

MINUTES OF THE BOARD OF ADJUSTMENT
January 18, 2012

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

ABSENT: Ms. Talley

Mr. Charreun called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act. Mr. Harrison welcomed Ms. Checca, Mr. Tsai, Mr. Reynolds, and Mr. Kenney to the Board.

On motion by Mr. Fleischer, seconded by Mr. Whipple, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining. On motion by Mr. Fleischer, seconded by Mr. Burr, Mr. Whipple was elected as the new Vice Chair, Mr. Whipple abstaining. On motion by Mr. Fleischer, seconded by Mr. Whipple, Ms. Talley was re-elected as Secretary and Mr. Charreun was re-elected as Assistant Secretary.

On motion by Mr. Fleischer, seconded by Mr. Burr, the **Minutes of the December 14, 2011** regular meeting were adopted as modified, Ms. Checca, Mr. Tsai, Mr. Reynolds, and Mr. Kenney abstaining. It was announced that at the request of the applicant, the application of **360 Cycling Studio, LLC, 4 Lackawanna Plaza** was postponed until the February 15, 2012 meeting of the Board. No further notice would be given.

Mr. Edwards arrived at the meeting. The application of **Michael Dyer, 67 Greenwood Avenue** was called. Mr. Sullivan stated that the application is for an appeal of the decision of a zoning administrative officer and provided some information about the Board's role in this type of application. David Owen, Esq., appeared as attorney for the applicant and described the application. Michael Dyer, property owner was sworn.

Through direct questioning by Mr. Owen, Mr. Dyer provided the information below about the property and the application. The property contains two apartments and three additional residential units with separate entrances and cooking and kitchen facilities that the applicant identifies as 3 roomer units known as Units 1, 3 and 5. An inspection report dated November 1, 2011 prepared by Patrick Ciancitto, Housing/Code Enforcement Inspector, alleged violations of the Zoning Ordinance and ordered the property owner to dismantle three illegal apartments on the first, second and third floors, identified as Units 1, 3 and 5. In July 1979, the applicant purchased the property along with William Rust and took sole ownership in March 1986. In 1979, the applicant undertook substantial rehabilitation of the property installing two kitchens.

Exhibits marked:

- A-1 Inspection Report, January 26, 1979, by Zoning and Housing Officer
- A-2 Copies of Building Permits issued in 1979
- A-3 Building Permit Record Cards maintained by the Construction Official from 1940 through 2006
- A-4 Application for electrical installation for 4 electrical meters
- A-5 Copy of placard for lathing approval, referencing smoke detectors requirement for roomers
- A-6 Hand-written Inspection Report, November 30, 1979, by Zoning and Housing Officer
- A-7 Letter, dated January 30, 1980 by Zoning and Housing Officer
- A-8 Handwritten note of Township Attorney Joseph Dickson, Jr., dated March 27, 1980
- A-9 Letter, dated March 28, 1980 by Zoning and Housing Officer
- A-10 Letter, dated August 27, 1980 by Zoning and Housing Officer
- A-11 Handwritten notes of William Rust dated September 4 and 5, 1980
- A-12 Copies of zoning ordinance amendments regarding the definition of "Family": Ordinances 79-45 and 80-31

Mr. Owen summarized the applicant's position and stated that based on the records and the unique circumstances, the property should be entitled to be a 2 family dwelling with 3 roomer units. Mr. Owen also stated that based on the dates of the ordinance amendments pertaining to the definition of the term "Family", each roomer unit should also be entitled to some form of a kitchen and/or cooking facility.

The Board questioned the applicant. The applicant testified that cooking and kitchen facilities were added to the three residential units subsequent to the adoption of Ordinance 80-31 prohibiting same. The applicant testified that rent from the three residential units has been paid directly to the property owner who does not reside at the property, rather than the family occupant(s) as required by Ordinance. Mr. Owen stated that since 3 the roomer units being provided are not being furnished by the property owner, the presence of more than 2 roomer units in the dwelling would not constitute a rooming house in terms of zoning, based on the definition of "rooming house" in the zoning ordinance. No questions or comments were offered from the public.

The Board discussed the application. Ordinance 79-45 adopted November 27, 1979 defined "a family" as "one or more persons living together as a single, nonprofit housekeeping unit whose relationship is of a permanent and domestic character, together with not more than two boarders or roomers who are tenants of the family occupant and whose rent shall be paid to the family occupant." Ordinance 80-31 adopted May 15, 1980 amended the aforementioned definition to provide "Accommodations for boarders or roomers shall not include cooking or kitchen facilities." The property was historically treated as a two family with two kitchens as evidenced by the 1978, 1989 and 2006 property record cards maintained by the Tax

Assessor. Consequently, the current use of the three units containing kitchen facilities violates the Zoning Ordinance.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the Board unanimously affirmed the action of Patrick Ciancitto, Housing/Code Enforcement Inspector, dated November 1, 2011. The Board noted that the three roomer units could be brought into conformance with the Zoning Ordinance by the roomers occupying those units paying rent to a tenant of one of the two apartments with no more than two roomers paying rent to any one tenant and removing the cooking and kitchen facilities.

Mr. Fleischer left the meeting and Mr. Tsai became the 7th eligible Board member. The application of **Frank & Marcia Haimbach, Park Street** was called. Calvin Trevenen, Esq., appeared as attorney for the applicant and described the application. Paul Sionas, Architect and Professional Planner, was sworn and provided testimony as a licensed Architect. A new single family dwelling is proposed on an existing vacant lot that does not abut a public street. The subject property is identified as lot 38 in block 2804 on the Tax map and is located within an existing "cul-de-sac" style cluster of properties at the north end of Park Street between Macopin Avenue and Mt. Hebron Road that are accessed by a private shared driveway from Park Street. The private shared driveway is located on a separate property identified as lot 33 in block 2804 and acts as the "roadway" access for the lots within the cul-de-sac, but it is not a public street. The applicants also own the property that adjoins the subject property to the east, which is identified as lot 39 in block 2804, contains an existing dwelling with address of 580 Park Street, and is one of the existing dwellings within the cul-de-sac. 43.50 feet of the easterly property line of the subject property abuts the property that contains the shared driveway.

Mr. Sionas described the plans for the proposed dwelling. The footprint of the dwelling would measure 3,311 square feet. Because the subject property has no frontage on a public street, there is no street line. As a result, there is no front yard by definition. The rear and side yards are typically assigned as a result of orienting to the front yard. The proposed dwelling is positioned to face the shared driveway lot to the east. The plans treat the easterly property line that abuts the shared driveway lot like a front property line, the northerly and southerly property lines like side property lines, and the westerly property line like a rear property line. This orientation is sensible and is in keeping with typical zoning. The proposed principal building coverage is 16 percent of the lot area, where a maximum of 25 percent is permitted in the R-1 Zone. The proposed dwelling would also comply with the maximum height allowed in the zone, and would also comply with the minimum amount of on-site parking spaces required by the N.J.R.S.I.S. The development of the property would require compliance with N.J.D.E.P. regulations since there is a stream located along the rear property line. The Montclair Fire Department has recommended that a residential sprinkler system be included within the proposed home, which could be accomplished.

Exhibits marked:

- A-1 Memorandum of Agreement, dated April 4, 1949, recorded in the Essex County Register, indicating agreements between the owners of the lots in the cul-de-sac to share and utilize lot 33 as a shared driveway and to maintain lot 34 as open space
- A-2 Set of Architectural Plans, by Sionas Architecture, PC, revised to 12/07/11

Deputy Fire Chief John Herrmann was sworn. He stated his qualifications as an expert in Fire Department practices and procedures including emergency equipment and vehicles. Through direct questioning by Mr. Trevenen, Deputy Fire Chief John Herrmann provided the following information. He has visited the site and reviewed the plans. He described the procedures utilized by the Fire Department and emergency personnel when using fire fighting and emergency equipment in a setting such as that of the subject property. Although the property would be accessible to fire fighting and emergency equipment, the Fire Department recommends a residential sprinkler system as an additional aid in fire suppression. The Board questioned Deputy Chief Herrmann. He stated that the residential sprinkler system is not a substitute for Fire Department equipment. A residential sprinkler system can have various effects on a fire, including extinguishing a fire or slowing its progression. Chair Harrison called for questions from the public.

Judith Polonfsky, 584 Park Street, asked if the existing design of the private shared driveway would restrict Fire Department and other emergency vehicles from accessing the property. Deputy Chief Herrmann stated that it is not always necessary for the vehicles to access the property. They need access to a fire hydrant that is nearby enough and they need to get their personnel onto the site, which can be accomplished.

Dennis Madej, 578 Park Street, asked if the location of the lot furthest back on the private road would compromise the timing involved in fighting a fire. Deputy Chief Herrmann provided a similar answer as above and also stated that a residential sprinkler system would assist with suppression during any delays.

Charles Culley, 11 Macopin Avenue, asked if a fire at the rear of the proposed dwelling would be more difficult to access. Deputy Chief Herrmann stated that a fire at the rear of the home would be accessed by going inside the building through the front.

John Werner, 28 Nassau Road, asked if the Fire Department could fight a fire that has spread into the trees in the rear yard. Deputy Chief Herrmann stated that the equipment used by the Fire Department is capable of fighting a fire in the trees.

Nick Panza, 11 Patton Place, asked if the recommendation for a residential sprinkler system is related to the remote location of the dwelling to the Park Street and an anticipated delay in accessing a fire. Deputy Chief Herrmann stated that he would not expect a significant delay and that the Fire Department can and has dealt with a variety of factors in terms of fire location and access.

The Board questioned Deputy Chief Herrmann. He described the staging and coordination that occurs between the Fire Department and other emergency responders. He also explained the procedure of using a pump truck. He also stated that the length that the subject property abuts the lot with the private driveway is not a concern for the Fire Department. Mr. Sionas also provided answers to questions. The distance from the proposed home to the attached garage on the existing home located at 584 Park Street is 11.5 feet. He also described the proposed relocation of the driveway for 584 Park Street, which presently encroaches over the property line onto the subject property.

Mr. Sionas, who was already sworn, provided testimony as a Professional Planner. The subject property is located in the R-1 One Family Zone, is roughly square in shape, and measures 20,471.39 square feet in area. N.J.S.A. 40:55D-35 of the Municipal Land Use Law requires that a lot for a new building abut a public street. N.J.S.A. 40:55D-36 of the Municipal Land Use Law provides the criteria for the Board's review under N.J.S.A. 40:55D-35, which requires that the Board determine that adequate access is provided for firefighting equipment, ambulances, and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map or on a general circulation plan element of the municipal master plan. The existing driveway that has existed since approximately 1924 has already been shown to be adequate in a similar application to the Board from 2005. The 16 foot width of the shared driveway provides sufficient access for all vehicles.

The Montclair zoning ordinance, under §347-20, also requires that a building lot have frontage on a public street. The property has no frontage on a public street and the applicant is seeking a variance. The variance can be justified by the practical difficulty imposed on the applicant only being accessible via the existing private driveway. The proposed style and scale of the dwelling would be in keeping with zoning standards and with the existing dwellings in the neighborhood. The Board questioned Mr. Sionas. The brook location was determined by a licensed surveyor. No further study of the wetlands delineation has been undertaken yet and no application to the N.J.D.E.P. has been submitted at this time. They have not proposed having the driveway lot dedicated as a public street. Chair Harrison called for questions from the public.

Judith Polonfsky, 584 Park Street, asked about the edge of the brook and whether that takes into account the changes that occur to the brook during large amounts of rain fall. Chair Harrison called for public comment.

Charles Culley, 11 Macopin Avenue, was sworn and stated his opposition to the application. He stated that the applicant did not provide sufficient notice. Mr Culley made several comments and stated concerns regarding the environmental impact of the proposal and whether proper emergency access could be provide to the property. Mr. Trevenen questioned Mr. Culley. Mr. Sullivan stated that the applicant submitted proof

that the public notice required by law was accomplished within the time required. The Board also briefly questioned Mr. Culley.

John Werner, 28 Nassau Road, was sworn and stated his opposition to the application. He stated that Mr. Sionas had already indicated that the applicants' existing residence at 580 Park Street, which abuts the subject property, is currently for sale. Mr. Sullivan indicated that this information is not legally relevant to the application.

Mark Wyville, 15 Macopin Avenue, was sworn and stated his opposition to the application. He stated that the neighbor's were not given enough time to prepare for this hearing.

Exhibits marked:

- O-1 Written comments in opposition to the application
- O-2 Photograph of the rear of the subject property, as seen from Mr. Wyville's rear yard, with a red shaded area to show the area of the subject property
- O-3 2 photographs of the rear of the subject property, as seen from Mr. Wyville's rear yard, 1 photograph of the existing vacant lot, and 1 with a red shaded area to show the an outline of the proposed dwelling

Dennis Madej, 578 Park Street, was sworn and stated his opposition to the application. He requested an extension so that the other property owners in the cul-de-sac can examine their rights relating to the lot containing the shared driveway, which is controlled by a covenant between the property owners, which could have an effect on the relief being requested by the applicant. Mr. Trevenen questioned Mr. Madej.

Mr. Sullivan stated that the topic of the shared driveway lot has caused an important issue to arise regarding sufficient notice and jurisdiction. Based on a 1992 case known as *Brower Development Corp. v. Planning Board of Clinton, 255 N.J. Super. 262*. Since the lot containing the shared driveway is integral to the application, the applicant will be required to complete public notice for a new public hearing date to property owners within 200 feet lot the subject property and the lot containing the shared driveway as well. The application will start again at a subsequent hearing following the revised notice. Chair Harrison announced that the application would continue at the February 15, 2012 regular meeting of the Board and that the applicant will be required to complete a revised public notice for that meeting date.

The Board took a short recess.

The application of **Matthew & Rachel Poggie, 545 Park Street** was called. The applicant, and Joseph Bruno, Architect, were sworn. Mr. Bruno described the application. Variances are requested to enlarge the 2nd floor of the dwelling and construct a new deck. The property is a corner lot at the intersection of Park Street and

Alexander Avenue and is located in the R-1 One-Family Zone. The lot measures 65 feet in frontage width along Park Street and measures 8,602.70 square feet in lot area. The lot contains a single family dwelling with an attached garage that has a driveway onto Alexander Avenue. The proposal is to enlarge the second floor of the dwelling with 2 additions and to construct a new deck at the rear of the dwelling.

Mr. Bruno described the Alexander Avenue front yard setback variance. As a corner lot, the property has 2 front yards: one on Park Street and another on Alexander Avenue. On the southerly side of the dwelling, which is the Alexander Avenue front yard, an addition is proposed to the second floor above an existing first floor section. This addition measures approximately 8 feet 2 inches by 17 feet and enlarges a bedroom. The plans indicate that the average front yard setback of the 2 nearest dwellings on Alexander Avenue to the east of the subject property is 32.62 feet, which is the required Alexander Avenue front yard setback for new construction on the subject property. The existing dwelling has a nonconforming Alexander Avenue front yard setback of 14.95. The addition described above is aligned with this area of the dwelling and requires a variance for an Alexander Avenue front yard setback of less than required. Mr. Bruno described the dwelling width variance. The existing dwelling width is nonconforming. The maximum dwelling width permitted is 41.38 feet, which is 65% of the 65-foot lot frontage width, and the existing dwelling measures 42.5 feet in width across the existing continuous first floor width. The proposed second floor addition on the southerly side of the dwelling would enlarge the width of the second floor to 42.5 feet and a variance is requested.

Mr. Bruno described the side yard setback variance. At the rear of the dwelling, an addition is proposed to the second floor of the dwelling. This addition measures 18 feet by 15 feet and contains part of a bathroom and a bedroom with sleeping loft in the attic section. The minimum permitted side yard setback from the northerly side property line is 6 feet. The dwelling has an existing nonconforming side yard setback of 5.73 feet at rear corner of deck. The second floor addition described above is aligned with the existing nonconforming northerly side yard setback of the first floor below it, and the second floor addition extends a bit further than the first floor below it. A new deck is also proposed at the rear of the dwelling, which would also follow the nonconforming northerly side yard setback line. Since the dwelling and the deck are positioned at a slight angle to the northerly side property line, the plan indicates that the proposed northerly side yard setback gets slightly reduced from 5.73 feet to 5.60 feet at the rear of corner of the new deck. The addition described above and the deck require a variance for a side yard setback of less than 6 feet.

Mr. Bruno described the variance for exceeding 2½ stories. Due to the sloping grade at the rear of the property, the basement of the existing dwelling comes out of the ground to the extent that existing first floor in that area of the dwelling is more than 6 feet above grade. Based on this, the basement in that area of the dwelling is counted as a story above grade. Due to this existing condition, from the perspective of the rear and partially from each side, the existing basement is story #1, the existing first floor is story

#2, and the existing second floor is story #3. Any half story above that would be an additional half-story atop story #3.

Exhibits marked:

- A-1 Photographs of the subject property
- A-2 Photographs of other properties in the neighborhood

The Board did not have any questions. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved. The Alexander Avenue front yard setback, dwelling width, and side yard setback variances are all existing conditions with which the applicant is either working within the parameters of the dwelling footprint or following the lines of the existing dwelling. The variance for exceeding 2½ stories is caused by the existing topography at the rear of the property. The design and scale of the dwelling would not have a negative impact on nearby properties or the streetscape. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved.

The application of **C.J. & Jaime Duffy, 19 Capron Lane**, was called. C.J. Duffy, property owner, and Robert Adamo, Architect, were sworn. Mr. Adamo described the application. Variances are requested to construct a second floor onto the dwelling. The property is located at the end of a cul-de-sac street in the R-0(a) One Family Zone. The lot measures 18,522 square feet in lot area with 35.92 feet of curved frontage. The lot contains a one-story single family dwelling with an attached garage. The proposal is to add a second floor to the dwelling with varying rooflines. At the front elevation, the largest portion of the proposed second floor addition is located at the center; and the remainder the proposed second floor addition is mostly under a new sloping roof with dormers. At the rear elevation, the addition is designed with more vertical walls than the front elevation. The maximum height of the dwelling from the lowest grade near the garage to highest ridgeline would be 33 feet 4 inches, which is under the 35 foot maximum permitted height.

Mr. Adamo described the dwelling width variance. The existing dwelling width is nonconforming. Due to existing lot configuration being located at the end of a cul-de-sac street, the lot has limited street frontage. The maximum dwelling width permitted is 23.35 feet, which is 65% of the 35.92-foot lot frontage width, and the existing dwelling measures 85 feet in width across the existing continuous first floor width. The proposed second floor addition would extend the full width of the approximately 85 foot wide existing footprint and a variance is requested. Mr. Adamo described the rear yard setback variance. The rear property line is the northerly property line. The existing dwelling footprint is nonconforming and has a minimum rear yard setback of 22.1 feet at the westerly rear corner of the dwelling. The rear yard setback improves towards the east as the dwelling is positioned at an angle to the rear property line. An existing nonconforming wood deck is located within the rear yard setback and would be removed. The proposed addition on the footprint of the dwelling requires a variance for

a rear yard setback of less than required. The existing wood deck in the rear yard is being replaced with an at grade patio which does not require a variance.

The attached garage would be reconfigured to be at the front elevation of the redesigned dwelling. As a result, a significant amount of asphalt pavement is being removed along the southerly property line and from the easterly side yard, although additional paving will be added to a currently unpaved area at the front of the new garage for the reconfigured driveway. The edge of the driveway will be at least 1 foot from the side property line.

Exhibits marked:

- A-1 Elevation drawings by ES Design Studio, LLC, revised to 12-19-2011, with color added
- A-2 3 photographs of the existing dwelling

The Board questioned the applicant. Mr. Duffy stated that he has discussed his plans with his neighbors. Mr. Duffy stated that the 2 homes on each side of his property are taller than his existing ranch style dwelling. Mr. Adamo described the design of the rear corner of the home closest to the rear property line. Mr. Adamo also stated that large existing trees along the rear property line help to mitigate the effect of the rear setback variance on the properties abutting the rear property line. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved. The lot has limited street frontage due to the existing lot being located at the end of a cul-de-sac street, which makes it impossible for the applicant to comply with the limitation on dwelling width. The proposed second floor addition does not expand outward from the existing footprint, and is pulled inward from the footprint at important locations closest to the front and rear property lines. The design and scale of the dwelling of the dwelling would not have a negative impact on nearby properties or the streetscape. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved.

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