

MINUTES OF THE BOARD OF ADJUSTMENT
August 16, 2006

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

ABSENT: Ms. Cockey

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 Ms. English, the following Resolution memorializing the approval of the application of **Edmund Auw, 53 Club Road** was adopted, Mr. Flood, Mr. Haizel, Ms. Holloway, and Mr. Susswein abstaining:

WHEREAS, **Edmund Auw**, owner of property at **53 Club Road**, did make application to the Board of Adjustment of the Township of Montclair to construct several additions to his one-family dwelling on property designated as Lot 39 in Block 3706 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant sought variances as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70c to permit a front yard setback less than required pursuant to **Montclair Code Section 347-45B(1)**; and

2. A variance pursuant to N.J.S.A. 40:55D-70c to permit 3 stories, whereas a maximum of 2 ½ stories is permitted pursuant to **Montclair Code Section 347-45A(2)**; and

3. A variance pursuant to N.J.S.A. 40:55D-70d(6) to permit a principal building height of 39 feet where a maximum of 35 is permitted pursuant to **Montclair Code Section 347-45A(1)**; and

WHEREAS, the applicant submitted a property survey prepared by Shepard and Shepard, dated October 8, 1985, and architectural drawings, on 1 sheet, prepared by Gerald J. Novak, AIA, revised to July 7, 2006; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on August 2, 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 located in the R-1 One Family Residential Zone and contains a single-family dwelling with an attached garage that is located in the ground level on the easterly side of the dwelling. The subject property is located adjacent to a Township Park (Yantacaw Brook Park) which is on the corner to the east. The subject property measures 98.74 feet along the curved frontage on Club Road and contains 12,500 square feet in lot area.

2. A complete second floor addition is proposed over the existing first floor, a 2½-story addition is proposed at the front entrance of the dwelling, and a 2-story bay addition is proposed on the westerly side of the front wall of the dwelling, all of which require variances. A two story addition and two-story bay addition are proposed at the rear of the dwelling and require no variances.

3. The required front yard setback for the subject property is 32.46 feet, which is based on the average front yard setback of the 2 nearest dwellings to the west of the subject property. The applicant proposes a front yard setback 26 feet for the front entrance addition, and 30 feet for the 2-story bay addition on the front wall of the dwelling. The Board determined that only small portions of these additions encroach into the required front yard and that the impact of these encroachments is minimized by curvature of street and the position of the dwelling on the lot.

4. The Board also determined that the variance requested for exceeding 2½ stories is acceptable since the topography of the lot is irregular and causes certain sections of the basement level to be more exposed where the grade level is naturally lower.

5. The applicants submitted an alternative elevation plan, marked as Exhibit A-4 at the hearing, which depicts a height of 39 feet to the ridge of the roof, and requires a "d" variance because it exceeds the maximum permitted height of 35 feet by more than 10 percent. The applicants stated that the 39-foot height provides a more aesthetically pleasing dwelling and sought the variance for height on those grounds. The Board determined that, based on the drawings submitted, an attractive dwelling with a conforming height could be constructed.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant failed to prove the requisite special reasons for the granting of the "d" variance for the proposed height and failed to prove 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 upon the foregoing findings, concluded that the applicant did prove peculiar and exceptional practical difficulties and exceptional and

undue hardship and did prove that the variances for front yard setback and number of stories 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 variances for front yard setback and number of stories 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 "d" variance for principal building height is hereby denied; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variances requested for front yard setback and number of stories are hereby approved, subject to the following condition:

1. The proposed additions to the dwelling shall comply with the maximum principal structure height of 35 feet, measured as required by the ordinance.

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 Ms. English, the following Resolution memorializing the approval of the application of **Matthew and Tiffany Loncar, 136 Haddon Place** was adopted, Mr. Flood, Mr. Haizel, Ms. Holloway, and Mr. Susswein abstaining:

WHEREAS, Matthew and Tiffany Loncar did make application to the Board of Adjustment of the Township of Montclair to construct a complete second floor addition onto their existing single-family dwelling on property designated as Lot 28 in Block 3606 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicants sought variances pursuant to N.J.S.A. 40:55D-70c as follows:

1. A variance from **Montclair Code Section 347-45A(2)** in that a maximum of 2 ½ stories is permitted, and the proposed addition creates a third story.

2. A variance from **Montclair Code Section 347-45(3)** in that a maximum principal building width not exceeding 65 percent of the lot frontage width is permitted and the width of the proposed addition exceeds 65 percent of the lot frontage width.

WHEREAS, the applicants submitted a property survey prepared by Richard J. Hingos, Inc., dated November 22, 2002, and floor plans and elevations prepared by Edmundo Lopez, Architect, PC, dated May 22, 2006; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on August 2, 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 74.73 feet in lot frontage width and 11,080 square feet in lot area. The subject property contains a one-story single-family dwelling which contains 2 existing stories on a section along the front façade where an attached 2-car garage exists in the basement level.

2. The applicant proposes to add a full second floor over the entire dwelling, which thereby creates a third level in the area of the dwelling along the front facade where the attached garages exist under the dwelling.

3. For the subject property, a maximum principal structure width of 48.57 feet is permitted. The existing dwelling measures approximately 52 feet in width and the proposed addition also measures approximately 52 feet in width and a variance is required.

4. With the exception of the story limit and maximum width requirement, the proposed addition complies with all other setback requirements.

5. Both of the requested variances are acceptable being that the footprint of the dwelling is not being expanded and the overall height of the dwelling as proposed is well in compliance with the 35-foot maximum height.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested 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 N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did prove 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 application of Matthew and Tiffany Loncar is approved; and

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

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Mr. and Mrs. John Washington, 48 Nishuane Road** was adopted as modified, Mr. Flood, Mr. Haizel, Ms. Holloway, and Mr. Susswein abstaining:

WHEREAS, Mr. and Mrs. John Washington, owners of property at **48 Nishuane Road**, did make application to the Board of Adjustment of the Township of Montclair to construct a new single-family dwelling on property designated as Lot 57 in Block 1916 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants sought variances as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70c to permit a lot frontage width of 50 feet where a minimum of 60 feet is required pursuant to **Montclair Code Section 347-50A**; and

2. A variance pursuant to N.J.S.A. 40:55D-70d(6) to permit a principal building height of 40 feet where a maximum of 35 is permitted pursuant to **Montclair Code Section 347-45A(1)**; and

WHEREAS, the applicant submitted a property survey prepared by Land Lovers, Inc., dated April 17, 2006, and a plot plan, floor plans, and elevations prepared by Greenwich Design, Architects, dated June 19, 2006; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on August 2, 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 an interior lot located in the R-1 One Family Zone measuring 50 feet in frontage width and 8,063 square feet in lot area. The existing single-family dwelling and detached garage would be demolished and a new single-family dwelling with an attached garage is proposed.

2. 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 near the side property lines, which prevent the applicants from obtaining more land to widen the subject property without creating or exacerbating nonconforming side yards on the adjoining lots.

3. The proposed single-family dwelling meets all setback requirements and coverage requirements, as well as the off-street parking requirements. The plans submitted by the applicants also depict a conforming height of 35 feet for the proposed dwelling.

4. The applicants also submitted an alternative elevation plan, marked as Exhibit A-1 at the hearing, which depicts a height of 40 feet to the ridge of the roof, and requires a "d" variance because it exceeds the maximum permitted height of 35 feet by more than 10 percent. The applicants stated that the 40-foot height provides a more aesthetically pleasing dwelling and sought the variance for height on those grounds. The Board determined that, based on the drawings submitted, an attractive dwelling with a conforming height could be constructed.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants failed to prove the requisite special reasons for the granting of the "d" variance for the height of the dwelling and failed to prove 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 upon the foregoing findings, concluded that the applicants did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance for lot frontage width 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 variance for lot frontage width 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 "d" variance requested for principal building height is hereby denied; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variance requested for a deficient lot frontage width 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. Fleischer, the following Resolution memorializing the approval of the application of **Dr. Jody L. Ross, 22 The Crescent** was adopted as modified, Mr. Flood, Mr. Haizel, Ms. Holloway, and Mr. Susswein abstaining:

WHEREAS, Dr. Jody L. Ross, as owner, did make application to the Board of Adjustment of the Township of Montclair to modify a previous condition of approval to permit a free-standing sign larger than 3 square feet with illumination, on property located as 22 The Crescent and designated as Lot 6 in Block 2203 on the Township Tax Map and located in the R-4 Three-Story Apartment Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated December 29 2005 along with sign details and photographs; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on August 2, 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. By resolution adopted on September 19, 1984 the Board granted site plan approval and variances pursuant to N.J.S.A. 40:55D-70c and d to convert the first floor of the building into a medical office and to convert the second and third floors into a dwelling unit for the applicant's use. A condition of the approval limited the free-standing sign proposed in conjunction with the application to no more than 3 square feet in area and non-illuminated.

2. In 2005, the applicant sought to modify the previous approval to eliminate the requirement that the occupancy of the second and third floor dwelling unit be limited to the medical practitioner. The applicant did not seek amendments to the conditions of approval. The Board determined that the applicant satisfied the necessary proofs and granted the applicant's request in a resolution adopted November 16, 2005.

3. The subject property has since been sold to Dr. Ross who maintains the first floor use of the building as a medical practitioner's office.

4. Dr. Ross seeks to modify one of the 1984 conditions of approval to provide a free-standing sign greater than 3 square feet in area with illumination to identify her family and cosmetic dentistry practice.

5. The sign details submitted by the applicant depicted an identification sign measuring 7.1 square feet. The applicant testified with regard to the illumination, and represented that it would be non-offensive picture type lighting. She further testified that the sign would be lit only during hours of operation, and in no event shall the sign be lit after 8:00 p.m.

6. The Board recognized that the subject property is located in the Township's Three-Story Apartment Zone, and Montclair Code Section 347-108H specifically permits signage identifying apartments, condominiums and cooperative buildings. As such many of the surrounding property have signage. Furthermore, since the 1984 approval, the area has undergone significant changes, including the construction of a parking deck in close proximity to the subject property.

7. Thus, the Board determined the applicant demonstrated sufficient changed circumstances to warrant the modification. The Board further found, modification would not adversely impact area properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance, provided the signage complies with Montclair Code Section 347-108H. The applicant shall comply with all the requirements of the code section, including but not limited to the requirement that signage shall not exceed 6 square feet.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair that the application of Dr. Ross to modify the 1984 condition of approval to permit a free-standing sign in excess of 3 square feet with illumination is hereby approved subject to the following conditions:

1. The sign shall be illuminated with non-offensive picture type lighting.
2. The sign shall not be lit after 8:00 p.m.

3. The sign shall comply with the requirements of Montclair Code Section 347-108H, including but not limited to the requirement that the sign shall not exceed 6 square feet.

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

Assistant Secretary Charreun announced that at the request of the applicant's attorney, the application of **Redeemer Church of Montclair, 105 Grove Street** would be carried to the regular meeting of the Board scheduled for September 20, 2006, and that no further notice would be given.

Chair Harrison called the continuation of the applications of **The Montclair Community School, 149 Forest Street and 152 Forest Street**. Mr. Whipple recused himself for these applications. Mitchell Abrahams, Esq. appeared as attorney for the applicant and stated that the applicant is prepared to proceed this evening, although there are only 6 eligible Board members to vote on the applications.

Mr. Abrahams called Bruce Kanze, Head of School at the Montclair Cooperative School, who was sworn. Mr. Kanze described the proposed use of 149 Forest and stated that the main use of the space would be as an archive of portfolio collections of their students' work, and that faculty meetings would also occur in the space. He stated that the classrooms within the existing school building at 65 Chestnut Street are fully occupied at the present time and they have a need for breakout space, which occurs when a class is split for the purpose of teaching different subjects. He stated that this breakout space is not available within the school building and that they are proposing to utilize 149 Forest Street twice a day as breakout space for approximately 9 children, who would be escorted across the street to 149 Forest Street for certain classes.

The Board questioned Mr. Kanze. Mr. Abrahams stated that the proposed use of the subject properties should not be characterized as an incursion into the residential zone, since school use is a permitted conditional use in the R-2 zone. Mr. Sullivan described the legal standards that the Board should be mindful of when considering the application as a conditional use that does not meet certain conditions of the zoning ordinance. Mr. Kanze stated that after experiencing some growth in student population, they had looked at ways to reconfigure the interior of the existing school, and have also been looking for a larger facility. He stated that they are presently seeking approval for temporary spaces to solve immediate problems they are experiencing with classroom space. He stated that the proposed use for 152 Forest Street would be a music studio and classroom and that their existing art studio and classroom at 150 Forest Street has been very successful. He also stated that the first floor space at 152 Forest Street is particularly adaptable to their proposed use, as is the first floor space at 149 Forest Street, although 149 Forest Street has the added problem of needing to cross a street.

Mr. Kanze stated that they are not intending to add to their student enrollment, and that the applications presently before the Board are proposed in order to accommodate their existing enrollment. He stated that they had 200 students last year, and that in the upcoming school year they anticipate approximately 195 to 197 students. He stated that at the present time they are not in a position to find a new location to accommodate their facility on one site. Mr. Abrahams stated that the applicant is willing to accept reasonable conditions regarding the crossing of students to 149 Forest Street. Mr. Kanze stated that he has been trying to get additional traffic controls at the intersection and would need to look further into using existing non-classroom space in school building for the breakout space they require.

Chair Harrison called for questions and comments from the public.

Susan Ross, 786 Valley Road, was sworn. Ms. Ross stated that she is the admissions director at the Cooperative School, and that they have been paying a crossing guard to work at the intersection of Chestnut and Forest Streets for years, and that the safety of their students is of the utmost importance.

Mr. Abrahams stated that the applicant would like to proceed with the Board's discussion and vote on 152 Forest Street first before any consideration is given to the application for 149 Forest Street.

The Board discussed the application for 152 Forest Street. On motion by Mr. Fleischer, seconded by Mr. Haizel, the application for the property at 152 Forest Street was approved, subject to the following conditions:

1. Any signage installed shall conform to the Ordinance requirements.
2. As stipulated by the applicant, the use of the property, as approved, shall be utilized in conjunction with the school use at 65 Chestnut Street.
3. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

Mr. Abrahams stated that he would like the Board to proceed with a discussion and vote on the requested variance to use the property at 149 Forest Street. The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Flood, the application for the property at 149 Forest Street was approved, subject to the following conditions:

1. Any signage installed shall conform to the Ordinance requirements.
2. This approval is limited to school related uses in conjunction with the school use at 65 Chestnut Street that do not involve pupils on the premises.

3. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

Mr. Flood left the meeting and Mr. Whipple rejoined the Board.

Chair Harrison called the application of **Terence Cummings, 45 Irving Street**. Terence Cummings and Edmundo Lopez, Architect, were sworn. Mr. Cummings described the proposed additions to his dwelling. He stated that the existing dwelling is small in size and needs additional living space to accommodate family living and that the proposed additions are part of overall renovations and upgrades that have been occurring since he purchased the property. Mr. Lopez described the plans for the proposed additions. He stated that the additions have been designed to match the existing architecture of the home and that the proposed work does not violate front yard setback on side street any more than the existing dwelling.

The Board questioned the applicant and Mr. Lopez. Mr. Lopez stated that the dwelling with the proposed additions complies with the maximum coverage requirement of 25 percent. Mr. Cummings described which trees would need to be removed as part of the proposal and stated that additional trees would be planted.

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. Susswein, the application was approved.

Chair Harrison called the application of **Mark Wyville, 15 Macopin Avenue**. Mark Wyville was sworn and described the proposed addition and stated that it requires a front yard setback variance. He stated that his dwelling has a front yard setback similar to that of most dwellings on Macopin Avenue. He stated that the proposed addition is setback a bit less than the existing dwelling and that the front yard setback requirement is skewed by the larger front yard setback of one of the dwellings used in the average calculation.

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application and it was suggested that since a brook exists on the applicant's property, the applicant should make an inquiry to the New Jersey Department of Environmental Protection on any wetlands issues that may exist. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved.

Chair Harrison called the application of **Dennis and Karen Casey, 11 Marion Road**. Dennis and Karen Casey were sworn. Mr. Casey stated that the existing dwelling has a small roofed front entry stoop and that they are proposing to construct a new front porch that would span the full width of the dwelling and have a gazebo end on the left hand side that would partially wrap around the left front corner of the dwelling. He stated that the proposed side yard setback on the right side of porch duplicates the

side yard setback of the existing front entry stoop. He also stated that the required front yard setback is 33.13 feet, which the proposed porch complies with for the majority of its width, with the exception of the gazebo end, which project closer to Marion Road and would have a front yard setback of 28.9 feet and requires a variance.

The Board questioned the applicants. Mr. Casey stated that the gazebo end is proposed for aesthetic purposes. Mrs. Casey stated that the proposed gazebo end would match a similarly designed feature on their rear deck. Mr. and Mrs. Casey stated that they considered placing the gazebo end along the side of the porch rather than the front; however the position of the existing driveway and certain trees prevented designing it that way.

Chair Harrison called for questions and comments from the public.

William Godsall, Architect for the applicants, described the project and the materials that would be used.

The Board discussed the application. On motion by Mr. Whipple, seconded by Mr. Fleischer the variance requested for the side yard setback was approved and the variance requested for the front yard setback was denied.

Chair Harrison called the application of **Mr. and Mrs. Andrew Lacey, 445 Park Street**. Grant Gille, Esq., appeared as attorney for the applicants and described the proposed addition. Mr. Gille called Mr. Way, Architect who was sworn.

Marked into evidence were:

- A-1 Two (2) photographs of the front of the dwelling, on a board
- A-2 Two (2) photographs on a board: 1 one of the northerly side of the dwelling and 1 of the rear of the dwelling
- A-3 Two (2) photographs of the northerly side of the dwelling, on a board
- A-4 A photograph of the rear of the dwelling and a rendering of the rear of the dwelling with the proposed addition and terrace, on a board,
prepared by John Way, Architect
- A-5 Two (2) renderings on a board depicting the proposed addition and terrace, prepared by John Way, Architect: 1 of the rear of the dwelling and 1 of the northerly side of the dwelling
- A-6 First floor plan and roof plan, on a board with color added, prepared by John Way, Architect

- A-7 Northerly side and rear elevations, on a board, illustrating the floor level, prepared by Jon Way, Architect
- A-8 Rendering of the rear of the dwelling with the proposed addition and terrace and a partial plot plan with color added, on a board, prepared by John Way, Architect
- A-9 Southerly side elevation, on a board, illustrating the first floor level, prepared by John Way, Architect
- A-10 Site Survey Drawing on a board, prepared by John Charles Smith & Associates, Landscape Architects, dated December 21, 2005, with proposed work illustrated in color by John Way, Architect
- the
- A-11 Site Survey Drawing on a board, prepared by John Charles Smith & Associates, Landscape Architects, dated December 21, 2005, with conforming alternative for the proposed work and the sections of existing dwelling that are nonconforming illustrated in color by John Architect
- a
the
Way,
- A-12 New Jersey Office of Cultural and Environmental Services Historic Sites Survey Form
- A-13 Sanborn Map, depicting the subject property to illustrate the average front yard setback of the 2 nearest dwelling on Clarewill Avenue

Mr. Way stated referred to Exhibit A-12 and described the historic nature of the dwelling. He stated that the dwelling was constructed around 1899, was used as a school for a period of time, and is very significant dwelling in the neighborhood. He referred to the photographs in Exhibit A-1 and stated that the position of the dwelling on the lot is skewed over towards Clarewill Avenue, which leaves a large side yard of on the northerly side of the lot. He stated that although the lot is large, the position of the dwelling on the lot encroaches into required rear yard setback, and that the existing front yard setback from Clarewill Avenue is also nonconforming due to the larger average front yard setback of the next 2 homes on Clarewill Avenue. Mr. Way continued by describing the problems associated with conforming additions to the dwelling. He stated that conforming additions would impair the quality of the existing porte cochere on the northerly side of the dwelling and have a negative impact on the historic qualities of dwelling. He also stated that the rear yard on the property is small and that the large side yard is the only recreational space for applicants' family and that conforming additions would impact this outdoor recreational space and would also require the relocation of the driveway.

Mr. Way described the proposed plans. He stated that the proposed one-story addition would have complied with the previous rear yard setback requirements of 25

feet. He also stated that no new construction is proposed to be closer to Clarewill Avenue than the existing dwelling and that the proposed addition encroaches into the required front yard setback by about 5 feet. He stated that the site slopes steeply from west to east and that the addition has been designed to step down to follow the slope. He also stated that a wood deck is proposed between the one-story addition and Clarewill Avenue and a raised stone terrace is proposed at the rear of the one-story addition. He further stated that the existing dwelling has no family room and that the proposed addition, which would contain a family room, along with the proposed deck and patio provide the type of space needed for a family with children.

The Board questioned Mr. Way. Mr. Way stated that in order to improve stormwater runoff from the property, roof leaders from the existing dwelling and the addition can be directed to the street, and drywells can be installed to collect runoff from other impervious surfaces. Mr. Way also stated that the proposed family room is less than 400 square feet in area and described the interior of the existing home.

Chair Harrison called for questions from the public. None were offered. Mr. Gille called Andrew and Wendy Lacey, who were sworn. The Board questioned the applicants. Mrs. Lacey stated that they have 3 children under the age of 4, including a daughter with special needs. She stated that the proposed addition, deck and patio provide the living space necessary to comfortably care for the children and enjoy their home and yard. Mr. Lacey stated that the space provided with the addition is needed since his daughter with special needs will likely live with them on a long term basis and additionally, his parents may soon reside within the dwelling as well. Mr. Lacey described the existing floor plan and stated that they are very limited in rearranging the existing floor plan due to the historic character of the interior of the home. He also stated that he has discussed the plan with his neighbor on the adjoining property on Clarewill Avenue, who is present at this meeting.

Chair Harrison called for questions and comments from the public.

Bernard Demoreuille, 141 Clarewill Avenue, was sworn. He stated that the applicant has shared the plans with him and that he understands applicants' needs. He stated that his only concern is stormwater runoff which is being addressed well by the applicants, and that from his perspective the encroachment into the rear yard is not an issue.

The Board discussed the application. It was determined that due to the slope of the property and the position of the addition on the sloping grade, the existing nonconforming height of the dwelling was being exacerbated by the proposed addition and required a variance in addition to the variances originally requested. On motion by Ms. English, seconded by Mr. Haizel, the application was approved, Mr. Whipple voting in the negative, subject to the following conditions:

1. The raised stone terrace shall not be constructed.

2. Any central air conditioning units shall conform to the zoning requirements.

3. The rear yard setback for the proposed addition and wood deck shall be no less than 25 feet.

4. The front yard setback from Clarewill Avenue shall be no less than the existing front yard setback of 23.06 feet, which is measured to the existing southeasterly corner of the dwelling.

5. Stormwater produced by the proposed work shall be controlled as per the testimony and plans provided. The Township Engineering Department shall review and approve any proposed stormwater discharges out to the street or storm sewers, as well as on-site drainage improvements, such as drywells.

Chair Harrison called the application of **Roger Dolden, 46 Wayside Place**. Roger Dolden and John Reimnitz, Architect, were sworn. Mr. Dolden described the application. He stated that the proposed additions mostly add space to the second floor of the home, where space is currently lacking.

Marked into evidence were:

- A-1 Computer rendering of the proposed front elevation on a board
- A-2 Site Plan, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-3 West Elevation, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-4 South Elevation, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-5 North Elevation, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-6 East Elevation, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-7 Alternative Site Plan, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-8 Alternative South Elevation prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added

- A-9 Basement Floor Plan, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-10 First Floor Plan, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-11 Second Floor Plan, prepared by John Reimnitz, Architect, dated June 30, 2006, on a board with color added
- A-12 Front yard setback analysis, on an enlarged copy of the Sanborn Map, on a board

Mr. Reimnitz stated that the proposed additions to the second floor are viewed as a third story on the southerly side and rear of the dwelling only, where the grade level is lower and more of the house is exposed. He stated that the variance is caused by the topography on the property and that the dwelling would be well below the maximum height permitted. He stated that the objective with the plan was to add space to the dwelling while causing minimal site disturbance. He further stated that the alternative plans presented as Exhibits depict a conforming option which is much larger and would have a far more significant impact on the site and the neighbors, and that the additions as proposed would block less natural light to neighboring homes. He continued by stating that the roof design and other architectural features of the façade break down the massing of the dwelling and described floor plans. Mr. Dolden stated that he has spoken with and met with neighbors and that all have been supportive of the application.

The Board questioned the applicant and Mr. Reimnitz. 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 Mr. Fleischer, the application was approved.

Chair Harrison called the application of **Richard Shaffer and Nataalka Bukalo, 34 Park Street**. Nataalka Bukalo and Shalini Taneja, Architect, were sworn. Ms. Bukalo described the application and stated that the building on the property was originally built as a home, and was converted to an office at some point afterward. She stated that since she and her husband purchased the property, they have used the building as an office; however, they wish to convert the building back to a single family dwelling. She stated that the building has retained its residential appearance throughout the time it has been used as an office and that the location of the property is an ideal location for them as their residence. She stated that they can only consider the proposed conversion if they are permitted to construct a one-car detached garage, which requires setback variances.

Ms. Taneja described the property and the zoning requirements. She stated that the proposed detached garage will require variances for side and rear yard setbacks of 3 feet instead of the 6 feet required and that the proposed garage would be accessed via the existing driveway on the property. She also stated that the rear yard of the property is very small, providing the applicants with a limited amount of outdoor space, and that requiring larger setbacks would significantly impact this outdoor space.

Marked into evidence were:

- A-1 Garage Plans and Elevations, on a board
- A-2 Photographs of the subject property, on a board
- A-3 Floor Plans of the building illustrating the proposed conversion and addition to the existing building

Ms. Taneja described the proposed change of use to a single-family dwelling and stated the proposed use is permitted in the OR-3 Zone. She stated that minimal alterations are required since the interior of the building has remained very residential in character during its use as an office. She stated that an addition is proposed on second floor to add a master bedroom, which complies with all zoning requirements and that the proposed location for a central air condenser also conforms. She continued by stating that the only variance required for the proposed conversion is lot size requirement, which is triggered by the change of use. She stated that there is no way to acquire additional land from any adjoining lot, all of which are developed and similarly undersized, and that the proposed change of use would be beneficial since it would provide a lower intensity residential use in comparison with the existing office use. She also stated the proposed garage should be approved because it provides a reasonable accommodation of security on a property that is proposed for use as a single-family dwelling.

The Board questioned the applicant and Ms. Taneja. Ms. Bukalo stated that a fence not a good alternative for security in the rear yard for their vehicle because it can be climbed and the vehicle can be vandalized. She also stated that the large Maple Tree at the rear is located on the neighbor's property, and that the proposed garage will be within 3 feet of that tree.

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. Susswein, the application was approved.

Chair Harrison called the application of **Ruggiero Real Estate, LLC, 98 Watchung Avenue**. Nicholas Brindisi, Esq., appeared as attorney for the applicant and described the application. Mr. Brindisi called Michael Ruggiero, owner, who was sworn and described the application. Mr. Ruggiero stated that the property has contained a

home heating oil delivery business for the last 60 years. He stated that they presently use 3 tanker trucks, 3 vans, 2 pick-ups, all of which on park on the property overnight.

Marked into evidence was:

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

Mr. Ruggiero described the photographs in A-1 and stated that they illustrate the existing garage at the rear of the lot and the extent of the proposed addition to the rear garage by using orange cones and one of their tanker trucks. He stated that the proposed enlarged garage would house their 3 tanker trucks and 3 vans. He also stated that presently only 2 tanker trucks park in garage, leaving 1 tanker truck and 3 vans outside. He stated that the proposal would allow garage parking for these 6 vehicles, which is being done for security purposes. He further stated that the smaller garages attached to back of front building are used for storage only since they are not large enough for truck or van parking. He also stated that the site is presently illuminated by an existing utility pole light, and that wall-mounted light fixtures are proposed on westerly side of the enlarged garage in order to light the setback area of the garage for security.

The Board questioned Mr. Ruggiero. Mr. Ruggiero stated that the adjoining property to the east would still be able to have vehicles access their own rear yard if the proposed addition is approved. He also stated that the tanker trucks are 30 feet long, and that the access space in front of the garage as proposed would be 40 feet, which would be sufficient room for maneuvering the trucks.

Chair Harrison called for questions from the public.

Chris Besta, owner of 100-106 Watchung Avenue, which adjoins the subject property, asked how long the construction period would last and how construction activities would be controlled in order to not spill over the property lines. He also asked whether any trucks would be added as a result of the application. The Board questioned Mr. Ruggiero. Mr. Ruggiero stated that no additional trucks or vans are contemplated and that the plan is to have his vehicles parked in the proposed garage. Mr. Brindisi stated that the applicant would agree to condition in that regard. Mr. Ruggiero stated that sometimes tankers are stored overnight with oil in them, and discussed the safety precautions that are taken with that situation. He also stated that he has been in the fuel oil business for 42 years.

Mr. Brindisi called Gianni Antilli, Architect, who was sworn and described the proposed addition. He stated that the existing garage would be widened to the west by about 4 feet and that an addition to match the new width of 40 feet with a length of about 32 feet is proposed at the front of the garage. He stated that the site is already fully paved and that the Board Engineer's letter reflects that no drainage improvements

need to be constructed for this application. He stated that the front building is to remain as it is and described the proposed lighting in the westerly side of the enlarged garage.

The Board questioned Antilli. He stated that no climate control system is proposed for the garage. Mr. Ruggiero stated that no trash dumpster is used on the site and that trash from the business is handled with typical garbage cans and picked up by the Township. Chair Harrison called for questions from the public. None were offered.

Mr. Brindisi called William Morrissey, who was sworn and stated his qualifications as a Professional Planner. Mr. Morrissey described the zoning requirements in the N-C Zone, and stated that although the existing use is being classified as a nonconforming use by Township as a business office use, the applicant has significant retail components within the business that are available to the public, which makes the existing use comparable to a permitted use and makes the use variance requested acceptable. He also stated that the proposed expansion of the garage building is proposed to cover existing commercial vehicle parking; therefore there is no expansion in intensity of the use. He continued by describing the other variances requested and stated that the application should be approved because no detrimental impact will occur as a result, and the application provides a number of benefits, including visual, safety, noise reduction benefits to the neighborhood. He also stated that the waiver for two-way driveway width can be granted since the site has operated safely under these conditions for some time.

Marked into evidence was:

A-2 Site Plan on a board

A-3 Larger photo board with 4 photos: 2 of the front of the property and 2 of the rear of the property

The Board questioned Mr. Morrissey. Mr. Antilli responded to a question on the intensity of the lights proposed on the side of the garage, and stated that the lights proposed are not high intensity lights and are not shielded.

Chair Harrison called for questions and comments from the public.

Chris Besta, owner of 100-106 Watchung Avenue, repeated his question on whether more trucks would be added to the site. Mr. Ruggiero responded again that no additional trucks would be added to the site.

Mr. Brindisi called William Batkay, 96 Watchung Avenue, was sworn. He stated that he is the owner of the adjoining property to the west. He stated that the application would only propose benefits to him as the owner of an adjoining residential property. Chair Harrison called for questions from the Board and question and comments from the public. None were offered. Mr. Brindisi gave his closing statements.

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

1. The existing inlet between the proposed building and the office which is clogged shall be cleaned so it will function properly as recommended in a memorandum dated June 5, 2006 from the Montclair Planning Board Engineer.

2. The three wall mounted light fixtures on the westerly side of the garage shall be shielded to prevent glare onto the adjacent residential properties.

3. No outdoor storage of commercial vehicles shall be permitted outside normal business hours.

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