

MINUTES OF THE BOARD OF ADJUSTMENT
September 22, 2004

PRESENT: Chair Harrison, Ms. English, Vice Chair Fleischer, Mr. Gallardo, Ms. Rock-Bailey and Mr. Susswein; also, Mr. Sullivan Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey, Mr. Flood, 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 Ms. English, the **Minutes of the August 18, 2004** regular meeting were adopted, as modified, Mr. Gallardo and Mr. Susswein abstaining.

Chair Harrison stated that the Board's discussion and vote on the variance application of **Frank T. Shane, 201 Bellevue Avenue** would be deferred to a later time in the meeting when more Board members arrived.

Chair Harrison called the variance application of **Peter & Kristen Korian, 19 Elston Road**. John Way, Architect, was sworn and described the application. He stated that an addition is proposed at the rear of the dwelling that would not meet the 6-foot side yard setback requirement in the easterly side yard. He also stated that the proposed addition would encroach 8 inches into the required 6-foot setback and continued by stating that the placement of the proposed addition is necessary due to the existing interior configuration. He further stated that the proposed addition conforms to all other zoning requirements.

The Board questioned Mr. Way.

Mr. Way stated that the easterly wall of the proposed addition would be aligned with the easterly wall of the existing dwelling, which is set back approximately 5 feet from the side property line. He also stated that there is an existing bay window along the easterly side of the dwelling that is set back 4 feet from the easterly side property line.

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

The Board discussed the application.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the variance application was approved.

Chair Harrison called the variance application of **James Dunneman, 128 Lincoln Street**. James Dunneman, owner, and Kien Q. Nguyen, Architect were sworn.

Mr. Nguyen stated his qualifications as a Licensed Professional Architect in the State of New Jersey. Mr. Dunneman stated that he was raised in the existing home on the subject property and that the proposed modifications to the dwelling are necessary in order to accommodate his family.

Mr. Nguyen stated that the property presently contains a one-story home and a detached garage and continued by describing the proposed additions to the dwelling. He stated that there are very few one-story homes in the area and that the existing home is not large enough to accommodate a family. He described the required front yard setbacks based on the average front yard setbacks of the 2 nearest principal buildings on either side of the subject property and continued by stating that the footprint of the dwelling must be enlarged in order to accommodate an efficient interior layout and that the proposed modifications result in a dwelling containing approximately 2,600 square feet.

The Board questioned Mr. Nguyen.

Mr. Nguyen stated that no living space is proposed over the attached two-car garage and that the attic over the garage is not connected to the proposed second floor of the dwelling. He also stated that there would be a pull-down stair access to the attic in the main portion of the dwelling.

Mr. Dunneman stated that his contractor would also be able to answer the Board's questions.

Chris Davis, contractor for Mr. Dunneman, was sworn and stated that the attic over the proposed second floor of the dwelling would be utilized for the mechanical equipment and storage.

The Board questioned Mr. Davis.

Mr. Davis stated that the attic space over the attached garage could be utilized for storage space with a pull-down stair as well and that the covered porch is proposed to provide safety and convenience at the front entry. He stated that the 3-foot 11-inch enlargement of the footprint towards Madison Avenue is necessary for the dwelling to meet the minimum interior size standards and that the proposed size of the dwelling is small in comparison with the existing homes in the neighborhood. He also stated that the height of the roof over the attached garage was designed to show continuity with the home. He continued by stating that two of the four existing basement foundation walls are being retained and that in their analysis, the option to utilize the existing home foundation and build toward the rear yard while utilizing space above an attached garage was more expensive than the proposed plan

Marked in to evidence were:

- A-1 Existing and Proposed Elevations, with color, on a board, prepared by Kien Q. Nguyen, Architect, undated

A-2 Site Plan, with color and attached photographs of adjoining properties, on a board, prepared by Kien Q. Nguyen, Architect, undated

Chair Harrison called for questions from the public.

Dorothy Carson, 3 Madison Avenue, inquired about the side yard setback being provided in the applicant's proposal.

Mr. Nguyen stated that the side yard setback being provided by the proposed plan would be similar to the side yard setback provided by the property at 3 Madison Avenue and that the existing vegetation between the dwelling would buffer the impact of the proposed additions.

Ms. Carson was sworn. The Board questioned Ms. Carson.

Ms. Carson stated that her home is a ranch home and that the applicant should be required to retain as much of the existing landscaping between the homes as possible.

Mr. Davis questioned Ms. Carson and asked whether the addition of new plantings and a fence along the property line would help with her concerns.

The Board questioned Mr. Davis.

Mr. Davis stated that the large maple tree on the applicant's property would have to be removed and that Lombardy Poplar trees could be planted along the side and rear to provide an even better landscaped buffer than presently exists. He also stated that no other trees have to be removed to accommodate construction, however, the applicant is seeking to upgrade the existing landscaping by replacing certain "scrub" trees" with new and better plantings.

Ms. Rock-Bailey joined the meeting.

The Board questioned Mr. Nguyen.

Mr. Nguyen stated that an alternative elevation plan has been considered that would reduce the height of the building by approximately 3 feet in overall height.

Marked into evidence was:

A-3 Alternative Elevation Plan, on 2 sheets, depicting the front and left side elevations, prepared by Kien Q. Nguyen, Architect, undated

Mr. Nguyen stated that reducing the encroachment into the Madison Avenue front yard is not possible because it would ruin the interior floor plan by affecting the size of

rooms and the location of interior stairs. He stated that the reduction in height shown on Exhibit A-3 does not affect the interior of the dwelling.

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. Gallardo, the variance application was approved subject to the following conditions:

1. The plans shall be revised to match the building elevations depicted on Exhibit A-3.

2. No more than one-half of the existing trees located between the dwelling on the subject property and the westerly side property line shall be removed and 2 of the 3 rearmost of these existing trees shall remain.

Mr. Nguyen left the meeting with Exhibits A-1, A-2, and A-3.

Chair Harrison called the application of **Frank T. Shane, 201 Bellevue Avenue** and stated that although there are 6 Board members present, only 5 are eligible to vote at this time. Grace Bertone, Esq., appeared as attorney for the applicant in place of Mr. Beyel, Esq. who was at the previous hearing on the application, and stated that the applicant is requesting that the vote on the application be postponed until the next meeting so that they may have the full Board present for the vote. She also requested that they be permitted to circulate a written version of Mr. Beyel's summation to the Board members prior to the Board's discussion and vote on the application.

Chair Harrison stated that the application would be continued at the October 20, 2004 regular meeting of the Board and that no further notice would be given. Ms. Bertone granted the Board an extension of time for which to act on the application to the October 20, 2004 meeting date.

Chair Harrison called the variance application of **David and Laura Janay, 210 Highland Avenue**. Calvin O. Trevenen, Esq., appeared as attorney for the applicant and described the application. He stated that the subject property is owned by David Janay's parents. Mr. Trevenen called David Janay, who was sworn and stated that his parents have owned the subject property for approximately 30 years. He stated that he wishes to build a new home for his family on the property that would complement the diverse architecture of the area.

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

Mr. Trevenen called Peter Meyer, who was sworn and stated his qualifications as a Licensed Professional Engineer in the State of New Jersey. Mr. Meyer described the

existing conditions on the site and stated that the property has an average slope of 39 percent.

Marked into evidence was:

A-1 Site Plan, with color, on a board, prepared by PPE Corp., revised to September 8, 2004

Mr. Meyer stated that the flattest area on the property is located approximately 80 feet from the front property line and that there are no signs of prior development on the property. He also stated that the site contains 54 existing trees of over 6 inches in diameter and that the depth to the bedrock on the site is from 4 to 10 feet. He further stated that the lot falls short of the of the minimum lot size requirement by approximately 96 square feet and that the proposed dwelling meets the required front yard setback all other setback and height requirements, with the exception of an exterior stairway, which will be addressed further by the applicant's architect.

Mr. Meyer stated that the proposed driveway has a gradient of 7 percent for the first 20 feet from the curbline, which increases to 17.5 percent for the first 20 feet on the subject property. He stated that the 17.5 percent driveway gradient requires a variance, however, that revisions to the plan are underway that would eliminate that variance. He also stated that 3 parking spaces are proposed within attached garages and that a paved drop-off and turnaround area is proposed off of the driveway in front of the dwelling that will not be used for off-street parking. He continued by describing the proposed retaining walls and stated that the proposed retaining walls in the front yard will have varying heights up to 12.5 feet, which requires a variance. He stated that the retaining walls at the rear of the dwelling would conform to the height requirements.

Mr. Meyer addressed the variances required and stated that the existing lot size is adequate for the development of the lot and that no setback variances are required for the main dwelling. He also stated that the height variance for the retaining walls should be granted because it would provide for a safe driveway and limit the amount of regrading needed on the site. He continued by addressing the Steep Slope construction and drainage requirements and stated that the applicant would comply with the comments and recommendations from the Board's Engineer's latest review letter, dated September 20, 2004.

Mr. Trevenen stated that the Board Engineer has cited a concern regarding utility easements on the property and also stated that he will conduct a title search in order to make a determination on that matter.

Mr. Meyer stated that the driveway gradient is being redesigned in order to provide a safe "stopping platform" at the base of the driveway.

The Board questioned Mr. Meyer.

Mr. Meyer stated that a railing or fence could be added at the top of the retaining walls to provide for safety. He also stated that the limit of disturbance depicted on the plans would not be changed as a result of the revisions to the driveway gradient. He also stated that blasting would likely be necessary on the site to accommodate the proposed construction. Mr. Meyer stated that the retaining walls in the rear yard are separated by at least 4 feet from each other, as required by ordinance.

Chair Harrison called for questions from the public for Mr. Meyer.

Ken Brower, 214 Highland Avenue, inquired about the tree removal process and whether the street would need to be closed at any time during construction. He also inquired about the grading and drainage of the site and procedures involved in blasting on the site.

Mr. Meyer stated that 49 of the 54 existing trees on the site would be removed and that the applicant would obtain permits to close the street if necessary. He also stated that the applicant would follow all necessary procedures for any required blasting.

The Board questioned the applicant.

Mr. Meyer stated that the applicant would take all appropriate measures regarding the potential location of a utility easement on the property.

Maria Czin, 206 Highland Avenue, asked whether blasting on the site could negatively affect the water tower that is located on higher ground to the west. She also inquired about the setback provided for the driveway from the southerly side property line and the effect that the proposed construction would have on trees located on adjoining properties. She also inquired about the retaining wall in the rear yard and how those walls affect drainage.

Mr. Meyer stated that small amounts of dynamite would be needed for blasting on the site, which should not have any effect on the existing water tower. He also stated that the retaining walls would positively affect drainage on the site by allowing for better absorption and less runoff.

Gerry Czin, 206 Highland Avenue, asked whether the proposed construction would destroy root structures for trees located on adjoining properties.

Mr. Meyer stated that the level of construction proposed near the property lines should not affect trees on adjoining properties.

Ken Brower, 214 Highland Avenue, inquired about the rear retaining walls.

Mr. Meyer stated that that the rear retaining walls are more decorative than structural and described the process of constructing retaining walls.

Gerry Czin, 206 Highland Avenue, asked if the applicant would be responsible for and bear the cost of removing any trees that die on adjoining properties as a result of construction.

Mr. Trevenen stated that there are no municipal ordinances governing that matter and that that type of situation would be handled privately at that time if that situation were to occur.

Are Tsirk, 201 Highland Avenue, inquired about the supervision and monitoring of blasting and the proposed retaining wall type.

The Board questioned Mr. Meyer.

Mr. Meyer stated that he would have to check whether the newest NJDEP Stormwater Management Regulations apply to the proposed development. Mr. Meyer confirmed that a retaining wall from Mr. Brower's property encroaches onto the Janay's property.

Chair Harrison called for a recess.

Mr. Trevenen called Eric Maran, who was sworn and stated his qualifications as a Licensed Professional Architect in the State of New Jersey. Mr. Maran described the design of the proposed dwelling and described the basement of the proposed dwelling.

Marked into evidence were:

A-2 Basement Floor Plan, prepared by Smith Maran Architects, dated September 22, 2004

A-3 Study Model of the proposed dwelling, created by Smith Maran Architects

Mr. Maran described the Study Model of the proposed dwelling and pointed out vehicular access to the garages and the exterior stairways around the proposed home. He described the height of the building according to the requirements of the zoning ordinance and stated that the proposed dwelling would have a height of 28 feet 10 inches, which does not include the stairway head located on the flat roof because it does not take up more than 10 percent of the roof area. He stated that the central air-conditioning units would be located on the roof of building, near the rear, and would be screened from view.

Mr. Maran described the main stairway entrance to the dwelling and also described the paved drop-off and vehicle turn-around area at the front of the dwelling. He stated that the main stairway entrance to the dwelling is on the northerly side of the dwelling and requires a variance because it projects more than permitted into the required side yard setback in the northerly side yard. He stated that the main stairway entrance has been designed to present well on the driveway and to reduce the amount of blasting required on the site. He also stated that the location of the entrance stairway

on the northerly side of the dwelling preserves the easterly side of the dwelling for windows with views of New York City and stated that the zoning ordinance would not prohibit an exterior stairway from encroaching into the required front yard setback. He continued by stating that the main entrance stairway is virtually invisible because it is located below grade, which minimizes its impact.

The Board questioned Mr. Maran.

Mr. Maran stated that the first landing of the proposed main stairway entrance would be approximately 2 to 3 feet below grade. He also stated that the main entrance stairway was designed to reduce the amount of blasting required in the northerly side yard and is the most aesthetically pleasing design for the proposed dwelling.

Chair Harrison called for questions from the public for Mr. Maran.

Ken Brower, 214 Highland Avenue, inquired about the floor plans and the location of windows on the proposed dwelling. He also inquired about the proposed outdoor deck at the front of the home and whether the depth of the home was designed with consideration to the adjoining properties.

Mr. Trevenen stated that certain design elements do not have any significance on the variances requested.

Mr. Sullivan stated that the Board can only consider design elements that have relevance in terms of variances that are being requested.

Tom Ercolano, 202 Highland Avenue, inquired about the limit of disturbance and asked whether the retaining walls in the front yard could be redesigned to be lower in height.

Mr. Maran stated that the limit of disturbance shown on the plan depicts the area where the vegetation will be disturbed, whether it is by excavation or workers treading.

Mr. Meyer stated that the proposed retaining walls have been designed to minimize the amount of regrading needed on the site, however, that the retaining walls could be lowered in height with more regarding of the site.

Mr. Maran reiterated that the design of the main stairway entrance is the most elegant solution for the proposed home and that other alternatives would be far less aesthetically pleasing.

Chair Harrison stated that the application would be continued at the October 20, 2004 regular meeting of the Board and that no further notice would be given. Mt. Trevenen granted the Board an extension of time for which to act on the application to the October 20, 2004 meeting date.

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