

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**April 17, 2013**

PRESENT: Chair Harrison, Mr. Fleischer, Mr. Kenney, and Mr. Reynolds; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Burr, Ms. Checca, Mr. Edwards, Mr. Tsai, Vice Chair Whipple, 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.

Calvin Trevenen, Esq., appeared on behalf of the application of **Wail Abukwaik, 590 Valley Road**, and requested a postponement of the application to the May 15, 2013 meeting. On motion by Mr. Fleischer, seconded by Mr. Kenney, the request was granted and no further notice would be required.

Mr. Charreun stated the attorney for the application of **Sprint Spectrum LP, 641 Bloomfield Avenue**, has requested a postponement of their application to the May 15, 2013 meeting. On motion by Mr. Fleischer, seconded by Mr. Kenney, the request was granted and no further notice would be required.

Chair Harrison was recused. Alan Trembulak, Esq., appeared on behalf of the application of **58 James Street, LLC, 58 James Street**, and requested a postponement of the application to the May 15, 2013 meeting. On motion by Mr. Fleischer, seconded by Mr. Kenney, with Chair Harrison abstaining, the request was granted and no further notice would be required.

On motion by Mr. Fleischer, seconded by Mr. Kenney, the **Minutes of the March 20, 2013** regular meeting were adopted as modified.

On motion by Mr. Fleischer, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Gary R. Lewis, 137 Grove Street**, was adopted as modified:

WHEREAS, Gary R. Lewis, as owner, did make application to the Board of Adjustment of the Township of Montclair to permit a two-family use on property designated as Lot 2 in Block 4307 on the Montclair Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70d(1) to allow a two-family use which is not a permitted principal use pursuant to Montclair Code Section 347-41; and

WHEREAS, the applicant submitted a survey prepared by Control Layouts, Inc. dated December 14, 2012 as well as an undated floor plan sketch; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 20, 2013 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is located on the easterly side of Grove Street, 51.25 feet from the intersection of Oxford Street and contains approximately 6,475 square feet of lot area. The property is improved with a two and one-half story frame dwelling containing two separate and distinct units each with separate means of access plus an attached two car garage.

2. The applicant testified that he purchased the property in December 2006 believing it contained a lawful two-family dwelling, however, he recently discovered that was not the case. The purpose of this application is to legalize the two-family residential use.

3. From 1936 through 1947, the property was located in the R-2 Two-Family Zone and Dr. Caggiano operated his medical office on the first floor and resided on the second floor with his family.

4. By resolution adopted March 7, 1950, the Zoning Board of Adjustment recommended approval to the Board of Commissioners that Dr. Caggiano's application to permit medical use of the first floor by a nonresident separate and apart from the residential use on the second and third floors in the R-2 Two-Family Zone, which was then approved by the Board of Commissioners.

5. In 1956 Dr. Caggiano sold the property to Dr. Zingali, who utilized the first floor for his practice. Dr. Zingali did not reside in the building and rented the second and third floors for single family residential use. In 1966 Dr. Zingali sold the building to his tenant, but continued to use the first floor medical space as a tenant.

6. By resolution adopted April 15, 1971, the Zoning Board of Adjustment recommended to the Board of Commissioners approval of the application to allow Dr. Zingali's son to occupy the first floor as dental office space and to allow the second and third floors as a separate one-family residential use on property now located in the R-1 One-Family Zone, which was then approved by the Board of Commissioners.

7. The Board determined the property is particularly suited for the proposed two-family residential use given its long-standing use as two separately functioning

units. In addition, utilization of the first floor as a residential use represents a less intensive use than a medical use.

8. The testimony established that the proposed use advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a); and provides sufficient space in an appropriate location for residential use in order to meet the needs of all New Jersey citizens (-2g) and encourages coordination of procedures resulting in more efficient use of land (-2m).

9. Approval of this application is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The property had a long-standing use as two separate and distinct units at the time the property was rezoned from R-2 to R-1 on or before 1970. Approval is consistent with the land use goals of the 2000 Master Plan Reexamination Report specifically to “maintain Montclair as a desirable residential community accommodating a range of population and income groups. The racial, income and age mix of Montclair’s citizens is desirable and representative of this region of the State, and land use policies should seek to preserve this range and balance.”

10. The property is located in an area of mixed uses including one, two and three-family residences, commercial uses and a school. The property abuts a preexisting nonconforming two-family use to the south and a conforming two-family use to the east. Based upon the Board’s particular knowledge of area land uses and local conditions, the within development application is not inconsistent with the character of the development in the area and will not cause substantial adverse impact to area properties.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief 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; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair, that the within application of Gary R. Lewis for a variance pursuant to N.J.S.A. 40:55D-70d(1) to permit a two-family use on property located in the R-1 One-Family Zone is hereby approved subject to the following condition:

1. The applicant shall be responsible for payment of all escrow fees incurred in connection with review of this application.

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

On motion by Mr. Fleischer, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Paul & Carla King, 6 Glenside Terrace**, was adopted:

WHEREAS, Paul & Carla King, 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 onto the rear of the dwelling, on property designated as Lot 43 in Block 4702 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(1) for a side yard setback of less than 6 feet from the northerly side property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 20, 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 dated April 2008, and architectural plans by John James, Architect, dated February 7, 2013; 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 and a detached garage in the rear yard. The lot measures 62 feet in width and 125 feet in depth.

2. A one story addition is proposed at the rear of the dwelling, aligned with the northerly side of the dwelling. The addition would contain part of an expanded kitchen and a mudroom. An existing deck in the same location as the proposed addition would be removed. A stone terrace at grade level is depicted on the plan, which complies with zoning.

3. The existing northerly side yard setback of the dwelling is nonconforming, measuring 4.9 feet, where a minimum of 6 feet is required. The kitchen addition would extend the nonconforming northerly side yard setback an additional 9 feet further into the rear yard and requires a variance to permit a side yard setback of less than 6 feet from the northerly side property line.

4. The Board determined that the requested variance could be approved. The addition is aligned with the existing nonconforming northerly side yard setback of the dwelling. Considering the limited size and scale of the addition, the 4.9 foot side yard setback poses no detriment to an adjoining property owner; 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. Kenney, the following resolution memorializing the Board's decision on the application of **Joseph Rispo, 201 Highland Avenue**, was adopted:

WHEREAS, Joseph Rispo, 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 attached garage addition onto the southerly side of the dwelling, on property designated as Lot 13 in Block 504 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-33C(4)(a) to permit the width of the principal structure 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 March 20, 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 of the existing conditions and architectural plans depicting the proposed addition; and

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

1. The property is located in the R-0 Mountainside Zone and contains a single family dwelling. There is no garage on the property. The existing driveway leads

to the southerly side of the dwelling. The lot measures 116.9 feet in width and 174.5 feet in depth. The property slopes downward from Highland Avenue.

2. A one-story addition is proposed at the southerly side of the dwelling to contain an attached garage and a mudroom. The addition measures 23 feet wide by 25 feet long. Portions of existing asphalt paving would be removed and there would be a net decrease in the impervious surface coverage on the lot.

3. The maximum permitted principal structure width for the subject property is 75.9 feet, or 65 percent of the lot frontage width. The width of the existing dwelling complies, measuring 74.8 feet in width, or 63.9 percent of the lot frontage width.

4. The addition would increase the width of the dwelling to 81.1 feet, or 69.4 percent of the lot frontage width. A variance is requested to permit the width of the principal structure to exceed the maximum permitted width. No other variances are required.

5. The Board determined that the variance could only be granted if the width of the addition was reduced to a maximum of 21 feet, which produces an overall dwelling width of 79.1 feet, or 67.7 percent of the frontage width. Subject to this modification, the variance can be justified due to the existing physical characteristics of the property, such as the position of the dwelling on the lot and the topography of the lot, and the variance would not have a negative impact on nearby properties 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 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, subject to the following condition:

1. The width of the garage addition shall be limited to a maximum of 21 feet.

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. Kenney, the following resolution memorializing the Board's decision on the application of **Raphaela Niehausen, 394 North Fullerton Avenue**, was adopted:

WHEREAS, Raphaela Niehausen, 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 an addition to the second floor and attic at the southerly side of the dwelling, on property designated as Lot 10 in Block 2505 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, variances are requested from Montclair Code Section 347-45C(1) for a side yard setback of less than 10 feet from the southerly side property line, and from Montclair Code Section 347-45C(4)(a) to permit the width of the second floor and attic 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 March 20, 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 dated December 2012, and architectural plans by Sionas Architecture dated February 7, 2013; 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 57.7 feet in lot frontage width and 150 feet in depth.
2. An addition is proposed to the second floor and attic at the southerly side of the dwelling. The addition has dimensions of 9 feet 5 inches wide by 14 feet long and would contain master bath and walk-in closet on the second floor and a reading nook on the attic floor.
3. The existing southerly side yard setback of 8.15 feet is nonconforming, as it is required to be at least 10 feet. The proposed addition is aligned with the walls on the southerly side of the dwelling and is also set back 8.15 feet from the southerly side property line, and requires a variance.
4. The maximum allowable principal building width for the subject property is 37 feet 6 inches, or 65 percent of the lot frontage width of 57.7 feet. The width of the

existing first floor of the dwelling is nonconforming, measuring 41 feet 3 inches. The second floor and attic level of the dwelling are currently conforming measuring 31 feet 10 inches in width. The proposed addition at the southerly side of the dwelling would extend the width of the second floor and attic floor an additional 9 feet 5 inches, to align with the southerly side wall of the existing first floor, and match the nonconforming width of 41 feet 3 inches of the first floor, and requires a variance.

5. The Board determined that the requested variances could be approved. The southerly side yard setback of the addition will be in keeping with the side yard setback of the existing first floor. The impact of the extended width of the second floor and attic is mitigated by design of the addition, which is set back from the front of the first floor and has a lower roofline height than the existing roof. The addition is modest in size and provides standard modern improvements for family style living. The design and scale of the dwelling would remain in keeping with the other dwellings in the neighborhood, and the variances pose no detriment to nearby properties 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 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. Fleischer, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Richard & Tammy Bakos, 122 Elm Street**, was adopted:

WHEREAS, Richard & Tammy Bakos, 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 for the width of a dormer addition on the third floor at the rear of the dwelling, on

property designated as Lot 26 in Block 3001 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-45A(2) to exceed 2½ stories due to the proposed width of the third floor dormer at the rear of the dwelling; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 20, 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 dated April 1998, and architectural plans by Diana Lee Coronato, Architect, dated February 15, 2013; 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 142 feet in depth.

2. Dormer additions are proposed onto the third floor at the front and rear of the dwelling. The dormer at the front of the dwelling complies with the zoning ordinance. A variance is requested for the width of the dormer addition on the third floor at the rear of the dwelling. The dormers are proposed as part of a third floor renovation to include a bedroom, a bathroom, and storage space.

3. The width of the dwelling at the third floor level is 24 feet 2 inches. The maximum allowable width of a dormer or the aggregate width of multiple dormers, on any one side of the dwelling is 12 feet 1 inch. The proposed dormer at the rear of the dwelling would measure 18 feet 1 inch, and thereby creates a 3rd story at the rear of the dwelling, and requires a variance.

4. The Board determined that the requested variance could be approved. The dwelling is relatively small in size and the proposed improvements help to modernize the dwelling for family style living. The design of the dormer at the rear of the dwelling is based on the existing conditions of the dwelling. The dwelling would remain in keeping with the size and scale of the dwellings in the neighborhood and the plan poses no detriment to an adjoining property owner 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 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.

The application of **Lonna & Martin Schwartz, 83 South Fullerton Avenue**, was announced. The applicants were sworn. Mr. Schwartz described the application. A variance is requested for the proposed location of a chicken coop. The property is a corner lot at the intersection of South Fullerton Avenue and Hawthorne Place, located in the R-1 One-Family Zone. The property is irregular in shape and measures approximately 28,288 square feet in lot area. The lot contains a single family dwelling and a detached garage accessed by a driveway from South Fullerton Avenue. The application was referred to the Historic Preservation Commission for comment because the property is located within a historic district included in the National Register of Historic Places. The chicken coop is an accessory structure, and is proposed to be located between the dwelling and the Hawthorne Place front property line, which is a front yard and requires a variance. The coop measures 4 feet by 11 feet, and is 7 feet tall. The coop is proposed to be approximately 10 feet away from the Hawthorne Place front property line.

Mr. Schwartz described the distances that the proposed location of the coop provides to the neighboring dwellings and their rear yard areas. The zoning ordinance would permit the coop in the rear yard of the property with a minimum setback of 6 feet to side and rear lines. Chapter 82 of the Township ordinance is managed by the Health Department requires a 10 foot setback from any property line, and a 50 foot distance to the windows and doors of neighboring dwellings. The Health Department code does not prohibit a front yard location. While the proposed location requires a variance for the front yard location, it should be more satisfactory for certain neighbors who have expressed concern about the proposed chicken coop.

Mr. Schwartz asked that a neighbor in attendance be called at this time. Robert Ryan, 79 South Fullerton Avenue, was sworn. Under questioning by Mr. Schwartz, Mr. Ryan stated his support for the application as presented. The Board also briefly questioned Mr. Ryan.

Exhibits marked:

- A-1 Photograph of existing hedges along Hawthorne Street front property line
- A-2 Photograph of existing hedges along Hawthorne Street front property line
- A-3 Photograph of existing hedges along Hawthorne Street front property line
- A-4 Historic photograph of South Fullerton Avenue in the area of the property

The Board questioned the applicant. Ms. Schwartz stated that the proposed location is the best location for the adjoining property owners because it is further away from their dwellings and rear yards than what is otherwise permitted by the Health Department code. The existing hedges along Hawthorne Street also shield the view of the coop from the public streets. Ms. Schwartz provided information indicating that the noise and odors emanating from the coop would be insignificant and would not negatively impact any neighbors.

Chair Harrison called for questions or comments from the public. Radika Eccles, 17 Prospect Terrace was sworn and stated her opposition to the application. She would not support a chicken coop at any location on the property. The Board briefly questioned Ms. Eccles.

The Board discussed the application and determined that the requested variance could not be approved. The property has sufficient space in the rear yard that would comply with zoning and Health Department codes. While the applicant's proposal to position the coop further away from the neighbors rear yards is commendable, the proposed location of the coop would have a negatively impact the front yard on Hawthorne Place, and the applicant's own testimony indicates that there are no negative impacts relating to noise and odors emanating from the coop. On motion by Mr. Fleischer, seconded by Mr. Kenney, the application was denied.

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