

MINUTES OF THE BOARD OF ADJUSTMENT
February 20, 2013

PRESENT: Chair Harrison, Mr. Burr, Ms. Checca, Mr. Edwards, Mr. Kenney, Mr. Reynolds, Mr. Tsai, and Vice Chair Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Fleischer 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.

Chair Harrison stated that the adoption of minutes and resolutions would be done at the end of the meeting.

It was announced that the application of **Gary R. Lewis, 137 Grove Street** would be carried to the March 20, 2013 meeting as the applicant did not complete public notice for this hearing. Mr. Charreun stated that the postponement of the continuation of the Wallwood Gardens application would need to be announced later in the meeting as the letter indicating the date of the requested adjournment was in the application file in the Planning Department which would have to be retrieved before the conclusion of the meeting.

The application of **Michael & Barbara Gregory, 179 Cooper Avenue** was announced. Michael Gregory sworn and described the application. Variances are requested to construct a new detached garage to replace an existing detached garage that was destroyed by a fallen tree. The width of the garage footprint would be expanded from the existing 18.5 foot width to 20 feet in width. The 20 foot length would remain the same. The existing westerly side yard setback of 3.10 feet at the front corner of garage, and the existing rear yard setback of approximately 3 feet at the westerly rear corner of the garage, are also proposed for the new garage. The rear lot line contains a "jog" in the line in the vicinity of the garage. The area where the garage footprint is being expanded is, for the most part, located further from the rear property line, due to the "jog" in the rear property line.

The Board briefly questioned Mr. Gregory. A letter from the applicant's Architect was marked as Exhibit A-1 and read into the record by Mr. Sullivan. The letter indicates that storm water collected from the roof of the new garage would be directed away from the westerly side and rear property lines.

Exhibit A-1: Letter from John Thomas Collins, Architect, dated February 19, 2013

No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved. The

location the proposed garage matches that of the existing garage. The 1.5 foot increase in the width of the garage is minor and a reasonable modernization. Subject to the condition below, the proposed westerly side yard and rear yard setbacks do not negatively impact any adjoining property. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved, subject to the following condition:

1. Roof drainage from the new garage is to be from roof gutters with leaders located at the front of the garage. The westerly side leader will discharge onto the existing curbed driveway and flow towards the street. The easterly side leader will discharge onto the ground in the rear yard of the property.

The application of **Savita & Matthew Lepore, 137 Cooper Avenue** was announced. Matthew Lepore, and his contractor, Kip Siebert, were sworn. Mr. Siebert described the application to construct a new detached garage to replace an existing detached garage that was damaged during a storm. The existing garage measures 24 feet wide by 20 feet deep. The proposed garage would be reduced in width, to be 21 feet wide by 20 feet deep. The existing westerly side yard setbacks of 4.56 feet and 5.10 feet, measured to the westerly corners of garage, and existing rear yard setback of 2.57 feet, are also proposed for the new garage.

The Board questioned the applicant. Mr. Siebert stated that the applicant is planning on creating a vehicle turn around area in the rear yard, and that moving the garage further fork the rear line makes that more difficult to achieve. He also stated that the roof leaders could be designed to discharge water away from the westerly side and rear property lines. The roof leader from the westerly side of the garage would be at the rear of the garage, and would extend across the rear of the garage to discharge into the applicant's rear yard on the easterly side of the garage.

No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved. The location the proposed garage matches that of the existing. The reduced width of the garage reduces the impact of the rear yard setback. Subject to the condition below, the proposed westerly side yard and rear yard setbacks do not negatively impact any adjoining property. On motion by Mr. Whipple, seconded by Ms. Checca, the application was approved, subject to the following condition:

1. The roof leaders shall be designed to discharge water away from the westerly side and rear property lines. The roof leader from the westerly side of the garage shall be at the rear of the garage, and shall extend across the rear of the garage to discharge onto the ground in the rear yard of the property at the easterly side of the garage.

The application of **Eric & Molly Severson, 114 Westview Road** was announced. Mr. Whipple was recused from the application. Molly Severson, and her contractor, Kip Siebert, were sworn. Mr. Siebert described the application to construct a new detached garage to replace an existing detached garage that was damaged during a storm. The

existing garage measures approximately 19 feet wide by 19 feet deep. The proposed garage would be increased in size to 21 feet wide by 20 feet deep. The existing easterly side yard setbacks of 2.69 feet and 2.95 feet, at the easterly corners of garage, and the existing rear yard setback of approximately 3 feet, are also proposed for the new garage. The "bump-out" bay that projects into the rear yard setback of the existing garage would not be reconstructed for the new garage.

The Board questioned the applicant. Mr. Siebert noted that the property slopes from west to east and that the roof drainage from the east half of the existing garage has discharged into the easterly side yard. He stated that they'd prefer not to discharge the storm water from the easterly half of the roof onto the driveway, as that can cause an icing issue. He stated that the roof leader on the easterly side of the garage could be at the front of the garage, but directed towards the rear, to give the discharge a chance to be absorbed in the side yard before flowing into the neighboring property. No questions or comments were offered from the public. The Board discussed the application. On motion by Mr. Burr, seconded by Ms. Edwards, the application was approved, subject to the following condition:

1. The roof leaders shall be designed to discharge water away from the easterly side and rear property lines. The roof leader on the easterly side of the garage shall be at the front of the garage, but directed towards the rear, to allow the discharge an opportunity to be absorbed in the side yard before flowing onto the neighboring property.

The application of **Robert & Sally Iracane, 212 Watching Avenue** was announced. The applicants were sworn. Mr. Iracane described the application. A variance is requested to construct a new detached garage to replace an existing detached garage that was damaged during a storm. He stated that the intent at this time is to construct the new garage framing on the existing concrete slab. They hope that they will not be required to install a footing. Until the garage is demolished, they cannot inspect the existing footing to see if it will be compliant with construction code. The existing garage measures 18 feet wide by 20 feet long. The proposed garage would match those dimensions. The existing side yard setback of 1.14 feet is also proposed for the new garage from the westerly property line.

The Board briefly questioned the applicants. Mr. Iracane stated that if they are required to install a footing by the Construction Official, they would be willing to increase the setback to 3 feet. He also stated that the intent is to have a roof overhang of 9 inches maximum at the rear of the garage, which extends towards the side property line.

No questions or comments were offered from the public. The Board discussed the application and determined that under specific circumstances, the requested variance could be approved, subject to the conditions below. The location and size the proposed garage matches that of the existing garage. Subject to the condition below, the proposed side yard setback would not negatively impact the adjoining property. On

motion by Mr. Whipple, seconded by Mr. Burr, the application was approved, subject to the following conditions:

1. The 1.14 foot side yard setback is only approved for the construction of the garage on the existing slab and footing. Should a new footing be constructed for any reason, the minimum side yard setback must be at least 3 feet.

2. If the garage is constructed with the 1.14 foot side yard setback, the roof overhang projecting towards that side yard shall be a maximum of 9 inches, which should be detailed on the plans submitted for permits.

3. The roof leaders shall be at the front of the garage, as shown on the plan submitted to the Board.

The application of **Karen Cahn, Park Street**, was announced. The applicant and George Held, Architect, were sworn. Mr. Held described the application to construct an addition and a deck onto the rear of the dwelling. The property is a corner lot at the intersection of Park Street and Summit Avenue. The property contains a single family dwelling and a detached garage in the rear yard accessed by a driveway on Summit Avenue. The lot measures 143.17 feet wide across the Park Street frontage and 150 feet across the Summit Avenue frontage. The lot measures 22,418 square feet in lot area. Based on the zoning ordinance, the rear property line of the subject property is the westerly property line, opposite from Park Street, because the Park Street frontage is narrower than the Summit Avenue frontage. The existing detached garage would be removed. A 2½ story addition is proposed to the rear of the dwelling, which would contain a new attached garage on the ground/first floor. The lot depth as defined in the zoning ordinance is 156 feet. The required rear yard setback for additions to the dwelling is a minimum of 25 percent of the lot depth or 39 feet. The existing dwelling has a rear yard setback of approximately 55.97 feet. The proposed addition with the attached garage would have a rear yard setback of 28.63, and a variance is requested.

Exhibit A-1: Sheet A-1 of the plans, dated January 4, 2013, color added

Exhibit A-2: Photographs of the subject dwelling and property

Exhibit A-3: Sanborn Map, with information added by the Architect

The Board questioned the applicant. Mr. Charreun answered questions regarding the potential of a subdivision of the subject property and the adjoining property to the north. He indicated that neither property has sufficient frontage on Park Street for a subdivision without requiring variances for insufficient lot frontage width. No questions or comments were offered from the public.

The Board discussed the application and determined that the requested variance could be approved based on the unique characteristics of the property and the application, such as the placement of the existing dwelling on the lot and most significantly, the removal of the existing detached garage in the rear yard. The proposal represents a reasonable modernization of the dwelling. The addition is thoughtfully

designed to reduce the impact on the rear yard setback, having the upper floors stepped back for the ground floor. The removal of the existing detached garage and the proposed landscaping of the yard will enhance the open space near the side and rear property lines and the aesthetics of the property. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved.

The application of **Danielle & Michael Zinn, 115 Midland Avenue** was announced. Danielle Zinn, and Erik Schultz, Architect, were sworn. Mr. Schultz described the application to construct an addition and a deck onto the rear of the dwelling. The property contains a single family dwelling. The lot measures 56 feet in width and is 244 feet deep. An existing deck at the rear of the dwelling would be removed. A one-story addition is proposed at the rear of the dwelling to expand an existing kitchen. A new deck is also proposed at the rear of the dwelling. The existing northerly side yard setback of the dwelling is nonconforming, measuring 2.33 feet and 2.13 feet at the front and rear northerly corners of the dwelling, where a minimum of 6 feet is required. The kitchen addition would extend the nonconforming northerly side yard setback 8 feet further and requires a variance. The new deck surface would be 7 feet from the northerly side line, however, the stairs depicted on the northerly side of the deck would be set back 4 feet from the northerly side property line and require a variance.

Exhibit A-1: Aerial Photograph

Exhibit A-2: Photographs of the subject dwelling and property

The Board questioned the applicant. Ms. Zinn answered questions about the northerly side yard and the landscaping along the northerly property line. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. The addition is aligned with the northerly side wall of the dwelling. The one story addition and the deck are relatively small in size and have been thoughtfully designed with regard to the nonconforming northerly side yard setback, and will not negatively impact the adjoining property owner. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved.

On motion by Mr. Whipple, seconded by Mr. Burr, the **Minutes of the January 16, 2013** regular meeting were adopted as modified, Mr. Reynolds abstaining.

On motion by Mr. Whipple, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **Paul Fraser, 142 Bellevue Avenue**, was adopted, Mr. Reynolds abstaining:

WHEREAS, Paul Fraser, 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 roofed portico at the front entrance of the dwelling, on property designated as Lot 2 in Block 3507 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-45B(1) for a front yard setback of less than the average front yard setback of the dwellings on the adjoining lots with frontage on Bellevue Avenue; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2013, 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, and plans by Francis C. Klein and Associates Architects, dated December 20, 1012; 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 and has a lot area of 12,577 square feet.

2. A portico roof with columns is proposed on the existing unroofed 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 on the same side of the street.

3. The proposed portico roof would have a front yard setback of 41.5 feet and a variance is requested.

4. The Board 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; 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. Whipple, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **Jason W. Fuchs, 47 Forest Street**, was adopted, Mr. Reynolds abstaining:

WHEREAS, Jason W. Fuchs, 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 enlarge the existing detached garage in the rear yard, on property designated as Lot 16 in Block 3204 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested the following variances:

- 1) Variances from Montclair Code Section 347-52 to permit a side yard setback of less than 6 feet from the southerly property line, and a rear yard setback of less than 6 feet from the easterly property line; and
- 2) A variance from Montclair Code Section 347-22A to allow the garage to occupy more than 25 percent of the rear yard area; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2013, 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 submission includes a property survey dated July 15, 2010, and drawings prepared by the applicant; and

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

1. The property is a corner lot at the intersection of Forest Street and Claremont Avenue, is located in the R-2 Two-Family Zone, and contains a two family dwelling. The lot measures 60 feet in width and has a lot area of 6,600 square feet.
2. 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.

3. The existing detached garage has a nonconforming side yard setback of 1.4 feet to the southerly property line, and a conforming rear yard setback 11.5 feet to the easterly property line. The existing detached garage occupies approximately 18.8 percent of the rear yard area, which is conforming.

4. 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.

5. The Board 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; 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 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 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; 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. Burr, seconded by Mr. Tsai, the following resolution memorializing the Board's decision on the application of **Michael Nicholson, 14 Gray Street**, was adopted, Chair Harrison and Mr. Reynolds abstaining:

WHEREAS, Michael Nicholson, 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 2nd floor addition and a wood deck at the rear of the dwelling, on property designated as Lot 22 in Block 4510 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following variances:

- 1) A variance from Montclair Code Section 347-45C(1) to permit a side yard setback of less than 6 feet from the easterly property line; and
- 2) A variance from Montclair Code Section 347-45C(4)(b) to allow the width of the new construction to exceed the maximum permitted width; and
- 3) A variance from Montclair Code Section 347-45E to exceed the maximum permitted principal structure coverage; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2013, 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 a property survey, and plans by Tonu Vanderer Architect, dated November 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 37.50 feet in width and a lot area of approximately 3,855 square feet.

2. 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.

3. 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.

4. 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 25.3 feet, which is 67.4 percent of the frontage width. The addition also measures 25.3 inches and requires a variance to allow the width of the new construction to exceed the maximum permitted width.

5. 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, etc. With the proposed deck at the rear and the removal of an existing small side stairway, the coverage increases to approximately 1,105.75 square feet, or 28.7 percent of the lot area, and a variance is requested to exceed the maximum permitted principal structure coverage.

6. The Board 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; 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 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. Whipple, seconded by Mr. Tsai, the meeting was adjourned.