

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**September 15, 2010**

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

ABSENT: Ms. Holloway

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. Susswein, the **Minutes of the August 18, 2010** regular meeting were adopted as modified, Mr. Burr and Mr. Whipple abstaining. On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Matt and Cathy Roberts, 131 Wildwood Avenue** was adopted, Mr. Burr and Mr. Whipple abstaining:

**WHEREAS, Matt and Cathy Roberts**, 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 for a proposed detached garage in the rear yard of the property designated as Lot 51 in Block 3505 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey dated February 17, 1992, and small scale drawings of the proposed garage; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 18, 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. A new detached garage is proposed that would replace the existing detached garage in the rear yard that is structurally damaged. The property is located in the R-1 One-Family Zone, contains a single-family dwelling, and measures 60 feet in width by 229.12 feet in depth.

2. The existing garage has an easterly side yard setback of 1.52 feet at its closest point. The new garage would be constructed on a new foundation in the same location where the existing garage is located. The new garage would have the same dimensions and the same easterly side yard setback as the existing garage.

3. The footprint of the garage measures 20 feet wide by 20 feet long. The garage would be 13 feet 6 inches feet tall. A variance is requested in that a side yard setback of no less than 6 feet is required for a new detached garage and a lesser side yard setback of 1.52 feet is proposed from the easterly side property line. No other variances are requested. The plans and testimony indicate that storm water collected from the roof of the proposed garage would be directed away from the easterly side property line.

4. The Board determined that the requested variance could only be granted if the proposed easterly side yard setback was increased to be no less than 3 feet. Subject to the condition imposed below, the application would have no substantial detriment to the public good; and

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within application of **Matt and Cathy Roberts** is hereby approved, subject to the following condition:

1. The proposed detached garage shall have an easterly side yard setback of no less than 3 feet, and all roof leaders on the proposed garage shall be directed away from the easterly side property line.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Anthony & Elizabeth Murphy, 15 Glenwood Road** was adopted, Mr. Burr and Mr. Whipple abstaining:

**WHEREAS, Anthony & Elizabeth Murphy**, 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 from **Montclair Code Section 347-45D** for a rear yard setback less than required, from **Montclair Code Section 347-45E** for a principal building coverage

exceeding the maximum permitted, and from **Montclair Code Section 347-45C(4)(a)** for permitted principal structure width exceeding the maximum permitted, for a proposed deck at the rear of the dwelling, on property designated as Lot 14 in Block 2705 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey dated July 15, 2009, a Plot Plan prepared by CLC Landscape Design dated July 19, 2010, a deck construction plan prepared by Collins Engineering dated July 20, 2010, and computer-generated images of the proposed deck; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 18, 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, contains a single-family dwelling and a detached garage, and measures 60 feet in width by 132.42 feet in depth. A deck is proposed at the rear of the dwelling. The proposed deck measures approximately 590 square feet including the 2 sets of stairs from the deck.
2. The rear yard setback required for the property is 39 feet 8<sup>3</sup>/<sub>8</sub> inches, or 30 percent of the lot depth of 132.42. The proposed deck has a rear yard setback of 25 feet 8<sup>1</sup>/<sub>8</sub> inches, which requires a variance.
3. The maximum permitted principal building lot coverage, including the proposed deck, is 25 percent of the lot area of 7,945 square feet. A principal building lot coverage of 31 percent of the lot area is proposed, which requires a variance. The plan indicates that the proposed coverage exceeds the maximum permitted by 479 square feet.
4. The maximum permitted principal structure width is 39 feet, or 65 percent of the lot frontage width of 60 feet. The existing dwelling measure approximately 37.5 feet in width using the widest points. The proposed deck would add approximately 3 feet to the overall width of the dwelling, to approximately 40.5 feet or 67.5 percent of the lot frontage width, which requires a variance.
5. The Board took into account that the variances requested are for a deck and not for a typical building addition. The Board determined that the size of the proposed deck could be slightly reduced in order to eliminate the principal structure width variance and to reduce the principal building lot coverage to a degree. The rear yard setback variance requested could be approved due to the location of the dwelling on the lot. The variance requested for principal structure width was denied, which reduced the size of the deck by 1.5 feet on the westerly side. The principal building lot

coverage variance was granted, although it could not exceed more than 410 square feet of what is permitted.

**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 variance requested to exceed maximum principal structure width is denied, and the variances requested for a rear yard setback less than required and to exceed the maximum principal building lot coverage are approved, subject to the following conditions:

1. The variance requested to exceed the maximum permitted principal structure width is denied.
2. The variances granted for a rear yard setback less than required and to exceed the maximum principal building lot coverage are limited to a deck.
3. The maximum principal building lot coverage variance granted for the deck is limited to 410 square feet over what is permitted.

**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.

It was announced that the application of **John Reimnitz, 9 Glenwood Road** was withdrawn with prejudice at the request of the applicant. It was also announced that application of **William L. Rose, 476 Grove Street** was withdrawn at the request of the applicant. The application of **Mr. & Mrs. Andrew Cohen, 119 Montclair Avenue** was postponed until the October 20, 2010 regular meeting at the request of the applicant. No further notice would be given. No extension of time was necessary. The application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the October 20, 2010 regular meeting at the request of the applicant. No further notice would be given. The Board was granted an extension of time.

The application of **Macrina Hamilton, 269 Grove Street** was continued from the August meeting. The applicant was present. Jerry Guzman was still under oath and described the revisions to the plans. The original design of the proposed shed dormer at the rear elevation of the third floor measured 31 feet in width. The revised plans reduce the overall width of the shed dormer from 31 feet to 28 feet 4¼ inches. The shifting of the dormer to the south by 2 feet 7¾ inches on the revised plan would also comply with the 6 foot side yard setback on the northerly side of the property for the dormer. Mr. Guzman also described the existing trees between the subject property and the adjacent property to the north. He stated that there is sufficient distance between the dwelling on the subject property and the dwelling located on the adjacent property to the north and that the position of the dwellings relative to each other being offset also reduces the impact of the proposed additions. Mr. Guzman answered several questions from the Board about the design options he explored. Chair Harrison called for questions or comments from the public. Hugh Boyd, 271 Grove Street who was still under oath, stated that the redesign of the dormer is an improvement from the previous plan, although he remains concerned with the enclosing of the porches on the northerly side of the dwelling and the increased elevation of the dwelling.

The Board discussed the application. The majority of the Board determined that based on the revised plans and subject to the condition below regarding the third floor dormer, all of the requested variances could be granted. The existing dwelling is small in size and the proposed modifications are reasonable to help to modernize the dwelling to accommodate a family. The proposed roof and columns at the front stoop has no impact on the streetscape. The building additions are aligned with the footprint of the dwelling and do not encroach further towards property lines. The third floor dormer is at the rear of the dwelling and as redesigned would not negatively impact any neighboring properties. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved. Chair Harrison and Mr. Susswein were not in favor of the motion. The approval was subject to the following condition:

1. The proposed at third floor dormer on the rear elevation shall be set back at least 3 feet from the northerly side wall of the dwelling.

The application of **Ruth E. Ross, 18 Vera Place** was called. The applicant was sworn and described the application. A deck is proposed at the rear of the dwelling. The rear yard setback requirement for the property is 33.5 feet, or 30 percent of the lot depth. The proposed deck has a rear yard setback of 30.8 feet, which requires a variance. The proposed deck encroaches into the required rear yard setback by approximately 2.7 feet. There are no other variances required. The proposed principal building coverage measures approximately 21.4 percent of the lot area. The Board questioned Ms. Ross. She described her options in locating the deck along other areas along the rear of the dwelling and stated that the interior configuration of the dwelling, the location of the driveway, and her desire to have the deck receive sun light were factors in locating the deck where it is proposed. No questions or comments were offered from the public. The Board discussed the application and took into account that the variance requested is for a deck and not for a typical building addition. The proposed deck is modest in size and the rear yard setback variance requested could be

approved due to the location of the dwelling on the lot and the relatively shallow lot depth. Existing vegetation along the rear property line also limits the visibility of the deck which would not have a negative impact on any neighboring property. On motion by Mr. Whipple, seconded by Mr. Burr, the application was approved subject to the following condition:

1. The variance granted for a rear yard setback less than required is limited to the deck as depicted on the plans submitted for the application.

The application of **Ron Rudolph, 76 Christopher Street** was called. Ron Rudolph and Rob Neiffer were sworn. Variances are requested to construct a detached garage and to extend the existing driveway on property. The property measures 75 feet in width by 160 feet in depth and contains a single family dwelling. There is no garage on the property and the existing driveway ends in the northerly side yard. A new detached garage is proposed in the northerly rear corner of the lot. It is evident from Sanborn Maps that a detached garage once existed in the northerly rear corner of the lot, where a storage shed presently exists at approximately 2 feet from the northerly side property line and approximately 9 feet from the rear property line. There was no property survey available depicting the previously existing garage, which was removed prior to the applicant's ownership of the subject property. The footprint of the proposed garage measures 26 feet wide by 26 feet long. The garage would be a conforming 15 feet tall. The proposed garage would be set back 1.5 feet from the northerly side property line and 1.5 feet from the rear property line. The existing driveway ends in the northerly side yard. No setback is proposed for the driveway extension from the northerly side property line.

Exhibits marked:

- A-1 Photograph of the area where the proposed garage would be located
- A-2 Photograph of the area where the proposed garage would be located

Mr Rudolph and Mr. Neiffer answered questions about the size of the proposed garage, the proposed setbacks, the large existing tree located between the proposed garage and the existing garage on the adjacent property to the north, the proposed extension of the driveway, and storm water runoff from the proposed garage. Chair Harrison called for questions or comments from the public. Anthony Di Lella, was sworn and stated that he is the owner of 80 Christopher Street, which is the adjacent property to the north, and provided a copy of the property survey of that property to help the Board better understand the location of the large existing tree between the proposed garage and the existing garage on his property.

Exhibit marked:

- O-1 Property survey of 80 Christopher Street dated December 8, 1987

The Board discussed the application. The Board determined that in order to grant any setback variances for the detached garage, the footprint of the garage had to be

reduced to be no greater than 22 feet by 22 feet. With that reduced footprint size, as well as the other conditions indicated below, the Board determined that a rear yard setback of no less than 3 feet can be approved considering the existing depth of the rear yard and location of the dwelling on the lot and the similar rear setback of other detached garages on neighboring properties. In considering the variance requested for the northerly side yard setback, the Board noted the location of a large existing tree located between the proposed garage and the existing detached garage on the neighboring property to the north, and the side yard setbacks of existing detached garages on neighboring properties. The majority of the Board determined that a side yard setback variance could be granted with the reduced footprint size, as well as the other conditions indicated below. The Board determined that the proposed garage should be at least 4 feet away from the large existing tree described above, and also determined that the garage should not be any closer than 4 feet from the northerly side property line. Based on the location of the dwelling on the property and an existing decorative retaining wall near the proposed driveway extension, the Board determined that the variance requested for the driveway setback could only be approved for the driveway extension as it approaches and reaches the retaining wall, as well as for the first several feet of the driveway extension as it passes the retaining wall and leads into the rear yard. At the point where the driveway passes the retaining wall, however, the driveway should begin to gradually move away from the property line so that it will conform to the 1 foot minimum side yard setback once the driveway is located in the area of the rear yard that is 6 feet west of the retaining wall.

On motion by Mr. Fleischer, seconded by Mr. Whipple, a variance for the rear yard setback of the garage and a variance for the driveway setback were approved unanimously. On motion by Mr. Whipple, seconded by Ms. English, a side yard setback variance was approved. Chair Harrison, Mr. Fleischer, and Mr. Susswein were not in favor of the motion granting the side yard setback variance. The approved variances were subject to the following conditions:

1. The proposed detached garage shall be limited to maximum dimensions of 22 feet wide by 22 feet long.
2. The rear yard setback shall be no less than 3 feet.
3. The proposed detached garage shall be at least 4 feet away from the large existing tree located between the proposed garage and the existing detached garage on the neighboring property to the north, and shall also not be any closer than 4 feet from the northerly side property line.
4. At the point where the driveway extension passes the retaining wall in the applicant's rear yard, the driveway should begin to gradually move away from the property line so that it will conform to the 1 foot minimum side yard setback from the northerly side property line once the driveway is located in the area of the rear yard that is 6 feet west of the retaining wall.

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

The continuation of the application of **Sprint Nextel Corp., 641 Bloomfield Avenue** was called. James Pryor, Esq. appeared as attorney for the applicant and summarized what was completed on the application at the previous meetings on July 21, 2010 and August 18, 2010. Ron Evans, who was still under oath, described the most recent revisions depicted on photo simulations.

Exhibits marked:

- A-6 Photo simulations on a board depicting the proposed antennas
- A-7 Photo simulations on a board depicting the proposed antennas

The panel antenna proposed in the gamma sector would be mounted on the westerly façade flush with the parapet and conform to the ordinance. The proposed dish antenna would be relocated from the beta sector along the easterly parapet to the alpha sector at the stairway bulkhead located at the rear of the building rooftop and would not to exceed 1 foot 4 inches above the height of the stairway bulkhead. The proposed GPS antenna would be mounted to the rear stairway bulkhead in the alpha sector and would also not exceed 1 foot 4 inches above the height of the stairway bulkhead. The application complies with all the conditional use standards except that the height of the panel antenna in the beta sector, the dish antenna and GPS antenna in the alpha sector exceed the top of the parapet wall or stairway bulkhead to which they are attached. The Board questioned the witness. No questions were offered from the public. The Board discussed the application. On motion by Mr. Whipple, seconded by Ms. Cockey, the application was approved subject to the following conditions:

1. The applicant shall submit revised plans relocating the panel antenna in the gamma sector to replace an existing antenna in compliance with the ordinance and relocating the dish antenna to the rear penthouse. The dish and antenna and the GPS antenna shall not exceed one foot 4 inches above the height of the structure to which each antenna is affixed.
2. The antennas shall be painted to match the structure to which they are affixed.
3. The antennas not constructed by Sprint in accordance with the 1997 approval shall require application to the appropriate Land Use Board for approval.
4. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with the review of this matter.

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