

**MINUTES OF THE BOARD OF ADJUSTMENT  
OCTOBER 19, 2005**

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Ms. Holloway, and Mr. Susswein; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Vice Chair Fleischer, Mr. Flood, Mr. Haizel, Mr. Whipple, 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. Susswein, seconded by Ms. Cockey, the **Minutes of the September 21, 2005** regular meeting were adopted as modified, Ms. English and Ms. Holloway abstaining.

On motion by Mr. Susswein, seconded by Ms. Cockey, the following Resolution memorializing the approval of the application of **Bernice Paschal, 5 Tuers Place** was adopted, Ms. English and Ms. Holloway abstaining:

**WHEREAS, Bernice Paschal**, owner of property at **5 Tuers Place**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a front yard setback less than required pursuant to **Montclair Code Section 347-45B(2)** and a rear yard setback less than that required pursuant to **Montclair Code Section 347-45D** in connection with the construction of a deck enclosure addition onto an existing single-family dwelling on property designated as Lot 12 in Block 4803 on the Township Tax Map and located in the R1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by Alfred J. Clark. Inc., dated November 17, 1986, and a plot plan prepared on a copy of the survey, floor plans, and elevations prepared by Sincox Associates Architects/Planners, dated May 25, 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 September 21, 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 located on a corner lot formed by a bend on Tuers Place and is located in the R-1 One-Family Residential Zone. The property measures 7,800 square feet in area and contains a bi-level, single-family dwelling with a garage underneath.

2. The applicant proposes to construct a deck enclosure addition on top of an existing wood deck on the rear of the structure. The existing dwelling and deck have a nonconforming front yard setback of 15.78 in the easterly front yard. The existing deck also has a nonconforming rear yard setback of 18 feet. The deck measures 14 feet by 14 feet and 2 feet of the deck would be cut back from the northerly (rear) side, creating a 12 foot by 14 foot deck that the enclosure would fit over.

3. The proposed deck enclosure addition would be aligned with the dwelling and the existing deck and would not meet the required front yard setback in the easterly front yard of 32 feet, taken from the average front yard setback of the 2 nearest principal structures on Tuers Place to the north of the subject property. The rear yard setback of the proposed addition is 20 feet, which is larger than the rear yard setback of the existing deck.

4. The applicant demonstrated that the location of the proposed addition is the most practical for dealing with the unique characteristics of the subject property, namely the shallow depth of the lot, the location of the existing dwelling on the lot, and the limited amount of usable outdoor green space.

5. Based upon the Board's particular knowledge of local conditions, the proposed addition 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 applicant 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 applicant did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within variance application of Bernice Paschal is hereby approved; and

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

On motion by Mr. Susswein, seconded by Ms. Cockey, the following Resolution memorializing the approval of the application of **Christine Koury, 664 Ridgewood Avenue** was adopted, Ms. English and Ms. Holloway abstaining:

**WHEREAS, Christine Koury**, owner of property at **664 Ridgewood Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(1)** in connection with the construction of a front entrance vestibule onto an existing single-family dwelling on property designated as Lot 29 in Block 4505 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a site plan, floor plans, and building elevations prepared by John Reimnitz Architect, dated May 15, 2005, as well as a property survey prepared by Richard J. Hings, Inc., dated December 15, 2004; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on September 19, 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 interior lot located in the R-1 One-Family Residential Zone and contains a two and a half story, single-family dwelling with a detached garage. The property has 60 feet of frontage on Ridgewood Avenue and contains 6,987 square feet in area.
2. The applicant proposes to construct a one-story addition consisting of an entrance vestibule onto the front of the structure. A new stoop and set of stairs are also proposed to be added to the front of the house.
3. The proposed entrance vestibule measures approximately 9 feet wide by 6 feet deep and does not meet the front yard setback requirement of 32 feet.
4. The existing dwelling has an existing roofed landing at the front entrance which projects 4½ feet from the front wall of the dwelling.
5. The Board determined that the applicant's plans could be modified so that the proposed front entrance vestibule would not project closer to Ridgewood Avenue than the existing roofed landing at the front entrance of the dwelling, which still requires a variance, but would have less impact on the front yard setback.
6. Based upon the Board's particular knowledge of local conditions, the proposed front entrance vestibule, as modified, 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 applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within variance application of Christine Koury is hereby approved, subject to the following condition:

1. The proposed vestibule shall not extend more than 4½ feet from the front wall of the dwelling.

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

Assistant Secretary Charreun announced that the application of **Dr. and Mrs. Bernard Crawford, 35 Parkway**, would be carried to the November 9, 2005 special meeting of the Board, because the applicants had not completed the public notice requirements.

Chair Harrison called the variance application of **John and Janet Curtis, Jr., 15 Hollywood Avenue**. The applicants were sworn and Mr. Curtis described the application. He stated that constructing a garage with the conforming setbacks has a negative effect on his usable rear yard space and also impact the adjoining property negatively because his garage and the neighbor's garage are accessed by a common driveway.

The Board questioned the applicants. Mr. Curtis stated that a smaller garage existed in the same location, although with a smaller footprint and that a concrete slab is all that presently exists. He stated that he had not considered a garage with a smaller footprint and that a total of 3 properties share the existing driveway to access their parking, although no easement is in place.

Chair Harrison called for questions and comments from the public.

Bonni Clark, 13 Hollywood Avenue, was sworn and supported the application. She stated that historically, a garage existed in the same location as the proposed garage and that moving the proposed garage further from the side property line would complicate the shared driveway configuration. She also stated that she was not aware that the proposed garage was 6 feet longer than the concrete slab and that she would support the application anyway.

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

1. The footprint of the proposed detached garage shall be modified to reduce the length from 24 feet to 20 feet.

Chair Harrison called the variance application of **Pablo and Christen Arbelo, 55 Wildwood Avenue**. The applicants were sworn. Mrs. Arbelo stated that the property contains a lawful two-family dwelling and described the application. Mr. Arbelo described the work that has been done up to this point and stated that the dwelling is being restored from a deteriorated condition. Mrs. Arbelo stated that the plan would be revised in order to comply with the rear yard setback and the side yard setbacks proposed are in keeping with the existing dwelling. She also stated that the dead end section of Wildwood Avenue contains numerous existing dwellings that are either two-family or three-family dwellings.

Marked into evidence was:

A-1 Photographs of the subject property and other dwellings on Wildwood Avenue, on 3 pages, prepared by the applicants

Mrs. Arbelo stated that the first floor of the dwelling would be a rental unit and that the second floor, which presently contains 858 square feet of living area, would be part of the proposed owners' unit. She also stated that the attic would be finished as part of proposal to complete owners' unit and that there would be no way to add a third dwelling unit due to configuration of interior. She continued by stating that the proposed addition and the finishing of the attic is necessary in order to provide enough space to accommodate a family. She then called Howard Dobelle, Architect, who was sworn and stated that he is a licensed Architect in the State of New Jersey.

Mr. Dobelle described the plans.

Marked into evidence was:

A-2 Photograph of the front of the dwelling with a simulation of the new roofline

Mr. Dobelle stated that the proposed changes to the dwelling would result in an overall height increase of 6 feet. He also stated that the proposed deck off of the rear of the second floor would be revised in order to comply with the 25-foot rear yard setback.

The Board questioned the applicants and Mr. Dobelle. The applicants described the existing attic and stated that they are not certain whether the attic was previously used or if it had been lawfully finished.

Marked into evidence was:

A-3 Photograph of the existing attic interior

Mr. Arbelo stated that the deck off of the second floor at the rear would be increased from 68 to 90 square feet. Mrs. Arbelo stated that the proposed attic space would contain 2 bedrooms and 1 bathroom. Mr. Dobelle stated that the attic would only be accessible through the living room on the second floor. He also stated that the basement is not habitable and would only be used as unfinished basement space. Mr. Arbelo called Dean Boorman, 40 Edgemont Road, Professional Planner, who was sworn.

Mr. Boorman described the existing conditions and the applicants' proposal, as well as the neighborhood. He stated that when he was hired to update the Montclair Master Plan in 1978, a land use map was provided to him by the Planning Department, which he would like to introduce into the record at this time.

Marked into evidence was:

A-4 Land Use Map of Montclair, undated

A-5 Photographs of the subject property and neighborhood, on a board, prepared by Dean Boorman

Mr. Boorman stated that the uses in the vicinity of the applicants' property have not changed from what is depicted on Exhibit A-4. He described the photographs contained in Exhibit A-5 and pointed out the existing land uses. He stated that the site is particularly suitable for the proposed expansion because the pattern of development and land uses in the neighborhood has been historically established. He also stated that the application meets the special reasons required to justify the granting of the requested variances and that the proposal does not represent a detriment to the public.

Chair Harrison called for questions and comments from the public.

Kevin Zaccareo, 45 Wildwood Avenue, was sworn. Mr. Zaccareo referred to Exhibit A-5 and stated that he grew up at 60 Wildwood Avenue, which is also a lawful two-family dwelling. He stated that too many of the two and three family dwellings on the street contain additional illegal apartments and are not owner-occupied. He stated that the proposal would have a negative effect on his property and stated his opposition to the application.

Mr. Arbelo stated that the existing gutters and leaders are in terrible condition and that they would be replaced. Mr. Dobelle also stated that a swale could be utilized near the property line to further protect the adjoining properties. Mr. Arbelo stated that most of the neighbors are very happy with what they have done to the home up to this point, as well as what they are planning to do with a property that was very run down. Mr. and Mrs. Arbelo also stated that they would like the Board to proceed with a vote at this time.

The Board discussed the application. A motion to approve the application was made by Mr. Susswein, and seconded by Ms. Holloway, however, Ms. Cockey and Ms. English did not support the motion and the variance application was denied.

Chair Harrison called the variance application of **Dr. Dennis J. Melillo, 22 The Crescent**. Laurence Olive, Esq., appeared as attorney for the applicant. The applicant was sworn and stated that he resides at 173 Route 46, Columbia, New Jersey.

Marked into evidence were:

- A-1 Land Use Map of neighborhood prepared by the applicant
- A-2 Binder containing 4 sheets with photographs of the subject property and the vicinity

Dr. Melillo stated that he purchased the property in 1984 and made an application to the Board of Adjustment to put his chiropractic office on the first floor of the subject property and reside in the apartment that comprises the second and third floors. He stated that the property was recently placed on the market and a contract of sale has been entered into with a dentist who wishes to purchase the property and use the first floor office for a dental practice while renting out the dwelling unit above rather than residing in it. He stated that at the time of the previous approval he testified that his intention was to practice and reside at the subject property, and that is why the Board's Resolution reflects that situation. He continued by stating that after a few years of living at the subject property, he and his wife had children and decided to move and that they have not lived at the subject property in over 17 years. He stated that it appears that it was an oversight to not amend the approval when the dwelling unit was no longer occupied by a resident doctor and was being rented out.

Dr. Melillo stated that he has researched the area and the existing mixed use buildings containing medical offices with apartments and that he has found that none of the doctors practicing on The Crescent also reside on the same property. He stated that the area is one of Montclair's most urban areas, and that it is very common for owners not to reside on their properties. He also stated that the previous approval could be amended without any negative impact, and is proven by the fact that the proposed situation has existed for a number of years already. He further stated that any concerns about an impact to the parking variance that was granted are mitigated by the availability of off-street parking in the area, including the Crescent Parking Deck presently under construction across the street.

The Board questioned the applicant.

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

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

1. The freestanding sign shall be no more than three square feet in area and non illuminated.
2. This approval is limited to one medical office on the first floor and one dwelling unit occupying the second and third floors.

Laurence Olive, Esq., appeared as attorney for the scheduled application of **PAAG, LLC. 7 Fidelity Place**. Mr. Olive stated that due to the fact that there are only 5 Board members present, he would request that the application be postponed to future date. The Board discussed potential dates for the application. Chair Harrison announced that the application would be scheduled for the November 9, 2005 special meeting of the Board and that no further notice would be given. Mr. Olive also granted the Board an extension of time.

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