

MINUTES OF THE BOARD OF ADJUSTMENT
September 2, 2009

PRESENT: Chair Harrison, Vice Chair Fleischer, Mr. Kenney, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq. and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Burr, Ms. Cockey, Ms. English, Ms. Holloway, and Mr. Franco, Secretary

Assistant Secretary Charreun called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison called the application of **CRAFTCO, 14 North Willow Street and 173 Glenridge Avenue**. William J. Ewing, Esq. appeared as attorney for the applicant and described the application. By resolution adopted November 19, 2008, the Board approved the applicants' request for minor subdivision to subdivide the property into two lots so that each building may be accommodated on its own lot. The proposed subdivision line will run along the northerly edge of the building fronting on Glenridge Avenue. Proposed Lot 38.01 will contain 1,446 square feet and proposed Lot 38.02 will contain 2,988 square feet. A 3.59 foot wide easement is proposed between the buildings to provide access to both buildings. The Board also granted a variance to exceed the maximum density on proposed Lot 38.01 to permit a density of 60 units per acre where a maximum of 55 units per acre are allowed; a variance to permit expansion of the preexisting nonconforming use by virtue of the reduction in lot area on proposed Lot 38.02; a variance to allow lot area of 2,988 square feet on proposed Lot 38.02 where a minimum of 10,000 square feet is required; and variances to allow a rear yard setback of 3 feet on proposed Lot 38.01 and 0 feet on proposed Lot 38.02 where a minimum of 10 feet is required. Pursuant to N.J.S.A. 40:55-47d, a minor subdivision shall expire 190 days from the date on which the resolution of municipal approval is adopted and the applicant failed to perfect the subdivision prior to May 28, 2009 giving rise to the within request for reapproval of the minor subdivision.

Steven Johnson, CEO of Craftco, was sworn. Mr. Johnson stated that the current plan is identical to the plan that was previously approved. The Board questioned the applicant. Mr. Sullivan clarified the legal timelines for recording the subdivision. The Planning staff confirmed that no new variances are required. The Board discussed the application and determined the application complies with municipal ordinances other than the previously approved variances. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved, subject to the following condition:

1. Prior to the issuance of a building permit, the applicant shall pay any and all outstanding property taxes.

Chair Harrison called the application of **Doug and Melissa Legters, 18 Edgecliff Road**. The applicants, and Jonathan Perlstein, Architect, were sworn. Mr. Perlstein described the application for a variance to permit a front setback less than required for a proposed roofed front porch at the front of their single-family dwelling.

Marked into evidence were:

- A-1 Photograph of the front of the existing dwelling
- A-2 Rendering of the front of the dwelling depicting the proposed roofed front porch

The property as an interior lot located in the R-1 One Family Zone and contains a 2½-story single-family dwelling with an attached garage. The applicants propose to demolish the existing unroofed front entry stoop and steps and construct a roofed front porch that would span 31.02 feet in width across the front wall of the 2½ story section of the dwelling. The average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property, is approximately 36.87 feet, which is the minimum permitted front yard setback for new construction on the subject property. The existing dwelling has a conforming front yard setback of 41.56 feet as measured from the second story overhang at the southerly front corner of the dwelling. The proposed roofed porch would have a minimum front yard setback of 34.74 feet and a variance is requested. The Board questioned Mr. Perlstein. No questions or comments were offered by the public.

The Board discussed the application and determined that the variance requested could be approved as submitted. The required setback is skewed due to the larger front setback of the dwelling on the adjoining lot to the south. Aside from that property, the proposed front setback is in keeping with or greater than that of nearby dwellings. Additionally, the varied topography of the area further reduces any negative impact to nearby properties. On motion by Mr. Fleischer, seconded by Mr. Kenney, the application was approved.

Chair Harrison called the application of **Anne Caldas & Mark Wyville, 15 Macopin Avenue**. Anne Caldas was sworn and described the application. The property is an interior lot located in the R-1 One-Family Zone and contains a 2½-story single-family dwelling with an attached one-car garage. The property measures 102.25 feet in frontage width and 15,338 square feet in lot area. The plan to convert the existing attached one-car garage into a bedroom results in an additional parking space being located between the dwelling and the street and requires a variance. The existing one-car garage measures 11 feet wide by 18 feet deep, although a bathroom exists on the first floor that projects into the garage area, and shortens the 18-foot depth for much of the garage. Constructing an addition onto the footprint of the dwelling is not practical and extremely difficult due to the existing stream on the property, as well as the topography of the site. The existing driveway length of 47 feet is long enough to accommodate 2 vehicle parking spaces. The Board questioned Ms. Caldas. No questions or comments were offered by the public.

The Board discussed the application and determined that the variance requested could be approved based on the physical constraints of the subject property. While many properties in the neighborhood have a similar nonconforming design with a one-car attached garage and 1 parking space between the dwelling and the street, the subject property is distinguished from those properties by these physical constraints, which preclude additions to the footprint of the dwelling. The Board also determined that

working within the existing dwelling footprint is favorable, and that the application would have no substantial detriment to the neighborhood. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved subject to the following condition:

1. There shall be no change to the footprint of dwelling.

Chair Harrison called the application of **William Beren and JoAnn Katzban, 98 Gordonhurst Avenue**. JoAnn Katzban, and Christopher Dougherty, Architect, were sworn. Mr. Dougherty described the application for a variance to permit a side yard setback less than required for a proposed one-story addition at the rear of their dwelling. The property is an interior lot located in the R-1 One-Family Zone, and contains a 2-story single-family dwelling with a detached garage. The applicants are proposing to modify an existing deck at the rear of the dwelling and construct a one-story addition that would align with the easterly side wall of the dwelling. The proposed addition contains an expanded kitchen and a half-bathroom. The existing dwelling has a nonconforming easterly side yard setback of approximately 4.05 feet. The proposed addition would align with the existing easterly side wall of the dwelling and a variance is requested in that a side yard setback of 6 feet is required from the easterly side property line and a lesser setback of approximately 4.05 feet is proposed. The proposed addition complies with all other zoning requirements. The Board questioned Mr. Dougherty. No questions or comments were offered by the public. The Board discussed the application and determined that the variance requested could be approved as submitted. The proposed addition is one-story, is modest in size, and would align with the existing easterly side yard setback of the dwelling and not further encroach on the easterly side yard. The proposed addition would not have a negative impact on any neighboring property. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

Chair Harrison called the application of **Joshua Feldman and Miranda Sherwin, 35 Woodmont Road**. The applicants, Liz Buckley, Professional Planner, and Jordan Rosenberg, Architect, were sworn. Mr. Feldman made a brief statement about the application. Ms. Buckley briefly described the application for variances to exceed 2½ stories and to permit a front yard setback less than required.

Marked into evidence was:

- A-1 Packet of photographs of the existing dwelling and aerial photographs, by EMB Professional Planning, LLC

Mr. Rosenberg described the application. The existing dwelling is a ranch style house except that the attached garage is located at the basement level at the left side of the house where the adjoining grade is lower to allow for a driveway to access to the garage doors. An addition is proposed to create a second floor over the majority of the existing first floor living space. An addition is also proposed to the first floor at the rear of the dwelling which fully complies with zoning. The proposed second floor would contain bedrooms and bathrooms. Based on the revised average grade calculations, the

proposed height is 32 feet 2 inches. The front setback of the addition is not any less than the existing first floor of the dwelling directly below the proposed addition.

Marked into evidence was:

A-2 Revised Average Grade Calculation, by Jordan Rosenberg, Architects

The Board questioned the witnesses. The Planning staff clarified that the basement level is included as a story due to the height of the first floor above grade in the area of the existing garage doors, which exceeds 6 feet, and due to the inclusion of parking in the basement. Mr. Rosenberg described the attic floor within the proposed addition. The addition was not located on the northerly side of the dwelling because the existing family room on the north end of the dwelling was built as an addition on a slab and may not have a suitable foundation to support the proposed addition. The family room also has a cathedral ceiling that would be eliminated by a new second floor and more existing mature trees are located on that side of the property that could be affected by a second floor addition.

A-3 Attic Floor Plan, by Jordan Rosenberg, Architects, dated July 20, 2009

A-4 Cross Section of dwelling and addition, by Jordan Rosenberg, Architect

A-5 Sheet A-03, Revised Elevations, depicting a height of 32 feet 2 inches above average grade, dated September 2, 2009 by Jordan Rosenberg, Architects

Chair Harrison called for questions from the public.

Lawrence Unger, 31 Woodmont Road, asked if there is a way to conform to the stories limitation with any addition above the existing dwelling or a way to design the roofline to be smaller in scale. Mr. Rosenberg stated that he thought any addition above the dwelling would require a variance since the basement is a story. Several Board members questioned whether shifting the addition away from the garage area would indeed require a variance for exceeding the story limit. The Planning Staff indicated that shifting the addition away from the garage could meet the intent of the ordinance but may still require a variance due to the specific language of the ordinance and the particular conditions of the subject property, where only the southerly wall of the basement is exposed enough to cause the basement to be story, and there is no set position of the addition away from the southerly wall that specifically complies.

Christopher Jurkiewicz, 32 Woodmont Road, asked if it was possible to design a second floor addition as a half-story and eliminate the proposed attic. Mr. Rosenberg stated that the second floor under that design concept would be 65% less in usable floor area than the currently proposed second floor and would not meet the needs of the applicants. Ms. Sherwin also stated that they need the proposed attic for storage space.

Ms. Buckley provided her testimony. She described the application and the variances requested. The property is an irregularly shaped interior lot located in the R-0(a) One-Family Zone and contains a single-family dwelling with an attached garage. The property measures 199.5 feet in total lot frontage width and 18,500 square feet in

lot area. The dwelling is a ranch style house except that the attached garage is located at the basement level at the left side of the house where the adjoining grade is lower to allow for a driveway to access to the garage doors. Due to the fact that the first floor at the southerly side of the dwelling above the basement garage is more than 6 feet above the adjoining grade, the basement of the dwelling is counted as a story above grade. As a result, the existing first floor level is a second story, the proposed second floor addition a third story, and the attic floor within the addition is a half-story. The dwelling with the proposed addition is considered to be 3½ stories, particularly as viewed from the southerly side elevation. The maximum permitted is 2½ stories, and a variance is requested. She stated that the Board should consider the fact that the majority of the basement of the dwelling is considerably under the adjoining grade level and the 3½ stories as a result of the addition is only apparent at the southerly elevation. She also stated that the Board should consider the practical difficulties described by the Architect in constructing the addition at the northerly side of the dwelling away from the basement garage.

Ms. Buckley continued with her testimony. The front property line is curved. The average front yard setback of the 4 nearest principal dwellings, 2 on either side of the subject property, is 45.56 feet, which is the minimum allowed front yard setback for new construction on the subject property. Where proposed by the applicant, the proposed second floor addition is set back 36.28 feet at its closest point to the front property line and a variance is requested. The proposed addition above the first floor does not encroach any closer than the first floor directly below it and the front setback requirement is skewed by the unusually large front setback of the dwelling on the adjoining lot to the south, which is approximately 77 feet.

The Board questioned the witnesses. Ms. Buckley stated that although a variance for the number of stories is required, the dwelling with the addition is not oversized, particularly considering the size and width of the lot. Ms. Sherwin described the existing first floor layout and that minimal interior construction in the first floor is proposed. Mr. Rosenberg stated he has photographs of existing dwellings in the neighborhood that have the appearance of more than 2½ stories and do not negatively impact their surroundings. Ms. Buckley stated that variances for number of stories should be generally considered in terms of the impact to the streetscape and perhaps how much of the dwelling is in violation of the story limit, particularly as it relates to the topography of a site.

- A-6 Photograph of existing dwelling in Montclair that is similar to the proposal
- A-7 Photograph of existing dwelling in Montclair that is similar to the proposal
- A-8 Photograph of existing dwelling in Montclair that is similar to the proposal

Chair Harrison called for questions from the public.

Christopher Jurkiewicz, 32 Woodmont Road, asked how much floor area is being added to the dwelling. Mr. Rosenberg stated that 1,964 square feet is being added not including any proposed attic floor area.

Ken Schapiro, 28 Woodmont Road, asked of the zoning ordinance limits dwellings to 2½ stories and if the proposal is for 3½ stories.

Ms. Sherwin provided additional testimony. There are not many ranches in the immediate neighborhood and their existing dwelling is undersized. The intent was to design a custom dwelling designed for their needs. Mr. Feldman provided additional testimony. Constructing an addition over the family room proved to be complicated and costly. He would agree to add evergreen plantings between the dwelling and the Ungers' property to the south, and would be willing to eliminate the rear gable in the attic.

The Board questioned the witnesses. Mr. Rosenberg stated that the front gable provides stairway access to the attic.

Chair Harrison called for public comment.

Lawrence Unger, 31 Woodmont Road, was sworn, and stated his opposition to the application. Due to the positioning of his dwelling and the applicants' dwelling relative to each other, the proposed addition would tower over his rear yard and have a significant negative impact on his property. If the addition is approved, the applicants should be required to plant trees that are 6 to 8 evergreens trees that are 10 to 12 feet tall at the time of planting should be required on the applicants' property in order to provide some screening of the addition from his rear yard. The applicants should consider smaller design options for the addition or consider looking into purchasing existing larger homes in the neighborhood instead of constructing the proposed addition.

Marked into evidence was:

O-1 Written statement from Lawrence and Suzette Unger, 31 Woodmont Road, opposing the application with 3 photographs of their rear yard

The Board questioned Mr. Unger. Mr. Unger stated that if the addition was shifted over to the north as suggested by several Board members, his view of the addition would be more shielded by existing trees. The Board also questioned the applicants. Mr. Feldman stated that he would agree to plant Leyland Cypress trees at 6-foot tall at the time of planting. Ms. Sherwin stated that the Ungers' dwelling already has a second floor, and presently towers over their rear yard, due to the positioning of the dwellings relative to each other as described by Mr. Unger. She also stated that their dwelling is about 75 feet away from the closest part of the Ungers' pool patio area.

Marked into evidence was:

A-9 Photograph of the rear yard of the applicants' property at 35 Woodmont Road

Christopher Jurkiewicz, 32 Woodmont Road, was sworn and stated his opposition to the application. He lives across the street and suggested that 20-foot tall trees in the front yard would improve the appearance of the proposed addition from his vantage point.

Ken Schapiro, 28 Woodmont Road, was sworn and stated his support for the application. He stated that he also lives across the street and has the most direct view of the southerly side wall of the dwelling, where the proposed 3½ stories is visible. The existing ranch style dwelling is not in keeping with the neighborhood, and the proposed addition would improve the subject property and benefit the neighborhood.

Mr. Rosenberg provided final statements and reiterated the reasons that the Board should approve the requested variances. The Board discussed the application. The Board determined that the variance requested for the front yard setback could be approved. The proposed addition above the first floor does not encroach any closer than the first floor directly below it and the front setback requirement is skewed by the unusually large front setback of the dwelling on the adjoining lot to the south, which is approximately 77 feet. The Board also determined that the variance requested for exceeding 2½ stories could not be approved. No testimony was provided to demonstrate there are existing dwellings in the immediate neighborhood that are 3½ stories and that the dwelling would remain in keeping with the neighborhood from the standpoint of number of stories. The southerly elevation is clearly viewed from the road, and the plan submitted proposes a flat wall on the southerly elevation extending upward 3½ stories from the ground, which is against the purpose and intent of the ordinance limiting the number of stories.

On motion by Mr. Susswein, seconded by Mr. Kenney, the variance requested to exceed 2½ stories was denied, with Mr. Fleischer and Mr. Whipple voting against that motion. On motion by Mr. Fleischer, seconded by Mr. Kenney, the variance requested for the front yard setback was approved, subject to the following condition:

1. The front yard setback of the proposed addition above the first floor shall not be less than the existing front setback of the first floor directly below it.

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