

MINUTES OF THE BOARD OF ADJUSTMENT
November 18, 2009

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

ABSENT: Ms. Cockey, Ms. English, and Mr. Franco, 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. Susswein, seconded by Mr. Whipple, the **Minutes of the July 15, 2009** regular meeting were adopted, Mr. Fleischer abstaining. On motion by Mr. Susswein, seconded by Ms. Holloway, the **Minutes of the August 19, 2009** regular meeting were adopted, Mr. Burr and Mr. Whipple abstaining.

On motion by Mr. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the Board's decision on the application of **John J. Hosay, Jr., 14 Club Road** was adopted, Mr. Fleischer abstaining:

WHEREAS, John J. Hosay, Jr., as owner, 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 347-39C** to permit a rear yard setback less than required for a proposed addition onto the first floor at the rear of the dwelling, on property designated as Lot 88 in Block 706 on the Township Tax Map and located in the R-0(a) One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated October 3, 1989, and a plot plan, a floor plan, and elevations, prepared by Derek Cox Architecture and Landscape Design, LLC, dated August 13, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 21, 2009 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 subject property is an irregularly shaped interior lot located in the R-0(a) One-Family Zone. The curved lot frontage of the subject property measures 60 feet in linear length and the property measures 19,260 square feet in lot area. The lot widens significantly towards the rear. The property contains a 1½ story single-family dwelling with an attached garage on the northerly side of the dwelling.

2. On March 15, 1989, the Board of Adjustment granted a rear yard setback variance for additions and a deck. The rear setback requirement at that time was 30 feet. A variance was granted for the rear setback of an attached garage addition on the north side of the dwelling at 16 feet, 2 additions to the first floor at the rear of the dwelling including a "walk-out" bay addition at approximately 26 feet and a family room addition at approximately 20 feet, and a deck at 13 feet.

3. Based on the current zoning ordinance, the rear setback requirement for the subject property is 31 feet, which is 30 percent of the lot depth measured as per the ordinance. Parts of the existing dwelling and deck are located within the current rear yard setback requirement, both as a result of the previously granted variances and the dwelling that existed prior to that.

4. The current plan is to expand the existing "walk-out" bay, which is part of the existing kitchen by 31.7 square feet. The bay would be widened from about 10 feet to 17 feet, and extended towards the rear property line by 1 foot. The two corners of the proposed addition would be set back 30.75 feet and 27.55 feet from the rear property line where 31 feet is required and a variance is requested. No other variances are required.

5. The Board determined that the requested variance could be granted. The configuration of the lot and the location of the dwelling on the lot create practical difficulties in conforming to the rear setback requirement. The addition is modest in size and the existing landscaping at the rear property line provides screening of the rear of the dwelling.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did 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 prove 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 **John J. Hosay, Jr.** 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. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the Board's decision on the application of **Mr. & Mrs. Brian Meith, 106 Edgemont Road** was adopted, Chair Harrison and Mr. Kenney abstaining:

WHEREAS, Mr. & Mrs. Brian Meith, as owners, 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 347-45B(2)** to permit a front yard setback less than required from Godfrey Road, and from **Montclair Code Section 347-45C(2)** to permit a side yard setback less than required for additions proposed onto the dwelling, on property designated as Lot 17 in Block 1708 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated December 4, 1998, and a plot plan, floor plans, and elevations, prepared by George A. Held and Associates, revised to September 24, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 21, 2009 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 subject property is a corner lot located in the R-1 One-Family Zone located at the intersection of Edgemont Road and Godfrey Road. The property measures 7,505 square feet in area and contains a 2½-story single-family dwelling with a detached garage in the northwesterly corner of the lot accessed by a driveway from Godfrey Road. An addition is proposed at the rear of the dwelling that complies with all zoning requirements.

2. On June 15, 2005 the Board of Adjustment granted a side yard setback variance for central air conditioning units. Within the same application, setback variances for a proposed detached garage were denied.

3. The average front yard setback of the 2 nearest dwellings to the west along Godfrey Road is 25.17 feet which is the required front yard setback. The existing dwelling has a slightly nonconforming front yard setback of 24.17 feet to the southwesterly corner of the one-story sunroom along Godfrey Road. A bay addition that extends 18 inches closer to Godfrey Road than the sunroom, and a second floor addition directly above the sunroom are proposed. Variances are requested in that a minimum front yard setback of 25.17 feet from Godfrey Road is required and 23.06 feet is proposed for the bay addition, and 24.17 feet is proposed from the southwesterly corner of the second floor addition.

4. A bay addition is also proposed on the northerly side of the house that would extend 16 inches into the side yard setback. The existing dwelling has a nonconforming northerly side yard setback of 5.78 feet from the northeasterly front

corner of the dwelling. A variance is requested in that a side yard setback of 6 feet is required from the northerly side property line and the proposed bay addition would be set back 4.59 feet from the northerly side property line.

5. The Board determined that the requested variance for the Godfrey Road front yard setback could be granted. The proposed bay addition for the sunroom and the second floor addition above the sunroom would not be any closer to Godfrey Road than the dwelling located on the immediately adjoining lot on Godfrey Road.

6. The Board also determined that the requested variance for the side yard setback could be granted. The bay addition for the dining room is a minor enlargement. The impact of the reduction in the side yard setback is mitigated by the architecture and rooflines of the dwelling, as well as the position of the dwelling on the adjoining lot to the north, which is separated from the subject property by a driveway.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 applicants did prove 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 of **Mr. & Mrs. Brian Meith** 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. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the Board's decision on the application of **Maria & John McCullough, 412 Highland Avenue** was adopted:

WHEREAS, Maria & John McCullough, as owners, 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 347-45B(2)** to permit a front yard setback less than required from Windsor Place, and from **Montclair Code Section 347-45E** to permit a greater principal building lot coverage than permitted to construct a roofed front porch onto the dwelling, on property designated as Lot 6 in Block 704 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated July 12, 2000 and a plot plan, first floor plan, and elevations, prepared by Architectural Design Associates, revised through October 1, 2009; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 21, 2009 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 subject property is a corner lot located in the R-1 One-Family Zone located at the intersection of Highland Avenue and Windsor Place. The property measures 6,705 square feet in area and contains a 2½-story single-family dwelling with an attached garage accessed by a driveway from Windsor Place.

2. The applicants propose to demolish the existing roofed front entry stoop and construct a roofed front porch facing the Highland Avenue frontage, where the front entrance to the dwelling exists. The proposed front porch has dimension of approximately 39.5 feet wide by 9 feet deep and conforms to the front yard setback requirement on Highland Avenue.

3. The required front setback from Windsor Place is 28.75 feet, which is based on the average front setback of the 2 nearest dwellings on Windsor Place to the west. The existing dwelling has a nonconforming Windsor Place front yard setback of 15.32 feet from Windsor Place, as measured from the northeasterly corner of dwelling. The proposed porch is aligned with the northerly wall of the dwelling and follows the nonconforming Windsor Place front yard setback. A variance is requested in that a minimum front yard setback of approximately 28.75 feet is required from Windsor Place and a lesser front yard setback of 15.31 feet is proposed.

4. The lot measures 6,705.43 square feet in area. The maximum permitted principal building coverage is 25 percent of the lot area or 1,670.5 square feet. The existing dwelling coverage measures 21.16% or 1,419 square feet. The total proposed coverage is 1,779 square feet, which equals 26.53 percent of the lot area and a variance is requested.

5. The Board determined that the requested variances could be granted. The proposed porch does not encroach any closer than the existing dwelling to Windsor Place and would not negatively impact the appearance of the Windsor Place streetscape. The application does not go against the intent of the principal building lot coverage limitation. The property is relatively undersized and the proposed front porch enhances the appearance of the property.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and

undue hardship and did prove 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 applicants did prove 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 of **Maria & John McCullough** 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. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the Board's decision on the application of **Frank & Josephine Martone, 229 North Mountain Avenue** was adopted:

WHEREAS, Frank & Josephine Martone, as owners, 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 347-46A(2)(a)** for a southerly side yard setback and from **Montclair Code Section 347-46A(3)** for a rear yard setback, less than required for a detached garage proposed on property designated as Lot 30 in Block 1603 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated April 23, 1994 and a plot plan, floor plan, and elevations prepared by Todd L. Koenig Architect, P.C., dated July 5, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 21, 2009 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 subject property is an irregularly shaped interior lot located in the R-1 One Family Zone. The lot measures 90 feet in frontage width and 14,200 square feet in area. The property contains a single-family dwelling with a detached garage in the southeasterly rear corner of the lot.

2. The existing garage is in poor condition and would be demolished. A new garage is proposed of the same exact dimensions in the same exact location as the existing. The plans and the testimony provided at the hearing indicate that the foundation and footing of the existing garage is being kept and reused for the new garage.

3. The existing detached garage has a nonconforming southerly side yard setback of 1.4 feet at its closest point and a nonconforming rear yard setback of 1.7 feet. The same nonconforming setbacks are proposed for the proposed garage. Variances are requested in that side and rear yard setbacks of 6 feet are required, and lesser setbacks are proposed. The height of the proposed garage is compliant and no other variances are requested.

4. At the hearing, in response to concerns raised by the Board, the applicants agreed to direct all roof leaders from the proposed garage to a drywell or seepage pit located on their property. The applicants also agreed to eliminate the proposed doorway, light fixture, retaining wall, concrete landing, and drainage inlet at the southerly side of the detached garage.

5. The Board determined that the requested variances could be granted. The fact that the applicants proposed to utilize the existing footing and foundation of the existing detached garage, coupled with the sloping grade of the rear yard, create peculiar and exceptional practical difficulties and exceptional and undue hardship in meeting the required setbacks. Subject to the conditions 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 applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 applicants did prove 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 of **Frank & Josephine Martone** is hereby approved, subject to the following conditions:

1. All roof leaders from the proposed garage shall be directed to a drywell or seepage pit located on the subject property.

2. The proposed doorway, light fixture, retaining wall, concrete landing, and drainage inlet at the southerly side of the detached garage shall be eliminated from 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.

Chair Harrison recused from the discussions regarding the **Omnipoint Communications, Inc., 153 Park Street** and **David & Carrie Greenbaum, 91 Lloyd Road**. The Board discussed the scheduling of a special meeting to continue the application of **Omnipoint Communications, Inc., 153 Park Street** as requested by the applicant. On motion by Mr. Susswein, seconded by Mr. Whipple, the application would be continued at a special meeting of the Board on January 27, 2010. No further notice would be given. The Board had been granted an extension of time on the application. On motion by Mr. Whipple, seconded by Mr. Susswein, the application of **David & Carrie Greenbaum, 91 Lloyd Road** was postponed until the December 16, 2009 regular meeting of the Board, as requested by the applicants. No extension of time was required at this time. Chair Harrison rejoined the Board. On motion by Mr. Susswein, seconded by Mr. Whipple, the continuation of the application of **Wallwood Gardens, Inc, 400 Orange Road** was postponed until February 17, 2010 at the request of the applicant. The applicant would be required to complete a full public notice for that date. The Board had been granted an extension of time on the application. Assistant Secretary Charreun stated the application of **Joseph & Holly Christovao, 22 Macopin Avenue** was withdrawn at the applicants' request.

Chair Harrison called the application of **Ed Dougherty, 220 Bloomfield Avenue**. Chair Harrison stated the application was submitted on August 18, 2009, and included a request for a variance, which was deemed incomplete by the Planning Department on August 21, 2009. No public notice was completed by the applicant and variance request would not be heard. Mr. Sullivan stated that the application also included an appeal of an administrative decision and/or an interpretation of the zoning ordinance. The applicant was not present. Mr. Sullivan indicated that the Board must act on any portion of the application that would be included as an appeal of an administrative decision and/or an interpretation of the zoning ordinance because the statutory time limit for the Board to act on that part of the application would expire on the date of this hearing. On motion by Mr. Susswein, seconded by Mr. Whipple, the Board dismissed the application for lack of prosecution.

Chair Harrison called the application of **Stephen M. Twomey & Kathleen Carroll, 217 Inwood Avenue**. Mr. Twomey was sworn and described the application for a variance for an easterly side yard setback less than required for a detached garage. The property is an interior lot located in the R-1 One-Family Zone and contains a 2½-story single-family dwelling with a detached one-car garage located at the northeasterly rear corner of the lot. The property measures 75 feet in width by 150 feet in depth. The existing detached one-car garage is to be demolished as it has been damaged by storm water accumulation in the rear yard. The existing detached garage measures approximately 13 feet wide by 20 feet long, and has a nonconforming side yard setback

0.50 and 0.90 feet from the easterly side property line, as measured from the front and rear corners on the easterly side of the garage, respectively. The existing garage has a rear yard setback of slightly more than 10 feet. The proposed garage is for 2 cars, would measure 20 feet wide by 24 feet long, and would be shifted to the west to increase the easterly side yard setback to 3 feet. A variance is requested in that a side yard setback of no less than 6 feet is required and a side yard setback of 3 feet is proposed from the easterly side property line. A conforming rear yard setback of 10 feet and a conforming height of 14 feet 9 inches are proposed. The existing driveway would be modified to accommodate the relocated and enlarged garage. An existing drywell would be relocated closer to the center of the yard.

The Board questioned the applicant. The roof leaders from the house are connected to the existing drywell in the rear yard, which routinely overflows. Storm water accumulation is a common problem in their neighborhood. The roof leaders from the proposed garage could be directed away from the easterly side property line. Chair Harrison called for questions and comments from the public. Kathy Cohen, 212 Fernwood Avenue, was sworn. She also described the problems caused by storm water accumulation in their neighborhood and stated that the Board should recommend to the Township Council that the additional drainage improvements be constructed on the street in their area. The Board discussed the application and determined that the requested variance could be granted. The existing easterly setback is being improved by the application which results in a benefit to the adjacent neighbor. The proposed easterly side yard setback is in keeping with or greater than that of similar properties in the neighborhood. Subject to the conditions imposed below, the application would have no substantial detriment to the public good. On motion by Mr. Whipple, seconded by Mr. Kenney, the application was approved, subject to the following conditions:

1. All roof leaders on the proposed garage shall be directed away from the easterly side yard, and shall be directed towards the rear yard, the westerly side yard, or any underground drywells constructed in the rear yard by the applicant.
2. The ground surface of the easterly side yard setback of the proposed garage shall be landscaped with vegetation and not paved or surfaced with gravel.

Mr. Fleischer had joined the meeting during the course of the previous application. Chair Harrison called the application of **Dennis Ramsammy, 10 Maple Avenue**. Dennis Ramsammy, and Mark Bess, Architect, were sworn. Mr. Bess described the application for variances for side yard setbacks less than permitted, to exceed the maximum permitted principal structure width, and to exceed the maximum permitted principal structure lot coverage for a two-story addition onto an existing dwelling. The property is an interior lot measuring 35 feet wide by 100 feet deep, is located in the R-2 Two-Family Zone, and contains a two-story, two-family dwelling and a detached garage in the rear yard. A two-story addition has been constructed at the rear of the dwelling without obtaining the required construction permits and zoning review from the Township. The applicant is seeking variances associated with the addition. The existing dwelling has nonconforming side yard setbacks of 2.9 feet from the southerly side line and 7.5 feet from the northerly side line. A variance is requested in that minimum side yard setbacks of 6 feet and 10 feet are required for the addition and

lesser side yard setbacks of 2 feet 11 inches from the southerly side line and 7 feet 9 inches from the northerly side line are proposed for the addition. Mr. Bess continued to describe the application. The existing dwelling has a nonconforming width of 24.5 feet. The addition does not widen the dwelling, but the ordinance limits the addition to a maximum of 22 feet 9 inches in width, or 65 percent of the lot width. A variance is requested in that the width of the addition measures 24 feet 1 inch in width. The existing dwelling, excluding the addition, has a nonconforming principal structure lot coverage of approximately 25.5 percent where a maximum of 25 percent of the lot area is permitted. A variance is requested in that a principal structure lot coverage of approximately 28.5 percent is proposed.

The Board questioned the applicant and Mr. Bess. The central air-conditioning units on the subject property will be relocated to conform to zoning requirements. The area on the southerly side of the detached garage is a patio area that is a step up from the surface of the driveway. A block wall with pillars has been constructed at the front of the lot, which extends into the public R.O.W. by as much as 3.8 feet. The Township Engineer has not issued a permit for this work. The wall is to be removed and any wall reconstructed will be relocated onto the applicant's property, and will be limited to 4.5 feet in height. No questions or comments were offered by the public. The Board discussed the application and determined that the requested variances could be granted. The lot is undersized in terms of lot area and lot width. Regarding the variances requested for the side yard setbacks and the principal structure width, the addition slightly improves upon the existing nonconformity of the existing dwelling. Regarding the variance requested for principal structure lot coverage, while the dwelling was very close to conformity prior to the addition, the addition is small in size, and based on the Board's knowledge of local conditions, the resulting principal structure lot coverage would be in keeping with or less than that of the majority of nearby properties in the same zone. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved, subject to the following conditions:

1. Any fences, wall, or pillars constructed in replacement of the wall and pillars recently constructed in the public right-of-way shall be located only on the subject property and shall conform to zoning requirements.
2. All central air-conditioning units on the subject property shall conform to zoning requirements.
3. The southerly side yard of the existing detached garage shall not be used for parking vehicles.

The Board remained in open session regarding the litigation concerning the previously denied application of **MetroPCS New York, LLC, 641 Bloomfield Avenue**. Mr. Sullivan stated he had recently sent further information to the Board members on the court's reversal of the Board's denial and that he was recommending no further action by the Board on the matter. There were no questions or discussion by the Board. On motion by Mr. Susswein, seconded by Mr. Whipple, the meeting was adjourned.