainage system but felt reassured by Mr. Petry's work and due diligence to illustrate the system will work.

Ms. Baggs stated that she was in favor of the application. She noted that the height variance and conditions will allow for the development of a home in keeping with the neighborhood.

Ms. Brinkman stated that due to the nature of the site, the request for 3 ½ stories and 44 feet of height is acceptable in context with the adjacent properties. She was in favor of the application.

Mr. Moore stated that he was in favor of the application. He appreciated the adjustments and modifications presented by the applicant. He noted that the tree replacement on site was good and that an arborist would understand the site best and ensure adjacent properties are ok in context.

Mr. Harrison stated that he did not have a problem with the requested variance for number of stories. He noted however that he was trouble by the height variance and that approaching the height variance relative to elevation was not convincing.

Mr. Harrison then summarized the conditions:

1. The applicants shall remove from the plans the stove located on the basement level, and the new single-family dwelling shall remain at all times a single-family dwelling;
2. All retaining walls shall conform to the requirements of the zoning ordinance;
3. The applicants shall comply with items 2 through 5 and 7 through 11 set forth in Board Engineer W. Thomas Watkinson's letter report dated April 9, 2015;
4. The HVAC system shall conform to the requirements of the zoning ordinance;
5. The drainage system shall be installed prior to construction of the single-family dwelling;
6. The driveway gradient shall conform to the requirements of the zoning ordinance;
7. The pool and associated fence shall conform to the requirements of the pool ordinance; and
8. The applicants shall comply with the requirements of the tree ordinance, replace each removed tree with one new tree as set forth in the tree ordinance, and consult with an arborist for guidance in promoting the success of new trees.

Mr. Susswein asked how the Township would enforce the condition regarding the arborist. He stated that he does agree with the intent of the condition.

Ms. Baggs noted that the Township employs an arborist.

Mr. Fleischer stated that the conditions are good and create an expectation for the applicant.

Mr. Fleischer made a motion to approve the application, seconded by Mr. Susswein.

Mr. Fleischer, Mr. Susswein, Ms. Checca, Mr. Reynolds, Ms. Baggs and Ms. Brinkman voted for the application. Mr. Harrison voted against the application. Mr. Kenney abstained.

NEW BUSINESS:

App 2411: Steven and Deborah Bernstein. 141 Lorraine Avenue. Bulk variance for accessory structure setback

Mr. Harrison introduced the application.

Mr. John Guadagnoli, architect for the project, represented the applicant. Mr. Guadagnoli summarized the application.

Questions from the Board were then accepted.

Mr. Fleischer noted that the front elevation of the proposed garage shows 15 feet in height, but the side elevation view shows two ridgelines. Mr. Guadagnoli stated that what was depicted was a roof vent and that in fact the maximum height would be 15 feet.

Mr. Fleischer noted that the proposed garage was very large in size. He noted that 25.5 feet is very large for 2 cars. He stated that the garage could be moved forward on the property to avoid the rear yard variance. He also noted that the width of the garage could be reduced by 0.5 feet to make the side yard setback 3 feet. Mr. Guadagnoli stated that the garage would be a masonry garage and require 12 feet for each vehicle. He noted that the 0.5 reduction in width would be no problem.

Mr. Kenney asked about the drip line from the large tree near the proposed garage. He stated that every inch the garage moved away from the tree would be helpful to protect it. Mr. Kenney echoed Mr. Fleischer's comments regard the rear yard setback.

Ms. Baggs asked if the proposed garage would use the existing garage's foundation. Mr. Guadagnoli noted that the existing garage was constructed on a concrete slab.

Ms. Baggs asked if the lot was undersized or if the garage was undersized. Mr. Guadagnoli stated that the garage was undersized.

Ms. Baggs asked if the garage could be moved closer to the house to avoid the tree. Mr. Guadagnoli stated that some space was needed in front of the garage to allow vehicles the ability to turn around.

Ms. Baggs asked if the applicant had explored creating an L-shaped garage to make space for the tree. Or if any other configurations were evaluated. Mr. Guadagnoli stated that an irregular shaped structure can result in complex roof lines and that a square or rectangular shape was best.

Mr. Kenney stated that as presented he could not be in favor of the application. However, he noted that if the rear yard was increased to be six feet and the side yard to three feet, he would be in favor of the application.

Mr. Fleischer stated that he would be in favor of the application with the conditions.

Ms. Checca stated that she would be in favor of the application with the conditions.

Mr. Reynolds stated that he would be in favor of the application with the conditions. He noted that the proposed garage is very deep.

Ms. Baggs stated that she did not see a reason to grant the side yard variance. She stated she would not be in favor of the application.

Ms. Brinkman stated that she would be in favor of the application with the conditions.

Mr. Moore stated that he would be in favor of the application with the conditions.

Mr. Susswein noted that the application represented an interesting case. He noted that historically the Board has approved non-conforming structures on the same footprint. Here, he noted, the footprint is large but close to the original footprint. He also noted that the location of the tree presented issues. He stated he would be in favor of the application.

Mr. Harrison stated that he would be in favor of the request for a side yard variance to permit a 3 foot side yard. He noted that the applicant is improving an existing yard encroachment. He noted that the practical reality of the driveway location requires a garage in this spot and that moving the garage would create un-useable space. He noted a condition not to exceed a height of 15 feet should be added.

Mr. Kenney made a motion to grant the variance with conditions, seconded by Mr. Fleischer.

The application passed unanimously.

App 2412: Xiongjun Zheng. 13 Talbot Street. Bulk variance for rear addition to property

Mr. Harrison introduced the application.

Mr. John Guadagnoli, architect for the project, represented the applicant. Mr. Guadagnoli summarized the project to construct a rear addition on the existing dwelling.

Mr. Xiongjun Zheng, the applicant, also provided details on the current condition of the subject property which is in a state of disrepair.

Questions from the Board were then accepted.

Mr. Fleischer noted that he is not concerned with the extension to the rear, noting that the extension does not worsen the existing yard setback. He was concerned about the large windowed attic that was proposed. He noted that the proposed second floor unit already has space over the first floor unit. He stated that the proposed attic was a very large living space and that there was no justification to grant the attic space. He noted that he was not in favor of the number of stories variance request.

Ms. Brinkman noted that windows should be installed on the sides of the extension to break up the mass of the walls. She noted that there could be some high transom windows perhaps. She asked about the location of the HVAC condensing units. Mr. Guadagnoli noted that they would be located in the rear yard. Ms. Brinkman asked if the Bilco doors were to access a crawl space. Mr. Guadagnoli replied yes.

Mr. Kenney noted that a reason was needed to grant the variance. He asked why the structure needed to be extended. Mr. Guadagnoli stated that the variances were needed because the lot is very small and that the same setbacks are applied to all lots, regardless of size in the R-2 zone. He noted that without the variances, the applicant could only provide two small one-bedroom units in the property.

Mr. Kenney asked if the property was too small to be used as a single family. Mr. Zheng noted that in order to develop the property, he needs the rental income of a two-family.

Mr. Guadagnoli noted that historically the property was a 2-family and that there is on-site evidence of the prior use.

Mr. Moore asked if the property would be used for investment income only or would also be owner-occupied. Mr. Zheng replied that he planned to rent the first floor unit and occupy the second floor unit.

Ms. Brinkman asked if the applicant had considered raising the roof of the structure to maintain the existing footprint of the building on the site. Mr. Guadagnoli stated that the intent was to remain consistent with the adjacent buildings in character of the streetscape. He also noted that any windows that would be installed on the side of the extension would need to be fire-rated.

Mr. Reynolds noted that the loft windows could be changed to egress windows for safety.

Mr. Harrison asked if on-street parking would be relied upon by the applicant. Mr. Guadagnoli and Mr. Zheng agreed.

Questions from members of the public were then accepted.

Maryann Bachman, 9 Talbot Street, provided comment.

Ms. Bachman stated that previously the subject property had been condemned and abandoned for about 5 years. She noted that there is only about a 6 inch space between 9 and 11 Talbot Street and asked how construction equipment would get behind the house.

Mr. Fleischer clarified that the survey of the subject property illustrates that there is 3.17 feet and 2.69 feet on each side of the structure on the property.

Ms. Bachman noted that the proposed addition is very large in the rear and will impose upon the rear yard of properties along Walnut Street.

Mr. Guadagnoli stated that the applicant would be willing to modify the plans so that there is not a 3rd story and instead it is only 2 ½ story structure.

Ms. Brinkman noted that when the setback from an adjacent property is 5 feet or less a window on that side wall should be fire-rated.

Comments from the Board were then accepted.

Mr. Fleischer stated that with the elimination of the 3rd story he would be in favor of the variance. He noted that there is hardship for the property as the lot is very narrow. He noted that the applicant is maintaining the required rear yard.

Ms. Checca stated that she would be in favor of the application with the stipulations presented by Mr. Fleischer. She stated that the rehabilitation of a vacant house was good and understands the hardship of the narrow lot.

Mr. Reynolds agreed that the narrow lot makes it difficult to create useable space within the dwelling. He stated he would be in favor of the application.

Ms. Baggs stated that she was troubled by the lot coverage proposed by the application. She stated that simply because the lot is small and is zoned R-2 does not obligate the owner to develop the property with 2 units. She noted that she is also

concerned about the impact on adjacent rear yards with the rear extension, which is a large 2 ½ story mass that will take up the green space. She stated that the applicant has not demonstrated that the property could be redeveloped as a single-family dwelling. She stated that she was not in favor of the lot coverage variance.

Ms. Brinkman stated that she was in favor of the concept of two two-bedroom units, however she was not in favor of the 3rd story. She expressed concern about the wall mass without windows, but understood the applicant's approach. She noted that the attic space is quite large and should use a 30 lbs. live load.

Mr. Moore stated that he was in favor of the application because the property previously was vacant and will be revitalized by the applicant. He stated that he supported the rear addition and limiting the height to 2 ½ stories. He stated that he was curious about the logistics of the construction, but it was not a concern.

Mr. Susswein asked for clarification on previous comments by the Board. He asked if the higher attic space was eliminated, would the access be by staircase or pull-down stairs. Mr. Guadagnoli stated that it had not been determined but either approach could be taken.

Mr. Susswein stated that he appreciated Ms. Baggs concerns given the narrowness of the lot. He noted the expansion of the house to the rear increases by almost 50%. He noted that he agreed the height should be limited to 2 ½ stories. He stated that an additional condition that access to the attic/loft area cannot be by full staircase.

Mr. Kenney stated that the Municipal Land Use Law states that the applicant has to demonstrate reasons for the requested variance. He noted that the reasons presented by the applicant, that the dwelling needs to be bigger and that there needs to be 2 units are not sufficient stand-alone reasons. He stated that the application is not justified. He noted that no testimony was provided that 2 units are needed to make the project viable. Mr. Kenney stated that the property could be developed as a small single family dwelling. He stated that he opposes the application.

Mr. Harrison stated that he would be in favor of the application. Mr. Harrison stated that the two side yard variances for the proposed addition are equal to or an improvement over the existing condition. He noted that the addition will not be as wide as the width of the existing house. He stated that the lot coverage variance was a little troublesome and that the applicant is significantly increasing an already non-conforming condition. Mr. Harrison stated that he understands the applicant's approach to maintain uniformity with the existing homes on the street and maintaining the height. He also appreciated that the rear yard setback was maintained.

Mr. Harrison stated that the Frog Hollow area has historically had small lots and experienced cycles of rehabilitation and disrepair. He noted that the applicant is willing to rehabilitate a house in the neighborhood which provides further justification for the variance.

Mr. Harrison stated that the withdrawal of the requested story variance makes the application better. He noted that overall the application is not a detriment to the public good and has a desirable end result. Mr. Harrison did note concern about the elevation

of the rear addition that did not have any windows. He stated that fire-rated windows should be considered to prevent a large blank wall.

Mr. Harrison summarized the conditions:

1. The HVAC equipment to be installed at the subject property must conform to all requirements of the ordinance
2. At least one fire rated window is to be installed on the east and west elevations of the proposed addition
3. The applicant's request for a variance from Montclair Code §347-45(A)2 to permit more than 2 ½ stories is denied.
4. The access to the attic space will not be provided by a full staircase and will be limited to a pulldown or hatch access only.

A motion was made to approve the application with conditions by Mr. Fleischer, seconded by Mr. Susswein. Mr. Harrison, Mr. Fleischer, Mr. Susswein, Ms. Checca and Mr. Reynolds voted for the application. Ms. Baggs and Mr. Kenney voted against the application.

App 2413: Mark and Barbara Rechan. 64 Clinton Avenue. *Bulk variance for rear yard setback*

Mr. Harrison introduced the application.

Mr. Joseph Bruno, architect for the project, represented the applicant. Mr. Mark Bruno was also present.

Mr. Bruno summarized the application.

Questions from the Board were then accepted.

Mr. Kenney asked if there were any photos of the existing rear of the property. Mr. Bruno replied no.

Mr. Kenney asked if there were any structural issues. Mr. Bruno stated that there was some rot and crumbling stone in the area. He noted that a new foundation will be used for the addition.

Ms. Baggs asked about the storage area behind the toilet as noted on the plans. Mr. Bruno stated that there would be storage above and behind the toilet, which would be located over the headroom of the stairs to the basement below.

Ms. Checca stated that she would be in favor of the application particularly because there is no bathroom presently on the first floor.

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

Ms. Baggs stated that the applicant has shown reason due to the extremely small size of the lot. She noted that the variance is a minor change and that the new bathroom would be a positive feature for the house. She stated she would be in favor of the application.

Ms. Brinkman stated that she would be in favor of the application.

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

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

Mr. Kenney stated that the testimony regarding the project demonstrated that it was de minimis in and that he would be in favor.

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

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

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

App 2414: Judith Sciarra. 165 Wildwood Avenue. Bulk variance for accessory structure height exceedance

Mr. Petto stated that the application requires further notice and can be heard at the September 16 meeting of the Zoning Board of Adjustment.

Mr. Harrison announced that the application would be moved to the September 16 meeting and that no further notice would be provided.

ADJOURNMENT

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Mr. Reynolds. The meeting was adjourned at 10:15pm, Thursday August 19, 2015.

Respectfully submitted,



Graham Petto, AICP
Zoning Board of Adjustment Assistant Secretary