

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**April 16, 2014**

PRESENT: Chair Harrison, Mr. Edwards, Mr. Fleischer, Mr. Kenney, Mr. Susswein, and Mr. Tsai and Vice Chair Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Burr, Ms. Checca, Mr. Reynolds, and Ms. Talley, Secretary

Mr. Charreun called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the **Minutes of the March 19, 2014** meeting were adopted as modified, Mr. Susswein and Mr. Tsai abstaining.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following resolution memorializing the Board's decision on the application of **Double EE Development, LLC, 130 Heller Way** was adopted, Mr. Susswein and Mr. Tsai abstaining:

WHEREAS, Double EE Development, LLC, 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 second floor addition onto the dwelling, on property designated as Lot 11 in Block 4804 on the Township Tax Map and located in the R-0(a) One-Family Zone; and

WHEREAS, a variance is requested Montclair Code Section 347-39A to exceed 2½ stories; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 19, 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 John Guadagnoli Architect, PC, dated January 20, 2014, and a property survey dated December 16, 2013; and

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

1. The property is located in the R-0(a) One-Family Zone and contains a single-family dwelling with an attached garage. The lot measures 100 feet wide and 16,273 s.f. in lot area.

2. The existing dwelling is a one-story ranch style home as seen from the front elevation. A 65 foot wide second floor addition is proposed. The addition has been designed to comply with the setbacks of the R-0(a) zone and the maximum permitted building width.

3. The topography of the lot is lower around the rear of the dwelling, where a garage exists at the basement level. As per definitions in the zoning ordinance relating to the number of stories, this topographic condition makes the existing dwelling a two-story home at the rear elevation. As a result, the second floor addition creates a 3<sup>rd</sup> story as seen from the rear elevation, and a variance is requested.

4. The Board determined that the requested variance could be approved. The dwelling would only exceed 2½ stories along the rear elevation, which is caused by the existing topography. The impact of the rear elevation exceeding the maximum number of stories is limited due to the location of the adjoining dwellings and their relative elevation and topography as well as existing trees and landscaping. The addition has been designed to limit the appearance of massing and the addition will not negatively impact the streetscape; and

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 within application is hereby approved; and

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.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following resolution memorializing the Board's decision on the application of **Joyce Fleissner, 36 Mountainside Park Terrace** was adopted as modified, Mr. Susswein and Mr. Tsai abstaining:

WHEREAS, Joyce Fleissner, did make an application to the Board of Adjustment of the Township of Montclair for variances and other relief described below, for the proposed improvements to the unimproved public street abutting the lot required to provide access to the property, and to create off-street parking for the property, which is designated as Lot 1 in Block 901 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to N.J.S.A. 40:55D-70c from Montclair Code Section 347-46C to permit a parking area in the front yard of the property; and

2. A variance pursuant to N.J.S.A. 40:55D-70c from Montclair Code Section 347-27.1F to permit the combined height of certain retaining walls and railings to exceed 4.5 feet in the front yard; and

3. Pursuant to N.J.A.C. 5:21-3.1, exceptions from the New Jersey Residential Site Improvement Standards 5:21-4.2, for a Residential Access Road, in that the existing right-of-way is less than 50 feet in width and in that the proposed extension of the cartway or roadway is not a minimum of 28 feet in width throughout its length; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 19, 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 by Richard F. Smith, Jr., revised November 12, 2009, and plans prepared by Petry Engineering, LLC, dated January 7, 2014; and

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

1. The property is located on the westerly side of the southerly limit of an unimproved portion of Mountainside Park Terrace, which is an existing dedicated 20-foot wide public right-of-way within a steeply sloped area of the Township.

2. The property contains a single family dwelling that was the subject of separate applications to the Board of Adjustment in 1973, 1981, and 2011, described further below. Following the 1981 application, the dwelling was constructed some time between 1983 and 1986. The dwelling has not been lawfully occupied since its construction because the improvements to the unimproved portion of Mountainside Park Terrace required to provide access the property, and off street parking for the dwelling, have not been completed pursuant to any approved plan.

3. In order to obtain a Certificate of Occupancy for the dwelling, the applicant must complete the improvements deemed necessary in the public right-of-way in order to provide access to the property and the applicant must also create off-street parking for the property.

4. The 2011 plan to provide the required roadway access and off street parking was approved by the Board subject to conditions. However, the 2011 plan was not executed by the applicant for several reasons. This includes an inability to comply with all of the conditions of the approval, such as obtaining the necessary permit from the NJDEP related to the grading and drainage plan that utilized the adjacent public parkland.

5. The plan for the current application includes a cartway or roadway extension from the existing paved road with a minimum width of 12 feet that extending into the public right-of-way in front of the subject property. The previous "cul-de-sac" concept in the dead end roadway in front of the dwelling has been eliminated. The current plan includes a semicircular driveway for parking in the front yard of the property, and a paved area in the front yard of the property that is contiguous with the proposed paved roadway that would provide a "turn around area" to allow vehicles in the dead end to make turning maneuvers, such as a "K turn", to exit the dead end street driving forward. The applicant's Professional Engineer indicated that with the existing grading, the 40 foot diameter cul-de-sac on the 2011 plan would require extensive excavating, regrading, and larger retaining walls to accommodate the cul-de-sac. The applicant's Professional Engineer also indicated that in comparison to the current plan utilizing a turn around area, the 40 foot diameter cul-de-sac on the previous plan did not provide any substantial advantage to most emergency vehicles in accessing or exiting from the front of the property.

6. The off street parking provided on the current plan is located on a new 12 foot wide semi-circular driveway that is large enough to contain 2 to 3 vehicles. The parking area is located in the front yard and requires a variance. The previously approved applications for the property included similar variances granted to construct either a detached garage or parking areas in the front yard.

7. The large existing rubble stone retaining walls in the front yard of the property were impacted by strong storms in the past several years, and have since failed and have broken apart. Various new retaining walls are proposed on the current plan in the front yard and within Mountainside Park Terrace the right-of way. None of the new retaining walls exceed 4.5 feet in height. A 3 foot tall guiderail is proposed along the top of the retaining wall that runs along the easterly border of the Mountainside Park Terrace right-of-way. A 3 foot tall railing or hand rail is proposed along the top of the retaining wall that forms the easterly side of the driveway/parking area. A variance is requested for the combined height of the new retaining walls and railings that exceed the maximum height of 4.5 feet permitted in a front yard.

8. The Board finds that the requested variances for the front yard parking and the combined height of the retaining walls and railings can be granted subject to the conditions listed below. The property is located along very steeply sloped terrain which makes it extremely impractical to create a driveway for conforming parking located in a side or rear yard. Due to the existing conditions and the relative location of nearby dwellings, the front yard parking area will not negatively impact the streetscape or any neighboring property. The extreme topography of the site also requires the use of retaining walls for proper site construction and engineering. The proposed retaining walls are shorter than those that previously existed in the front yard of the property, and the railings atop the walls provide the necessary safety measures for people, property, and vehicles near the edges of the retaining walls, without creating a visual nuisance.

9. The proposed improvements within the public right-of-way and the front yard of the property on the current plan have been reviewed by the Township Engineering Department by a report dated February 19, 2014. The Board Engineer has issued a report on the project, dated February 15, 2014. A witness from the Montclair Ambulance Unit provided information on how ambulance vehicles would potentially access and exit the dead end street as designed on the plan. The applicant's Professional Engineer also provided information relating to the proposed roadway and turn around area and how it could be utilized as needed by emergency or maintenance type vehicles. The Fire Department and Department of Community Services had previously indicated that their large vehicles would back out of the dead end, and the proposed plan without the cul-de-sac would not affect that method of exiting the site.

10. The applicant has requested de minimis exceptions from the New Jersey Residential Site Improvement Standards 5:21-4.2, for a Residential Access Road, in that the existing right of way is less than 50 feet in width and in that the proposed cartway is not a minimum of 28 feet in width, to include a 21 foot wide traveled way and one 7 foot wide parking lane.

11. The Board finds that the requested exceptions can be granted under 5:21-3.1(g) of the New Jersey Residential Site Improvement Standards, in that the plan is consistent with the intent of the Site Improvements Act; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructure and possible surrounding future development. The circumstances of the subject property are sufficiently unique to warrant the granting of the requested exceptions.

12. The Board finds that the exception to permit the existing 20-foot right-of-way width in lieu of the 50-foot minimum width can be granted. The existing right-of-way width was created by the Township and the applicant can not enlarge the width of the right-of-way. The Township Engineer and Board Engineer have reviewed the plan as it relates to the work in the existing 20 foot right-of-way, and have only requested minor revisions. The tentative agreement to either have the turn around area that extends into

the subject property dedicated to the Township as an extension of the public right-of-way or to have an easement provided to the Township will effectively expand a portion of the right-of-way serving the subject property and allow it to function effectively.

13. The proposed cartway width of 12 feet is in compliance with the comments of the Township Fire Department from the 2011 application. The Board determined that the proposed cartway width could not be widened any further without creating significant land disturbances and utilizing larger retaining walls to support the proposed roadway extension and turn around area on the steeply sloped land, which would negatively impact the adjoining properties. Due to the existing conditions, the proposed roadway and turn around area would generally be limited for access to the subject property only; and

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 variances requested 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 variances requested 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, subject to the following conditions:

1. The proposed turn around area that extends into the applicant's property shall be either dedicated to the Township as an extension of the public right-of-way, or an easement shall be granted to the Township for the purposes deemed necessary by the Township. The parking area proposed for the subject property shall be excluded from either arrangement.

2. Should the Township not accept the dedication of area of the proposed turn around area that extends into the applicant's property as an extension of the public right-of-way, the maintenance of the turn around area located on the applicant's property shall be the responsibility of the property owner, unless the Township accepts such responsibility as part of any easement agreement.

3. Any signage or other approach to restricting parking within the turn around area shall be determined by the Township Council either through the process of having the area dedicated as part of the public right-of-way, or through the alternative easement agreement.

4. As required by the Township Fire Department for the 2011 application, the dwelling will be fully sprinklered, the area of the roadway proposed to be extended by the applicant shall be paved to a minimum width of 12 feet, and the existing fire hydrant on the subject property will remain.

5. The proposed roadway extension and turn around area shall be constructed to Township standards as required by the Township Engineering Department and any all permits for such work shall be obtained from the Township Engineering Department.

6. The applicant shall comply with the comments 1, 4, 5, 7, 8 of the Board Engineer's report dated February 15, 2014; and

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.

It was announced that at the request of the applicant, the continuation of the application of **Montclair Town Center, LLC, 37 North Mountain Avenue and 323 Claremont Avenue** was postponed until the May 21, 2014 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

The application of **Steve & Jessyca Karl, 88 Undercliff Road** was announced. The applicants were present and were sworn. Their home improvement contractor, Martin Schwartz, was also sworn. Mr. Schwartz described the application. A variance is requested to construct a mudroom onto the northerly side of the dwelling. The property is a corner lot at the intersection of Undercliff Road and Ramsay Road and is located in the R-1 One-Family Zone. Ramsay Road borders both the north and west sides of the property. The property contains a single-family dwelling with an attached garage accessed from Ramsay Road on the north side of the property. The lot measures approximately 32,670 s.f. in lot area. The existing dwelling is positioned closely to the northerly Ramsay Road front property line. The dwelling has existing nonconforming front yard setbacks of 10.25 feet, 13.54 feet, and 15.13 feet along different points of the dwelling facing the northerly Ramsay Road front property line, where a minimum setback of 25 feet is required. A mudroom addition is proposed on the northerly side of the dwelling next to the driveway, facing Ramsay Road. The mudroom measures 7.5 feet wide by 8 feet deep. The mudroom would be set back 5 feet 6 inches and 6 feet 4 inches from the northerly Ramsay Road front property line, as measured to the 2 front corners of the mudroom. A variance is requested for a front yard setback of less than permitted.

Exhibits marked:

A-1 through A-6      Photographs of the dwelling and property

The Board questioned the applicant. Mr. Schwartz stated that the applicant intends to keep the foliage near Undercliff Road that helps to screen the area where the small addition is proposed. Mr. Schwartz also described why the mudroom is not proposed adjacent to the existing attached garage oriented towards the rear yard. The Board discussed the application. A majority of the Board determined that the variance requested could be approved. The applicant is utilizing an area of the dwelling where an existing doorway exists, which is near the driveway on Ramsay Road. The position of the existing dwelling on the corner lot limits the ability to fully comply with zoning. The limited size of the addition and the unique characteristics of the property and the neighborhood significantly limit the impact of the addition on the streetscape and nearby properties. On motion by Mr. Whipple, seconded by Mr. Edwards, the application was approved, with Mr. Kenney voting against the approval.

The continuation of the application of **Montclair Kimberley Academy Foundation, 40 Upper Mountain Avenue** was announced. Alan Trembulak, Esq., appeared as attorney for the applicant. The application was last heard at the February 19, 2014 meeting of the Board. Todd Smith, MKA Director of Athletics since 2002, was sworn. He was also a boys and girls varsity soccer coach at MKA for several years as well. He described the various instances in a soccer game or practice session held on Muenster field in which a ball could be kicked long and far enough that it would end up on Upper Mountain Avenue. Soccer practices had occurred on Muenster field during the Fall of 2013 while the safety netting was installed. He attended about 5 practice sessions and 4 soccer games at Muenster field in the Fall of 2013. During the practice sessions he observed that approximately 8 to 10 balls cleared the netting. Balls are more likely to clear the netting during practice sessions since there are more soccer balls being kicked around at the same time. He described what he learned by speaking to the soccer coaches at other Montclair schools regarding their soccer fields and how they deal with soccer balls being kicked off the field onto the streets.

The Board questioned Mr. Smith. He stated that during his observations at Muenster field during soccer games and practices, many balls hit along the top area of the netting, so that shorter netting would increase the number of balls potentially falling in the street area. Soccer practices were infrequent at Muenster field before the field renovation. He stated that the safety netting facing Bloomfield Avenue at Van Brunt field is between 15 to 20 feet in height. No questions were offered from the public.

Paul Edwards, head coach for boys lacrosse at MKA for the last 12 years, was sworn. He explained how the safety netting at Muenster field can help to keep lacrosse balls from ending up in the street area. The netting was not installed in the spring, so there was no opportunity to see its utility during their last season. For the most part,

netting that is about 12 feet would provide the majority of blockage required for lacrosse, but that the 15 foot netting would help to reduce the number of lacrosse balls that exit the field during practice and games. The Board questioned Mr. Edwards. He stated that prior to the renovation, Muenster field was not suitable for varsity lacrosse. No questions were offered from the public.

John Williams, Landscape Architect, was recalled, and was still under oath. He stated that he examined other fields using fencing or netting as a safety measure abutting streets. He looked at the fields at Rand School, Watchung School, Fortunato Field, as well as a school athletic field in Newark. There are no published standards for such fences or netting at these types of facilities. Based on the observations, most of the fields use permanently installed chain link fencing, and the average height of which was about 12 feet on the street side. He described the shrubs and trees that have already been planted along the Upper Mountain Avenue front yard of the field and described the additional trees and plantings that could be added to further screen the safety netting and posts while it is installed. The Board questioned Mr. Williams. No questions were offered from the public.

Exhibits marked:

- A-2 Photographs of school athletic fields and the related fencing or netting
- A-3 Photographs and a rendered image of area of Muenster field containing the safety netting and the newly planted trees and shrubs

Richard Sunshine, Assistant Headmaster and CFO for MKA, who was still under oath, reiterated some of his prior testimony regarding the use of the field, their reasons for installing the safety netting, and their willingness to add trees and landscaping. He stated that the posts can be modified to be reduced in height if the Board required it. The Board questioned Mr. Sunshine. Chair Harrison called for questions from the public. Edward Skillin, 29 Upper Mountain Avenue, asked if MKA takes the neighbors' property values into consideration when making their decision about the development and use of the field.

Chair Harrison called for public comment. Amy Putman, 70 Upper Mountain Avenue, was sworn and stated her concerns about the field and the appearance of the netting. Edward Skillin, 29 Upper Mountain, was sworn and stated his concerns about the about the field and the appearance of the netting. Tina Bennett, 39 Upper Mountain Avenue, was sworn and made a few comments regarding the need for the safety netting. The Board briefly questioned Mr. Williams regarding the additional trees that could be planted along the Upper Mountain frontage to further screen the netting and its posts.

Mr. Trembulak summarized the application. The Board discussed the application. The majority of the Board determined that the application can be approved subject to the conditions listed below. The majority of the Board determined that approval of the

application would result in a public safety benefit that encourages the appropriate use of land and promotes the public health, safety and general welfare. The Montclair Historic Preservation Commission advised that it has no objection to the proposed amendments to the site plan and favor approval of the fence and netting as proposed. The applicant's proposal will not adversely impact the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. A motion by Mr. Whipple, was seconded by Mr. Fleischer, and was approved by a vote of 4 to 3, with Mr. Kenney, Mr. Edwards, and Chair Harrison voting against the approval. The conditions of the approval are as follows:

1. No goal posts or other permanent structures shall be installed on the subject property, other than those shown on the site plan.
2. No athletic activities shall be permitted on Saturdays or Sundays except for reasons of scheduling emergencies.
3. Competitive games against other schools shall be limited to lacrosse and field hockey, except for reasons of scheduling emergencies, however, under no circumstances shall competitive football games against other schools be permitted at any time.
4. The applicant shall comply with comments 2 through 14 contained in the report dated September 20, 2012 from W. Thomas Watkinson, P.E., P. P., Board Engineer.
5. No temporary or permanent lighting of the athletic field shall be permitted.
6. A permanent scoreboard shall not be permitted on site.
7. Parking lot lights shall be on timers and turned off two hours after sunset.
8. The applicant shall adhere to the lighting plan marked as Exhibit A-3 (Sheet SL-1 Site Lighting Plan, dated November 14, 2012, prepared by MKW & Associates, LLC) at the public hearing.
9. All retaining walls shall conform to Ordinance standards.
10. Setbacks from the playing field shall be a minimum of 37 feet on the westerly side, 25 feet on the easterly side and 27 feet on the northerly side.
11. No permanent sound amplification system shall be permitted.
12. The applicant shall comply with comments 1 and 2 contained in the report dated December 24, 2013 from W. Thomas Watkinson, P.E., P.P., Board Engineer.

13. The height of the proposed post and netting shall not exceed 15 feet in height.

14. The posts and netting shall be permitted only between March 1 to June 15 and August 10 to Thanksgiving of each year and shall be removed at all other times.

15. As stipulated by the applicant, seven additional maple trees at a minimum height of 14 feet shall be planted to supplement the eight maple trees planted along Upper Mountain Avenue. The location shall be subject to review and approval by the Montclair Planning Department.

16. The applicant shall be responsible for payment of all escrow charges incurred in connection with review of this matter.

On motion by Mr. Fleischer, seconded by Mr. Kenney, the meeting was adjourned.