

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**May 18, 2005**

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

ABSENT: Mr. Haizel and 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 **Minutes of the April 20, 2005** regular meeting were adopted as modified, Ms. English, Mr. Flood, and Mr. Whipple abstaining.

Mr. Flood joined the meeting.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Jack and Elaine Kelly, 17 Chester Road** was adopted, Ms. English, Mr. Flood, and Mr. Whipple abstaining:

**WHEREAS, Jack and Elaine Kelly**, owners of property at **17 Chester Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of a detached garage on property designated as Lot 48 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by Miller and McGiffert, Inc., dated August 20, 1962, and a site plan, floor plan, and elevations prepared by Sionas Architecture, P.C., revised to March 9, 2005, that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on April 20, 2005 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 measures 60 feet in width and approximately 7,290 square feet in area. The property contains a 2½-story dwelling and a detached two-car garage located at the southeasterly rear corner of the lot.

2. The existing detached garage has been structurally damaged by a large tree on the subject property that is growing up against the rear wall of the garage.

3. The applicants' proposal is to remove the tree located behind the existing garage, demolish the existing garage, and construct a new detached garage in the same location. The footprint of the existing detached garage measures 19 feet and 4 inches in width by 20 feet 4 inches in length, and the proposed detached garage would have the same dimensions. The height of the proposed garage would also match the height of the existing garage.

4. The existing detached garage has a nonconforming easterly side yard setback of 1.22 feet, where 6 feet is required, and a nonconforming rear yard setback of 3.13 feet, where 6 feet is required. The proposed garage would have the same easterly side yard and rear yard setbacks and requires variances. The height of the proposed garage conforms to the ordinance.

5. The existing location of the dwelling on the subject property, as well as the location of mature landscaping in the rear yard, limits the applicants' ability to provide larger setbacks for the proposed detached garage than the existing setbacks.

6. Based upon the Board's particular knowledge of local conditions, the proposed detached garage is consistent with the character of the neighborhood and will not adversely impact the public good.

**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 variance application of Jack and Elaine Kelly is hereby approved, subject to the following condition:

1. The proposed detached garage shall not be constructed any closer to either the easterly side property line or rear property line than the existing detached garage.

**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 **Beth Stephens & Virginia Graham, 70 Central Avenue** was adopted, Ms. English, Mr. Flood, and Mr. Whipple abstaining:

**WHEREAS, Beth Stephens & Virginia Graham**, owners of property at **70 Central Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of a detached garage on property designated as Lot 10 in Block 1514 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by Laughlin & Associates Inc., dated May 27, 1992, and a site plan on a copy of the survey and elevation drawings with no date or preparer indicated, that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on April 20, 2005 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, measuring approximately 60 feet in width and approximately 7,120 square feet in area. The property contains a 2-story single-family dwelling and the remains of a detached one-car garage located at the northwesterly corner of the lot that was destroyed by a fallen tree in November 2004.

2. The footprint of the previously existing detached one-car garage measured 12.4 feet in width by 18.2 feet in length. The previously existing detached garage also had a nonconforming rear yard setback of approximately 2 feet at its closest point, measured to the northwesterly corner of the garage, and a nonconforming northerly side yard setback of approximately 1.1 feet.

3. The applicants' proposal is to construct a new detached one-car garage in the same area of the property. The proposed garage would have dimensions of 12 feet in width by 18 feet in length, which are essentially the same as the dimensions of the previously existing garage. According to the applicant, the 14-foot height proposed for the new garage represents an increase in height of approximately 6 inches from the previously existing garage.

4. The northerly side yard of the proposed garage would be increased from 1.1 feet to 2 feet, which represents an improvement from the previously existing northerly side yard setback. The rear yard setback would remain at 2 feet at the northwesterly corner, which matches the previously existing rear yard setback, and also increases towards the southwesterly corner of the garage due to the angled rear property line.

5. Based upon the Board's particular knowledge of local conditions, the proposed detached garage is consistent with the character of the neighborhood and will not adversely impact the public good.

**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 variance application of Beth Stephens & Virginia Graham is hereby approved, subject to the following condition:

1. The northerly side yard setback of the proposed garage shall be no less than 2 feet.

2. The rear yard setback of the proposed garage measured to the northwesterly corner shall be no less than 2 feet and shall increase towards the southwesterly corner of the garage as depicted on the plot 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.

Assistant Secretary Charreun announced that at the request of the applicants, the application of **Willow Street Partners, LLC, 7 No. Willow Street** would be postponed until the June 15, 2005 regular meeting of the Board, and that the Board has been granted an extension of time for which to act on the application.

Chair Harrison called the variance application of **Peter and Susan Carr, 89 Highland Avenue**. David Owen, Esq., appeared as attorney for the applicant and described the application.

Ms. Cockey joined the meeting.

Mr. Owen described the history of the subject property and stated that the dwelling on the lot had received front yard variances when it was first built in 1960 and later for an addition constructed in 1963. He called Paul Sionas, who was sworn and stated his qualifications as a New Jersey Licensed Architect and Professional Planner.

Mr. Sionas described the subject property and the addition and alterations proposed for the existing dwelling. He stated that the subject property is a corner lot with frontages on Highland Avenue and Edgewood Terrace and described the required front yard setbacks from each street. He stated that the front yard setback requirement for the subject property is skewed due to the unusual location and large front yard setback of the existing large home located on the lot adjoining to the north, which also fronts on Edgewood Terrace and affects both required front yard setbacks for the subject property. He continued by stating that the proposed addition and alterations are based on the lawfully existing structure and that strict application of the front yard setback requirement creates practical difficulties for the applicants. He further stated that none of the proposed work is located any closer to Highland Avenue than the existing dwelling. He also stated that the existing dwelling is set back approximately 38 feet from Edgewood Terrace and that a 34-foot front yard setback is proposed from Edgewood Terrace. He further stated that the proposed setback from Edgewood Terrace is a minimal deviation from the 35 feet permitted with the 1960 variance application, and that the further encroachment on the Edgewood Terrace front yard is caused by the curvature of the road and the existing position of the dwelling on the lot.

Marked into evidence were:

- A-1 Site Plan with color, on a board prepared by Sionas Architecture, P.C., dated March 7, 2005
- A-2 Floor Plan with color, on a board prepared by Sionas Architecture, P.C., dated March 7, 2005

The Board questioned Mr. Sionas. Mr. Sionas stated that reducing the size of the proposed addition in order to comply with the original 35-foot front yard setback variance for the Edgewood Terrace front yard would have a significant negative impact on the usability of the proposed breakfast area. He described the trees that would be removed to accommodate the proposed addition and expanded driveway and stated that the property would still contain a significant amount of mature deciduous trees. He also stated that additional evergreens are proposed at the easterly side of the addition.

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 Ms. Cockey, the variance application was approved.

Chair Harrison called the variance application of **Kelly and Brian Meith, 106 Edgemont Road**. The applicants were sworn and Mr. Meith described the application. He stated that 2 central air conditioning units are proposed in the northerly side yard of their corner lot and that a new detached one-car garage is proposed in the rear yard. Ms. Meith stated that variances are requested for the side yard setbacks of the proposed central air conditioning units and the proposed garage from the northerly side property line. She also stated that due to the fact that they have a corner lot and limited rear yard space, the northerly side yard is the most practical location for the central air conditioning units.

Marked into evidence were:

- A-1 Three (3) photographs of the subject property depicting the proposed location of the central air conditioning units
- A-2 Informational brochure on the type of central air conditioning units proposed on the subject property
- A-3 Two (2) photographs of the central air conditioning units located on the property of the adjoining neighbor to the north, with an attached Sanborn Map of the subject property and vicinity

Ms. Meith stated that the dwelling on the adjoining lot is located at an unusually large distance from her property and that the proposed central air conditioning units are considered quiet by industry standards. She also stated that the existing solid fence along the northerly property line would be extended to enclose the units and screen them from view. Ms. Meith continued by describing the proposed detached one-car garage.

Marked into evidence were:

- A-4 Garage Interior Floor Plan Detail, prepared by the applicants
- A-5 Future Backyard Layout, prepared by the applicants, detail sheet for proposed central air conditioning units, and 2 photographs of the existing driveway on the subject property

Ms. Meith stated that a 3-foot setback from the northerly property line is proposed for the one-car garage in order to allow for at least 2 additional vehicles to park on the driveway. She also stated that the footprint of the proposed garage would measure 15 feet in width by 26 feet in length and that they plan to utilize the garage to park 1 vehicle and for storage on the first floor and loft level. She further stated that based on her research, the minimum length recommended for a detached garage

without storage space is 20 feet long, and that the average length is 22 feet. She continued by stating that the proposed garage would not impact the northerly neighbor because it would be screened by the existing detached garage located on the adjoining property to the north.

The Board questioned the applicants. Ms. Meith stated that any extension of the fence along the northerly property line would conform to the height requirements of the zoning ordinance. She stated that constructing the proposed detached garage with a 6-foot side yard setback would push the garage further towards Godfrey Road and have a negative impact on the adjoining property owner on Godfrey Road. She also stated that a pull-down stairway is proposed for access to the second level storage area of the garage. She further stated that the proposed location of the central air conditioning units was chosen based on the addition that will be built in the near future as well as their plan for the outdoor rear yard space.

Chair Harrison called for questions and comments from the public.

Margaret Tribble, 110 Edgemont Road, was sworn and stated that she is the owner of the adjoining property to the north. She stated that the proposed extension of the fence along the northerly property line should be allowed to be 6 feet in height rather than the 4.5 feet permitted. She also stated that the side yard setback from the northerly property line for the detached garage should be 4 feet rather than the 3 feet proposed.

Marked into evidence was:

O-1 Photograph of the area of the applicants' property where the central air conditioning units are proposed, as seen from the second floor bedroom window of the dwelling at 110 Edgemont Road

The Board questioned the applicants and Ms. Tribble. Ms. Meith stated that 3 window air conditioners would be removed from the northerly side of the home and that the trash area along the northerly side of the home would be moved into the proposed garage. Mr. Meith stated that a 4-foot side yard setback for the proposed garage would be acceptable.

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

1. The proposed central air conditioning units shall not be located closer to Edgemont Road than the midway point of the northerly side wall of the dwelling.
2. All new fences shall conform to the height requirements and shall be constructed in a manner that will form an enclosure around the proposed central air conditioning units and provide screening.
3. The proposed garage shall conform to all zoning requirements.

Chair Harrison called the variance application of **William and Rhonda Halperin, 30 Midland Avenue**. William Halperin, owner, and Susan Chandler, Architect, were sworn. Ms. Chandler described the proposed addition to the two-family dwelling and stated that the lot is undersized measuring 55 feet in width by 70.77 feet at its deepest point. She stated that the existing dwelling has a nonconforming rear yard setback of 11 feet and that a two-story addition is proposed at the rear and northerly side of the dwelling that would be aligned with the existing rear wall of the dwelling and would also be set back 11 feet from the rear property line. She described the proposed interior modifications and stated that the existing dwelling is in need of upgrades. She continued by stating that alternative designs and positions for the addition were examined along the northerly side of home, however, that those options would result in awkward interior layouts and would have negative effects on the usable outdoor green space. She stated that the proposed addition is modest in size having a total new footprint area of approximately 500 square feet including the porches. She also stated that the proposed addition would be lower in height than the existing dwelling and that it has been designed to be harmonious with the design of the existing dwelling.

Marked into evidence were:

A-1 Four (4) photographs of the dwelling on the subject property

The Board questioned Mr. Halperin and Ms. Chandler. Mr. Halperin stated that the guest room/office on the first floor has been incorporated into the design as a “swing” space that may be usable by either the first floor tenant or the second floor tenant. Ms. Chandler clarified certain aspects of the interior layout.

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

The Board discussed the application. On motion by Ms. English, seconded by Ms. Cockey, the variance application was approved, Chair Harrison voting in the negative.

Chair Harrison called the variance application of **Tom Hodgson, 122 South Fullerton Avenue**. Tom Hodgson, owner, and Ryan Hodgson, the owner’s son, were sworn. Tom Hodgson described the application and stated that he is seeking to install 2 central air conditioning units on his property. He stated that his property has 3 front yards, where the units are not permitted, and 1 side yard that is not wide enough to properly install the proposed units. He continued by stating that the proposed central air conditioning units are proposed at the northwesterly corner of the dwelling, between the dwelling and Orange Road. He stated that the proposed location for the installation of the units is the most appropriate because it would be the furthest from any street and because the westerly side of the dwelling functions as the “back” of the house. He also stated that the proposed units would be partially obscured by a one-story “bump-out” along the westerly side of the home as well as the driveway which comes in from Orange Road right to the area where the units are proposed. Ryan Hodgson stated that

the proposed location is the most suitable and practical regarding construction issues associated with the cooling system, such as the ductwork.

Marked into evidence were:

- A-1 Photograph of the "front" (easterly front yard) of the subject property as seen from South Fullerton Avenue
- A-2 Photograph of the "rear" (westerly front yard) of the subject property as seen from South Fullerton Avenue

The Board questioned the applicant and Ryan Hodgson. Ryan Hodgson stated that he would be doing the landscaping on the property soon and that he does plan on planting around the proposed units in order to screen them from public view.

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

The Board discussed the application. On motion by Ms. English, seconded by Ms. Cockey, the variance application was approved, subject to the following condition:

1. The proposed central air conditioning units shall be screened on the westerly and northerly side by evergreen shrubs.

On motion by Ms. English, seconded by Ms. Cockey, the meeting was adjourned.