

MINUTES OF THE BOARD OF ADJUSTMENT
February 15, 2012

PRESENT: Chair Harrison, Mr. Burr, Ms. Checca, Mr. Kenney, Ms. Holloway, Mr. Tsai; also, Mr. Sullivan, Esq., Ms. Talley, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Edwards, Mr. Fleischer, Mr. Reynolds, and Vice Chair Whipple

Assistant Secretary 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. Burr, seconded by Mr. Kenney, the **Minutes of the January 18, 2012** regular meeting were adopted as modified.

On motion by Mr. Burr, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Michael Dyer, 67 Greenwood Avenue** was adopted:

WHEREAS, Michael Dyer, as owner, did file an appeal with the Board of Adjustment of the Township of Montclair pursuant to N.J.S.A. 40:55D-70a, 72a and Montclair Code Sections 202-18A, 202-36 of the decision of an administrative officer alleging violations of the Zoning Ordinance relating to illegal apartments on property designated as Lot 13 in Block 3212 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on January 18, 2012, at which time the Board carefully reviewed the testimony presented as well as the evidence submitted and established the following findings:

1. The subject property is improved with a three-story structure which currently contains two apartments and three additional residential units with separate entrances and cooking and kitchen facilities.

2. In July 1979, the applicant purchased the property along with William Rust and took sole ownership in March 1986.

3. 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 (Units 1, 3 and 5).

4. Section 347-47 provides the following principal uses are permitted in the R-2 Two-Family Zone: (a) one-family detached dwellings; (b) two-family detached dwellings; (c) municipal facilities, subject to site plan review by the Planning Board. In pertinent part, 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."

5. 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. In addition, the applicant testified that rent from the three residential units had been paid directly to the owner rather than the family occupant as required by Ordinance.

6. In 1979, the applicant undertook substantial rehabilitation of the property installing two kitchens. (Building Permits Exhibit A-2; Permit Record Cards maintained by the Construction Official Exhibit A-3; Handwritten note of Township Attorney Joseph Dickson, Jr., dated March 27, 1980 Exhibit A-8; Handwritten notes of William Rust dated September 4 and 5, 1980 Exhibit A-11). 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 violates the Zoning Ordinance. The Board, however, noted that the three 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.

NOW, THEREFORE, BE IT RESOLVED, based upon the foregoing, the Board of Adjustment of the Township of Montclair, does hereby affirm the determination of Patrick Ciancitto, Housing/Code Enforcement Inspector, dated November 1, 2011.

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. Burr, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **Matthew & Rachel Poggie, 545 Park Street** was adopted:

WHEREAS, Matthew & Rachel Poggie, owners of property at 545 Park Street, did make 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 to the 2nd floor of the dwelling and to construct a deck, on property designated as Lot 32 in Block 2805 on the Township tax map and located in the R-1 One Family Zone; and

WHEREAS, the applicant requested the following variances:

1. A variance from §347-45B(2) for an Alexander Avenue front yard setback of less than required.
2. A variance from §347-45C(4)(a) to expand the width of the 2nd floor beyond the maximum permitted width.
3. A variance from §347-45C(2) for a side yard setback of less than 6 feet from the northerly side property line
4. A variance from §347-45A(2) to exceed 2½ stories; and

WHEREAS, the applicant submitted a property survey dated August 22, 2011 and plans prepared by Joseph J. Bruno, AIA revised to December 19, 2011; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 18, 2012 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 Board carefully reviewed the testimony presented and established the following findings:

1. 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.
2. 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.
3. 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.

4. 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.

5. 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.

6. A variance is requested 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.

7. The Board 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; and

WHEREAS, the Board concluded, based upon the foregoing findings, 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 concluded, based upon the foregoing findings, 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 application of Matthew & Rachel Poggie, 545 Park Street is approved; and

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. Burr, seconded by Mr. Kenney, the following resolution memorializing the Board's decision on the application of **C.J. & Jaime Duffy, 19 Capron Lane** was adopted as modified:

WHEREAS, C.J. & Jaime Duffy, owners of property at 19 Capron Lane, did make 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 to the 2nd floor of the dwelling and to construct a deck, on property designated as Lot 32 in Block 2805 on the Township tax map and located in the R-1 One Family Zone; and

WHEREAS, the applicant requested the following variances from §347-39C:

1. A variance to permit a greater width than permitted for the proposed second floor; and
2. A variance to permit a rear yard setback of less than required; and

WHEREAS, the applicant submitted a property survey dated December 7, 2011 and plans prepared by ES Design Studio, LLC, revised to December 19, 2011; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 18, 2012 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 Board carefully reviewed the testimony presented and established the following findings:

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. The Board 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; and

WHEREAS, the Board concluded, based upon the foregoing findings, 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 concluded, based upon the foregoing findings, 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 application of C.J. & Jaime Duffy, 19 Capron Lane is approved; and

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

It was announced that at the request of the applicant, the **Frank & Marcia Haimbach, Park Street** was postponed indefinitely. The applicant did not request a specific meeting date at this time. The Board was granted whatever extension of time deemed necessary. The applicant would be required to complete public notice for any future meeting date.

It was announced that at the request of the applicants, the selection of a meeting date to continue the application of **Omnipoint Communications, Inc., 153 Park Street**, and the selection of a meeting date to commence the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue**, were each postponed to the May 16, 2012 regular meeting of the Board. The Board was granted an extension of time on each application.

It was announced that at the request of the applicant, the application of **360 Cycling Studio, LLC, 4 Lackawanna Plaza** was postponed until the March 21, 2012 meeting of the Board. No further notice would be given.

Assistant Secretary Charreun indicated that the Essex County Board of Chosen Freeholders had scheduled a meeting for June 20, 2012 in the Council Chamber which conflicts with the Board's regularly scheduled meeting for June. After some discussion, the Board changed the June 2012 regular meeting date to June 13, 2012. Public notice of the new date would be provided in accordance with the Open Public Meetings Act.

Chair Harrison indicated that he would be recused from only application being heard at this meeting due to a professional conflict and left the meeting. With Vice Chair Whipple also being recused for the same reason and not present as a result, Mr. Burr was selected by the Board as temporary Chair for the application of **Valley National Bank, 529 and 539 Valley Road**. The applicant is applying for a use variance and site plan approval. Richard Toniolo, Esq, appeared as attorney for the application. Mr. Toniolo recognized that there were only 5 Board members present, and stated that the applicant would commence the application at this hearing. Mr. Toniolo described the application and called Charles Huha, First Vice President Facilities Director for Valley National Bank, who was sworn.

Through direct questioning by Mr. Toniolo, Mr. Huha provided the following information. The property consists of two lots that the bank leases from two different owners. 529 Valley Road contains an existing one-story brick drive-through bank and two parking spaces located behind the building. The drive-through includes a canopy covering three drive-through aisles. 539 Valley Road contains a two-story office building with a parking area for 12 cars in the front yard. A bank occupies part of the first floor at 539 Valley Road. A 7.5 foot by 7 foot extension of the drive-through roof canopy is proposed. One of the columns of the new canopy roof would contain underground pneumatic tube to connect the drive-through window at 529 Valley Road to the bank branch at 539 Valley Road. The bank wishes to remove employees from the teller window at the drive through facility and relocate those individuals elsewhere in their organization.

The Board questioned the applicant. Mr. Huha stated that the bank had approached the owner of 539 Valley Road to discuss the proposed site modifications recommended by the Township Planner in a report dated August 3, 2011. Mr. Huha indicated that the property owner was willing to allow the bank to make several of the changes to the site requested by the Planner, but the owner is unwilling to allow changes to the site that would reduce the number of parking spaces. The Architect for the applicant had prepared a plan to show these revisions to the site to the property owner. That plan was not submitted to the Township. The Board raised questions about the legality of the existing parking lot overhanging into the public right of way or the lack of ADA compliance. Mr. Toniolo requested an adjournment of the application to the March 21, 2012 meeting of the Board, so that the applicant can revisit some of the issues being raised and also prepare a revised plan to be provided to the Board. The Board was granted an extension of time. No further notice would be required, unless a revised plan creates new variances not covered by the notice already provided.

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