

MINUTES OF THE BOARD OF ADJUSTMENT
September 19, 2012

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

ABSENT: Mr. Edwards, Ms. Holloway, Mr. Kenney, 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 Ms. Checca, the **Minutes of the August 19, 2012** regular meeting were adopted as modified, Mr. Burr and Mr. Reynolds abstaining.

On motion by Mr. Fleischer, seconded by Ms. Checca, the following resolution memorializing the Board's decision on the application of **Savita & Matthew Lepore, 137 Cooper Avenue** was adopted as modified:

WHEREAS, Savita & Matthew Lepore, 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 to construct a dormer addition onto the 3rd floor at the rear of the dwelling, on property designated as Lot 39 in Block 3507 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-45A(2) to exceed 2½ stories at the rear of the dwelling as a result of the proposed addition; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on July 18, 2012 and August 15, 2012, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated April 17, 2012, and floor plans and elevations by Downtown Design Works Architecture, LLC, last revised to July 31, 2012; and

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

1. The property is an interior lot measuring approximately 83.30 feet in frontage width and 150 feet in lot depth. The property is located in an R-1 One-Family Zone and contains a 2½ story single family dwelling.

2. A dormer addition is proposed onto the 3rd floor at the rear of the dwelling that will create a 3rd story at the rear of the dwelling based on the zoning ordinance. The latest revision to the plan proposed two separate dormers on the rear elevation.

3. The dwelling exists at 2½ stories and the width of the dwelling at the 3rd floor level is 34 feet. Montclair Code Section 347-23 allows dormers in a half story that are not more than 50 percent of the width of the dwelling in order to maintain the 2½ story maximum. The maximum permitted width of a dormer or dormers on the rear elevation for the subject property is 17 feet.

4. The width of the proposed 3rd floor dormer addition on the original plan submitted by the applicant measured the full 34 foot width of the 3rd floor. Based on the Board's comments, the applicant revised the submission and instead proposed 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.

5. 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 having to build out to the footprint of the dwelling, 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; 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 variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application is hereby approved; and

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

On motion by Mr. Fleischer, seconded by Ms. Checca, the following resolution memorializing the Board's decision on the application of **James Ackerman, 141 Upper Mountain Avenue** was adopted:

WHEREAS, James Ackerman, 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 to construct an addition onto the rear of the dwelling, on property designated as Lot 7 in Block 1601 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-33C(1) for a side yard setback of less than 12 feet from the northerly side property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 15, 2012, at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated August 4, 2000, plans prepared by Dugasz & Brower, Architects, revised June 27, 2012; and

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

1. 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.

2. In 2006, the Board of Adjustment reviewed an application for an addition onto the southerly side of the dwelling. The Board approved a front yard setback variance and denied a dwelling width variance in that decision.

3. 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.

4. 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.

5. The Board 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; 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 variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application is hereby approved, 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.

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 Ms. Checca, the following resolution memorializing the Board's decision on the application of **Roger Drill & Lettie Teague, 131 North Mountain Avenue** was adopted:

WHEREAS, Roger Drill & Lettie Teague, 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 to construct a detached garage in the rear yard of the property, designated as Lot 13 in Block 1504 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-46A(3) for a rear yard setback of less than the minimum of 6 feet; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 15, 2012, at which time it was established that notice was

properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted plans by PS&S Architecture, PC, dated April 30, 2012, and a property survey dated May 7, 2005; and

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

1. The property is located in an R-1 One-Family Zone and contains a single family dwelling with a detached garage in the southerly side of the rear yard. The property measures 92.11 feet in frontage width; the lot depth ranges from 100.02 feet on the southerly side to 107.66 feet on the northerly side.

2. 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 existing garage has a nonconforming rear yard setback of 2.93 feet, where a minimum of 6 feet is required. The existing garage has a conforming side yard setback of over 9 feet. The deck attached to the garage appears to extend slightly over the rear property line, where it abuts a fence.

3. The applicant proposes to demolish the existing garage and attached deck and to construct a new detached garage in the same area of the property. The proposed garage would measure 26 feet in width by 24 feet in length. The southerly side yard setback of the garage would be reduced from just over 9 feet to 6 feet, which conforms to the minimum permitted side yard setback, and a conforming height of 15 feet is proposed.

4. The proposed rear yard setback depicted on the plans submitted is 3 feet. During the course of the hearing, the applicant amended the proposal for a rear yard setback to 4.5 feet.

5. The Board determined that the requested variance could not be approved. The existing nonconforming condition includes a significantly smaller garage than what is proposed by the applicant. Considering that the existing garage would be completely removed, the overall size of the subject property, and the enlargement of the footprint of the garage, the variance can not be justified and not be approved without a substantial detriment. The applicant failed to prove a hardship relating to a physical characteristic of the land and failed to prove that any purposes of the Municipal Land Use Law would be advanced or that any public benefit would result from approval of the variance; and

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application is hereby denied; 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. Fleischer, seconded by Ms. Checca, the following resolution memorializing the Board's decision on the application of **Clifford H. and Karen Goldman, 145 Highland Avenue** was adopted as modified:

WHEREAS, Clifford H. and Karen Goldman, as owners, did file an appeal with the Board of Adjustment of the Township of Montclair pursuant to N.J.S.A. 40:55D-70a, 72a and Montclair Code Sections 202-18A, 202-36 of the determination of Richard Charreun, Montclair Planning Technician, dated August 2, 2012, that a proposed structure was not a permitted accessory use on property designated as Lot 26 in Block 504 on the Township Tax Map and located in the R-O Mountainside Zone;

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by Lawrence P. Quirk, AIA, Sheets A-1 through A-3 dated April 11, 2012 revised through June 5, 2012; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 15, 2012, at which time the Board carefully reviewed the testimony presented as well as the evidence submitted and established the following findings:

1. The subject property is improved with a two and one-half story masonry and frame single family dwelling which was constructed in 1927.
2. 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.

3. 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 structure depict a full bathroom (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.

4. The plans depict accessory building height in excess of the maximum height of 15 feet allowed pursuant to Montclair Code Section 347-34A(1) for an accessory structure and would require a variance pursuant to N.J.S.A. 40:55D-70c. The accessory building height is not the subject of this appeal.

5. Based upon the improvements outlined in the preceding paragraph, the Board agreed with Mr. Charreun's determination that the proposed 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.

NOW, THEREFORE, BE IT RESOLVED, based upon the foregoing, the Board of Adjustment of the Township of Montclair, does hereby uphold and affirm the determination of Richard Charreun, Montclair Planning Technician, dated August 2, 2012 determining the proposed structure is not a permitted accessory use which requires a variance pursuant to N.J.S.A. 40:55D-70d(1).

NOW, THEREFORE, BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the applicants, Township Manager, Township Council and Township Clerk.

It was announced that at the request of the applicant, the continuation of the application of **Essex Holdings Management, LLC, 174 Harrison Avenue** was postponed until the October 17, 2012 meeting of the Board. The Board was granted an extension of time and no further notice will be given.

The application of **Santos & Lourdes Ricciardi, 70-72 Forest Street** was announced. Santos Ricciardi was sworn and described the application. A variance is requested to construct a driveway and parking area for 2 vehicles in the front yard of the property. A 16 foot wide driveway entrance is proposed at the curb centered on the lot to provide access to 2 separate parking spaces that approach the front entrances at the front of the dwelling. There are no dimensional variances requested as the driveway

and parking spaces meet the minimum size requirements and the setback requirements from the property lines. The Board questioned the applicant. Mr. Ricciardi stated that his engineer recommended regrading the front yard area due to its slope. He also stated that he thought that 2 separate driveways would create more paved area than what is proposed. He stated that he did not communicate with the adjoining commercial property about obtaining access to his rear yard through that property due to the fact that there are existing spaces that would have to be removed by that property and a large tree that would have to be removed as well.

Michael Pessolano, Professional Planner was sworn, stated his qualifications, and described the application. The property is narrow in width and the existing dwelling prevents the applicant from creating a parking area in a side or rear yard. The property has 2 dwelling units with no on-site parking and the plan improves the parking deficiency. The plan to provide some on-site parking also benefits the community by helping to reduce the overall demand on other off-site or public parking resources. The visual impact of the proposed parking area is limited due to the specific location and setting of the property, which adjoins a larger commercial parking lot to the south. The plan is in keeping with the stated goals of the latest Master Plan reexamination report, which identifies a problem in the Township with off-street parking. The Board questioned the witness. Mr. Pessolano described the restrictions on overnight street parking and indicated that the tenants of the subject property currently park on nearby private property for a fee.

Chair Harrison called for questions and comments from the public. Jennifer Crews Reynolds, 66 Forest Street, was sworn and stated her opposition to the application. The Board questioned Ms. Crews Reynolds. She described how she and other property owners without on-site parking find off-street parking in the neighborhood without creating a front yard parking area. Matt Maloney, 70 Forest Street was sworn. He is a tenant of the subject property. He stated his support for the application. The variance should be granted since the applicant has no other way to provide on-site parking. Off site solutions are expensive and inconvenient. The proposed parking area will not be a visual nuisance since the adjoining commercial lot overwhelms the view from every perspective. Mr. Pessolano stated that the applicant would be willing to revise the design as the Board sees fit in order to obtain the variance. The Board discussed the application. During the discussion and prior to voting, Mr. Pessolano asked that the application be carried to give the applicant an opportunity to present a new design. There was no motion in favor of carrying the application. On motion by Mr. Burr, seconded by Ms. Checca, the variance was unanimously denied.

The application of **Michael & Michelle Lepak, 316 North Fullerton Avenue** was announced. Michelle Lepak, was sworn. Her neighbor, June Wegner, 317 North Fullerton Avenue, sat beside Ms. Lepak and was also sworn. Ms. Lepak described the application. A variance is requested to construct a roofed wrap-around front porch onto the single-family dwelling. The property is a corner lot at the intersection of North

Fullerton Avenue and Fairfield Street and is located in an R-2 Two-Family Zone. The existing dwelling has an unroofed landing at the front door. A roofed front porch is proposed that would wrap around the northerly front corner of the dwelling into the Fairfield Street front yard of the corner lot. The proposed porch is intended to replace a similar porch that previously existed on the property. The porch that existed on the dwelling is also similar to what presently exists at 314 North Fullerton Avenue. The proposed porch would be 26 square feet smaller than the porch that previously existed. The front property line along Fairfield Street is at an angled position to the dwelling. The proposed porch would have a front yard setback of 18.8 feet from Fairfield Street at its closest point. A minimum of 25 feet is required along Fairfield Street and a variance is requested.

Exhibits marked:

- A-1 Photograph of the subject property
- A-2 Photograph of the subject property

The Board did not have any questions for the applicant. Chair Harrison called for questions and comments from the public. June Wegner, 317 North Fullerton Avenue, who was already sworn, stated her support for the application. Annette DeMichele, 67 Warren Place, was sworn and stated her support for the application. The Board discussed the application and determined that the requested variance could be approved. The proposed porch replaces a similar porch that existed on the property and improves the aesthetics of the dwelling. The adjoining properties on Fairfield Street are located in a commercial zone, with no front yard setback. The requested variance will also not have a negative impact on any nearby property. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved.

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