

MINUTES OF THE BOARD OF ADJUSTMENT
May 18, 2011

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

ABSENT: Ms. Cockey, and Ms. Talley, 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 Mr. Susswein, the **Minutes of the April 13, 2011** regular meeting were adopted as modified, Ms. Holloway abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Micha Levi & Aya Izraely-Levi, 134 Watchung Avenue** was adopted, Mr. Fleischer and Ms. Holloway abstaining:

WHEREAS, Micha Levi & Aya Izraely-Levi, 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 side yard setback less than permitted associated with a proposed detached garage in the rear yard of the property designated as Lot 36 in Block 3410 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey dated September 18, 2008, photographs, and plans prepared by Derek Cox Architecture and landscape Design, LLC, dated February 14, 2011; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on April 13, 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 property contains a single-family dwelling and a small detached garage that is in poor condition. A new detached garage is proposed that would replace the existing detached garage in the same area of the rear yard of the property. The minimum permitted side yard and rear yard setbacks for detached garages in the R-1 Zone is 6 feet.

2. The existing detached garage is rectangular in shape, measures approximately 10.5 feet wide by 18 feet long, and has a nonconforming westerly side yard setback.

3. The property survey indicates an existing 2.4 foot setback on the westerly side of the garage at its closest point. It was not clear to the Board whether the 2.4 feet was the setback of the garage to the westerly side property line, or the setback of the garage to an existing fence located between the garage and the westerly side property line as it is depicted on the property survey. The existing garage is approximately 17.5 feet from the rear property line.

4. The new detached garage would have a larger overall footprint with an irregular shape, measuring 21 feet 9 inches at the widest and 29 feet 9 inches at the longest. The increase in size provides a second vehicle parking space, plus a storage area at the rear portion only at the left side of the garage. A conforming rear yard setback of 7.5 feet is proposed at the closest point and a conforming height of 12 feet 9 inches is proposed.

5. The westerly side wall of the new garage has an 18 foot length and is proposed to be constructed along the same nonconforming westerly side yard setback as the existing detached garage described above.

6. The enlargement to the footprint of the garage to provide the additional parking space and storage area would be located further inward on the property and would conform to the setback requirements.

7. The majority of the Board determined that the requested side yard setback variance could be approved if the westerly side yard setback was increased to 3 feet as described below, and subject to further conditions below. A side yard setback of 3 feet would allow for proper maintenance of the garage and property within the side yard of the garage.

8. The westerly side wall of the new garage is approximately the same length as the westerly side wall of the existing detached garage. Permitting a westerly side yard setback of 3 feet, subject to conditions, would be in keeping with the lawfully existing nonconformity; 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 conditions:

1. The garage shall be at least 3 feet away from both the westerly side property line and the existing fence located between the garage and the westerly side property line.
2. Not more than 20 feet in length of the proposed garage shall be located within 6 feet of the westerly line.
3. Storm water collected from the roof of the new garage shall be directed away from the westerly 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. Susswein, the following Resolution memorializing the Board's decision on the application of **Mr. & Mrs. William Lenchinsky, 23 Woodmont Road** was adopted, Ms. Holloway abstaining:

WHEREAS, Mr. & Mrs. William Lenchinsky, 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 associated with a proposed addition to the dwelling to create a second floor and attic on property designated as Lot 70 in Block 4702 on the Township Tax Map and located in the R-0(a) One Family Zone; and

WHEREAS, the applicant requested variances from **Montclair Code Section 347-39A** to exceed 2½ stories and from **Montclair Code Section 347-39B(2)(a)** for a front yard setback less than required; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on April 13, 2011 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 November 26, 2010 and elevation drawings and plans prepared by George A. Held, AIA & Associates, dated March 3, 2011; and

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

1. The property contains a single-family dwelling with attached garage at grade level on the southerly side of the dwelling. The lot is irregularly shaped and measures a total of 152.85 feet in frontage width and 19,156 square feet in lot area.

2. An addition is proposed to create a new second floor and attic over a large portion of the existing dwelling.

3. The proposed addition to the dwelling would result in a 3½ story design, which requires a variance. The existing basement/ground floor on the southerly side of the dwelling where the attached garage exists is included as a story above grade since the first floor of the dwelling in that area of the property is more than 6 feet above grade. The existing first floor of the dwelling is the second story. The proposed second floor is the third story. The proposed attic is a half-story.

4. The required front yard setback for new construction on the subject property is 55.01 feet based on the average front yard setback of the 2 dwellings to the north on Woodmont Road. The properties to the south on Woodmont Road are located in a different zone and are not included in the average front yard setback calculation.

5. The existing dwelling has a nonconforming front yard setback that varies due to the angled position of the dwelling. The closest point of the front yard setback of the existing dwelling is 35.1 feet, which is located at the southerly side of the dwelling. The minimum front yard setback for the proposed addition is 38.29 feet and a variance is requested.

6. The variance to exceed 2½ stories can be granted based on the topography of the lot, the compliant overall height of the dwelling, and the specific design. The proposed second floor and attic addition is set away a sufficient distance from the grade level attached garage at the southerly side of the dwelling, and does not produce the visual effect of massing intended to be reduced by the ordinance.

7. The front yard setback variance can also be granted. The proposed front yard setback is consistent with that of the existing dwelling and the other properties in the neighborhood. The adjoining lot to the north has an unusually large front yard setback of approximately 76 feet, which skews the required front yard setback for the subject property; 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.

David Owen Esq. appeared as attorney for the continuation of the application of **John S. DiGeronimo, Richard DiGeronimo, and Angelo J. Benfante, 170-172 Pine Street**. Mr. Fleischer and Ms. English had not yet arrived to the meeting, and Mr. Owen elected to wait until there were at least 7 eligible members present to continue the application.

The application of **Walter Kos, 21 Forest Street** was called. William Ewing, Esq., appeared as attorney for the applicant. Peter Steck, Professional Planner, was sworn and described the application. A few minutes into Mr. Steck's testimony, Mr. Fleischer and Ms. English arrived at the meeting. Mr. Steck repeated the testimony and Mr. Fleischer and Ms. English were both eligible to vote on the application and 2nd alternate Mr. Edwards was therefore not eligible.

Mr. Steck stated that the property is located in the R-2 Two-Family Zone and contains a two-family dwelling. The lot measures 56 feet in width and 150 feet in lot depth. Variances are requested for a roofed porch that was constructed onto the southerly side of the dwelling. The porch is not yet completed. On July 29, 2010, the Construction Official stopped the work since no permits had been issued. To obtain permits and complete the work on the porch, 2 variances are required from zoning. The northerly side yard of the property has a minimum side yard setback of 9.2 feet; therefore the southerly side setback must be at least 10 feet. A southerly side yard setback of approximately 4.1 feet is proposed and a variance is requested. The maximum permitted dwelling width is limited to 36.4 feet, which is 65 percent of the lot width of 56 feet. With the proposed porch, which adds approximately 6.5 feet to the dwelling width, the dwelling measures approximately 43.3 feet, or 78 percent of the lot width, and a variance is requested.

The requested variances can be granted because the benefits outweigh the detriments. The plan is in keeping with the Master Plan goal of maintaining the Township's older housing stock. The aesthetic improvement of adding an architectural feature such as a roofed porch to the dwelling is beneficial to neighborhood. The porch is limited to one story and is open with no walls. The dwelling on the adjacent lot to the south is located approximately 18 feet away from the edge of the proposed porch which is a sufficient distance so as not to produce a negative effect on that property or the streetscape.

Exhibit marked:

A-1 Planner's Exhibit Dated April 17, 2011, 4 pages consisting of maps, photos, and drawings

The Board questioned the witness. Mr. Steck stated that if the dwelling on the adjacent lot to the south was developed to its maximum capacity towards the north without variances, a minimum of 14 feet of open space would still exist between that dwelling and the proposed porch. Mr. Steck also answered several questions on the potential alternatives in the design of the porch that could have been more compliant with zoning. There were no questions or comments from the public. Mr. Ewing had no further witnesses. The Board discussed the application thoroughly. Four (4) of the 7 voting Board members decided to approve the application based on the testimony provided and subject to conditions. A motion by Mr. Susswein to approve the application subject to the condition below was seconded by Ms. English, and also supported by Ms. Holloway and Mr. Burr. Chair Harrison, Mr. Fleischer, and Mr. Whipple were not in favor of the motion. The application was approved with 4 affirmative votes subject to the following condition:

1. The approval is limited to a one-story open porch without walls as depicted on the plans and exhibits submitted.

The continuation of the application of **John S. DiGeronimo, Richard DiGeronimo, and Angelo J. Benfante, 170-172 Pine Street** was called. David Owen Esq. appeared as attorney for the applicant. Mr. Owen stated that Sheet LD-1 Lighting Design Plan, dated August 25, 2011 should have been marked as an Exhibit at the last meeting. He also stated that revised plans and engineering information has been submitted and will be described further by the witnesses.

Exhibits marked:

A-15 Sheet LD-1 Lighting Design Plan, dated 8/25/10

Derek Cox, Architect, was recalled and was still under oath. Mr. Cox described the revised plans. Sheet SP-1 Site Plan, SC-1 Streetscape, A-2 Proposed Second Floor, Roof & Loft, Sheet A-3 Proposed North & East Elevation, and A-4 Proposed South & West Elevation have been revised and are dated May 1, 2011. The 4 central air conditioning units would be removed from the ground area behind the building and would be relocated to the rear portion of the attic within the redesigned roof. An additional planting bed would be located at the previous location for the central air conditioning units. The walkway in that area has also been extended. The trash enclosure area has been redesigned to be longer. The 8 trash receptacles within the enclosure would now be located in a single row to allow room for access through the enclosure area. The overall height of the building would be brought down from 34 feet 9 inches to 32 feet. The roof design will remain a hip and ridge roof with one gable dormer at the front, although the previously proposed large cross gables on both sides of the roof have been eliminated. The roof/loft plan has been modified due to the removal of the large gable ends on both sides of the roof and the new location of the central air conditioning units on the roof. No new variances are required with the revisions. None of the previous variances are eliminated by the revisions, although some have been reduced in scope.

The Board questioned the witness. Mr. Cox further described the details of the revised plans. No questions were offered from the public. Mr. Owen recalled Jonathan Bilow, Professional Engineer, who was still under oath. Mr. Bilow described the revisions to the grading and drainage plan for the project. The Board Engineer's most recent review letter requested a redesign of the Grading & Drainage Plan in keeping with the Township Engineering Department's request. The drywells have been relocated from the driveway area to the rear yard in the center of the parking area. The drainage report was also revised as a result of the changes. There were no questions from the Board or the public.

Exhibits marked:

A-16 Sheet GD-1 Grading & Drainage Plan, revised 5/15/11

A-17 Drainage Report, revised 5/16/11

Mr. Owen called Peter Steck, Professional Planner, who was sworn and described the application, the revised plans, and the variances requested. With respect to the variance to permit the expansion of non-conforming use, there are purposes of zoning and special reasons in support of such variance. The project promotes public safety and the general welfare insofar as it rehabilitates and modernizes the existing apartments and provides a code-compliant parking area. The project also promotes a desirable visual environment given the improvements to the exterior building and site. The project also promotes the efficient use of land given the renovations to an existing building and parking area. Moreover, the variance does not cause any substantial detriment to the public good: The four-family dwelling has been in existence since 1912. There is no increase in density. The number of bedrooms per apartment remains the

same. There is a relatively minor expansion of the building towards the rear. The proposed roofline is similar to the existing roofline. The expansion does not cause the on-site parking requirement to change. The upgrades to the building and exterior site in fact benefit the neighborhood. As well, the variance does not cause any substantial impairment of the intent and purpose of the master plan or zoning ordinance. The master plan reexamination report states with respect to housing goals the importance of maintaining a range of housing types and maintaining the condition of the older housing stock, and it encourages the maintenance and preservation of the housing stock. Overall, the improvements enhance the property, and the code-compliant parking area is in keeping with the requirements of the zoning ordinance. Finally, the expansion is relatively minor but provides much better living space and exterior site.

With respect to the bulk variances for building front yard setback, building side yard setback, principal structure\building width, building coverage, parking space setback, driveway setback, trash enclosure setback, and no enclosed parking spaces, those purposes of zoning that support the variance for expansion of a non-conforming use, also support the bulk variances under N.J.S.A. 40:55D-70c(2). These bulk variances are integral to the overall project. Moreover, they do not cause any substantial detriment to the public good: The existing front yard setback is 6.2 feet, and the proposed front yard setback is 6.2 feet. The existing side yard setback is 2.7 feet, and the proposed side yard setback is 2.7 feet. The existing principal structure width is 36.5 feet, and the proposed principal structure width is 36.5 feet. The existing building coverage is 25.5%, and the proposed building coverage is a slightly greater 31.3% and necessitated by the improvements. The one parking space that is set back less than 4 feet from the southerly property line adjoins the industrial building in the C-2 Zone and is buffered with a wood fence. The existing and extended driveway that are set back less than 1 foot from the northerly property line are also buffered with a wood fence. The trash enclosure is also surrounded by a wood fence. The property has never had enclosed parking spaces, and to enclose same would likely cause a reduction in the number and size of on-site parking spaces. Enclosing parking spaces within a garage building or the principal building would increase building coverage and reduce landscaping. As well, these variances do not cause any substantial impairment of the intent and purpose of the master plan or the zoning ordinance for the reasons set forth above in connection with the variance for expansion of a non-conforming use. The benefits of these bulk variances substantially outweigh any detriment.

The bulk variances for building front yard setback, building side yard setback, principal structure\building width, building coverage, parking space setback, driveway setback, and no enclosed parking spaces are also justified under N.J.S.A. 40:55D-70c(1) by reason of the existing four-family dwelling lawfully existing on the property, which because of its configuration and placement on the property gives rise to peculiar and exceptional practical difficulties or exceptional and undue hardship, which justifies variance relief. The analysis of the negative criteria applies. The exception from the site plan ordinance to permit the new driveway to be less than eighteen feet wide is justified given the existing building lawfully existing on the property, the existing narrowness of

the driveway, and the low traffic volume to be generated by the four apartments. The literal enforcement of the driveway width standard is impracticable or will exact undue hardship given the characteristic of the property, and the exception is reasonable and within the general purpose and intent of the site plan ordinance.

Exhibits marked:

A-18 Planner's Exhibit Dated May 18, 2011, 4 pages consisting of maps, photos, and drawings

The Board questioned the witness. Mr. Steck addressed questions regarding affordable housing, the Master Plan, and the application. There were no questions or comments offered from the public. Mr. Owen summarized the application. The Board discussed the application. The Board concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the bulk 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. The Board also concluded that with respect to the bulk variances that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment, and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance. On motion by Mr. Fleischer, seconded by Mr. Burr, the application for use and bulk variances and final site plan approval was approved, subject to the following conditions:

1. The applicant shall adhere to the conditions set forth within the Board Engineer's report dated March 21, 2011; and
2. The applicant shall submit a revised drawing GD-1 that is consistent with revised drawing SP-1.

The Board took a short recess.

The application of **David Adleman, 115 Buckingham Road** was called. The applicant was sworn and described the application for a variance associated with a proposed one-story addition at the rear of the dwelling. The lot measures 50 feet in width by 175 feet in depth, and a total of 8,750 square feet in lot area. The westerly side wall of the existing dwelling has a nonconforming side yard setback of 3.61 feet. The proposed addition is aligned with the westerly side wall of the dwelling and would also have a side yard setback of 3.61 feet from the westerly side property line and a variance is requested. The proposed addition would extend the westerly side wall of the dwelling by 16 feet 6 inches. The addition is 16 feet 5 inches wide and would contain part of an expanded kitchen, an office, and bathroom. The Board briefly questioned the applicant. No questions or comments were offered from the public. The Board discussed the

application. The Board determined that the requested variance could be approved for the plan as submitted. The addition is modest in size and the lot is relatively narrow. The proposed addition is limited to one-story and is aligned with the existing side wall of the dwelling and would not negatively impact any adjoining property or the streetscape. On motion by Mr. Whipple, seconded by Ms. English, the application was approved.

The application of **Colette Dunworth, 13 Stonehenge Road** was called. The applicant and Paul Sionas, Architect, were sworn. Ms. Dunworth briefly described the application for a roofed porch at the front of the dwelling. Mr. Sionas also described the application. The property is located in the R-1 One Family Zone and contains a single-family dwelling with an attached garage located at the front wall within the footprint of the dwelling. The lot has a curved front property line, measures approximately 59 feet in width across the front setback of the dwelling, and approximately 7,840 square feet in total lot area. A roofed porch is proposed at the southerly front corner of the dwelling which will extend from an existing smaller roofed front entry way located at the center of the front wall. The porch addition measures 11 feet 5 inches wide by 7 feet 10 inches long and would fill in the southerly front corner of the dwelling within the extended lines of the front wall and the southerly side wall. The floor of the proposed porch is very low to the ground to match the existing landing at the front entrance. The average front yard setback of the 4 nearest dwellings, to the 2 dwellings each side of the subject property, is 29.4 feet, which is the required front yard setback for new construction on the subject property. The existing dwelling has a nonconforming front yard setback that varies due to the curved front property line and the design of the existing dwelling. The existing nonconforming front yard setback is a minimum of 23 feet at the existing roofed entry way, and a maximum of 28 feet 2 inches at the southerly front corner of the dwelling where the proposed roofed porch would be located.

The Board questioned the applicant. Mr. Sionas described the characteristics of the property that distinguish it from most of the other lots on Stonehenge Road to warrant the granting of the variance. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved for the plan as submitted. The placement of dwelling on the lot, coupled with the curved front property line, sufficiently distinguishes the subject property from the other properties on Stonehenge Road that also do not have front porches. The proposed porch essentially fills in a notch in the dwelling footprint and also provides an aesthetic benefit to the property and the neighborhood. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

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