

**MINUTES OF THE BOARD OF ADJUSTMENT
AUGUST 15, 2012**

PRESENT: Chair Harrison, Ms. Checca, Mr. Edwards, Mr. Fleischer, Mr. Kenney, Mr. Tsai and; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Burr, Ms. Holloway, Mr. Reynolds, Vice Chair Whipple, 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. Fleischer, seconded by Mr. Edwards, the **Minutes of the July 18, 2012** regular meeting were adopted as modified.

On motion by Mr. Fleischer, seconded by Mr. Edwards, the following resolution memorializing the Board's decision on the application of **Frank & Marcia Haimbach, Park Street** was adopted as modified:

WHEREAS, Frank and Marcia Haimbach, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a single family residence on property designated as Lot 38 in Block 2804 on the Montclair Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70c which requires a building lot to front on a public street pursuant to Montclair Code Section 347-20.
2. To direct issuance of a permit for a building not related to a street giving access to such proposed building pursuant to N.J.S.A. 40:55D-35, 36 and Montclair Code Section 202-22A(2).

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by

Sionas Architecture P.C., Sheet SP-1 dated May 16, 2012 revised through June 22, 2012; Sheets A-1 through A-4 dated May 16, 2012; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 18, 2012 at which time it was established the notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property, Lot 38, measures 151.5 feet in width, contains 20,471.39 square feet of lot area with 44 feet of frontage on a private road. The subject property is part of an eight lot private enclave consisting of Lots 32 through 39 in Block 2804 created in 1925 and known locally as "The Hoo". Lot 33 which contains the private road, Lot 34 which is a dedicated open space park lot and Lot 35, a vacant lot, are jointly owned by the owners of Lots 32, 36, 37, 38 and 39. Lot 32 is improved with a single family home with frontage on Park Street as well as the private road. Lots 37 and 39 contain single family homes with frontage on the private road. Lot 36 also contains a single family home with frontage on the private road which the Board approved by resolution adopted April 20, 2005 granting substantially the same relief as sought by the applicants herein.

2. The applicants propose to construct a two and one-half story, four bedroom, two and one-half bath Tudor style single family home consisting of 4,269 square feet (including 505 square feet of garage). The proposed dwelling meets all applicable bulk standards contained in the Zoning Ordinance and the New Jersey Residential Site Improvement Standards.

3. The uncontroverted testimony presented at the public hearing established the relatively flat private road is approximately 16 to 17 feet in width with a slight curvature, would adequately accommodate the largest fire truck in the Montclair Fire Department which is 8 feet in width and not more than 40 feet in length. Two existing fire hydrants in the area were available to service the property. Additionally, the applicants stipulated they would provide a residential sprinkler installation for additional fire protection. Based upon the foregoing, the Board concluded that there is adequate access for firefighting equipment, ambulances and other emergency vehicles to the home.

4. Based upon the layout of the lot and private road as part of the enclave, which constitutes an extraordinary and exceptional situation uniquely affecting a specific piece of property, the strict application of the Zoning Ordinance results in peculiar and exceptional practical difficulties and exceptional and undue hardship upon the applicants consistent with N.J.S.A. 40:55D-70c(1).

5. Approval of the requested variance advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a); provides adequate light, air and open space (-2c) and promotes a desirable visual environment through creative development techniques and civic design arrangements (-2i) which represents a public benefit.

6. Based upon the Board's particular knowledge of local conditions, the proposed home is substantially consistent with the character of the development in the area, will protect the riparian zone and will not adversely impact the public good.

7. Approval of the application is consistent with the intent and purpose of the Master Plan or Zoning Ordinance which seeks to preserve the quality of life of surrounding neighborhoods.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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 pursuant to the requirements of N.J.S.A. 40:55D-70c(2).

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants met the requisite proofs contained in N.J.S.A. 40:55D-36 in order to direct issuance of a permit.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair, that the within application of Frank and Marcia Haimbach for a variance and to direct issuance of a permit to allow construction of a single family home which does not abut a public street is hereby approved subject to the following conditions:

1. The applicants shall install a sprinkler system in the house.
2. Air conditioner condenser units shall not be permitted on the easterly side of the house.
3. Development of the property shall be substantially in accordance with the plans and elevations submitted and the footprint of the house shall not be exceeded.
4. Lots 34 and 35 in Block 2804 shall be merged by deed and the existing restrictions on Lot 34 as an open space park lot shall be applicable to Lot 35.
5. The private road shall be maintained as a fully paved road at its current width. An existing "as built" plan of the private road shall be submitted to the Township

prior to the issuance of a construction permit for future verification of compliance with this condition.

6. The applicants shall be responsible for the payment of affordable housing development fees as required by Montclair Code Section 202-39 et seq.

7. The applicants shall be responsible for payment of all escrow fees incurred in connection with review of this matter.

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 continuation of the application of **Wallwood Gardens, Inc, 400 Orange Road** was postponed until the December 19, 2012 meeting of the Board. The Board was granted an extension of time and the applicant would be required to complete a full public notice for that future meeting date.

The continuation of the application of **Savita & Matthew Lepore, 137 Cooper Avenue** was called. Kip Siebert, contractor, was present and was still under oath. Matthew Lepore, applicant, and Christopher Rose, Architect were sworn. Mr. Rose described the revisions to the plan based on the Board's previous comments. The applicant now proposes two separate dormers at the rear of the 3rd floor with a combined total width of 27 feet, which is approximately 79.2 percent of the width of the third floor width and requires a variance.

The Board briefly questioned the applicant. There were no questions or comments from the public. The Board discussed the application. A majority of the Board determined that the requested variance could be approved based on the revised plan. The two smaller dormers and the overall reduced dormer width on the rear elevation from the original plan provides the usable space the applicant is seeking without requiring a larger building footprint, and is in keeping with the intent of the ordinance which seeks to reduce the massing of construction and maintain a half-story appearance on the 3rd level. On motion by Mr. Fleischer, seconded by Mr. Edwards, the application was approved, by a vote of 3 to 2, with Mr. Kenney and Ms. Checca voting against the approval.

The application of **James Ackerman, 141 Upper Mountain Avenue** was announced. The applicant and John Brower, Architect, were sworn. Mr. Brower described the application. The property is located in the R-0 Mountainside Zone. The lot measures 100 feet in width by 217.83 feet in length, and contains a single family dwelling with a detached garage on the southerly side of the lot. The application is for a side yard setback variance for an addition proposed at the rear of the dwelling along the northerly side. The existing dwelling has an existing nonconforming northerly side yard

setback of 8 feet, at the northerly rear corner of the dwelling, where a minimum of 12 feet is required in the R-0 Zone. An addition is proposed that would align with the northerly side wall of the dwelling. Due to the angle of the dwelling to the northerly side property line, the existing nonconforming side yard setback of 8 feet is reduced to 7.7 feet at its closest point and a variance is requested. The proposed addition is to extend a kitchen. An existing side entrance stair and landing on the northerly side of the dwelling that is within the side yard setback is being removed. Although the plan includes a basement, the first floor addition will be on piers instead. Mr. Ackerman also made a brief statement about the purpose of the addition.

The Board briefly questioned the applicant. There were no questions or comments from the public. The Board discussed the application and determined that the requested variance could be approved. The addition is aligned with the northerly side wall of the dwelling, and has been also designed to step further away from the northerly side property line at the end of the addition. The requested variance will also not have a negative impact on any nearby property. On motion by Mr. Fleischer, seconded by Mr. Kenney, the application was approved, subject to the following conditions:

1. A grading and drainage plan shall be approved by the Board Engineer pursuant to the Steep Slope ordinance.
2. The existing side entrance stair and landing on the northerly side of the dwelling shall be removed as depicted on the plan.

The application of **Roger Drill & Lettie Teague, 131 North Mountain Avenue** was announced. Roger Drill was sworn and described the application. The existing detached garage is in a dilapidated condition and must be removed. The existing garage measures roughly 12 feet wide by 19 feet long and has a wood deck attached to it. The deck attached to the garage appears to extend slightly over the rear property line, where it abuts a fence. The existing garage has a nonconforming rear yard setback of 2.93 feet, where a minimum of 6 feet is required. A new detached garage is proposed in the same area of the property. The proposed garage would measure 26 feet in width by 24 feet in length. A conforming height of 15 feet is proposed. The new garage is proposed to be located 3 feet from the rear property line to match the existing nonconforming rear yard setback.

The Board questioned the applicant. Mr. Drill stated that the overall dimensions of the garage were determined based on the need for 2 car parking plus additional space for storage. Moving the garage footprint forward requires excessive disturbance to the existing driveway and retaining wall. Stormwater collected from the roof of the new garage would be collected in a drywell that would be located in the rear yard. There were no questions or comments from the public. The Board discussed the application and determined that the requested variance could not be approved as submitted. During the discussion, the applicant offered to amend the proposed rear yard setback to 4.5 feet. A motion to approve the 4.5 foot rear yard setback was made by Mr. Kenney, but

did not receive a second and failed. On motion by Mr. Fleischer, seconded by Checca, the variance as amended to 4.5 feet was denied, by a vote of 4 to 1, with Mr. Kenney voting against the denial.

The application of **Clifford H. and Karen Goldman, 145 Highland Avenue** was called. Mr. Sullivan stated that the application is for an appeal of the decision of a zoning administrative officer and provided some information about the Board's role in this type of application.

Calvin Trevenen, Esq., appeared as attorney for the applicant and described the application. On August 9, 2012, the applicant submitted an application to the Board of Adjustment for an appeal of an administrative decision made by the Planning Department on August 2, 2012. The application is made pursuant to N.J.S.A. 40:55D-70a, 72a and Montclair Code Sections 202-18A, 202-36 and is appealing the of the determination of Montclair Planning Department in enforcing the zoning ordinance, dated August 2, 2012, that a proposed accessory structure is not a permitted accessory use.

Karen Goldman, property owner was sworn. Through direct questioning by Mr. Trevenen, Ms. Goldman provided the information below about the property and the application. The subject property is improved with a two and one-half story masonry and frame single family dwelling which was constructed in 1927. An accessory structure was built in the rear of the property in 1945 which was identified as a "playhouse", "bungalow" and "lounge and playroom" in various municipal records. The accessory structure contained a sink and toilet and was unheated. The accessory structure was substantially destroyed on October 31, 2011 and subsequently demolished. The applicants seek to construct a new, slightly larger accessory building that will contain an exercise room and will be used to accommodate the owner's pottery hobby. The plans for the new accessory structure depict a full bathroom, including a sink, toilet and shower, an additional sink with cabinetry/countertop, dishwasher and refrigerator. The applicants testified that they did not intend to use the new accessory building as a dwelling unit, rental unit or for any business purpose.

Exhibits marked:

- A-1 Photograph of the subject accessory structure
- A-2 Photograph of the subject accessory structure
- A-3 Photograph of the subject accessory structure
- A-4 Photograph of the subject accessory structure
- A-5 Photograph of the subject accessory structure
- A-6 Copy of the definition of "accessory building or use" from the Montclair zoning ordinance

Mr. Trevenen summarized the applicant's position and stated that based on the records and the unique circumstances, the applicant should be entitled to construct the

proposed accessory building as proposed and have it considered a permitted accessory use that is customarily incidental to the principal dwelling.

The Board questioned the applicant. Ms. Goldman provided more information on what the interior of the previous accessory structure was like. The previous structure did not have a shower or bath and was not heated. There was also no hot water provided. Mr. Trevenen also made additional comments comparing the proposed accessory structure to pool houses that are customarily permitted as accessory uses. Mr. Charreun was sworn and answered questions from the Board. He described some of the meaningful differences between the proposed accessory structure and the type of pool house that can be permitted without conflicting with the zoning ordinance.

The Board discussed the application. The Board agreed with the Planning Department's determination that the proposed accessory structure does not constitute a use customarily associated with a single family use. As correctly noted by Mr. Charreun, the sink outside the bathroom and proposed cabinetry/ countertop constitutes a "kitchen facility" by definition in the Zoning Ordinance. The combination of a full bathroom and a kitchen-type facility constitute "complete living facilities" which constitutes a "dwelling unit" pursuant to the Zoning Ordinance and is not permitted as an accessory use. Such use would require a use variance pursuant to N.J.S.A. 40:55D-70d(1) contrary to Section 347-31 of the Montclair Code. On motion by Mr. Kenney, seconded by Mr. Fleischer, the Board unanimously affirmed the action of the Planning Department, dated August 2, 2012.

Mr. Tsai joined the meeting.

The application of **Essex Holdings Management, LLC, 174 Harrison Avenue** was announced. David Owen, Esq., appeared as attorney for the applicant and described the application. A use variance is requested to construct a new building for 2 dwelling units in the R-1 One-Family Zone. Tax records ranging from 1972 to the present indicate that the property has contained a two-family dwelling. There are no past variances for the property. The construction permit record card for this lot can not be located. There have been no recent construction permits issued. The two-family use of the dwelling is nonconforming in the R-1 Zone.

Exhibits marked:

- A-1 Certificate of Current Property Tax and Assessment Status, 04/19/12
- A-2(a) Tax Assessment Card, 2006 to present
 - (b) Tax Assessment Card, 1990-2005
 - (c) Tax Assessment Card, 1972-1989
- A-3 Email correspondence from Patrick Ciancitto, Code and Housing/Property Maintenance Inspector, 08/01/12
- A-4 1943 Zoning Map

Mr. Owen called Keith Ballentine, 395 Claremont Avenue, who was sworn. He identified himself as one of the principle in the LLC that owns the subject property. They have recently purchased the property. The dwelling is in poor condition, has been vacant, and some of the interior of the existing dwelling has been gutted.

Exhibits marked:

- A-5 Photograph of the subject property
- A-6 Photograph of the subject property
- A-7 Photograph of the subject property
- A-8 Photograph of the subject property
- A-9 Photograph of the subject property
- A-10 Photograph of the subject property
- A-11 Photograph of the subject property
- A-12 Photograph of the subject property
- A-13 Photograph of the subject property

The Board questioned the applicant. Mr. Owen stated that the 1943 map is the latest map that shows the subject property in an R-2 Two Family Zone. Mr. Owen also made numerous statements regarding the background of the property and the current application. Mr. Charreun was sworn and answered questions from the Board. Mr. Sullivan stated that even if the previously existing two-family dwelling was acknowledged as a lawfully pre-existing nonconforming use, the fact that the existing structure is being removed means that the new two-family dwelling proposed requires a use variance for a new two-family use. Mr. Ballentine stated that the existing dwelling is in an extremely dilapidated condition, and due to age, neglect, and fire and water damage, it can not be retained and must be completely demolished. He also stated that he feels that the new two-family dwelling is a much better option for him as a property owner and the neighborhood than a subdivision with 2 separate single family dwellings.

Chair Harrison called for questions from the public for Mr. Ballentine. David Brooks, 12 Graham Terrace, asked if he was spoken to by Mr. Ballentine and whether the zoning of the property was understood prior to its purchase. Phyllis Scott, 169 Harrison Avenue, asked how many mature trees were already removed from the Harrison Avenue front yard. Zane Crute, 171 Harrison Avenue, made statements against the application and did not ask a question. Paul Nahodyl, 6 Graham Terrace, made statements against the application and did not ask a question. Patrick Fagan, 14 Graham Terrace, asked what evidence there is that the existing dwelling is a lawful two-family dwelling. He also asked if there would be enough land after the proposed dwelling to still have a building lot.

Mr. Owen called Karen Brinkman, Architect, who was sworn and stated her qualifications. Ms. Brinkman described the property and the application. She described the plans for the proposed dwelling and stated that it has been designed to appear like a single family dwelling. An attached two-car garage is proposed for each dwelling unit.

Each dwelling unit would contain 3 bedrooms. The number of parking spaces complies with the zoning ordinance and the N.J.R.S.I.S. The driveway for each garage would be accessible from one curb opening on Harrison Avenue which is the existing driveway entrance. She stated that due to the neglect and damage, the existing dwelling has structural issues that require its demolition. The existing home also has 7 foot ceilings, which is not in keeping with typical modern day residential usage. The location of the dwelling has been selected preserve the natural features of the site, including the grade level, existing mature trees and open space that exists.

Exhibits marked:

- A-14 Site Plan Sheet A-1, by Brinkman Architecture, revised 07/27/12
- A-15 Floor Plans Sheet A-2, by Brinkman Architecture, revised 07/27/12
- A-16 Elevations Sheet A-3, by Brinkman Architecture, revised 07/27/12

The Board questioned Ms. Brinkman. The existing dwelling footprint is 1,218 square feet including the front porch. The proposed dwelling footprint is 2,918 square feet including the front porch. The large lot to the north has a very large side yard setback abutting the subject property. Chair Harrison called for questions from the public for Ms. Brinkman. Randall McMillan, 9 Graham Terrace, asked if any study was done regarding environmental impacts. He also asked if new fencing was proposed and how the parking was arranged. Zane Crute, Jr. 171 Harrison Avenue, asked how the traffic generated by the new dwelling would impact the local streets. Vivian Harrell, 169 Harrison Avenue, asked to see a plan. David Brooks, 12 Graham Terrace, asked about the exterior material proposed to be used. He also asked numerous questions about the design of the proposed dwelling. Paul Nahodyl, 6 Graham Terrace, asked if photographs of other dwelling in the neighborhood were taken to compare to the proposed dwelling.

Mr. Owen called Roger DeNiscia, Professional Planner, who was sworn and described the application. He described the property and the application. The existing dwelling in its current condition is a negative element in the neighborhood and the site requires redevelopment. The two-family usage will not have a significant traffic impact overall. Having the driveway on Harrison Avenue will preserve the existing traffic conditions on Graham Terrace. The large size of the site helps to mitigate the impact of the two-family dwelling. The proposed plan calls for 2 dwelling units that individually are smaller than what could be anticipated if a new single family, or multiple single family dwellings, were proposed on the site. The smaller dwelling units proposed by the applicant is in keeping with current Master Plan goals. The conditions of the property are unique in comparison to the surrounding residential lots.

The minimum lot width required for a subdivision of the subdivision of the subject property is 75 feet. The lot has 150 feet of frontage on Graham Terrace and is subdividable into 2 lots fronting on Graham Terrace with any lot size variances. If the lot was developed with a new single family dwelling, a much larger home could be

produced which could have more impact on the site. The potential 2 lot subdivision could also produce 2 dwellings that in total would be larger than what is proposed and would also have more impact on the site. The application advances certain purposes of planning included in the Municipal Land use law. The application meets the negative criteria. The site will be greatly improved visually. The application will provide smaller housing units as desired by the Master Plan. All of the bulk requirements are met and the physical features of the site are preserved. The Board should also consider that the property has had 2 dwelling units for many years.

Exhibits marked:

- A-17 Photo-board of subject property and neighborhood, by Roger DeNiscia, PP
- A-18 Sanborn Map, presented by Roger DeNiscia, PP
- A-19 Concept Plot Plan for 1 dwelling on existing lot, presented by Roger DeNiscia, PP
- A-20 Concept Plot Plan for 2 lot subdivision with 1 home on the each lot, presented by Roger DeNiscia, PP

The Board questioned Mr. DeNiscia. He stated that the dwellings units proposed measure approximately 2,500 square feet. He also stated that many existing dwellings in the neighborhood are smaller than 2,500 square feet. The Board questioned Mr. Charreun who clarified a question about the zoning map.

Chair Harrison called for questions from the public for Mr. DeNiscia. David Brooks, 12 Graham Terrace, asked for Mr. DeNiscia's qualifications. He asked how long the dwelling has been vacant and if the two family use, should it be considered valid, has been abandoned as a result. Mr. DeNiscia stated that the history of usage as a two-family house and its large size on a corner can be considered factors in particular suitability for the requested variance. Paul Nahodyl, 6 Graham Terrace, asked how the size of the dwelling units proposed compare to the existing dwellings on Graham Terrace.

Mr. Owen stated that with 6 Board members present, the applicant will hold off on the summation and Board's vote until the next meeting. Chair Harrison announced that the application would continue at the September 19, 2012 meeting and that no further notice would be given. He announced that anyone present who may not be able to attend the next meeting could provide their testimony now.

David Brooks, 12 Graham Terrace, was sworn and stated his opposition to the application. No use variance should be granted. The applicant should be limited to single family use on the existing lot or 2 single family houses if the lot is subdivided. The Board questioned Mr. Brooks who clarified that his main concern is having rental units in the R-1 Zone are that he resides in.

Paul Nahodyl, 6 Graham Terrace, was sworn and stated his opposition to the application. The applicant should be limited to single family use on the existing lot or 2 single family houses if the lot is subdivided.

Zane Crute, 171 Harrison Avenue, was sworn and stated his opposition to the application. The applicant should be limited to single family use on the existing lot or 2 single family houses if the lot is subdivided. He stated that in the 20 years he as lived at his address, he has observed the property as vacant.

Sheila Crute, 171 Harrison Avenue, was sworn and stated her opposition to the application. The applicant should be limited to single family use on the existing lot or 2 single family houses if the lot is subdivided.

Patrick Fagan, 14 Graham Terrace, was sworn and stated his opposition to the application. He stated that in the 18 years he as lived at his address, he has observed the property as vacant. He is concerned about rental units in the R-1 Zone. The Board briefly questioned Mr. Fagan.

Zane Crute, Jr., 171 Harrison Avenue, was sworn and stated his opposition to the application. The applicant should be limited to single family use in the R-1 Zone. The Board briefly questioned Mr. Crute.

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