

MINUTES OF THE BOARD OF ADJUSTMENT
October 9, 2013

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

ABSENT: Ms. Checca and Mr. Edwards

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 welcomed Mr. Susswein to the Board. On motion by Mr. Whipple, seconded by Mr. Fleischer, the **Minutes of the September 18, 2013** regular meeting were adopted, Mr. Burr abstaining. On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Cullen McVoy, 20 Prospect Terrace**, was adopted, Mr. Burr abstaining:

WHEREAS, Cullen McVoy, 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 at the rear of the dwelling, on property designated as Lot 13 in Block 3108 on the Township Tax Map and located in the R-1 Two-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-45D 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 September 18, 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 August 27, 1993 and drawings of the proposed deck and several and photographs; 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 is somewhat irregular in shape as the rear property line is angled to the side lines and the position of the dwelling. The lot measures 70 feet in width; the lot depth varies from 141.33 feet to 149.18 feet. The lot area measures 10,203 square feet.

2. A deck with maximum dimensions of 18 feet by 18 feet is proposed at the rear of the dwelling. The rear corners of the deck would be cut at angles. The property

survey and drawings depict an existing short retaining wall in the rear yard, near the end of the proposed deck.

3. The depth of the lot as per the zoning ordinance is approximately 145 feet. The permitted rear yard setback for the deck on the property is approximately 36.25 feet, which is equal to 25% of the lot depth. The dwelling has a conforming rear yard setback of 41.9 feet at its closest point. The proposed rear yard setback for the deck is 24 feet to the closest part of the deck and a variance is requested.

4. The Board determined that the requested variance could be approved for the plan as submitted, subject to a condition below. A deck of the size proposed is a typical backyard feature for properties in the neighborhood. The placement of the deck where it is proposed would limit the impact on the historic architecture of the dwelling. The sloping topography of the lot and existing retaining walls are a factor in locating and sizing decking on the property. The deep placement of the dwelling on the lot and the angled rear property line are factors in considering the granting of the variance. The screening provided by the existing trees and landscaping, and the layout of existing open spaces in the rear and side yards that would remain unencumbered in the applicant's plan provide sufficient buffering from adjoining 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 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. No further building or impervious coverage shall occur on the northerly side of the proposed deck; and

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

It was announced that at the request of the applicant, the continuation of the application of **Bank of America, 560 Valley Road** was postponed until the November 20, 2013 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

The application of **Marc & Leslie Kunkin, 1 Kenneth Road** was announced. Marc Kunkin and Larry Quirk, Architect, were sworn. Mr. Quirk described the application. A variance is requested to construct an addition at the rear of the dwelling. The property is a corner lot, located at the intersection of Grove Street and Kenneth Road, and is located in the R-1 One-Family Zone. The property contains a 2-story, single-family dwelling. The driveway on the property is on Grove Street. The minimum permitted front yard setback from the Grove Street property line for the new construction is 30.58, which is based on the average Grove Street front yard setback of the 2 properties to the north of the subject property. The proposed Grove Street setback for the new construction is approximately 25.3 feet and a variance is requested.

Exhibit marked:

A-1 3 photographs of the property and the adjoining Grove Street front yards

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved for a setback of 25 feet from Grove Street for the proposed addition. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved, subject to the following condition:

1. The minimum front yard setback permitted for the addition depicted on the plans is 25 feet from the Grove Street property line.

Chair Harrison was recused. Alan Trembulak, Esq., appeared as attorney for **Prudential New Jersey Properties, 695 Bloomfield Avenue** and elected to continue to wait for the arrival of Mr. Reynolds, who was expected shortly, and who would be the 7th eligible Board member for the use variance application.

The application of **Tim Larkin, 54 Linden Avenue** was announced. Randolph Newman, Esq. appeared as attorney for the applicant who was not present. Thomas Mesuk, Architect, was sworn and stated his qualifications. Mr. Mesuk described the application. Variances are requested to construct additions onto the dwelling. The property is located in the R-1 One-Family Zone and contains a single-family dwelling. There is no garage on the property. The existing driveway is located on the easterly side of the dwelling. The lot measures 41.23 feet in width, 100 feet in depth, and the lot area measures 4,123 square feet. The proposed work includes the construction of a gable onto the front of the existing roof; and on the easterly side, an existing roofed porch would be removed and reconstructed with a lesser width, but it would be extended to align with the rear of the dwelling.

The required front yard setback for new construction on the subject property is 61.5 feet, based on the average setback of the neighboring houses pursuant to the ordinance. The existing dwelling has a nonconforming front yard setback of 20.16 feet at the left front corner and 20.52 feet at the left front corner. The proposed gable at the front of the existing roof would extend the existing front wall of the dwelling upward along this nonconforming front yard setback and a variance is requested. The reconfigured and extended side porch is also forward of the required 61.5 foot front yard setback and also requires the front yard setback variance. The minimum side yard setbacks in the R-1 Zone are 10 feet on one side and 6 feet on the other. The existing dwelling has nonconforming side yard setbacks of 8.1 and 7.84 feet on the easterly side, and 2.18 and 2.69 feet on the westerly side. The proposed gable would be set back 4.29 feet from the westerly side property line, where 6 feet is required, and a variance is requested. The reconfigured and extended side porch would have a side yard setback of 9.14 and 8.53 feet from the easterly side property line where a minimum of 10 feet is required, and requires the side yard setback variance. The lot frontage width of the subject property measures 41.23 feet. The maximum permitted principal structure width is 26.79 feet, or 65% of the lot frontage width. The existing principal structure width is nonconforming, measuring approximately 31 feet. Although the new side porch is narrower than the existing, its extension to the rear of the dwelling can be viewed as adding to the width across the rear half of the first level of the dwelling, and a variance is requested.

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved for the plan as submitted. The required front yard setback is greatly skewed by the very large front yard setback of the adjoining dwelling to the west. The front yard setback of the proposed gable addition is aligned with the front wall of the existing dwelling, and due to the arrangement and position of dwellings in the neighborhood, the front yard setback variance does not negatively impact the streetscape. The side yard setback and building width variances are predicated on the existing conditions of the dwelling, are minor in nature, and do not negatively impact any neighboring property. The proposed modifications to the dwelling improve the aesthetics and usability of the dwelling. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved.

At approximately 8:20 pm, Mr. Reynolds had not yet arrived. Chair Harrison was recused and Mr. Trembulak indicated that he would start his use variance with the 6 eligible Board members present. Vice Chair Whipple announced the application of **Prudential New Jersey Properties, 695 Bloomfield Avenue**. Alan Trembulak, Esq., appeared as attorney for the applicant. Steven Janett, CEO and Executive VP of Prudential New Jersey Properties, was sworn and described the application. He described the number of type and number of employees expected at the proposed office, the typical daily operations, and how the office space would appear to the public and how it would occasionally be used by the public for certain arts and community oriented events. Mr. Reynolds arrived several minutes into Mr. Janett's testimony and was not eligible to vote at this time.

Exhibits marked:

- A-1 Rendering of the proposed interior
- A-2 Rendering of the proposed interior
- A-3 Rendering of the proposed interior

The Board questioned Mr. Janett. No questions were offered from the public. Lynne Oliver, Real Estate Agent with Prudential New Jersey Properties, was sworn. Ms. Oliver described the existing art gallery and other arts oriented activities at the existing Prudential New Jersey Properties office on Church Street. She was one of the creators of the art gallery at the office and has operated the gallery for the last several years. She described how the proposed office space would allow the arts related activities of their office to flourish and be better utilized by the public. The Board questioned Ms. Oliver. No questions were offered from the public.

Richard Keller, Professional Planner, was sworn and stated his qualifications. He described the application. He stated that the variance can be approved and that the site is particularly suited for the proposed use. The real estate office advances the general welfare since it fosters pedestrian traffic and visual interest at the high profile corner location. The traditional real estate advertising in the windows along with the strong art gallery component of the applicant's office both create public interest in the space. The gallery component of the office promotes local artists. The design of the space enhances the aesthetics of the property. The public good is advanced by the interaction with the local arts community, which enhances and promotes the existing arts oriented uses in Montclair. The Board should recognize the distinction between different types of office use, such as realtors or insurance agencies, compared with other offices that do not attract public interest. He referenced a 2001 approval by the Board for a similar use variance on Fairfield Street, in which the Board made the finding that a real estate office use does not violate the intent of Montclair commercial retail zoning and the goals of the Master Plan.

Exhibit marked:

- A-4 Rendering of the proposed interior

The Board questioned Mr. Keller extensively. Mr. Keller reiterated much of his prior testimony. No questions were offered by the public. Vice Chair Whipple called for public comment. Luther Flurry, 14 Madison Avenue, was sworn. He is the Executive Director of the Montclair Business Improvement District (BID). Mr. Flurry stated the BID's support for the application as described by the applicant at the proposed location. The Board questioned Mr. Flurry extensively. Mr. Flurry reiterated his support for the application and provided more information about the BID's short term and long range goals. Mr. Trembulak provided some closing statements. With 6 eligible members in attendance, he requested that the Board's discussion and vote be carried to the

November 20, 2013 meeting. He granted the Board an extension of time, and it was announced that no further notice would be given.

Chair Harrison rejoined the Board. The application of **Barbara Schiavone, 30 Greenview Way** was announced. Calvin Trevenen, Esq. appeared as attorney for the applicant. John Guadagnoli, Architect, was sworn and stated his qualifications. Mr. Guadagnoli described the application and the plans in detail. Variances are requested to construct additions to the front and rear of the dwelling. A new driveway and related site work are also proposed. The existing driveway is on the northerly side of the property and leads to an existing attached garage at the rear of the dwelling. The proposed work includes the construction of an addition to the basement level at the front of the dwelling to accommodate a new attached garage; a one story addition the rear of the dwelling that would eliminate the existing rear facing attached garage; removal of the existing driveway on the northerly side of the house; creating a new driveway leading to the proposed basement level garage at the front of the dwelling that will also require retaining walls and railings; and a new roofed front porch. The Board questioned Mr. Guadagnoli. He stated that the plan restores the rear yard, which is now significantly paved and used for driveway maneuvering. He described the practical difficulty involved with creating a fully conforming garage considering the existing dwelling footprint. He also described the design of the retaining walls and safety railings. No questions were offered from the public.

Exhibit marked:

A-1 Site plan with color added

J. Michael Petry, Professional Planner, was sworn and stated his qualifications. He described the application and the variances requested. By excavating at the front to create the basement level garage, the plan creates a 3-story section along the area of the front façade containing the garage. The average front yard setback of the 4 nearest dwellings, 2 on each side of the subject property, is 34 feet 10 inches, which is the minimum permitted front yard setback for new construction on the property. The existing dwelling has a conforming front yard setback of 38 feet 11 inches at its closest point, which is the northerly front corner of the dwelling. The minimum permitted front yard setback is plotted across the site plan. The basement garage addition would have a front yard setback of 30 feet 6 inches, and a variance is requested. The lot frontage width of the subject property measures 70 feet. The maximum permitted principal structure width is 45.5 feet, or 65% of the lot frontage width. The existing principal structure width is nonconforming, measuring approximately 53.38 feet. The nonconforming building width is implicated in 2 instances on the plan. The proposed front porch and the proposed basement garage addition are contiguous new construction across the front façade, and the total width of such would match the existing nonconforming width. Also, the northerly rear corner of the dwelling would be filled with the proposed one story addition, which extends the nonconforming width across the rear façade. The maximum permitted principal building coverage is 25% of

the lot area. The existing condition is conforming at 20.92%. With the proposed additions, the building coverage increases to 29.55% and a variance is requested

Mr. Petry continued to describe the application and the variances requested. The interior width of the proposed garage measures 16.5 feet. The minimum parking space width in the zoning ordinance is 9 feet. As a result, the proposed garage may not be considered a two-car garage, and since the zoning ordinance and the NJRSIS require at least 2 parking spaces for the dwelling, the plan is interpreted as providing the 2nd parking space on the driveway in the front yard, which would require a variance. He state that the applicant is also seeking a variance to permit an undersized 2 car garage in this case, since the proposed garage could actually fit 2 smaller type vehicles next to each other depending on the types of vehicles used by the home owner. The proposed regrading in the front yard for the new driveway requires retaining walls. The plan indicates a maximum height of 4 feet 4 inches, which for the wall height alone complies with the 4.5 foot maximum permitted height in front yards. The plan also depicts an iron railing at the top of the wall, which the zoning ordinance incudes in the height of the wall, and the combined height of the wall and railing will exceed 4.5 feet in certain areas, requiring a variance.

Exhibits marked:

- A-2 Photographs of dwellings in the neighborhood
- A-3 Map of existing dwellings on Greenview Way depicting building coverage
- A-4 Aerial photograph of the area

The Board questioned Mr. Petry. No questions were offered from the public. Chair Harrison called for public comment. Michele Trevenen, 29 Greenview Way, was sworn and stated her support for the application. Dara Duffy, 34 Greenview Way, was sworn and stated her support for the application. Mr. Trevenen summarized the application. The Board discussed the application. Some Board members expressed concerns about the front yard building coverage and front yard parking variances; however, the majority of the Board determined that the requested variances could be approved for the plan as submitted, subject to the condition listed below. The majority of the Board determined that the variances requested are predicated on existing conditions relating to the existing dimensions and placement of the dwelling on the lot. The majority of the Board also determined that the plan improves the aesthetics of the property and results in a net decrease in impervious coverage. On motion by Mr. Whipple, seconded by Mr. Reynolds, the application was approved, subject to the condition below. The application received 4 affirmative votes, with Chair Harrison, Mr. Fleischer, and Mr. Kenney voting against the motion to approve. The application was approved, subject to the following condition:

1. In the northerly side yard, the pavement from the side door entry stoop to the rear corner of the dwelling shall be removed and this area shall be landscaped.

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