

MINUTES OF THE BOARD OF ADJUSTMENT
January 16, 2013

PRESENT: Mr. Burr, Ms. Checca, Mr. Edwards, Mr. Fleischer, Mr. Kenney, Mr. Harrison, Mr. Tsai and Mr. Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun

ABSENT: Mr. Reynolds and Ms. Talley

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.

Mr. Whipple and Ms. Checca had yet to arrive but were expected. On motion by Mr. Fleischer, seconded by Mr. Edwards, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining. On motion by Mr. Fleischer, seconded by Mr. Edwards, Mr. Whipple, who was not yet present, was re-elected as Vice Chair. On motion by Mr. Fleischer, seconded by Mr. Burr, Ms. Talley was re-elected as Secretary and Mr. Charreun was re-elected as Assistant Secretary.

On motion by Mr. Fleischer, seconded by Mr. Edwards, the **Minutes of the December 19, 2012** regular meeting were adopted, Mr. Kenney and Mr. Tsai abstaining. Ms. Checca arrived at the meeting.

On motion by Mr. Fleischer, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **Patricia Sullivan, 97 Wildwood Avenue** was adopted, Mr. Kenney and Mr. Tsai abstaining:

WHEREAS, Patricia Sullivan, 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 new detached garage to replace an existing detached garage that was destroyed by a fallen tree, on property designated as Lot 35 in Block 3505 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-46A(2)(a) to permit a side yard setback of less than 6 feet from the westerly side property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 19, 2012, 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 December 23, 1997, a drawing of the proposed front elevation of the garage, and photographs of the garage before and after the damage; and

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

1. The property is located in the R-1 One-Family Zone and contains a single family dwelling. The lot measures 47 feet in width and 229 feet in depth.
2. The applicant proposes to construct a new detached garage to replace an existing detached garage that was recently destroyed by a fallen tree.
3. The footprint and location of the proposed garage will be the same as the existing garage. The footprint measures 20.95 feet in width by 18.27 feet in length.
4. A minimum side yard setback of 6 feet is required for the new detached garage. The existing westerly side yard setback of 4.72 foot is proposed for the new garage and requires a variance.
5. The proposed detached garage is approximately 21 feet from the easterly side property line and approximately 80 feet from the rear property line. A conforming height of 13 feet 2 inches is proposed.
6. The Board determined that the requested variance could be granted. The location and size of the proposed garage matches that of the garage that existed on the property prior to its recent destruction, and the proposed westerly side yard setback does not pose a detriment to the neighboring property; 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 variances 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. Burr, the following resolution memorializing the Board's decision on the application of **Joni Bronander, 111 Gordonhurst Avenue** was adopted, Mr. Kenney and Mr. Tsai abstaining:

WHEREAS, Joni Bronander, 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 an addition and decking at the rear of the dwelling, on property designated as Lot 54 in Block 3502 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-45C(4)(b) to allow the width of the new construction to exceed the maximum permitted width; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 19, 2012, 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 September 10, 2012, and plans by George A. Held, AIA & Associates dated September 18, 2012; and

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

1. The property is located in the R-1 One-Family Zone and contains a single family dwelling. The lot measures 62.50 feet in width and a lot depth of approximately 167 feet.

2. A one story addition and wood decking is proposed at the rear of the dwelling. The addition would contain part of an expanded kitchen, a den, and a mudroom. New decking is also proposed to connect to existing decking that is aligned with easterly side of the dwelling.

3. The maximum permitted width of the proposed construction is limited to 65% of the lot frontage width. For the subject property the width limitation is 40.63 feet. The addition and deck together are viewed as the new construction and measures approximately 44 feet in width across its entirety. A variance is requested to allow the width of the new construction to exceed the maximum permitted width.

4. The Board determined that the requested variance could be granted. The addition and decking are either aligned with or slightly set in from the existing sides of the dwelling and would not negatively impact a neighboring property or 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 variances 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. Burr, the following resolution memorializing the Board's decision on the application of **Sal & Barbara Taibi, 144 Buckingham Road** was adopted, Mr. Kenney and Mr. Tsai abstaining:

WHEREAS, Sal & Barbara Taibi, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to construct a new detached garage to replace an existing detached garage that was destroyed by a fallen tree, on property designated as Lot 2 in Block 2709 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, variances are requested from Montclair Code Section 347-46A(2)(a) to permit a side yard setback of less than 6 feet from the easterly side property line, and from Montclair Code Section 347-46A(3) for a rear yard setback of less than 6 feet; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 19, 2012, 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 August 26, 1994, and plans by Burton S. Landau Associates, dated December 12, 2012; and

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

1. The property is located in the R-1 One-Family Zone and contains a single family dwelling. The lot measures 60 feet in width across the front and 58 feet in width across the rear, and 126 feet in depth.

2. The applicant proposes to construct a new detached garage to replace an existing detached garage that was recently destroyed by a fallen tree.

3. The footprint and location of the proposed garage will be the same as the existing garage. The footprint measures 18 feet 10 inches in width by 19 feet in length.

4. Minimum side yard and rear yard setbacks of 6 feet are required for the new detached garage. The existing easterly side yard setback of 3.35 and 3.45 feet at the garage corners, and existing rear yard setback of 5.58 and 8.16 feet at the garage corners, are proposed for the new garage and require variances.

5. The applicant indicated that the proposed garage would be approximately 2 feet taller at the ridge than the existing garage. The garage is built into the sloping topography of the rear yard and would meet the maximum permitted accessory structure height of 15 feet as defined in the zoning ordinance.

6. The Board determined that the requested variances could be granted subject to the condition below. The location and size of the proposed garage matches that of the garage that existed on the property prior to its recent destruction, and the side yard and rear yard setbacks do not pose a detriment to the neighboring property; 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 variances 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, subject to the following condition:

1. Roof leaders on the easterly side of the garage shall be directed away from the easterly side property line and directed onto the applicants' driveway.

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. Burr, seconded by Ms. Checca, the following resolution memorializing the Board's decision on the application of **Frank & Mary Ann Cerino, 665 Bloomfield Avenue** was adopted, Mr. Fleischer, Mr. Edwards, Mr. Kenney and Mr. Tsai abstaining:

WHEREAS, Frank and Mary Ann Cerino, as owners, did file an appeal with the Board of Adjustment of the Township of Montclair pursuant to N.J.S.A. 40:55D-70a, 72a and Montclair Code Sections 202-18A, 202-36 of the Administrative Officer's determination that the previous automobile dealership was abandoned on property designated as Lot 14 in Block 1403 on the Montclair Township Tax Map and located in the "Center Area" of the C-1 Central Business Zone; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 19, 2012, at which time the Board carefully reviewed the testimony presented as well as the evidence submitted and established the following findings:

1. On or about September 2012, Mr. Cerino applied for a business license to permit the sale of new and used automobiles to reestablish his DeCozen Chrysler, Jeep, Dodge automobile dealership at the property. The application was denied by correspondence dated October 4, 2012 from Janice Talley, Director of Planning and Community Development, who found that "while the property was previously used as a car dealership, that use was abandoned pursuant to Section 347-114 of the Montclair Code when the car dealership was relocated to a new location and the existing building sign on the building was removed."

2. The subject property consisting of approximately .3375 acres is improved with a one story building, parking area and related site improvements. By resolution adopted September 13, 1945, the Board granted a variance permitting use of the property as an automobile showroom and repair shop. By resolution adopted September 9, 1948, the Board approved the expansion of the building in connection with the aforementioned use.

3. In 1987, the applicants purchased the property and established DeCozen Chrysler Plymouth automobile dealership which involved the sale of new and used vehicles as well as the servicing of vehicles. By virtue of a zoning amendment applicable to the property in 2006, new and used automobile sales and repair establishments were prohibited uses. The applicants' use of the property continued as a nonconforming use until between October 2007 and July 2008 when the dealership moved to Verona.

4. Mr. Cerino testified that the move to Verona was due to the fact that the existing building in Montclair was over 75 years old and in need of substantial upgrades. In early 2009, the building was gutted and renovations commenced. Substantial renovations continued on a piecemeal basis to the present time due to financial constraints. Mr. Cerino testified that renovations are anticipated to be completed in January 2013.

5. In October 2011 the "DeCozen" sign, which the applicants testified was in poor condition, was removed at the time the building was refaced. Mr. Cerino testified that the sign no longer had the proper Chrysler logo and was obsolete.

6. Mr. Cerino testified that while he considered various options to use the property between 2008 and the present, at no time did he intend to abandon the use for the sale of new and used vehicles. He presented evidence to the Board establishing that in 2010 and 2011 he was in discussions with Lotus and Lamborghini to bring a dealership to this location.

7. Based upon the foregoing, the Board concluded that the actions of the applicants cannot be construed to constitute an abandonment of the use of the property for the sale of new and used automobiles. Abandonment requires (1) some overt act or some failure to act which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment and (2) an intention to abandon. *Berkeley Square v. Zoning Bd.*, 410 N.J. Super 256 (App. Div. 2009).

8. With respect to the servicing of automobiles at the property, the applicants removed the automobile lifts as part of the renovation process. Mr. Cerino testified that it was his intention to reestablish the use of the property for the sale of new and used automobiles, however, he did not intend to service vehicles. Consequently, the Board determined that Mr. Cerino's actions constituted an abandonment of the service use.

NOW, THEREFORE, BE IT RESOLVED, based upon the foregoing, the Board of Adjustment of the Township of Montclair, does hereby affirm the determination of Janice Talley, Director of Planning and Community Development, dated October 4, 2012 for the limited purpose of servicing automobiles at the property is hereby abandoned; and,

NOW, THEREFORE, BE IT FURTHER RESOLVED, based upon the foregoing, the Board of Adjustment of the Township of Montclair, does hereby reverse the determination of Janice Talley, Director of Planning and Community Development, dated October 4, 2012 that the use of the property for the sale of new and used vehicles is abandoned.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the applicants, Township Manager, Township Council and Township Clerk.

It was announced that at the request of the applicant, the application of **Montclair Child Development Center, Inc., 33 Fulton Street** was withdrawn.

The application of **Paul Fraser, 142 Bellevue Avenue** was announced. The applicant, and Francis Klein, Architect, were sworn. Mr. Klein described the application to construct a roofed portico at the front entrance of the dwelling. The property is located in the R-1 One-Family Zone and contains a single family dwelling. The lot measures 60 feet in width and has a lot area of 12,577 square feet. A portico roof with columns is proposed on the existing front entry stoop. The front yard setback requirement for new construction on the subject property is 70.11 feet, based on the average front yard setback of the 3 nearest dwellings with frontage on Bellevue Avenue. The proposed portico roof would have a front yard setback of 41.5 feet and a variance is requested to permit a front yard setback of less than required. No other variances are required.

The Board briefly questioned Mr. Klein. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. The proposed front yard setback is in keeping with that of the dwellings on the immediately adjoining lots, as well as those directly across the street. The required front yard setback is significantly skewed by the much larger front yard setbacks of dwellings further to the east on the same side of Bellevue Avenue, one of which is required by ordinance to be included in the average front yard setback calculation. The proposed roofed landing provides functional and aesthetic improvements and will not have a negative impact on any nearby property or the streetscape. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved.

Mr. Whipple arrived at the meeting. The application of **Jason W. Fuchs, 47 Forest Street** was announced. The applicant was sworn and described the application to enlarge the existing detached garage in the rear yard. The property is a corner lot at the intersection of Forest Street and Claremont Avenue and contains a two family dwelling. The existing detached garage in the rear yard of the property measures approximately 12 feet 3 inches wide by 22 feet 3 inches long. The applicant indicated to the Board that the intent is to enlarge the existing detached garage in the rear yard by constructing an addition to the garage. The driveway and parking area outside of the garage would be reconfigured, curbing would be added, and lawn areas would be restored. The plan is to extend the garage width to the east by 10 feet, so that the garage would measure 22 feet 3 inches wide by 22 feet 3 long. The existing nonconforming side yard setback of 1.4 feet would be extended with the 10 foot wide addition. The conforming rear yard setback of 11.5 feet would be reduced to a nonconforming 1.5 feet. The rear yard coverage of the proposed garage footprint would be a nonconforming 34.3 percent. The height of the garage complies with the maximum permitted height of 15 feet.

Exhibit marked:

A-1 Property survey dated July 15, 2010

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and considered that the vast majority existing garage, if not the entire existing garage, would need to be removed to accommodate the new construction. Due to the physical characteristics and the existing conditions of the subject property, the Board determined that the requested variances could be approved, but only subject to the modifications to the plan as described below. The proposed garage, if positioned and sized as indicated in the conditions below, would be in keeping with the setbacks and scale of existing detached garages in the neighborhood, and would not have a negative impact on nearby properties. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved, subject to the following conditions:

1. The footprint of the proposed garage shall be limited to a maximum of 21 feet by 21 feet.
2. Minimum setbacks of 3 feet shall be provided from the southerly and easterly property lines.
3. All roof leaders shall be directed away from the southerly and easterly property lines.
4. The driveway and parking areas shall be constructed as depicted on the plan submitted, and curbing shall be installed on the driveway and parking areas

Chair Harrison stated that his home is within 200 feet of the property that is the subject of the final application on the agenda, and therefore was recused and left the meeting. Vice Chair Whipple announced the application of **Michael Nicholson, 14 Gray Street**. Mr. Sullivan stated that he had represented Mr. Nicholson in the purchase of the subject property. He stated that he no longer represents the applicant in any capacity and that in his opinion there is no conflict of interest, and that he can provide objective advice to the Board if required. He stated, however, that he would recuse himself if any Board member felt it was necessary. No objection was voiced by the Board.

Mr. Nicholson was sworn and described the application. Variances are requested to construct a 2nd floor addition and a wood deck at the rear of the dwelling. The lot measures 37.50 feet in width and a lot area of approximately 3,855 square feet. An addition is proposed to the second floor and attic at the rear of the dwelling. The addition would be aligned with the side walls of the dwelling and measures 25 feet 4 inches in width. The addition would contain a master bedroom and bathroom. The dwelling has an existing nonconforming easterly side yard setback of 2.5 feet. The proposed 2nd floor addition would also be set back 2.5 feet from the easterly side property line and a variance is requested to permit a side yard setback of less than 6 feet. The maximum width allowed for the proposed addition is 24.4 feet, or 65 percent of the lot frontage width. The dwelling has an existing nonconforming principal structure

width of 25 feet 4 inches. The addition also measures 25 feet 4 inches and requires a variance to allow the width of the new construction to exceed the maximum permitted width. The maximum permitted principal structure coverage for the property is 25 percent of the lot area, or 963.75 square feet. The existing principal structure coverage is already nonconforming at approximately 1,026 square feet or 26.6 percent, including existing stairways and landings. With the proposed deck at the rear, the coverage increases to approximately 1,118.25 square feet, or 29 percent of the lot area, and a variance is requested to exceed the maximum permitted principal structure coverage.

Exhibit marked:

A-1 Three photographs of the existing dwelling

The Board briefly questioned the applicant. A small stairway on the side of the dwelling, which is right at the property line, would be removed. Mr. Charreun stated that this would slightly reduce the proposed principal structure coverage from 29 percent to 28.7 percent. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved. The existing lot size and placement of the existing dwelling is restrictive. The addition to the 2nd floor is aligned with the walls of the existing dwelling and provides needed living space on the 2nd floor. The proposed deck is conservatively designed and is a reasonable accommodation for enjoyment of the rear yard. With the proposed addition and deck, the scale and design of the dwelling remains in keeping with the other dwellings in the neighborhood, and would not have a negative impact on nearby properties. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

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