

MINUTES OF THE BOARD OF ADJUSTMENT
April 19, 2006

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

ABSENT: Ms. Holloway, Mr. Flood, Mr. Mellon, 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. Susswein, the following Resolution memorializing the approval of the application of **75 Elm Street, Montclair, LLC c/o Raymond Testa, 75 Elm Street** was adopted, Ms. Cockey abstaining:

WHEREAS, 75 Elm Street, Montclair, LLC c/o Raymond Testa, owner of property at **75 Elm Street**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to *N.J.S.A. 40:55D-70c* for lot frontage width less than that required pursuant to **Montclair Code Section 347-50A** in connection with the proposed construction of a two-family dwelling on property designated as Lot 49 in Block 3004 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Trinity Land Surveying, Inc., dated December 2, 2004, and a plot plan, floor plans, and elevations prepared by Jose Gennaro, Architect, dated November 14, 2005; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 15, 2006 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The subject property is a vacant interior lot measuring 10,649.08 square feet in area and is located in the R-2 Two-Family Zone; the previously existing single-family dwelling on the lot shown on the property survey has been demolished.

2. The applicant proposes to construct a new 2½-story, two-family dwelling with an attached garage at the rear of the dwelling. A variance is requested in that a minimum lot width of 60 feet is required, and the property measures 54.25 feet in width along the Elm Street frontage.

3. The existing lot frontage width and overall size of the subject property is consistent with or greater than that which exists in the neighborhood. Furthermore, the adjoining properties to the north and south contain structures that are either at or near the side property lines, which prevents the applicant from obtaining more land to widen the subject property.

4. The proposed plan for the two-family dwelling meets the height and setback requirements, as well as the off-street parking requirements and based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact area properties and is consistent with the intent and purpose of zone plan and zoning ordinance.

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 variance application of 75 Elm Street, Montclair, LLC c/o Raymond Testa 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 Mr. Susswein, the following Resolution memorializing the approval of the application of **R. Luther Flurry and Jarmila T. Packard, 16 Madison Avenue** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, R. Luther Flurry and Jarmila Packard, as owners, did make application to the Board of Adjustment of the Township of Montclair to convert the existing vacant nursing home on the property into a single-family dwelling and retain the existing single-family dwelling located at the rear of the property, which is designated as Lot 5 in Block 4007 on the Township Tax Map and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicants sought a variance pursuant to *N.J.S.A. 40:55D-70d* to allow two principal buildings on the lot where a maximum of one is permitted pursuant to **Montclair Code Section 347-20**; and

WHEREAS, the applicants submitted a 15-sheet set of drawings that includes plot plans, floor plans, elevations, renderings, and photographs, prepared by Scot Surbeck, Architect, and a topographic and boundary survey prepared by DMC Associates, Inc., dated October 3, 2005; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 15, 2006 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone measuring 1.693 acres in size and contains a 2½ story vacant nursing home (the “front building”) and a 1½-story single-family dwelling located at the rear of the lot (the “rear building”). The property also contains a long driveway from Madison Avenue that splits into 2 driveways, which then lead to various paved areas behind the front building.

2. On November 1, 1945, the Board of Adjustment approved an application to use the 2½-story dwelling on the property as a nursing home. On June 16, 1960, the Board of Adjustment denied an application to construct an addition onto the nursing home building. On January 14, 1971, the Board of Adjustment approved an application to construct an addition onto the single-family dwelling located at the rear of the property.

3. The previous applications for the subject property indicate that the front building was at one time the principal building on the lot and the that 1½-story rear building was a carriage house accessory to the principal building, and that at the time the principal building became a nursing home (1945), the 1½-story carriage house became a dwelling for the owner/proprietor of the property. It also appears that the rear building was also used for administrative functions associated with the nursing home, although no approval was ever received for that use.

4. The applicants propose to convert the legal nonconforming nursing home into a single-family dwelling and retain the existing single-family dwelling at the rear of the lot as a single-family dwelling. As part of the proposed conversion and renovation, the applicants also propose to reduce the impervious coverage on the property from 45 percent to 36 percent, by removing significant portions of paved areas behind the front building and replacing those areas with landscaping.

5. Approval of this application will eliminate the nursing home use on the property and will result in a use which is more harmonious with the character of the existing neighborhood. The physical changes proposed for the property, including the renovations of the buildings and the removal of pavement to be replaced with landscaping, represent significant aesthetic improvements.

6. The Board determined that the applicants proved "special reasons", as the subject property is of such a size that it can accommodate a total 2 principal single-family residences within 2 existing structures, and in that the application promotes a desirable visual environment, and the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2 e, g, and i.*

7. Based upon the Board's particular knowledge of local conditions, the conversion of the nonconforming nursing home to a single-family dwelling while retaining the existing single-family dwelling at the rear of the lot, is consistent with the character of the neighborhood and will not adversely impact the public good, and approval of this application is consistent with the intent and purpose of the master plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief 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; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of R. Luther Flurry and Jarmila T. Packard is hereby approved, subject to the following conditions:

1. All outstanding property taxes shall be made current prior to the issuance of any building permits.
2. The existing tennis court and concrete planters at the rear of the property shall be removed as indicated and shall be replaced by vegetative cover and/or gardens.
3. Upon the completion of construction requiring staging areas for heavy equipment, but no later than April 19, 2011, all pavement located to the south of the line formed by connecting the southerly edge of the southernmost driveway to the southerly edge of the paved area in front of the attached garage of the rear dwelling, shall be removed, with the exception of paved walkways leading from the driveway to the main entrance of the rear dwelling.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **John Gerecs, 128-130 North Fullerton Avenue** was adopted as modified, Mr. Haizel and Ms. Holloway abstaining:

WHEREAS, **John Gerecs**, did make application to the Board of Adjustment of the Township of Montclair to construct a new two-family dwelling with a detached two-car garage on property designated as Lot 5 in Block 2312 on the Tax Map of the Township of Montclair and located in the R-2 Two-Family Residential Zone; and

WHEREAS, the applicant sought variances and waivers as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(6) to permit a principal building height of three stories where a maximum of two and one-half stories is permitted pursuant to **Montclair Code Section 347-51**; and

2. A variance pursuant to N.J.S.A. 40:55D-70c to permit a dwelling to be constructed on a lot measuring 59 feet in frontage width on North Fullerton Avenue where a minimum lot frontage width of 60 feet is required pursuant to **Montclair Code Section 347-50A**; and

3. Variances pursuant to N.J.S.A. 40:55D-70c to permit a front yard setback of 21.07 feet from North Fullerton Avenue, as measured to the front porch, and 14.20 feet from Walnut Place, as measured to the 2-story cantilevered projection, where a front yard setback of 25 feet is required for both front yards pursuant to **Montclair Code Section 347-51**; and

4. A waiver from the **New Jersey Residential Site Improvement Standards, Section 5:21-4.14**, to permit a total of 4 off-street parking spaces where a total of 5 off-street parking spaces is required for the proposed two-family dwelling containing 4 bedrooms per dwelling unit; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated September 28, 2005, and a plot plan, floor plans, and elevations prepared by John Thomas Collins, Architect, dated December 2005; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on March 29, 2006, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The subject property is a corner lot located at the intersection of North Fullerton Avenue and Walnut Place, which is a dead end street. The property is a vacant lot located in the R-2 Two-Family Zone measuring 9,150 square feet in area and contained a 2½-story two-family dwelling which has been recently demolished.

2. The applicant proposes to construct a new two-family dwelling and a detached 2-car garage on the lot.

3. The variance requested for lot frontage width is a minor deviation and the existing lot width and size is consistent with or greater than many of the lot widths and sizes in the neighborhood. Furthermore, the adjoining property to the north is presently developed and there is no opportunity for the applicant to widen his property.

4. The proposed front yard setback from North Fullerton Avenue is duplicative of the front yard setback of the previously existing dwelling on the lot and the proposed front yard setback from Walnut Place represents an improvement from the previously existing front yard setback. The proposed front yard setbacks from both streets are also in keeping with that of the adjoining properties and with that of the neighborhood.

5. The 4 proposed off-street parking spaces are sufficient for the two-family dwelling; should the applicant or a future owner of the subject property require an additional on-site parking space, there is sufficient room to the east of the proposed driveway to provide an additional conforming parking space.

6. The proposed third floor dormers are appropriate given the fact that the dwelling meets the overall height requirement, and the proposed dwelling would still be in keeping with the size, scale, and character of the previously existing dwelling on the subject property as well as the existing dwellings in the neighborhood. Furthermore, the area immediately to the west of the subject property is presently developed with structures of a similar height and scale as the proposed dwelling and is also elevated in its natural topography, which further limits the impact of the height and bulk added by the proposed third floor dormers.

7. Based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact area properties and is consistent with the intent and purpose of Master Plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of the height variance and proved by a preponderance of the evidence that the proposed relief 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances for lot frontage width, front yard setback, and off-street parking 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 N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause 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 N.J.S.A. 40:55D-70c(2)

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of John Gerecs is hereby approved, subject to the following conditions:

1. The proposed detached garage shall not exceed 15 feet in height as measured to the ridge on the roof.
2. A landscaped screen shall be added to the westerly setback of the parking area located on the driveway.
3. Should a fifth parking space be added to the property, it shall be located to the east of the proposed driveway and comply with all zoning requirements.
4. Except for the driveway leading to the garage, all curb openings and driveways shall be removed and a permit for such work obtained from the Engineering Department.
5. The location of any outdoor central air conditioning units shall comply with all zoning requirements.
6. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

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 called the continuation of the application of **American Bank of New Jersey, 120 Watchung Avenue**. Robert Gaccione, Esq., appeared as attorney for the applicant and stated that the applicant's Architect has prepared a rendering for the Board to consider.

Marked into evidence was:

A-7 Rendering of proposed bank, on board, prepared by Dennis Mylan,
Architect

Chair Harrison called for public comment.

Phoebe Pollinger, 174 Montclair, Avenue, was sworn and stated her opposition to the application. Mr. Gaccione cross-examined Ms. Pollinger.

Judith Tapaldo, 15 Prospect Avenue, was sworn and stated that she is a business owner in Watchung Plaza and is speaking on behalf of the Watchung Plaza Business Association. She stated her support for the application.

Adrianna O'Toole, 48 South Willow Street, was sworn. She stated that she is a realtor with office in Watchung Plaza and stated her support for the application.

Robert Johannsen, 117 Watchung Avenue, was sworn. He stated that he is the owner of a delicatessen in Watchung Plaza and stated his support for the application.

Mr. Gaccione gave his closing statements. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Susswein, the application was unanimously denied.

Chair Harrison called the variance application of **Bashir and Pamela Zivari, 51 Myrtle Avenue**. Bashir Zivari was sworn and described the application. He stated that the dwelling has an existing attached one-car garage at the front of the dwelling, which is under the adjoining grade level, is undersized and in disrepair. He stated that he proposes to demolish the attached garage, level the grade of the front yard, and construct a gravel driveway and parking area for 2 cars in the rear yard. He stated that variances are required for the driveway width and the driveway setback from the side property line. He also stated that the existing garage is not large enough for a vehicle, which causes them to park their vehicles on the driveway in the front yard and that the proposed driveway and parking area in the rear yard would eliminate this nonconforming condition and provide a visual improvement to their front yard and the neighborhood.

The Board questioned Mr. Zivari. Mr. Zivari stated that the proposed 8.5-foot driveway width is wide enough to allow vehicles unencumbered access to the parking in the rear yard. He stated that the driveway setback could be increased to conform once

it passes the rear of the dwelling. He also stated that landscaping could be added to the parking area setback if required by the Board.

Chair Harrison called for questions and comments from the public. None were offered.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Haizel, the application was approved, subject to the following condition:

1. The plan shall be revised so that a 4-foot setback is provided for the driveway behind the dwelling, and the 4-foot setback area shall be landscaped to provide screening of the parking area and turnaround area, as required by the zoning ordinance.

Chair Harrison called the variance application of **Anthony Gloster, 8 William Street**. Anthony and Celeste Gloster were sworn. Mr. Gloster described the proposed addition to his single-family dwelling. He stated that the existing dwelling is very limited in size and requires additional living space to accommodate a family.

The Board questioned the applicants. Mr. Gloster stated that the addition would be aligned with the side walls of the existing dwelling and that the exterior would match the existing dwelling. Mr. Gloster also stated that he believes that the addition has been designed so that the roof eaves do not overhang onto the adjoining property to the east. Mr. Gloster stated that a representative from the office of the Architect that designed the addition is present to help answer questions. Frank Gerard Godlewski, 10 Crestmont Road, was sworn and described the drawings. He stated that the plan does depict a roof eave that matches the existing roof eave and would extend over the easterly side property line. He stated that the roof eave of the addition could be cut back in order not to encroach over the easterly side property line. Mr. Godlewski stated that the addition has been designed at its minimal size and could not be reduced without negatively impacting the purposes for the addition.

Mr. Gloster stated that he may decide to extend his driveway to the rear corner of the addition. Chair Harrison stated that if the driveway is to be extended the applicant will require variances for driveway width less than 10 feet and for a setback of less than 1 foot and an easement since the driveway is partially located on the adjoining property to the west.

Marked into evidence was:

A-1 Photograph of the rear elevation of the existing dwelling

Chair Harrison called for questions and comments from the public.

Samuel Williams, 6 William Street, was sworn. He stated his support for the application and only expressed concerns about how stormwater runoff from the roof of the addition is to be handled.

Keshia Trotman, 38 Central Avenue, was sworn. She asked whether any impacts to utilities lines, pipes, or wires are expected that might affect properties on Central Avenue as a result of the digging for the addition or the elevation of the addition.

The Board discussed the application. On motion by Mr. Susswein, seconded by Ms. Cockey, the application was approved, subject to the following conditions:

1. No part of the proposed addition, including roof eaves and gutters, shall extend over the easterly side property line.
2. All stormwater leaders shall be directed to the rear yard of the subject property.
3. Should the applicant decide to extend the driveway a further distance towards the rear yard, the Board grants variances from **Montclair Code Section 347-102C** for a driveway width less than 10 feet and from **Montclair Code Section 347-104** for a driveway setback less than 1 feet, which would be subject to the applicant obtaining and recording an easement to locate the driveway partially on the adjoining property to the west.

Chair Harrison called the variance application of **David and Julie Rowley, Jr., 1 Marquette Road**. Calvin Trevenen, Esq. appeared as attorney for the applicants and described the application. Mr. Trevenen called David Rowley, Jr., who was sworn. Mr. Rowley described the proposed addition and stated that the existing dwelling is very small and that the proposed addition would accommodate his growing family and allows them to remain at their home rather than move.

The Board questioned Mr. Rowley. Mr. Rowley stated that he would consider removing the shed attached to the garage if the Board required it. Chair Harrison called for questions from the public. None were offered.

Mr. Trevenen called Lawrence Quirk, who was sworn and stated his qualifications as an Architect. Mr. Quirk described the existing dwelling and the proposed addition. He stated that the existing dwelling is small and that the proposed addition provides the space required for a family and would modernize the interior of the dwelling.

Marked into evidence were:

A-1 through A-7 Photographs of the subject property, taken in June of 2005

The Board questioned Mr. Quirk. Mr. Quirk described the floor plans and elevations in detail in response to questions from the Board. Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for a short recess. Upon returning, Mr. Trevenen stated that he is waiting for his Professional Planner, Roger DeNisica, to arrive. Chair Harrison stated that the Board would discuss rescheduling the application of **21 North Mountain, LLC, 21 North Mountain Avenue** while waiting for Mr. DeNisica to arrive. David Owen, Esq., attorney for the applicant, was present. After some discussion, Chair Harrison announced that the application of **21 North Mountain, LLC, 21 North Mountain Avenue** would be carried to a special meeting to be held on Wednesday, April 26, 2006, at 7:30 p.m. in the First Floor Conference Room and that no further notice would be given.

Mr. DeNisica arrived and Mr. Trevenen presented him as a Professional Planner and continued the application of **David and Julie Rowley, Jr., 1 Marquette Road**. Mr. DeNisica was sworn and described the application. He stated that the required front yard setback on Alexander Avenue is excessive due to the larger, deeper lots located on Alexander Avenue to the east of the subject property and that it is highly impractical for the applicants to comply with this requirement. He also stated that the rear yard setback variance can also be approved because the new construction actually complies with the requirement and the variance is required for the setback of the existing garage structure being incorporated into the footprint, which does not pose any detriment since the detached garage has been in place for many years.

The Board questioned Mr. DeNisica. Chair Harrison called for questions and comments from the public.

Elaine Pardalos, 2 Marquette Road, was sworn and stated her support for the application.

James Pascucci, 87 Alexander Avenue, was sworn and stated his support for the application.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Haizel, the application was approved.

Chair Harrison called the variance application of **Melih Abdulhayoglu, 1 Watchung Avenue**. Ronald Istivan, Esq. appeared as attorney for the applicant and described the application. He stated that a contractor hired by the owner of the subject property proceeded with construction of a an attached garage addition without a building permit and that once a permit was filed for, it was discovered that the addition requires a front yard setback variance from the Watchung Avenue front property line. He stated that the applicant is also requesting a variance to locate central air units between the dwelling and Watchung Avenue.

Mr. Istivan called Tony Vanderer, who was sworn, and stated his qualifications as an Architect. Mr. Vanderer described the proposed attached garage addition. He stated that the existing attached garages at the rear of the dwelling are unusable since they are narrow and low and also located in the basement level, which requires the use of stairs and is inconvenient for a homeowner with children. He stated that the proposed garage would be at a higher grade level on the property, at or near the first level of the home and would be much more convenient for the owner of the property. He also stated that the existing driveway that leads to the existing garages would be removed and the basement level containing the existing garages would not be used to house vehicles. He described the plan for managing the stormwater produced by the addition and stated that the plan for the addition and new driveway already received an approval from the Essex County Planning Board.

Marked into evidence were:

- A-1 Letter of approval from the Essex County Planning Board, dated January 18, 2006
- A-2 Twelve (12) photographs of the subject property on a board
- A-3 Photograph of the rear of the dwelling on the subject property

The Board questioned Mr. Vanderer. Mr. Vanderer stated that with all of the construction that has recently been added over the original dwelling, the existing garages in the basement level would be extremely difficult to modify because structural columns would have to be moved. He also stated that even if the garages were modified to better fit vehicles, they would still remain as an inconvenience with residents needing to use the stairs each time they leave and arrive at their home.

Chair Harrison called for questions from the public. None were offered.

Mr. Istivan called Melih Abdulhayoglu, who was sworn. Mr. Abdulhayoglu described the history of the project and how the site came to be as it is today. He stated that the existing garages have not been used because vehicles cannot fit through the openings and that vehicles have been parking on the driveway. He also described the proposed location of the central air conditioning units and stated that they would be located in a pit that would be cut out of the grade and walled in and would not be visible from Watchung Avenue.

The Board questioned Mr. Abdulhayoglu. Chair Harrison called for questions and comments from the public.

Ted Shrensel, 238 North Mountain Avenue, was sworn and stated his concerns over drainage on the subject property and how it would affect his property, which is

located on the adjoining lot down the slope. He also expressed concerns over tree removal and stated that he was told by the owner of the subject property that 5 central air units might be installed on the property.

The Board discussed the application. On motion by Mr. Susswein, seconded by Mr. Haizel, the application was unanimously denied.

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