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MINUTES OF THE BOARD OF ADJUSTMENT December 17, 2014

ORDER AND ANNOUNCEMENTS: The meeting was called to order at 7:40 p.m. by Vice Chair Whipple. Vice Chair Whipple read the notice of compliance with the New Jersey Open Public Meetings Act and indicated that appropriate notice was forwarded to the officially designated newspaper of Montclair and posted in the Municipal Building. The schedule of meetings is also posted on the Town website.

ROLL CALL: Vice Chair Whipple, Mr. Fleischer, Mr. Kenney, Mr. Reynolds, Mr. Sullivan, Esq., and Ms. Talley, Secretary were present. Chair Harrison, Ms. Checca and Mr. Susswein were absent.

Ms. Talley announced that Application 2380 **New York SMSA Limited Partnership d/b/a Verizon Wireless, 10 Pine Street** has submitted a letter requesting that the matter be carried to the January 21, 2015 Zoning Board of Adjustment meeting. Mr. Stanzione verbally provided an extension of time for the Board to act until January 21, 2015 without additional notice. A motion to grant the extension of time was made by Mr. Reynolds, seconded by Mr. Fleischer and approved unanimously.

Ms. Talley announced that she has received a letter from Mr. Alan Trembulak, attorney for **App. 2381 Willard Place Partners, 9 Willard Place**, requesting that the matter be carried to the January 21, 2015 Zoning Board of Adjustment meeting. The letter granted the Board an extension of time. A motion to grant the extension of time was made by Mr. Reynolds, seconded by Mr. Fleischer and approved unanimously.

Mr. Whipple announced **Application 2393: New York SMSA Limited Partnership d/b/a Verizon Wireless, 208 South Mountain Avenue.** Mr. Stanzione, attorney for the applicant, requested that this matter also be carried to the January 21, 2015 meeting. He granted the Board an extension of time. A motion to grant the extension of time was made by Mr. Fleischer, seconded by Mr. Reynolds and approved unanimously.

APPROVAL OF THE MINUTES: On motion by Mr. Fleischer, seconded by Mr. Kenney, the minutes of the November 19, 2014 meeting were approved as modified by Mr. Kenney with Mr. Whipple and Mr. Reynolds abstaining.

On motion by Mr. Fleischer, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Jonathon and Rebecca Hirsh, 75 Heller Way** was adopted:

WHEREAS, Jonathon and Rebecca Hirsh, 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 deck on property designated as Lot 111 in Block 4805 on the Township Tax Map and located in the R-O(a) One-Family Zone; and

WHEREAS, the applicant requested a variance from Montclair Code Section 347-39C for a rear yard setback of less than required; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 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 dated February 8, 2011 and plans by Michael Kuybida Architect dated July 21, 2014; and

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

1. The property is an oddly-shaped lot at the on Heller Way and is located in the R-O(a) One-Family Zone. The lot is irregular in shape, having a width that varies from 100 feet at the street line to 168 feet at the rear property line. The lot depth varies from 117 feet along the northerly side line to a maximum of 165 feet along the southerly property line. The location of the garage on the right side of the house also limits the area where a deck can be located.

2. In discussing the application, the Board was concerned about the large size of the deck and the stairs located in the side yard setback.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the application is hereby approved, subject to the following conditions:

1. The deck shall not extend more than fifteen feet and ten and one-half inches from the house.
2. The left side of the deck shall not extend beyond the existing screened sitting room.

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

Application 2390 - Michael Bender, 18 Waterbury Road was announced by Vice Chair Whipple. Mr. Robert Gaccione introduced himself as the attorney representing the applicant. Mr. Gaccione summarized the applicant which requires a side yard setback variance to rebuild a garage on the property.

Mr. Bender was sworn in as the applicant. Mr. Bender stated that he purchased the property in 2008. The existing metal garage was damaged by the excessive snow last year and needs to be replaced. The proposed new garage is in the same location as the existing garage.

Mr. Steve Corso was sworn in as the expert architect and planner for the application. The following exhibits were marked into the record:

A-1: photo of the house

A-2: photo of the existing garage

Mr. Corso summarized the proposed garage which will be a wood frame structure with wood or fiber cement siding. A carport will be attached to the garage on the north side. Mr. Corso stated that the proposed garage is consistent with the character of the area. He stated that it will maintain the 3.7 feet side yard setback of the existing garage, with the exception of the southwest corner of the garage which will be .1 inches closer to the property line because of the angle of the driveway.

Mr. Corso stated that this is a diminimus variance and that there are no detriments created by the proposed variance. The aesthetic improvement provided by the new structure is a significant benefit. He stated that the proposed variance does not impair the intent and purpose of the zoning ordinance or master plan.

The Board questioned Mr. Corso. Mr. Whipple asked if there will be gutters and leaders on the garage. Mr. Corso stated that there will be gutters, with the leaders located in the back of the garage and draining into the 6-foot rear yard setback. Mr. Fleischer asked if there will be a loft in the garage. Mr. Corso said no.

The public was invited to question the witness. There were no questions. The public was invited to provide comments. There were no comments.

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

Application 2396 - D. Wacs & J. Restrict, 122 Essex Avenue was announced. This application is for a one-story addition to the rear of a single-family house located at the corner of Essex Avenue and Garden Street. Karen Brinkman, Architect, represented the applicant. She stated that the addition is 125 square feet in size and the landing is 29 square feet in size. Ms. Brinkman stated that the addition is tucked back into the rear of the house and is designed to provide a mudroom and a larger family room in the house.

Ms. Brinkman stated that the addition meets the 25 foot front yard setback on Garden Street. However, since the adjacent houses fronting on Garden Street are setback fairly far from the street, the average setback is 36.5 feet. This setback line runs through the middle of the existing house and thus triggers the need for a front yard setback variance.

The setback of the addition is 25 feet and the setback of the landing is 19.08 feet. The variance requested is for a front yard setback of 19.08 feet. Ms. Brinkman pointed out that the lot is a trapezoid with the narrower end at the rear of the property.

Mr. Kenney asked if they could keep the addition within the 36.5 foot setback. Ms. Brinkman stated that this setback would not permit an addition to enlarge the family room or create a mudroom because of the configuration of the lot in relation to the average setback.

The Board questioned Ms. Brinkman. They pointed out that there is a significant amount of mature landscaping surrounding the property.

Ms. Brinkman introduced the following exhibit which was marked into the record:

A-1: This exhibit showed the location of proposed windows on the rear addition.

The public was invited to question the witness or make comments. There were not questions or comments.

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

Mr. Sullivan noted that the Board is required to take action on **Application 2367: 58 James Street, LLC, 58 James Street**. The Board made a motion to dismiss this application unless the applicant grants an extension prior to the January 21, 2015 Zoning Board of Adjustment meeting. A motion was made by Mr. Fleischer, seconded by Mr. Reynolds and approved unanimously.

Mr. Sullivan noted that the Board is required to take action on **Application 2003: Wallwood Gardens, Inc., 400 Orange Road**. The Board made a motion to dismiss this application unless the applicant grants an extension prior to the January 21, 2015 Zoning Board of Adjustment meeting. A motion was made by Mr. Fleischer, seconded by Mr. Reynolds and approved unanimously.

Mr. Sullivan thanked Mr. Whipple for his years of service to the Board and wished him luck on his future endeavors. On motion by Mr. Fleischer, seconded by Mr. Susswein, the meeting was adjourned at 10:50 pm.