

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

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

ABSENT: Ms. Talley, Secretary, Ms. Cockey and Ms. English

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. Whipple, seconded by Mr. Susswein, the **Minutes of the November 17, 2010** regular meeting were adopted as modified, Ms. Holloway abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **David Bauer, 27 Watchung Avenue** was adopted, Ms. Holloway abstaining:

WHEREAS, David Bauer, 27 Watchung Avenue 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 associated with a proposed addition to the dwelling on property designated as Lot 2 in Block 1603 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance from **Montclair Code Section 347-45D** for a rear yard setback of less than 36.3 feet or 30 percent of the lot depth; and

WHEREAS, the applicant submitted a property survey dated October 15, 2010 and a plan prepared by Brinkman Architecture LLC, dated October 22, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 17, 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 at the southwesterly corner of Watchung Avenue and Edgemont Road. The lot contains a single-family dwelling and a detached garage.

2. The required rear yard setback for the property is 36.3 feet or 30 percent of the lot depth. The existing dwelling has a nonconforming rear yard setback of 27.79 feet at its closest area.

3. The southerly rear corner of the dwelling would be squared off with a small one story addition measuring 1 foot 7 inches by 3 feet 5 inches, which is associated with proposed alterations to the kitchen. The area where the addition is located would have a rear setback of 32.03 feet and a variance is requested for a rear yard setback less than the required 36.3 feet. The addition would be built under an existing roof eave.

4. The Board determined that the requested variance could be granted. The proposed addition is very small in size and is aligned with the existing exterior walls of at the southerly rear corner of the dwelling. The addition does not encroach any closer to the side and rear property lines than the existing dwelling and would not negatively impact any adjoining 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 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 **David Bauer** 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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Mr. & Mrs. James O'Brien, 120 Chestnut Street** was adopted, Ms. Holloway abstaining:

WHEREAS, Mr. & Mrs. James O'Brien, 120 Chestnut Street 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 associated with a proposed addition to the dwelling on property designated as Lot 20 in Block 2401 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested variances from **Montclair Code Section 347-45C(1)** for a side yard setback less than 6 feet from the westerly side property line,

from **Montclair Code Section 347-45E** for a principal building coverage exceeding 25 percent of the lot area; and

WHEREAS, the applicant submitted a property survey dated November 20, 2002 and a plan prepared by George Held & Associates, revised July 13, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 17, 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 and contains a single-family dwelling and a detached garage. The lot measures 45.5 feet in width 139.86 feet in depth.

2. A one-story addition is proposed at the rear of the dwelling. The addition would contain a kitchen and a mudroom.

3. The existing dwelling has a nonconforming westerly side yard setback of 4.1 feet, where a minimum of 6 feet is required. The addition is aligned with the westerly side wall of the dwelling and requires a variance for a side yard setback less than required from the westerly side property line.

4. The maximum permitted principal building coverage is 25 percent of the lot area. The existing principal building coverage is at 23.4 percent of the lot area. With the proposed addition and stairway, the principal building coverage proposed is 27.4 percent of the lot area and a variance is requested for a principal building coverage exceeding the maximum permitted.

5. The Board determined that the requested variances could be granted. The proposed addition is aligned with the westerly side wall of the existing dwelling. The property is relatively narrower and shallower than the vast majority of properties in the neighborhood. The addition would not have a negative impact on any adjoining property, and the dwelling would remain in keeping with the character with the existing homes in the neighborhood; 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 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 within application is hereby approved, subject to the following condition:

1. The smaller of the 2 existing accessory buildings in the rear yard shall be removed and that area of the rear yard shall be landscaped and not paved.

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.

The Board discussed the **2010 Annual Report**. Certain sections of the zoning ordinance were recommended to be reviewed further by the Planning Board and Township Council. The 2010 Annual Report would be modified to include those recommendations and would be reviewed and adopted at a subsequent meeting. The Board discussed the **2011 Schedule of Regular Meetings**. The proposed April 2011 meeting date was changed from April 20, 2011 to April 13, 2011. On motion by Mr. Whipple, seconded by Mr. Susswein, the 2011 Schedule of Regular Meetings was adopted as modified.

It was announced that at the request of the applicant, the scheduling of a special meeting to continue the application of **Omnipoint Communications, Inc., 153 Park Street** was postponed to the February 16, 2011 regular meeting of the Board. No further notice would be given. The Board was granted an extension of time. It was also announced that at the request of the applicant, the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the February 16, 2011 regular meeting. No further notice would be given. The Board was granted an extension of time.

The continuation of the application of **Hillside Square, LLC, 8 Hillside Avenue** was called. David Owen Esq. appeared as attorney for the applicant. Mr. Owen stated that since only 6 Board members are present, that the applicant will request to carry the summation and vote on the application to the next meeting of the Board on January 19, 2011. The Board was granted an extension of time. He indicated that he would recall Robert Silver, of Hillside Square, LLC, for some brief testimony. Mr. Silver, who was still under oath, described the unsigned written agreement between the applicant and one of property owners on Orange Road that pertains to the details of the proposed fence and stone wall that would be on or near the boundary between the subject property and the abutting Orange Road properties. Mr. Silver also pointed out that a one story medical office building exists at the corner of Orange Road and Plymouth Street, which is located in the R-1 Zone. The Board questioned Mr. Silver. There were no questions from the public.

Exhibit marked:

A-21 Copy of unsigned written agreement

It was announced that the application would continue at the January 19, 2011 regular meeting of the Board. No further notice would be given.

The application of **Timothy T. Foster, Fairfield Street** was called. David Owen Esq. appeared as attorney for the applicant and described the application. The applicant owns the vacant corner lot located at the southeast corner of Fairfield Street and Essex Avenue, designated as Lot 7.01 in Block 3412, in the R-1 One-Family Zone and has prepared plans for a new single-family dwelling to be built on the property. The applicant and his wife own the existing single-family dwelling on the adjoining interior lot at 12 Fairfield Street designated as Lot 7 in Block 3412, and intend to sell the existing single-family dwelling at 12 Fairfield Street and move into the proposed dwelling on the corner lot. The applicant seeks a front yard setback variance in connection with constructing a new single-family dwelling on the property.

Exhibits marked:

- A-1 Planning Department Memorandum dated December 8, 2010 with attachments
- A-2 1969 Montclair Zoning Ordinance
- A-3 1975 Montclair Zoning Ordinance

James Brighton, Architect, was sworn and stated his qualifications. He described the plans submitted, which include perspective views, a site plan, elevations and floor plans for the proposed dwelling and detached garage. The plans are dated January 18, 2010 and revised through July 14, 2010. The elevations and floor plans provide for a two and one-half story, three-bedroom dwelling with detached two-car garage. The size of the dwelling exclusive of basement and attic is 3,448 square feet and is generally consistent with the size and width of dwellings in the neighborhood. The design of the dwelling incorporates thoughtful and pleasing architectural contours, shapes and details, as well as quality building materials, and is harmonious with the architecture in the neighborhood. The proposed dwelling is not unusual or atypical for the neighborhood.

The Board questioned the witness. Mr. Brighton described some of the revisions that could be incorporated in order to improve the Essex Avenue front yard setback. The public questioned the witness. David Appel, 7 Fairfield Street, asked if there was a Fairfield Street elevation drawing that depicts the distance between the proposed dwelling and the existing dwelling next door at 12 Fairfield Street. Richard Feldman, 20 Fairfield Street, asked about the amount of floor space provided within the proposed dwelling. Annette Weis, 6 Fairfield Street, asked if the detached garage is included in the amount of floor area indicated. Andrew Scherer, 130 Essex Avenue, asked if the large existing hedges along the Essex Avenue frontage would remain. The applicant,

Timothy Foster, was sworn. He stated that his existing dwelling at 12 Fairfield Street contains 3,655 square feet of floor area. He also stated that it is their intention to retain the large existing rhododendrons and hemlocks along the Essex Avenue front property line. The public continued to question the witnesses. John Rapanos asked if it was typical for homes in the neighborhood to have chimneys facing the street.

Peter Steck, Professional Planner, was sworn and described the application.

Exhibits marked:

- A-4 Planning Exhibit by Peter Steck, PP, dated December 14, 2010
- A-5 Plans prepared by James Brighton, Architect, dated January 18, 2010 and revised through July 14, 2010
- A-6 Map of the subject property depicting the allowable principal building envelope, prepared by Richard J. Hingos, Inc, dated December 14,

2010

The subject corner lot was created from a two-lot subdivision approved by the Planning Board in 1973. Before the subdivision, there was one large corner lot, essentially a double lot, and after the subdivision, there was a new interior lot, known as Block 3412, Lot 7, and the subject corner lot, known as Block 3412, Lot 7.01. Attached to Exhibit A-1, the Planning Department's memorandum dated December 8, 2010, are copies of the Planning Board minutes and subdivision resolution and the deed perfecting the subdivision creating the new lots.

The neighborhood is almost fully-developed, and the property is the last vacant corner lot that remains undeveloped. Most of the neighborhood was developed prior to the adoption of the current zoning ordinance provision requiring front yard setbacks to be calculated based upon the average front yard setback of the two nearest principal structures on the street frontage. The neighborhood includes several corner lots that contain existing dwellings with a non-conforming front yard setback less than 25 feet. As reflected on the site plan, the Essex Avenue front yard setback of the dwelling at 18 Fairfield Street directly across Essex Avenue from the subject property is 23.4 feet, and is much less than the average front yard setback of the two nearest principal structures on its side of Essex Avenue. If a one-story porch is included in the calculation of the actual front yard setback of the dwelling at 18 Fairfield Street, the Essex Avenue front yard setback is approximately 15 feet.

Under N.J.S.A. 40:55D-70c(1), the strict application of the front yard setback regulation, to the particular size and irregular shape of the property, results in peculiar and exceptional practical difficulties or exceptional and undue hardship because it requires the applicant to construct an unreasonably narrow dwelling with a 15.30 feet front façade parallel to Fairfield Street and a 24.80 feet rear façade parallel to the rear property line, which dwelling would be quite impractical for living space and would be very unattractive in the neighborhood. The proposed dwelling or a dwelling similar to the proposed dwelling would be reasonable and merits variance relief in order to relieve such difficulties and hardship. Alternatively, under N.J.S.A. 40:55D-70c(2), the purposes

of the Municipal Land Use Law are advanced by a deviation from the applicable front yard setback regulation. These purposes include but are not limited to the promotion of a desirable visual environment (N.J.S.A. 40:55D-2i) and the provision of sufficient space for residential use (N.J.S.A. 40:55D-2g); the benefits of the deviation substantially outweigh any detriment.

The variance does not cause any substantial detriment to the public good, nor does it cause any substantial impairment of the intent and purpose of the master plan or zoning ordinance: The proposed dwelling is a permitted use for an approved building lot. Its size and width are consistent with the neighborhood, and its design is harmonious with the neighborhood. The proposed building coverage is less than the allowed building coverage, and the proposed dwelling meets all requirements of the zoning ordinance except for the Essex Avenue front yard setback. The Essex Avenue front yard setback is greater than that of the corner lot located directly across Essex Avenue at 18 Fairfield Street. The applicant proposes to maintain a substantial landscape buffer along the Essex Avenue property line. The master plan recommends a single-family dwelling for the property and does not address front yard setbacks established by the zoning ordinance. The Essex Avenue front yard setback is greater than the minimum required front yard setback of 25 feet and, given the surrounding neighborhood, the Essex Avenue front yard setback does not substantially impair the intent or purpose of the zoning ordinance.

The Board questioned Mr. Steck. The public questioned the witnesses. John Rapanos, 18 Fairfield Street, asked if homes that were built many years ago can be compared to homes proposed to be built today. Susan Rapanos, 18 Fairfield Street, asked about the front setback of her own property.

The Board took a short recess. Upon reconvening, Timothy Foster was recalled and stated that the existing lot is 10 percent larger than the average lot on Fairfield Street and the proposed home is 20 percent larger than the average home on Fairfield Street. He is willing to reduce the size of the home to improve the front yard setback on Essex Avenue. The Board questioned Mr. Foster. Public comment was given.

Cindy Gamcsik, 127 Essex Avenue, was sworn. She stated that she would prefer not to have the proposed home moved any closer to the south or the east. John Rapanos, 18 Fairfield Street, was sworn. He indicated that he was present for the 1973 subdivision application. The Board should consider the overall size of the proposed home when determining how to handle the variance request. Claudia Slovinsky, Esq., 130 Essex Avenue, stated that she is an attorney representing Marsha L. Love & Maarten Bosland, 126 Essex Avenue. She stated that the proposed home should be reduced in size and the Essex Avenue setback should be increased. Andrew Scherer, 130 Essex Avenue, was sworn and stated that the large existing hedges along the Essex Avenue frontage should remain. David Appel, 7 Fairfield Street, was sworn and stated that the proposed home should not be moved any closer to the east. He would be in favor of reducing the Essex Avenue setback to improve the distance between the proposed home and Mr. Foster's existing home. Richard Feldman, 20 Fairfield Street, was sworn and stated that the size of the home should be reduced.

The Board questioned Mr. Foster again. Mr. Owen provided his closing statements. The Board discussed the application and determined that the variance could be granted subject to certain conditions. The Board concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1). The Board concluded with respect to the variance that the applicant proved that the purposes of the Municipal Land Use Law are advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation substantially outweigh any detriment, and will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(2). Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good. On motion by Mr. Whipple, seconded by Mr. Susswein, the Board determined that the requested variance could be granted subject to the following conditions:

1. The Essex Avenue front yard setback shall be no less than 30 feet;
2. The Essex Avenue façade of the new single-family dwelling shall include offsets and alignments substantially consistent with the façade shown on Exhibit A-5;
3. The applicant shall maintain evergreen shrubbery along Essex Avenue to the same extent as the landscaping presently at such location, and the applicant shall submit a sketch to the Planning Department showing the length of the existing landscaping along Essex Avenue within one month of this approval; any replacement evergreen shrubbery shall be five feet in height at the time of planting and the evergreen shrubbery shall include at least three evergreen trees at all times.

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