

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**October 17, 2012**

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

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

On motion by Mr. Fleischer, seconded by Mr. Burr, the following resolution memorializing the Board's decision on the application of **Santos & Lourdes Ricciardi, 70-72 Forest Street** was adopted, Mr. Edwards, Mr. Kenney, and Mr. Whipple abstaining:

WHEREAS, Santos & Lourdes Ricciardi, 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 driveway and parking area for 2 vehicles in the front yard of the property, designated as Lot 22 in Block 3202 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-52 in that the proposed parking area is not permitted to be located between the dwelling and the front property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 19, 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 March 28, 2012, a plan prepared by Stewart Surveying & Engineering, LLC, dated July 16, 2012, and a packet of information from the applicants including written information, illustrations, and photographs; and

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

1. The property is located in the R-2 Two-Family Zone, contains a two-family dwelling with no existing on-site parking or driveway. The property measures 40 feet in width by 213 feet in depth.

2. 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. A variance is requested in that the proposed parking area is not permitted to be located between the dwelling and the front property line.

3. The physical characteristics of the property identified by the applicant as criteria for granting the variance are not distinguishable from similar properties in the neighborhood, and the proposed front yard parking area would have a significant negative visual impact on the neighborhood; 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 Mr. Burr, the following resolution memorializing the Board's decision on the application of **Michael & Michelle Lepak, 316 North Fullerton Avenue** was adopted, Mr. Edwards, Mr. Kenney, and Mr. Whipple abstaining:

WHEREAS, Michael & Michelle Lepak, 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 roofed wrap-around front porch onto the single-family dwelling, on property designated as Lot 22 in Block 3403 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the property is a corner lot at the intersection of North Fullerton Avenue and Fairfield Street, and a variance is requested from Montclair Code Section 347-51 for a front yard setback of less than 25 feet from the Fairfield Street front property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 19, 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 28, 1990, and plans by Brinkman Architecture, LLC, revised August 27, 2012; and

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

1. 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 property contains a 2½ story single family dwelling with a detached garage in the rear yard accessed by a driveway on Fairfield Street.

2. 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.

3. Sanborn Maps, dated through 1961 depict that the roofed porch similar to what is proposed previously existed on the dwelling. The proposed porch would also be similar to the existing roofed wrap around porch on the dwelling located at 314 North Fullerton Avenue. The applicant indicated that the proposed porch would be approximately 26 square feet smaller than the previously existing porch.

4. The proposed porch would have a conforming front yard setback of 32.3 feet from North Fullerton Avenue. 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.

5. The Board 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 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; 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.

It was announced that at the request of the applicant, the application of **Montclair Kimberly Academy Foundation, 40 Upper Mountain Avenue** was postponed until the November 14, 2012 meeting of the Board. The Board was granted an extension of time and no further notice will be given.

The continuation of the application of **Essex Holdings Management, LLC, 174 Harrison Avenue** was announced. David Owen, Esq., appeared as attorney for the applicant. He stated that he intended to recall Roger DeNiscia, Professional Planner as a rebuttal witness before concluding the application. In advance of that, Chair Harrison called for public comment. Shane Faber, 8 Graham Terrace, was sworn and stated his opposition to the application. Paul Nahodyl, 6 Graham Terrace, was sworn and stated his opposition to the application.

Mr. Owen proceeded to question Mr. DeNiscia, who was still under oath. Mr. DeNiscia stated that published directories by The Price & Lee Company are available in the Montclair Public Library. He reviewed his findings and stated that the directories indicate that the subject property contained 2 households in 1937 and 1939. The directories from 1951 and 1954 also show 2 households. The directories from 1961 and 1965 show only 1 household. The 1969 the directory does not include listing for the property, meaning that the property could have been vacant. He also reiterated earlier

testimony that the Montclair tax record from 1972 to current indicates 2 dwellings unit in the building.

Exhibits marked:

A-21 The Price & Lee Company Montclair Directory 1937

A-22 The Price & Lee Company Montclair Directory 1939

The Board questioned the witness. Mr. DeNiscia stated that the directories available in a public library are a useful and valid source of information for a Professional Planner doing the type of research necessary for the topic being explored with the current testimony. Mr. DeNiscia stated that he does not know exactly how long the property has been vacant. He also stated that it is not known when a fire may have occurred at the property. Chair Harrison called for questions from the public on the testimony provided by Mr. DeNiscia. David Brooks, 12 Graham Terrace asked several questions about The Price & Lee Company Montclair directories used by Mr. DeNiscia. The Board briefly questioned the witness. Mr. DeNiscia stated that he was not aware whether Census data for the earliest time period being examined was available.

Mr. Owen summarized the application and stated that the application should be approved. David Brooks, 12 Graham Terrace requested permission to make a comment on the testimony provided by Mr. DeNiscia at this hearing. Mr. Owen objected, however, Mr. Books was allowed to comment on the testimony. Mr. Brooks was sworn and stated the information provided by Mr. DeNiscia is too selective and should be rejected by the Board. The Board discussed the application. After the discussion, a motion by Mr. Whipple to approve the application was seconded by Mr. Edwards, however, the motion failed to be approved getting 4 affirmative votes, and 3 negative votes, and the application was denied.

The Board took a short recess.

The application of **Kevin & Tara Griswold, 97 Mt. Hebron Road** was announced. Tara Griswold and her contractor, Matthew Cunningham, were sworn. Ms. Griswold described the application. The property is a corner lot at the intersection of Mt. Hebron Road and College Avenue. The enclosed porch depicted on the survey is being modified to become part of the interior of the dwelling. As part of that project, a new roofed landing is proposed at the existing front doorway. The minimum front yard setback for the proposed roofed landing is 25 feet, since the only adjoining property, which is located to the west of the subject property, has a front yard setback of less than 25 feet. The proposed roofed landing would be set back approximately 18.38 feet from the Mt. Hebron Road front property line and a variance is requested. The property survey for the next door dwelling indicates that front yard setback of that dwelling is 13.71 feet.

Exhibit marked:

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

The Board briefly questioned the applicant and Mr. Cunningham. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. The proposed roofed landing provides functional and aesthetic improvements and will not have a negative impact on any nearby property. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

The application of **Rogier Intres, 23 Chester Road** was announced. The applicant was sworn and described the application. Wood decking is proposed in the rear yard on the southerly side of the dwelling. The dwelling is on the last property on the southerly side of the dead end street and abuts Brookdale Park. The dwelling is positioned so the main entry door and main facade face east towards Brookdale Park rather than the front property line on Chester Road. The minimum rear yard setback for new construction attached to the dwelling, such as the proposed decking, is approximately 30.3 feet. The existing enclosed porch on the southerly side of the dwelling is approximately 30 feet from the rear property line as it essentially abuts the rear yard setback line. The proposed decking is low to the ground surface. 529.5 square feet of decking would be 10 inches from the ground. Another section of decking measuring 98 square feet would be 14 inches from the ground. Most of the decking that is proposed requires a variance as it lies within the required rear yard setback. The decking is proposed to be 4 feet from the rear property line at the maximum extent and a variance is requested.

The Board questioned the applicant. Mr. Intres stated that the rear yard area is his choice for the decking since it is the most private section of his yard. He stated that part of his decision on the size and location of the deck has to do with property maintenance, which is challenging as the proximity to the parkland causes an invasion of weeds onto his grounds. The proposed deck will help to maintain the property. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved with a modified plan with an increased rear yard setback. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved, subject to the following condition:

1. The rear yard setback of the proposed decking shall be at least 11 feet. The decking that benefits from the rear yard setback variance shall not exceed 30 feet in width, shall not exceed 14 inches in height from grade measured to the deck surface, and must otherwise comply with the zoning ordinance.

The application of **Ellen Sander, 12 Garden Street** was announced. The applicant was sworn and described the application. A variance is requested to allow a 7 foot fence height where a maximum height of 4.5 feet is permitted. The westerly side

property line abuts a property occupied by Watchung Elementary School. The proposed 7 foot tall fence would be aligned with the front corner of her dwelling, excluding the front porch. The applicant stated that the proposed fence would help to shield her property from the parking lot and dumpster area of the school and that a 7 foot chain link fence belonging to the school is located on the property line that separates the lots. She stated that due to the existing mature deciduous trees in the side yard, evergreen plantings have not survived and are not a viable option for screening.

The Board briefly questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved due to the variety of unique circumstances related to the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

The application of **Montclair Child Development Center, Inc., 33 Fulton Street** was announced. Robert Taylor, Esq. appeared as attorney for the applicant and described the application. Variances are requested associated with a proposed wall mounted sign on the westerly side of the building. The property is located in an R-3 Garden Group Zone and contains a Pre-School Head Start Program.

Bob O'Donnell, sign contractor, was sworn and described the proposed sign. Variances are requested in that the proposed sign faces the side property line and is not on a street frontage, and in that the proposed sign exceeds 12 square feet in area. The wall sign consists of individual letters which would cover 77 square feet of wall area. The sign is proposed on the east side wall of the building because the front façade facing Fulton Street has very little wall space available due to its architectural design consisting largely of windows. The main entrance door is located on the east side wall of the building which is also much closer to the parking area. The proposed location of the wall sign also allows for visibility for vehicles and pedestrians as they travel eastward on Fulton Street.

Exhibit marked:

A-1 Photograph of the easterly façade

The Board questioned the witness. Mr. O'Donnell stated that the signage would not be illuminated and that the existing panel sign mounted on the entrance canopy on the easterly wall would be removed. He also stated that the size of the sign was designed as per the applicants needs as they see it. Mr. Taylor also added information about the individual named on the sign through his experience and knowledge with the applicant over several years of dealing with the property. He also stated that the existing panel sign has been on the canopy at the main entrance since 2006. Mr. Sullivan addressed the Board about their role in evaluating the request for the variances based on the requirements of the Municipal Land use Law. After several questions about the size of the proposed sign, Mr. Taylor stated that he would request to carry the

application to the next meeting of the Board, so the applicant can consider their options and provide additional information. Chair Harrison announced the application would continue the November 14, 2012 meeting of the Board and that no further notice would be given.

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