

MINUTES OF THE BOARD OF ADJUSTMENT
February 17, 2010

PRESENT: Chair Harrison, Mr. Burr, Ms. Cockey, Ms. English, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Vice Chair Fleischer, Ms. Holloway, Mr. Kenney, and Ms. Kadus, Secretary

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. Whipple, seconded by Ms. Cockey, the **Minutes of the October 21, 2009** regular meeting were adopted as modified. On motion by Mr. Whipple, seconded by Mr. Burr, the **Minutes of the November 18, 2009** regular meeting were adopted, Ms. Cockey and Ms. English abstaining. On motion by Mr. Susswein, seconded by Ms. Cockey, the **Minutes of the December 9, 2009** special meeting were adopted as modified, Ms. Cockey, Ms. English, and Mr. Whipple abstaining. On motion by Mr. Whipple, seconded by Ms. Cockey, the following Resolution memorializing the Board's decision on the application of **Carlos Cubeddu, 293 Park Street** was adopted, Mr. Whipple abstaining:

WHEREAS, Carlos Cubeddu, as owner, 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 from **Montclair Code Section 347-46A(2)(a)** for a northerly side yard setback less than permitted for a proposed detached garage in the rear yard of the property on property designated as Lot 23 in Block 2505 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey dated July 19, 2000, and a plot plan, floor plan, and elevations, prepared by JGF Architects, LLC dated December 17, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 20, 2010 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 subject property is an interior lot located in the R-1 One-Family Zone and contains a 2½-story single-family dwelling. The property measures 105.25 feet in frontage width and 21,037 square feet in area. The property survey depicts the location of a previously existing detached two-car garage in the rear yard that was recently

demolished. The demolition of the detached garage as well as some preliminary construction of a new detached garage has occurred without the required construction permits and zoning review from the Township.

2. The applicant is seeking a variance to reconstruct a detached garage on the existing footings and foundation. The proposed garage will have the same dimensions and height as the recently demolished garage. The footprint of the detached garage measures 20 feet 3 inches wide by 20 feet 3 inches long.

3. The garage has a nonconforming side yard setback of 3.20 and 4.05 feet from the northerly side property line, as measured from the front and rear corners of the garage, respectively. A variance is requested in that a northerly side yard setback of not less than 6 feet is required and side yard setbacks of 3.20 and 4.05 feet are proposed.

4. The Board determined that the requested variance could be granted. The garage is simply being replaced and there northerly side yard setback is remaining the same. The proposed northerly side yard setback is also in keeping with or greater than that of similar properties in the neighborhood. Subject to the condition imposed below, the application would have no substantial detriment to the public good; 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 of **Carlos Cubeddu** is hereby approved, subject to the following condition:

1. All roof leaders on the proposed garage shall be directed away from the northerly side property line.

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 recused. Mr. Sullivan stated that there has been a request by Martin Newmark, Esq., representing **David & Carrie Greenbaum, 91 Lloyd Road** for a pending application, for the Board to subpoena the 8 exhibits from the original hearing date in 2002 for an application for 99 Lloyd Road. Mr. Sullivan provided a brief explanation, and on motion by Mr. Whipple, seconded by Ms. Cockey, the Board requested that a subpoena be sent.

Chair Harrison rejoined the Board and there was a brief discussion about the requested postponement of the application of **Wallwood Gardens, Inc, 400 Orange Road**. The continuation of the application was postponed until May 19, 2010 at the request of the applicant. The applicant would be required to complete a full public notice for that date. Mr. Sullivan stated that he would have a discussion with the attorney for the applicant and confirm that the Board is granted an extension of time to that date.

Chair Harrison called the variance application of **Thomas Buerkle & Barbara Rosen, 53 Brookfield Road**. Barbara Rosen and Edmundo Lopez, Architect, were sworn. Ms. Rosen gave a brief description of the existing and proposed front porch and her property. Mr. Lopez described the property and the proposed porch in more detail. A one-story addition is proposed to extend the existing enclosed front porch into the westerly side yard of the property. The porch addition measures 6 feet 5 inches in width and 19 feet 1½ inches in length. The required front setback for the porch addition is 34.3 feet, which is based on the average front setback of the 3 nearest dwellings, 2 to the right and only 1 to the left, which is on the corner of Brookfield Road and Edgemont Road. The existing dwelling has a nonconforming front yard setback of 30.9 feet measured to the existing porch. The addition is aligned with the existing porch and front wall of the dwelling and would also have a front yard setback of 30.9 foot front yard setback. A variance is requested in that a minimum front yard setback of 34.3 feet is required. A side yard setback of not less than 6 feet is required from the westerly side property line. The dwelling is positioned at an angle to the westerly side property line. The proposed porch addition extends 4¾ inches into the required 6 foot setback at the front corner of the porch, and 2 feet 4½ inches into the required 6 foot setback at the rear corner of the porch. A variance is requested in that a side yard setback of less than 6 feet is proposed from the westerly side property line.

The Board questioned the applicant and Mr. Lopez. There were no questions or comments from the public. The Board discussed the application determined that the requested variances could be granted. The porch addition is aligned with the existing porch and front wall of the dwelling and has the same front yard setback. The proposed front yard setback is also in keeping with the properties to the east. The angled westerly side property line causes the side yard setback of the addition to be reduced towards the rear. The addition is appropriately sized and positioned and the larger front yard setback of the dwelling on the adjoining lot to the west reduces the impact of the proposed westerly side yard setback. On motion by Ms. English, seconded by Mr. Burr the application was approved.

Chair Harrison called the variance application of **Marc Zuluaga, 25 Bellaire Drive**. The applicant was sworn and described the application. The property is a corner lot at the intersection of Bellaire Drive and Central Avenue located in the R-1 One-Family Zone. The property is irregularly shaped, measures 2,575 square feet in lot area, and contains a 2½ story single-family dwelling. The required front yard setback for new construction on the property from the Bellaire Drive front property line is 25 feet, since the average front yard setback of the 2 nearest dwellings on the same side of Bellaire Drive is less than 25 feet. A second floor addition is proposed on the easterly side of the dwelling above an existing one-story section of the dwelling. The addition will be aligned with the first floor below it, and would be set back 13.24 feet from the Bellaire Drive front property line at its closest point. A variance is requested in that a front yard setback of not less than 25 feet from Bellaire Place is required. An existing vestibule at the front entrance facing Bellaire Drive is to be removed, and a roofed front porch, measuring 15 feet 1 inch by 6 feet 10⅝ inches is proposed. The porch would be set back 8 feet from the Bellaire Drive front property line at its closest point. A variance is requested in that a front yard setback of not less than 25 feet from Bellaire Place is required.

The Central Avenue frontage measures 27.8 feet, and a maximum principal structure width of 18.07 feet, or 65 percent of the frontage, is permitted. The existing dwelling is already nonconforming in this regard, measuring approximately 21.5 feet at its widest point. The proposed roofed front porch would extend this width by approximately 2 feet to 23.5 feet, and a variance is requested. The minimum rear yard setback required from the westerly property line on the subject property is 25 feet, since 30 percent of the 83-foot lot depth is less than 25 feet. The existing dwelling is positioned on the westerly side of the lot, has a nonconforming rear yard setback, and a significant portion of the existing dwelling is already located within the 25-foot rear setback. A portion of the proposed roofed front porch would be located closer than 25 feet from the rear property line, and a variance is requested. The lot area measures 2,575 square feet. A maximum principal building coverage of 25 percent of lot area is permitted. The existing dwelling has a nonconforming principal building coverage of 28.1 percent including the landings and exterior stairways. The proposed front porch addition adds approximately 69 square feet of building coverage, increasing the coverage to 30.8 percent, and a variance is requested.

The Board had no questions for the applicant. There were no questions or comments from the public. The Board discussed the application determined that the requested variances could be granted. The variances are caused by irregular shape of the property, the relatively small lot size, and the position of the dwelling on the lot. The proposed second floor addition and front porch improve the living and recreational space of the dwelling and would enhance the appearance of the dwelling without having a negative impact on an adjoining property or the streetscape. The proposed improvements to the dwelling represent a benefit to the property and the neighborhood. On motion by Ms. English, seconded by Mr. Burr the application was approved.

Chair Harrison called the continuation of the application of **Falad Properties, LLC, 39-41 North Fullerton Avenue** and **David A. Faloni, Sr. and Molly Cotton, 30 Forest Street** and **Cofal Properties, LLC, 32 Forest Street and 43 North Fullerton Avenue**. Ms. Cockey was recused and left the meeting. There were 5 eligible Board members present. David Owen, Esq. appeared as attorney for the applicants and stated that he has 3 witnesses tonight and that they would request that the vote be postponed until there are 7 eligible members present.

David Faloni, 150 Avon Drive, Essex Fells, who was still under oath, was recalled. He described photographs they recently discovered taken in 1958 that depict the rear yard of 43 North Fullerton Avenue and the parking of vehicles that occurred in the rear yard at that time.

Marked into evidence were:

- A-19a-d Historic photographs of 43 and 45 North Fullerton Avenue from 1958
- A-20 Site Plan, sheet SP-2, color added, prepared by Sionas Architecture, P.C., dated January 8, 2010

The Board questioned Mr. Faloni. He stated that the existing gravel parking area behind 39-41 North Fullerton Avenue was constructed without proper approvals and before the zoning change in 2005 due to the overwhelming need and demand of some of their tenants who need parking. Chair Harrison called for questions from the public. Neal O'Shea, 24 Forest Street, asked if the tenants who park in the parking lot are charged an additional fee beyond their rent.

Paul Sionas, Architect, who was still under oath, was recalled. Revised site plan drawings, dated January 8, 2010 were submitted for the application. The proposed major subdivision is unchanged. The parking layout on the proposed merged lot containing 43 and 45 North Fullerton Avenue has been redesigned. Spaces 2 through 11 are located along the rear property line of the lot. The parking spaces, the access aisle, and the setbacks fully comply with the dimensional requirements. Spaces 12 through 23 are located behind the 3-family house. These parking spaces, the access aisle, and the setbacks also fully comply with the dimensional requirements. This set of spaces includes 5 pairs of "tandem" parking spaces, where one space is located directly in front of another space, so at least 5 spaces are not directly accessible from the aisle without driving through another parking space. Space 22 is not a tandem space, but is accessible by driving through a striped area delineating the path of the driveway connecting the North Fullerton properties.

The parking area on the proposed enlarged property of 39-41 North Fullerton Avenue has also been redesigned. The 21 parking spaces, the access aisle, and the setbacks also fully comply with the dimensional requirements. A walkway and small stairway is depicted leading from the rear of the building at 39-41 North Fullerton

Avenue to the parking area on that property. He described the requirements contained in The New Jersey Residential Site Improvement Standards, N.J.A.C. 5:21-4.16 Parking Lots. With the current revisions to the plan, a variance is requested in that the percentage of impervious surface coverage on the proposed merged lot containing 43 and 45 North Fullerton Avenue would be at 73.1 percent of the lot area, where a maximum of 70 percent is permitted. The proposed enlarged lot containing 39-41 North Fullerton Avenue would have a conforming impervious lot coverage of 67.5 percent.

Marked into evidence were:

- A-21 Soil Erosion Plan, sheet SP-3, color added, prepared by Sionas Architecture, P.C., dated January 8, 2010
- A-22 Landscape and Lighting Plan, sheet SP-4, color added, prepared by Sionas Architecture, P.C., dated January 8, 2010
- A-23 Site Details/Zoning Chart, sheet SP-1, color added, prepared by Sionas Architecture, P.C., dated January 8, 2010
- A-24 Enlarged portion of the Landscape and Lighting Plan, sheet SP-4, color added

The Board questioned Mr. Sionas. No questions were offered from the public.

Mr. Owen called J. Michael Petry, who was sworn and gave his qualifications as a Professional Engineer. He described the Drainage Report he prepared, dated October 16, 2009, which was previously submitted, and was distributed to the Board Engineer and Township Engineer. He stated that the drainage system described in the report will decrease the amount of storm water runoff from the site and improve existing conditions. He stated that the report relates to the originally submitted site plan, dated April 23, 2009 and not the current revised plan and described the modifications to the drainage system design that could easily accommodate the revised plan. He addressed Board Engineer's comment letter, dated January 30, 2010, and stated that they could comply with all of the recommendations. The stormwater overflow pipe can be re-routed along the driveway of 30 Forest Street in order to save the large tree between 32 Forest Street and 30 Forest Street without negatively affecting the drainage system. The Board questioned the Mr. Petry. No questions were offered by the public.

Chair Harrison called for public comment. Neal O'Shea, 24 Forest Street, was sworn, made several statements, and voiced his opposition to the application.

Marked into evidence was:

- O-1 Two-page exhibit, prepared by Neal O'Shea, 24 Forest Street, consisting of a timeline, written information, and photographs

The Board questioned Mr. O'Shea. Mr. Owen also questioned Mr. O'Shea, who answered questions about his parking area and the recorded easement that he utilizes

to access his rear yard. Mr. O'Shea also stated that only he and his family park in his rear yard.

Marked into evidence was:

A-25 Photograph of rear yard parking area of 24 Forest Street, taken from the roof of 39-41 No. Fullerton Avenue

Jim Wallace, 39 North Fullerton Avenue, was sworn, and stated his support for the application.

Jennifer Jones, 45 North Fullerton Avenue, was sworn, and stated her support for the application.

Fernando Salles, 45 North Fullerton Avenue, was sworn, and stated his support for the application.

James Quigley, 45 North Fullerton Avenue, was sworn, and stated his support for the application.

Steve Clutterbuck, 39 North Fullerton Avenue was sworn, and stated his support for the application.

Ilana Shugayev, 45 North Fullerton Avenue, was sworn, and stated her support for the application.

Mr. Owen stated that he would like to make a closing statement and have the Board vote at an upcoming meeting. Chair Harrison announced that the public hearing was closed and the matter would be continued at the March 17, 2010 regular meeting of the Board. No further public notice would be given. The Board was granted an extension of time on the application. On motion by Mr. Whipple, seconded by Ms. English the meeting was adjourned.