



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 SEPTEMBER 16, 2015

ORDER: The meeting was called to order at 7:49 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, Mr. Susswein, Mr. Reynolds, Ms. Baggs, Ms. Checca, Mr. Kenney, Mr. Sullivan, and Mr. Petto. Ms. Brinkman and Mr. Moore were absent

MINUTES: The minutes of the July 15, 2015 meeting were offered for any suggested changes. Mr. Harrison noted a few minor edits. Mr. Fleischer made a motion to approve the minutes as amended, seconded by Mr. Susswein. The minutes were approved unanimously

OLD BUSINESS:

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

Mr. Fleischer introduced the resolution. An edit was offered by Mr. Fleischer. Mr. Fleischer made a motion to approve the resolution as amended, seconded by Mr. Susswein. The resolution was approved with Mr. Harrison and Mr. Kenney abstaining.

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

Mr. Harrison introduced the resolution. Mr. Harrison offered an edit to the resolution. Mr. Fleischer made a motion to approve the resolution as amended, seconded by Mr. Susswein. The resolution was approved unanimously.

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

Mr. Harrison introduced the resolution. Mr. Harrison offered an edit to the resolution. Mr. Fleischer made a motion to approve the resolution as amended, seconded by Mr. Susswein. The resolution was approved with Ms. Baggs and Mr. Kenney abstaining

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

Mr. Harrison introduced the resolution. Mr. Harrison offered an edit to the resolution. Mr. Fleischer made a motion to approve the resolution as amended, seconded by Mr. Susswein. The resolution was approved unanimously.

App 2416: Judith Sciarra. 165 Wildwood Avenue. Bulk variance for accessory structure height exceedance (Materials previously distributed to Board members)

Mr. Harrison introduced the application. Present were Ms. Judith Sciarra, Mr. Cliff Gumkowski and architect for the project Mr. Peter Serpico.

Ms. Sciarra summarized the application and noted that the intent was to construct a second floor addition to the garage to be used as a home gym by the family.

Questions from the Board were then accepted.

Mr. Fleischer stated that the intent of the ordinance was to keep accessory structures lower in height. He stated that the applicant needs to provide a more substantial reason for the height variance. Ms. Sciarra stated that they have resided in the home for more than 20 years. She noted that currently there is no space within the home to accommodate a gym and that the third floor of the home which has space does not have a ceiling tall enough to accommodate it. She also noted that the basement of the home has low ceilings. Finally, Ms. Sciarra stated that many adjacent properties have carriage houses.

Mr. Gumkowski submitted photos, Exhibit A-1, for the Board to review of adjacent carriage houses near the subject property. He noted that these carriage houses all have a second floor above a garage below. He stated that the family's children are college athletes and a gym space is a need for the family.

Ms. Sciarra stated that the garage located on the property to the rear of their property was just as high, if not higher, than the proposed garage addition in the application.

Mr. Kenney asked what the square footage of the house was. Ms. Sciarra stated it is about 5,000 square feet.

Mr. Kenney asked how many people reside in the house. Ms. Sciarra stated that seven people live in the home.

Mr. Kenney stated that the photos of the adjacent garages do not appear to be 26 feet in height. He asked if they had measured the structures shown in the pictures to compare the height. Ms. Sciarra stated that no measurements had been taken. She stated that the carriage house to the left of the applicant property is just as high as the proposed garage.

Mr. Kenney noted the overall height to the ridge would be 28 feet, 8 inches. He asked what the ceiling height would be on the second floor. Mr. Serpico stated that it would be 6 feet 6 inches to 7 feet along the end plate and that it would rise in the center. Mr. Kenney stated that the 7 foot wall height was concerning.

Mr. Kenney asked if the roof would be flatter than the main house. Mr. Gumkowski stated that the style of the roof is intended to match the house. Mr. Serpico stated that the slope of the roof is slightly lower than the main house.

Ms. Baggs referred to the Carriage House definition as stated in the Montclair Code. Ms. Baggs asked if according to the definition the proposed structure would be a carriage house. Ms. Sciarra replied no.

Ms. Baggs asked if the proposed structure would comply with the requirements of carriage houses. She asked what the square footage of the second floor would be. Mr. Serpico replied that it would be 580 square feet which is larger than the first floor of the garage.

Ms. Sciarra stated that there was no intention to use the space as a dwelling unit.

Ms. Baggs asked if it was a hardship for the applicant not to have a carriage house.

Ms. Sciarra stated that the intention of the application was to address the need to have a gym at home.

Ms. Baggs asked if the applicant had considered adding onto the existing house. Ms. Sciarra stated that an addition would have limitations and may not be compatible with the older house.

Mr. Fleischer asked if the applicant had considered a one-story 15 foot height garage addition to accommodate the gym. Ms. Sciarra stated that alternative was not considered. She stated that the desire was to maintain as much open space in the yard and to keep the proposed 2 story garage in context with the other carriage houses on adjacent properties.

Ms. Checca asked if any of the structures presented in Exhibit A-1 were recently constructed. Ms. Sciarra stated that she was unsure but noted that work was being done on the second floor of a carriage house nearby.

Mr. Kenney asked for clarification of the footprint of the proposed structure and the size of the garage. Ms. Sciarra noted that the garage size would remain the same at 30 feet by 30 feet.

Mr. Kenney asked if the gym could fit within the 30 foot by 30 foot area. Mr. Serpico stated that was never considered. He noted that lot coverage on the property is only 16.5% which is less than the permitted maximum. He noted that the only variance within the application was the height of the structure.

Mr. Fleischer noted that there is an existing 26 foot setback between the garage and the rear property line. He noted that accessory structures require a minimum six foot setback. He noted that this large area gives the applicant a number of alternatives to considered. He stated that the application does not seem justified.

Mr. Gumkowski stated that the intent was to construct a structure that would be similar to the house and would match existing carriage houses in the neighborhood.

Ms. Sciarra noted that the garage could be extended to the rear but that it would not be in context with the other carriage houses. Mr. Fleischer stated that a rear addition would not be visible from the street and noted that the other carriage houses are all existing.

Ms. Sciarra summarized the testimony and stated that the intent of the application was to maintain historic spirit of the neighborhood. She noted that this is the right approach as opposed to a large one-story garage. She stated a two-story structure would be more aesthetic and match the house.

Comments from the Board were then accepted.

Mr. Susswein thanked the applicant for their presentation. He noted that the chronology of development of the other garages/carriage houses nearby is unknown. He expressed concern that granting a variance of this type would set a precedent. He stated that there is a reason to maintain the 15 foot height maximum for accessory structures. He noted that he did not believe there was sufficient justification to grant a variance.

Mr. Kenney stated that he would have difficulty saying yes for many of the same reasons as stated by Mr. Susswein. He noted that the applicants' reliance on the height of garages on adjacent properties without providing the actual heights was concerning. He stated that he understood the need for higher ceilings due to equipment and use of the space, but without concrete figures to rely on for the height of other garages/carriage houses proved difficult to review.

Mr. Fleischer stated that the applicant had many other options to achieve their programmatic needs on-site. He noted that carriage houses historically could be occupied but no longer.

Ms. Checca commended the applicant on their sensitivity of the proposed structure to match the house. She noted that she agreed with Mr. Fleischer. She stated that while the proposed solution met the needs of the family, it does not meet the purpose of the zone.

Mr. Reynolds agreed that other options exist for the applicant. He stated that he understood the difficulty but noted that this could set a precedent.

Ms. Baggs agreed with the previous comments. She noted that the burden of proof was the responsibility of the applicant and there was not sufficient merit to support the variance request.

Mr. Harrison stated that he would not be in favor of the application. He noted that the subject property does contain large existing structures but that the lot is large in size and not limited in where they can expand. He also noted that the property is flat. Mr. Harrison stated that the zoning limits the height of accessory structures and there is sufficient space to accomplish the needs of the owner in other ways.

Mr. Fleischer made a motion to deny the variance request, seconded by Mr. Kenney. The application was denied unanimously.

NEW BUSINESS:

App 2417: Matthew & Laura Evans. 245 Grove Street. *Bulk variance for addition to corner property, front yard setback*

Mr. Harrison introduced the application. Present was the applicant, Mr. Matthew Evans and architect for the project, Mr. Jonathan Perlstein.

Mr. Perlstein reviewed the application. He noted that there is only one shower facility in the house presently and that the proposed second floor addition does not exceed beyond the existing setback encroachment of the first floor sunroom below.

Mr. Harrison asked about the tree located near the proposed addition and if it would be impacted. Mr. Evans stated that it would be trimmed but would remain in place.

Mr. Kenney stated that the testimony presented by Mr. Perlstein was good and presented a positive disposition.

Mr. Fleischer stated that he was in favor of the application as the proposal is building on top of an existing sun porch.

Ms. Checca stated that she was in favor of the application. She noted that there is no other reasonable location for the addition to be located and noted that there is already the existing encroachment on the first floor.

Mr. Reynolds agreed with the previous comments and stated he was in favor of the application.

Ms. Baggs stated that the situation on a corner lot does present a hardship. She noted she was in favor of granting the variance.

Mr. Susswein stated he was in favor of the application.

Mr. Harrison stated that he was in favor of the application. He noted that the existing house already encroaches into the setback. He also stated that it would not be detrimental to the zone plan.

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

App 2419: David & Helen Crossen. 64 Prospect Avenue. *Bulk variance for garage addition*

Mr. Harrison introduced the application. Present were the applicant Mr. David Crossen, Mr. Jeff Egarian, engineer and Mr. Jason Lembo, contractor.

Mr. Crossen introduced the application and summarized the requested variance. He stated the proposed addition to the garage would make for a more efficient use of the structure.

Mr. Lembo noted that due to the elevation change, the front façade of the structure is taller than the rear. He stated that the proposed structure is similar to the adjacent garage and the intention was to create a structure at grade of the rear yard behind.

Mr. Crossen noted that upon exiting the property, there is a steep slope upward and the rear yard is not visible from the first floor of the home. He stated that the intention of the application was to create a structure that would be even with the grade of the rear yard so that the pool and yard were visible from this structure.

Questions from the Board were then accepted.

Ms. Baggs asked the applicant to review the proposed spaces within the structure. Mr. Lembo reviewed the interior plans noting there would be a kitchenette and a bathroom.

Mr. Reynolds asked if there would be a stove in the structure. Mr. Lembo replied no.

Mr. Reynolds asked if there would be air conditioning in the structure. Mr. Lembo replied yes.

Ms. Checca asked if there would be heat in the structure. Mr. Lembo replied no. He stated that it was to be used during the summer months only.

Mr. Kenney asked for clarification of the dimensions of the structure. Mr. Lembo noted the structure would be 22 feet in width and 22 feet in depth.

Ms. Baggs noted the location of the proposed accessory structure in relation to the side yard setback requirement. She noted that the side yard setback requirements for accessory structures in the R-O zone are 18 feet from one side and 12 feet from the other. Ms. Baggs noted that the swimming pool on the property is also an accessory structure and has a 12 foot setback, which would require this new structure to have an 18 foot setback, where 12 is proposed by the applicant. She noted this would require an additional variance.

Mr. Kenney asked if any thought was given to shifting the second level back or reducing the depth to eliminate the need for a variance. Mr. Lembo stated that two separate one-story structures would be sufficient, however he noted that this is the only flat area of the yard.

Ms. Baggs noted that the property is located within the Mountain Historic District. Mr. Petto noted that the application would be reviewed by the Montclair Historic Preservation Commission at their meeting on September 17, 2015. Ms. Baggs asked if the proposed design of the garage would match the house. Mr. Lembo replied yes.

Ms. Baggs referred to the height study and noted that the pool is not located next to the proposed garage/cabana structure. Mr. Lembo stated that it was about 10 feet between the pool and the garage/cabana structure.

Ms. Baggs noted that there was not an existing garage on the property. Mr. Crossen replied yes.

Ms. Baggs asked if it would be possible to construct just a one-story garage. Mr. Lembo stated yes, however he noted that the roof of the garage would be at grade with the rear yard behind the structure.

Ms. Baggs asked if the structure could be shifted to eliminate the need for the side yard variance. Mr. Crossen noted that there are steps up to the rear yard that are preventing such a shift and the location of the garage is aligned with the existing driveway.

Mr. Kenney referred to the Engineer's Report and asked if the applicant would comply. Mr. Egarian stated yes and noted that seepage pits would be installed and a stormwater management plan would be prepared.

Ms. Checca asked if the swimming pool was existing. Mr. Lembo replied yes.

Mr. Reynolds asked about the retaining walls along the rear of the property. Mr. Crossen stated that the walls are to be replaced because they are in need of repair.

Mr. Harrison asked for clarification on whether the garage structure would be visible from the street. Mr. Lembo stated that the top of the structure would be visible only due to the situation of the structure and the steep grade of the front yard of the property.

Mr. Fleischer noted that the requested variance was for 19.6 feet in height where 15 feet is permitted maximum. He asked how the applicant measured the height. Mr. Egarian stated that the height was calculated by measuring the height at 10 foot intervals around the structure and taking the average.

Mr. Fleischer stated that if the structure were pushed deeper into the hillside the average height above grade could be reduced. He proposed the structure could be moved five to six feet to the rear to reduce the height exceedance. He noted that this could be closer to the requirement of the ordinance.

Mr. Kenney noted that a 22 foot depth garage may also be more than is needed.

Mr. Harrison noted that if the structure were moved to the rear it may better align with the pool to provide a more clear view of the rear yard and pool.

Ms. Baggs asked what the permitted accessory uses are for the zone. Mr. Susswein noted that **Montclair Code § 347-31(F)** states that other accessory uses customarily associated with one-family detached dwellings are permitted.

Mr. Crossen stated that the use of the structure would be practical for the rear yard and pool. He noted that there are 13 steps from the first floor of the house up to the rear yard making it difficult to access the area.

Mr. Fleischer stated that the cabana level could be smaller and that the proposed use would not be in violation of the Code requirements.

The applicant requested the application be continued to the October 21, 2015 meeting of the Board of Adjustment. The Board agreed to the request.

App 2423: Sheila Boyd. 12 Orange Road. Bulk variance for off-street parking

Mr. Harrison introduced the application. Ms. Sheila Boyd was present as the applicant.

Ms. Boyd reviewed the proposal. She stated that she has been a tenant of the property since January 2015. She noted that the subject property is located in a busy commercial area and that street parking is difficult. She noted that the Orange Road parking deck is located to the south. She also noted that the intersection of Orange Road and Bloomfield Avenue is dangerous and makes parking along the street difficult.

Mr. Susswein asked if overnight parking is permitted with a permit. Ms. Boyd stated that finding a space can be difficult and it is not convenient.

Mr. Kenney asked about the adjacent properties and if they were similarly sized without driveways. Ms. Boyd stated yes.

Mr. Harrison asked if the applicant would be willing to reduce the width of the proposed driveway to eliminate the setback variance for the off-street parking area. Ms. Boyd replied yes.

Mr. Susswein noted that there are 5 or 6 adjacent properties to the south that are similarly situated with no off-street parking. He noted that this application could set a precedent for more variance requests. Ms. Boyd stated that the lack of an extended porch along the front façade of the subject property allows enough space for the front yard off-street parking. Mr. Susswein noted that this property is unique compared to the other adjacent properties.

Mr. Fleischer noted that historically the Board has granted variances of this type. However, he noted that the issue here is that there are 7-8 other houses in the

immediate area with the same parking issue. He asked if those residents parked elsewhere.

Ms. Baggs asked if this was a hardship for this specific property. Ms. Boyd noted that parking has been removed from the other side of the street due to the construction.

Ms. Baggs asked if there was space for a car in this proposed parking area. Ms. Boyd noted that a smaller car could fit in the space and not encroach over the sidewalk.

Mr. Fleischer noted that a hardship exists due to a narrow lot, for example. He noted that lack of space for a driveway cannot be considered a hardship.

Comment and questions from the public were the accepted.

Tanya Richards, 18 Orange Road, provided comments.

Ms. Richards noted that she was concerned about the impact of the application on the neighborhood character. She noted that there are nice, small front yards along the street presently.

Ms. Richards noted that the sidewalk is well-used and provides a safe walking area for pedestrians.

Ms. Richards noted that the applicant is a tenant and not a property owner. She expressed concern about the long term impact of the variance.

Ms. Richards asked for clarification on who would pay for the curb cut. The Board noted that the applicant would be responsible for the cost of the curb cut.

Ms. Richards noted that the construction across the street presents a lot of unknowns and that many owners in this area want to maintain as much of the character as possible. She stated that she was concerned how this variance could impact the neighborhood.

Mr. Susswein stated that while he hoped the applicant would stay in Montclair, he noted that in the event the applicant were to no longer reside at the property, the variance would remain. He noted that the spot could be rented if a future tenant of the property did not own a car.

Ms. Richards stated that the area is very dense with a variety of uses and that all neighbors are impacted by the parking situation.

Ms. Boyd summarized her testimony and stated that the street already has a house with front yard parking at 26 Orange Road. She stated that while she is a tenant, she and the owner of the property are in a relationship. She also noted that she is dedicated to maintaining the property and keeping the character of the neighborhood.

Ms. Richards noted that 26 Orange Road has a larger front yard setback than the subject property.

Comments from the Board were then accepted.

Mr. Fleischer stated that typically the Board has granted variances of this type on narrow lots. However, he noted while there is presently a lot of construction nearby the property, it will conclude in the near future. He also noted that parking has been available in the area in the form of permits for either off-street or garage parking from

the Township Parking Utility. He stated that the parking situation for these properties should have been addressed by the Township.

Ms. Checca stated that while the application was very thorough, she was not in favor. She noted that there is an elementary school in the area and commercial space. She noted that the residences along Orange Road before Hillside School provide a soft buffer from the adjacent business district. She stated that the front yards here along the street are important green space. Ms. Checca stated that she understands the hardships presented by a narrow lot, but the lack of parking is experienced by all residences on this block. She noted concerns about impacts to the pedestrian traffic presented by another drive way on the block. Ms. Checca also stated that future cars could be larger than a compact car and could encroach near the sidewalk. She stated that it was an undesirable condition and was detrimental to the zone plan.

Mr. Reynolds disagreed with Ms. Checca's comments. He stated that the applicant does not currently have a driveway and has no conforming option to create one. He noted that the lot is small and needs access to the same quality of life elements as other lots. He noted that there are options to make it better and less detrimental by using permeable paving surfaces and landscaped buffers. He stated that a hardship does exist and that the lot is so small that such a dwelling could not be constructed on it today.

Ms. Baggs stated that she understands the hardships documented by the applicant but that she also had to consider the negative criteria. She noted that while the applicant would gain one private off-street parking space, one public on-street parking space would be lost due to its creation. This trading of a public space for a private space is a negative for the public, Ms. Baggs noted. She also stated that the proximity of the applicant's proposed curb cut to the intersection of Bloomfield Avenue and Orange Road presents some safety concerns. She noted that the zone plan would be weakened by the variance as it sets a precedent. Ms. Baggs also stated that the loss of pervious surface by the proposed parking area would have a detrimental environmental impact. She noted that a condition to use pervious pavers could be made. Ms. Baggs stated she would not be in favor.

Mr. Susswein stated that he agreed with Ms. Baggs comments. He noted that while there is a hardship, it could set a precedent. He said that if the variance were granted, the block could wind up with 5-6 driveway curb cuts and all porches on the homes removed to accommodate off-street parking. He stated that when the construction is completed, relief from the current parking constraints could come. He stated he was not in favor of the application.

Mr. Kenney stated that he was not in favor of the application. He noted that a future tenant could have a vehicle that is longer than 14 feet which would encroach onto Township property. He noted that while the applicant showed good intentions to not block the sidewalk, the space was limited and it could be blocked.

Mr. Harrison stated that the Board has acted on many of these applications previously. He noted that no access to the rear yard and a narrow lot presents issues for creating an off-street parking space. However, he noted in previous approvals, the proposed driveways were in an area where many residential driveways already existed. He noted

that he was sympathetic to the applicant. He stated that the Township did try to accommodate the situation, however it is currently worsened by the construction. Mr. Harrison noted that while the immediate concern is over the next two years, the variance would be granted to the property forever. He noted that the impact would be a substantial detriment to the public good and the zone plan. Finally he stated that once the nearby construction is complete, the neighborhood will be nice.

Mr. Kenney made a motion to deny the application, seconded by Mr. Susswein. Mr. Harrison, Mr. Fleischer, Ms. Checca, Ms. Baggs, Mr. Kenney and Mr. Susswein voted against the application. Mr. Reynolds voted in favor.

ADJOURNMENT

A motion to adjourn the meeting was offered by Mr. Fleischer, seconded by Mr. Reynolds. The meeting was adjourned at 10:25pm, September 16, 2015.

Respectfully submitted,



Graham Petto, AICP
Zoning Board of Adjustment Assistant Secretary