

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**November 20, 2013**

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

ABSENT: Ms. Checca, 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.

On motion by Mr. Whipple, seconded by Mr. Burr, the **Minutes of the October 9, 2013** regular meeting were adopted as modified, Mr. Edwards abstaining.

On motion by Mr. Whipple, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **Tim Larkin, 54 Linden Avenue**, was adopted, Mr. Edwards abstaining:

WHEREAS, Tim Larkin, 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 additions onto the dwelling, on property designated as Lot 26 in Block 4009 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance from Montclair Code Section 347-45B(1) for a front yard setback of less than required; and
2. A variance from Montclair Code Section 347-45C(1) for side yard setbacks of less than required; and
3. A variance from Montclair Code Section 347-45C(4) to permit a greater principal structure width than permitted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 9, 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 July 24, 2013 and plans by Thomas J. Mesuk, Architect, LLC; 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. 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.

2. 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.

3. The required front yard setback for new construction on the subject property is the average of the 3 neighbors fronting on the same side of Linden Avenue, which includes 1 dwelling to the east and 2 dwellings to the west. The average front yard setback of the 3 neighbors is 61.5 feet, which includes the very large front yard setback of 52 Linden Avenue, measuring approximately 148.42 feet. 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.

4. 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 a minimum of 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.

5. 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.

6. The Board 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; 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. Burr, the following resolution memorializing the Board's decision on the application of **Marc & Leslie Kunkin, 1 Kenneth Road**, was adopted, Mr. Edwards abstaining:

WHEREAS, Marc & Leslie Kunkin, 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 at the rear of the dwelling, on property designated as Lot 4 in Block 3706 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the property is a corner lot, located at the intersection of Grove Street and Kenneth Road, and a variance is requested from Montclair Code Section 347-45B(2) for a front yard setback of less than required from the Grove Street front property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 9, 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, May 19, 1993 and plans by Lawrence P. Quirk, Architect, Architect, AIA; and

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

1. 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.

2. An addition comprised of a one story section and a two story section is proposed at the rear of the dwelling. The proposed work complies with zoning, with the exception of the required front yard setback from the Grove Street front property line.

3. The minimum permitted front yard setback for the new construction from the Grove Street property line 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.

4. The Board determined that the requested variance could be approved for the plan as submitted, for a minimum front yard setback of 25 feet from the Grove Street front property line. The proposed setback of the proposed addition from the Grove Street front property line is greater than that of the existing dwelling, and the proposed setback does not negatively impact the streetscape due to the position of the existing nearby dwellings; 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 minimum front yard setback permitted for the addition depicted on the plans is 25 feet from the Grove Street property line; 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 **Barbara Schiavone, 30 Greenview Way**, was adopted as modified, Chair Harrison, Mr. Edwards, and Mr. Kenney abstaining:

WHEREAS, Barbara Schiavone, 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 additions onto the dwelling, on property designated as Lot 33 in Block 4701 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance from Montclair Code Section 347-45A(2) to exceed 2½ stories along a section of the dwelling; and
2. A variance from Montclair Code Section 347-45B(1) for front yard setbacks of less than required; and
3. A variance from Montclair Code Section 347-45C(1) for a northerly side yard setback of less than 10 feet; and
4. A variance from Montclair Code Section 347-45C(4) to exceed the maximum permitted principal structure width; and
5. A variance from Montclair Code Section 347-45E to exceed the maximum permitted principal building lot coverage; and
6. Variances from Montclair Code Section 347-46C to permit a parking space in the front yard, and/or a variance from Montclair Code Section 347-102B to permit a width of less than 9 feet for 2 parking spaces within an attached garage; and
7. A variance from Montclair Code Section 347-27.1F to allow a retaining wall and fence/guard rail combination to exceed 4.5 feet in a front yard; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 9, 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 June 25, 2012, and plans by John Guadagnoli, Architect, PC; 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 two-story single-family dwelling. 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 front property line is at an angle to the dwelling, and measures 70 feet in width. The lot depth varies from 123.72 feet to 133.90 feet. The lot measures 8,931 s.f. in lot area.

2. 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.

3. By excavating at the front to create the basement level garage, the plan creates a 3-story section along this area of the front façade and a variance is requested.

4. 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 basement garage addition would have a front yard setback of 30 feet 6 inches, and a variance is requested.

5. The minimum permitted side yard setbacks are 10 feet on one side and 6 feet on the other. The existing dwelling has a conforming southerly side yard setback of over 7 feet, where a minimum of 6 feet is permitted, and a nonconforming northerly side yard setback of 8.58 feet, where a minimum of 10 feet is permitted. The basement garage addition and the one story addition at the rear of the dwelling are aligned with the northerly side wall of the dwelling, and a variance is requested for a side yard setback of less than 10 feet.

6. 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: across the front façade where the proposed front porch and the proposed basement garage addition are contiguous new construction that matches the existing nonconforming building width; and at the northerly rear corner of the dwelling footprint where a proposed one story addition fills an existing unbuilt area and widens the rear façade to match the existing nonconforming building width, and variances are requested.

7. 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.

8. 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 is not 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. The applicant is simultaneously seeking a variance to permit the 2 undersized parking spaces in the garage, in the event that 2 smaller vehicles fit in the garage with no front yard parking; and

9. The proposed regrading in the front yard for the new driveway requires retaining walls. The retaining walls have a maximum height of 4 feet 4 inches, which complies with the 4.5 foot maximum permitted height in front yards. The iron railing at the top of the retaining walls causes the combined height of the wall and railing to exceed 4.5 feet in certain areas, requiring a variance.

10. Some Board members expressed concerns about the 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; 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 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.

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.

Chair Harrison was briefly 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 7<sup>th</sup> eligible Board member for the use variance application.

Chair Harrison rejoined the Board and announced the application of **Steve & Sandy Goodman, 22 Berkeley Place**. Steve Goodman and Paul Sionas, Architect, were sworn. Mr. Goodman briefly described the application. Mr. Sionas described the property and the variance requested. The property is a corner lot located at the intersection of Berkeley Place and North Mountain Avenue. The property contains a 2½-story single-family dwelling and a detached garage. The driveway on the property is on North Mountain Avenue. The existing front porch that wraps around the northwesterly corner of the dwelling has a roofed area and an unroofed area. The proposed work involves enlarging and altering the porch by squaring off the porch floor at the corner of the porch, extending the porch roof into the corner of the porch with a pergola-type roof in order to cover an area of the porch floor to contain a built-in hot tub, and constructing a one story addition within the footprint of the existing unroofed porch on the North Mountain Avenue side of the dwelling. The minimum permitted front yard setback from each front property line is dictated by the average of the 2 properties on each side of the subject property. The minimum permitted setback from the Berkeley Place front property line is 25.4 feet and a conforming 27.2 feet is proposed for the new construction. The minimum permitted setback from the North Mountain Avenue front property line is 27.1 feet and a nonconforming setback that varies from 17.1 feet to 18.4 feet is proposed for the new construction, and a variance is requested.

Exhibits marked:

- A-1 Site Plan, by Sionas Architecture
- A-2 Existing floor plan and elevations
- A-3 Proposed floor plan and elevations

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. The majority of the new construction is aligned with the existing roofed and unroofed sections of the porch. The expansion of the porch footprint at the corner of the porch is very minor in size. The dwelling would remain in keeping with the size and scale of existing dwellings in the neighborhood, and the application does not have a negative impact on the streetscape or any neighboring property. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved.

The application of **Mark & Stephanie Lurie, 379 North Fullerton Avenue** was announced. Mark Lurie was sworn and described the application. The property is a corner lot located at the intersection of North Fullerton Avenue and Aubrey Road. The property contains a 2½-story single-family dwelling and an attached garage. The driveway on the property is on North Fullerton Avenue. A second floor addition is proposed over an existing one story section of dwelling located on the northerly side of the house. The addition measures 10 feet by 22 feet 2⅛ inches and would contain a master bathroom and a walk-in closet. The minimum permitted setback for the new construction from the North Fullerton Avenue front property line is 25 feet since the only adjoiner to the south has a setback of less than 25 feet. The minimum permitted setback from the Aubrey Road front property line is dictated by the average of the 2 properties adjoining the subject to the east on Aubrey, which is 30.33 feet. The proposed setback from the North Fullerton front property line is 24.48 feet where a minimum of 25 feet is permitted, and the proposed setback from the Aubrey Road front property line is 28.20 feet where a minimum of 30.33 feet is permitted and variances are 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. The addition is located within the existing footprint. The dwelling would remain in keeping with the size and scale of existing dwellings in the neighborhood, and the application does not have a substantial negative impact on the streetscape or any neighboring property. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved.

At approximately 8:00 pm, Mr. Reynolds arrived at the meeting. Chair Harrison was recused. Vice Chair Whipple announced the continuation of the application of **Prudential New Jersey Properties, 695 Bloomfield Avenue**. Alan Trembulak, Esq., appeared as attorney for the applicant. Testimony was completed at the October 9, 2013 and there were now 7 eligible members present to discuss and vote on the application. Mr. Trembulak briefly summarized the application and requested that the Board vote on the application. The Board discussed the application. The majority of the Board determined the proposed real estate sales office on the first floor would function differently than a traditional office use and is more akin to a retail use. Real estate sales offices generally provide attractive window display areas to advertise their properties for sale to pedestrians and attract “walk-in” customers. The dedicated art gallery would generate additional visitors and walk-in traffic and the combined uses are consistent with the intent and purpose of the Zoning Ordinance. This high profile corner location at the western end of the Center Area is particularly suited for the proposed real estate sales office with art gallery component and will provide a vital bridge with the Montclair Art Museum located one block to the east. Based upon the Board’s particular knowledge of local conditions, the within application will not adversely impact the public good. The majority of the Board voted in favor of the application, by a vote of 6 to 1, with Mr. Tsai voting against the application. On motion by Mr. Susswein, seconded by Mr. Burr, the application was approved, subject to the following conditions:

1. Compliance with and satisfaction of all conditions contained in the Planning Board's resolution of January 14, 2013, not inconsistent herewith.
2. The art gallery shall function in the area delineated on Exhibit A-1 and provide a minimum of six new shows per year.
3. The proposed manager's office shall be relocated, so that no office shall be visible from either Bloomfield Avenue or Bell Street.
4. The applicant shall be bound by all representations made on its behalf by its attorney, witnesses, and professionals during the course of the public hearings.
5. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

Mr. Susswein left the meeting. Chair Harrison rejoined the Board and announced the continuation of the application of **Bank of America, 560 Valley Road**. Diane Hickey, Esq. appeared as attorney for the applicant. Variances are requested for wall mounted signage. The application was last before the Board in July 2013 and revised plans have been submitted pursuant to the Board's comments from the July meeting. John Janis, Butler Sign Company, who was previously sworn, described the revised plan. Three wall signs are proposed on the revised plan. On the large brick façade on the northerly side of the building, the replacement of the existing Bank of America wall sign and the new Merrill Lynch wall sign have not been modified from the previous plan. The Merrill Lynch wall sign originally proposed for the front façade above the 2nd floor windows has been eliminated, and has been replaced by a wall sign on a masonry canopy-like projection on the northerly side of the building entrance at grade level.

Exhibit marked:

- A-3 Photographs of the existing signage and photo-simulations of the proposed signage, by Butler Sign Company

The Board questioned Mr. Janis, who answered several questions about the size, design, and locations of the proposed signs. No questions were offered from the public.

Peter Steck, Professional Planner, who was previously sworn, described the revised application and the variances requested. The subject property is improved with a concrete and brick building occupied by Bank of America on the first floor and Merrill Lynch on the second floor. The property is located in the Upper Montclair Historic Business District and was the subject of a report issued by the Montclair Historic Preservation Commission dated November 15, 2013. By resolution of the Board of Adjustment dated September 22, 1993, the Board granted variance relief to permit wall-mounted business identification signs on the westerly and northerly exterior walls of the

building. The building is set back a substantial distance from the front street line, contains a large footprint with unusual architectural style and was originally built for a single tenant. Based upon the unusual characteristics of the building and its location on the property combined with its dual use, the strict application of the sign regulations results in peculiar and exceptional practical difficulties and exceptional and undue hardship upon the applicant. Based upon the unique physical features of the site, the proposed number, size and location of signs is appropriate and necessary in order to allow the public to safely and adequately identify the two uses.

The Board questioned Mr. Steck. No questions were offered from the public. The Board discussed the application and determined that the requested variances could be approved for the revised plan. Based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact the public good. Approval of the three wall-mounted signs is consistent with the intent and purpose of the zoning ordinance which seeks to avoid visual clutter. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved, subject to the following conditions:

1. The background color of the "Merrill Lynch Wealth Management" sign with logo (Sign 2) shall match the background color of the existing "Bank of America" sign located over the front entrance facing Valley Road.
2. The applicant shall comply with paragraph 2 of the recommendations contained in the Montclair Historic Preservation Commission report dated November 15, 2013.
3. The applicant shall be bound by all representations made on its behalf by its attorney, witnesses, and professionals during the course of the public hearings.
4. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

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