

MINUTES OF THE BOARD OF ADJUSTMENT
June 16, 2010

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

ABSENT: Mr. Kenney

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. English, the **Minutes of the April 21, 2010** regular meeting were adopted as modified, Mr. Susswein abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the **Minutes of the May 19, 2010** regular meeting were adopted as modified, Ms. Cockey, Ms. English, and Ms. Holloway abstaining. On motion by Mr. Whipple, seconded by Ms. English, the **Minutes of the May 26, 2010** special meeting were adopted as modified, Ms. Cockey and Ms. Holloway abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Hui Zhang, 8 Skytop Terrace** was adopted, Ms. Cockey, Ms. English, and Ms. Holloway abstaining:

WHEREAS, Hui Zhang, as owner, 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 the proposed construction of a one story addition and deck at the rear of the dwelling on property designated as Lot 127 in Block 3802 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested variances from **Montclair Code Section 347-45D** for a rear yard setback less than required, and from **Montclair Code Section 347-45E** for a principal building coverage exceeding 25 percent of the lot area; and

WHEREAS, the applicant submitted a property survey dated June 30, 2005 and drawings of the proposed addition and deck prepared by the applicant; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 19, 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 is located in the R-1 One-Family Zone and contains a single family dwelling. The lot is irregularly shaped and measures 6,759 square feet in lot area. A one-story addition and deck is proposed at the rear of the dwelling.

2. The required rear yard setback for the property is 29.6 feet, or 30 percent of the lot depth of 98.67 feet. The rear setback follows the angled rear property line. A portion of the proposed addition and the deck will extend into the required rear yard setback. The addition would have a rear setback of approximately 26 feet at its closest, and the deck and deck stairs would have a rear setback of approximately 21 feet at its closest. A variance is requested for a rear yard setback less than required.

3. The existing principal structure coverage is conforming at 22 percent of the lot area. With proposed addition and deck, the principal structure coverage increase to 26.4 percent of the lot area. A variance is requested for a principal building coverage exceeding 25 percent of the lot area.

4. The Board determined that the requested variances could be granted. The unusual shape and shallow depth of the lot and the placement of the existing dwelling on the lot significantly limit the ability of the applicant to construct conforming additions to the dwelling. The Board also noted that due to the curvature of Skytop Terrace and the varied lot depths, the rear yard area of the subject property is aligned with the front yard area of the adjoining property to the north on Skytop Terrace, and that that the applicant should plant and maintain evergreen shrubbery between the proposed addition and the northerly side property line.

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 of **Hui Zhang** is hereby approved, subject to the following condition:

1. At least 2 evergreen shrubs shall be planted and maintained between the proposed addition and the northerly side 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 **Rhonda and David Crichlow, 16 Greenview Way** was adopted, Ms. Cockey, Ms. English, and Ms. Holloway abstaining:

WHEREAS, Rhonda and David Crichlow, as owners, 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 proposed additions to the dwelling on property designated as Lot 27 in Block 4701 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested variances from **Montclair Code Section 347-45C4(a)** to exceed the permitted principal structure width for an addition to the second floor of the dwelling, and from **Montclair Code Section 347-45D** for a rear yard setback less than required for one-story additions at the sides and rear of the dwelling; and

WHEREAS, the applicant submitted a property survey dated October 10, 2001, and drawings prepared by Sionas Architecture, dated February 17, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 19, 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 is located in the R-1 One-Family Zone and contains a single family dwelling with an attached garage. The lot measures 85 feet in frontage width and 10,116 square feet in lot area.

2. One story additions are proposed along the sides of the of the existing rear section of the dwelling. The required rear yard setback for new construction on the property is 36.47 feet, which is 30 percent of the lot depth of 121.58 feet. The existing dwelling has a nonconforming rear yard setback, and the proposed one-story additions would be aligned with the existing rear wall of the dwelling. A variance is requested for rear yard setbacks of 28.22 feet and 27.95 feet for the proposed additions where 36.47 feet is required.

3. A second floor addition is proposed above an existing one-story section located at the southerly side and front of the dwelling. The width of the first floor and footprint of the dwelling is currently nonconforming. The lot is 85 feet wide at the front. A

dwelling width of 55.25 feet is permitted, which is 65 percent of lot frontage width. The first floor and footprint of the dwelling measures 58.55 feet in width, which is 68.8 percent of the lot frontage width. The addition to the second floor would add 11 feet and 1.5 inches of width to the second floor of the dwelling, so that the width of the second floor of the dwelling would be aligned with the first floor and footprint at 58.55 feet. A variance is requested to exceed the permitted principal structure width for the addition to the second floor of the dwelling.

4. The Board determined that the requested variances could be granted. The proposed one-story additions along the sides of the existing rear section of the dwelling would be aligned with the existing rear wall of the dwelling and do not negatively impact the remaining open rear yard area. The expanded width of the second floor resulting from the proposed second floor addition does not cause the dwelling to be out of scale or out of character with the existing dwellings in the neighborhood; 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 of **Rhonda and David Crichlow** 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.

Prior to hearing any applications, the Board took a brief recess while awaiting the arrival of Chair Harrison who had indicated he would soon arrive. Chair Harrison arrived at 7:55 pm and the meeting resumed. The continuation of the application of **Focus Physical Therapy and Wellness, 552 Valley Road** was called. Calvin Trevenen, Esq. appeared as attorney for the applicant. Jonathan Perlstein, Architect who was still under oath, described the revised plans dated June 7, 2010. In response to concerns raised by the Board at the previous meeting, the handicapped accessible lift has been removed from the southerly side of the front porch and a small addition, with a footprint of approximately 20 square feet, containing a handicapped accessible lift is proposed on the southerly side the addition proposed at the rear of the building. The paver walk at

the front of the building has been reduced in size since the lift is no longer provided at the side of the porch. The paver walk at the rear entrance has been slightly enlarged by approximately 20 square feet to provide access from the handicapped accessible parking space in the rear yard to an at-grade doorway entrance for the handicapped accessible lift at the basement level. The lift enclosure then provides access to the first floor of the building, which is the second story at the rear of the sloping lot. The proposed lift enclosure addition conforms to all zoning requirements. The revised plans would reduce the impervious coverage from the previously proposed conforming 77 percent of the lot area and would remain less than the 80 percent maximum allowed. The proposed changes to the site plan would be included in any grading and drainage plans to be reviewed by Board Engineer.

The Board questioned Mr. Perlstein. He addressed questions pertaining to the driveway, fencing, and lighting. He also stated that the revised plan would be in keeping with the Historic Preservation Commission approval. No questions or comments were offered from the public. Mr. Trevenen summarized the application. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved, subject to the following conditions:

1. The applicant shall obtain the right to utilize eleven off-site parking spaces.
2. All employees (except handicapped) shall park off site.
3. Compliance with the conditions contained in the Historic Preservation Commission Resolution and Certificate of Appropriateness No. HPC 2010-6 dated May 20, 2010 to the extent said conditions remain relevant.
4. The applicant shall comply with the conditions contained in the Board Engineer's review memorandum dated March 27, 2010 and shall submit the revised plans to the Board Engineer and comply with any additional requirements.
5. This approval is limited to medical office use not exceeding 250 square feet at the rear of the first floor of the building.
6. The proposed fence shall conform to the requirements of the Zoning Ordinance.
7. All outstanding property taxes shall be paid prior to the issuance of a construction permit.
8. The applicant shall be responsible for payment of all escrow charges incurred in connection with the review of this matter.

The application of **David and Azita Staubach, 12 Argyle Road** was called. Azita Staubach was sworn and described the application. A variance is requested associated with the proposed construction of a vestibule and landing at the front entrance of the dwelling. The lot is located at the end of a cul-de-sac, is irregularly shaped, and

measures 7,700 square feet in lot area. The property received a variance for the setback of an addition and deck on the easterly side of the dwelling in 2000. The existing dwelling currently exceeds the allowable principal structure coverage on the site, occupying approximately 27.8 percent of the lot including the existing low-lying front landing and step that measures approximately 30 square feet. A vestibule measuring approximately 16.2 square feet, and a new low-lying landing and step measuring approximately 24 square feet, are proposed at the front entrance of the dwelling. With the new construction, the principal structure coverage slightly increases to 27.9 percent, and a variance is requested. The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be granted. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

The application of **William L. Rose, 476 Grove Street** was called. Calvin Trevenen, Esq. appeared as attorney for the applicant and described the application for variances associated with proposed additions to the nonconforming two family dwelling and to construct a new detached garage. William Rose, 19 La Salle Road, was sworn and described the property and the application. He stated that he took ownership of the property on December 14, 2009. The dwelling on the property is vacant and is in poor condition. The front porch that had existed on the dwelling and detached garage that existed in the rear yard were demolished in January 2010, although by that time, the porch had already completely collapsed and the garage was significantly dilapidated and collapsing as well. On April 1, 2010, the Director of the Planning Department informed the applicant's attorney that although the dwelling had been vacant for an unknown period of time and the interior had undergone some removal of fixtures, that the nonconforming use of the two family dwelling had not been abandoned.

Exhibits marked:

- A-1 December 14, 2009 deed
- A-2 August 8, 1994 deed
- A-3 Seller's Property Condition Disclosure Statement
- A-4 Planning Department letter dated September 18, 2009
- A-5 10 Photographs of the exterior of the dwelling
- A-6 6 Photographs of the interior of the dwelling
- A-7 1973 Tax Assessor record
- A-8 1978 Tax Assessor record
- A-9 Copy of index cards listing construction permit activity from 1970 to 1982

The Board questioned Mr. Rose. He stated that the existing interior fixtures were removed due to their poor condition and that he purchased the two family dwelling with the intent of renovating an expanding it as a two family dwelling. No questions were offered from the public. Mr. Trevenen called Judy Donolly, Architect, who was sworn and stated her qualifications. She stated that the architect of record is Derek Cox Architecture and Landscape Design, LLC. Mr. Cox is out of the country on vacation and he requested that she provide testimony on his behalf for the plans submitted for the application at this hearing. She described the existing dwelling and the proposed plans

in detail. A 2½ story addition is proposed at the rear of the dwelling and a new detached two-car garage is proposed at the rear of the lot. The 2½ story addition includes basement and attic areas extending the same of the existing dwelling. Each dwelling unit in the existing structure has 2 bedrooms, with the second bedroom for the second floor apartment being located in the attic. The plan for the renovated and expanded structure depicts that each dwelling unit would also have 2 bedrooms, and that the attic and basement areas would be commonly accessible through a new interior stairwell contained within the addition. The roofline of the proposed 2½ story addition matches that of the existing dwelling at 31 feet 5½ inches. A deck is proposed on the southerly side of the dwelling and a reconstruction of the front porch is also proposed as part of the renovation and expansion of the dwelling. An exterior stairway to the second floor would be removed on the driveway side. The footprint of the new front porch matches that of the previous front porch shown on the 1994 survey, and the same 14-foot front yard setback is proposed.

Exhibits marked:

- A-10 Existing floor plans and elevations on a board with minor modifications and corrections included
- A-11 Proposed floor plans and elevations, property survey and plot plan, proposed detached garage plan and elevations, and zoning information, on board with minor modifications and corrections included

The Board questioned Ms. Donolly. The footprint of the existing dwelling excluding porches and stairways measures approximately 1,145 square feet. No questions were offered from the public. Mr. Trevenen called Roger DeNiscia, Professional Planner, who was sworn and stated his qualifications. Mr. DeNiscia described the application. The property is located in the R-1 One-Family Zone. The available Township records indicate that the property contains a lawfully existing nonconforming 2½ story two family dwelling. The proposed addition and garage require a variance pursuant to N.J.S.A. 40:55D-70d(2) in that they represent expansions of the nonconforming use. The applicant has requested a front setback variance for the 14-foot front yard setback of the front porch, although there does not appear to be any expansion of the porch structure from what had lawfully existed before it collapsed and was removed. The architect's plot plan includes a note that indicates that the required front yard setback is 39 feet 10 inches on the subject property, which is based on the average front setback of properties on Grove Street pursuant to the ordinance. The 2½ story addition at the rear of the dwelling, the deck on the side of the dwelling, and a new detached two-car garage conform to all bulk requirements for permitted principal and accessory structures in the R-1 Zone. The previously existing garage had a rear setback of 0.8 feet and a side yard setback of 5.8 feet. The new two-car garage has a larger footprint and is proposed with minimum rear and side yard setbacks of 6 feet 1 inch and would conform to the maximum height limit of 15 feet. The paved area in the rear yard would be reconfigured and provide 2 parking spaces outside of the two-car garage. The spaces are 10 feet wide by 20 feet long each, where 9 feet by 18 feet is the minimum size. The total of 4 parking spaces provided conforms to the Montclair zoning ordinance, which requires a minimum of 4 spaces for a two family dwelling, and the

New Jersey Residential Site Improvements Standards 5:21-4.14(b), which requires 1.5 per 2 bedroom dwelling unit, or a total of 3 spaces.

Mr. DeNiscia stated that the application is a reasonable alteration and enlargement of the existing nonconforming two family use and that the application advances several purposes of planning listed in N.J.S.A. 40:55D-2. The application improves the functional deficiencies of the two family dwelling and improves the current deplorable condition of the dwelling and property. While the application proposes an increase in the size of the two family dwelling, the occupancy of the dwelling in terms of the number of dwelling units and number of bedrooms would remain the same. There would be no substantial negative impacts associated with the application.

Exhibits marked:

A-12 Photographs of the subject property and a property survey map on a board

The Board questioned Mr. DeNiscia. No questions were offered from the public. Mr. Trevenen called Ann Marie Rose, 19 La Salle Road, who was sworn. Ms. Rose provided additional information on the usage of the dwelling prior to her and her husband's ownership in December 2009 that she obtained from personal dealings with the previous property owner. She indicated that the prior owner, Alicia Kupchik, resided in the second floor apartment, and that the first floor apartment was rented to one person, who vacated the first floor apartment once the front porch had collapsed, which likely occurred during the spring of 2009. The Board questioned Ms. Rose. The two apartments are separately metered and they are still receiving separate utility bills for the two apartments. Ms. Donolly returned to provide more information. The first floor, second floor, and attic floor of the existing dwelling contains a total of 2,642 square feet of floor area. The first floor measures 1,145 square feet, the second floor measures 842 square feet, and the attic measures 655 square feet. The first floor, second floor, and attic floor of the dwelling as proposed would contain a total of 4,830 square feet of floor area. The proposed first floor would contain 1,642 square feet, the proposed second floor would contain 1,594 square feet, and the proposed attic would contain 1,594 square feet. Since the attic in the proposal is similar to the basement area in terms of being a common area, if the attic is excluded in the total proposed living area, the total proposed living area is 3,236 square feet.

Mr. Trevenen requested that the application be continued at a subsequent meeting of the Board so that additional information on recent history of the two family dwelling can be provided. No questions or comments were offered from the public. Chair Harrison announced that the application would be continued at the July 21, 2010 meeting of the Board and that no further notice would be given.

The application of **John and Katherine Lubenesky, 17 Carlisle Road** was called. Katherine Lubenesky and Mark Braithwaite, Architect, were sworn. Ms. Lubenesky described the application from her perspective as the property owner. Mr. Braithwaite described the proposed additions. A 2½ story addition is proposed at the

northerly rear corner of the dwelling that would square off that corner of the building footprint. This addition measures 10 feet 3½ inches by 8 feet 4 inches and would contain an eating area for the existing kitchen on the first floor, and a study on the second floor. Due to the irregular shape of the rear property line, this addition lies fully within the required rear yard setback on the northerly side of the property, and a rear yard setback of 20.49 feet is proposed, which requires a variance. This addition is also aligned with the northerly side wall of the dwelling, which has a side yard setback of 5.89 feet where a minimum of 6 feet is required, and a variance is requested. A larger 2.5 story addition is proposed on the southerly side of the dwelling. This addition measures 16 feet by 23 feet 9½ inches and would contain a family room on the first floor, and a master bedroom on the second floor. A small portion of this addition lies within the required rear yard setback, and requires the same variance as above for the rear yard setback.

Roger DeNiscia, Professional Planner, was sworn. The property is located in the R-1 One-Family Zone and contains a 2½ story single family dwelling with a one-car attached garage. The lot has an irregularly shaped rear property line, measures 65 feet in width across its frontage on Carlisle Road, and measures 5,925 square feet in lot area. The property is located across from a New Jersey Transit railroad. The required rear yard setback for new construction on the property is 29.98 feet, which is 30 percent of the lot depth of 96.61 feet. The northerly side yard setback is required to be no less than 6 feet. The maximum permitted principal structure width for the subject property is 42.25 feet, which is 65 percent of the lot frontage width of 65 feet. The side yard setback variance is very minor and is in keeping with the existing dwelling. The rear setback variance is caused by the irregular shape of the rear property line. The design of the larger addition that requires the width variance is driven layout and dimensions of the interior of the existing dwelling. While a variance is required for this addition, the proposal is in keeping with the design and scale of the homes on the street, many of which already have this type of addition on one side.

Exhibits marked:

- A-1 Floor Plans, dated June 15, 2010, with existing and proposed floor areas
- A-2 Photographs of the subject property and nearby dwellings on a board

The Board questioned the applicant and the witnesses. Chair Harrison called for questions or comments from the public. Bill Uscato, 15 Carlisle Road, was sworn and stated his concerns about the addition proposed of the southerly side of the dwelling. David Kellet and Anne McKenna, 26 College Avenue, were sworn. Ms. McKenna stated her opposition to the application. The additions make the dwelling out of scale with the other homes in the neighborhood. Mr. Kellet also stated his opposition to the application for the same reasons. The Board questioned Mr. Kellet and Ms. McKenna. Mr. McKenna indicated that the lack of trees between her yard and the applicants' rear yard exacerbates the variance requested for building width. Mr. Kellet stated that the second floor of the proposed addition is more impactful than the first floor.

The Board discussed the application determined that the rear setback variance and the side yard setback variances can be approved due to the irregular shape of the rear property line and the position of the existing dwelling on the lot. The addition extending the width of the dwelling to the south could not be approved as submitted. That addition would extend the width of the dwelling to a total of 48.08 feet, which equals 73.96 percent of the lot frontage width. While the existing dwelling is small in size and the rear yard configuration poses a hardship for the applicants, the Board determined that this variance could only be permitted for the first floor of the addition, subject to the conditions indicated below. Allowing the second floor to be expanded to the proposed width would be out of scale with the dwellings in the neighborhood and would negatively impact nearby properties and the streetscape.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the variances requested were approved, subject to the following conditions:

1. The larger addition proposed on the southerly side of the dwelling shall be modified so that the second floor of the addition complies with the maximum permitted principal structure width. The highest part of the roof of the first floor of this addition shall not exceed the level that is equal with the bottom of the second floor windows on the southerly elevation depicted on the plans submitted to the Board.

2. Any new or relocated central air conditioning units shall conform to the zoning ordinance.

3. The applicant shall add landscaping along the southerly section of the rear property line and the southerly side property line to provide screening the view of the larger addition proposed on the southerly side of the dwelling. The landscaping shall include shrubs and at least 2 evergreen or deciduous trees.

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