

**MINUTES OF THE BOARD OF ADJUSTMENT  
NOVEMBER 9, 2005**

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

ABSENT: Mr. Haizel, Ms. Cockey, Mr. Flood, Ms. Holloway, and Mr. Mellon, Secretary

Assistant Secretary Charreun called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison called the application of **Dr. and Mrs. Bernard Crawford, 35 Parkway**, however, the applicants' architect was not present yet, so Chair Harrison called the next application.

Chair Harrison called the application of **PAAG, LLC, 7 Fidelity Place**. Laurence Olive, Esq., appeared as attorney for the applicant and requested that, since there are only 5 Board members present, the application be carried to a future meeting date. Chair Harrison announced that the application would be carried to the November 16, 2005 regular meeting and that no further notice would be given.

Chair Harrison called the application of **Michael J. Murphy, 131 Lloyd Road**. Edward Trawinski, Esq., appeared as attorney for the applicant and stated that his partner Gary Werner, Esq., is also present to assist him with exhibits. David Owen, Esq., gave his appearance and stated that he is representing Fran Adler, of 22 Mulford Lane. Kenneth Traum, Esq., of 24 Mulford Lane, gave his appearance and stated that he is representing himself.

Mr. Trawinski gave his opening statements and called Michael Murphy, who was sworn. Mr. Murphy described the subject property.

Marked into evidence were:

- A-1 Copy of the Building Permit issued by the Montclair Building Department
- A-2 Copy of the Certificate of Approval issued by the Montclair Building Department
- A-3 Copy of the Order of Settlement from the Superior Court of New Jersey Law Division: Essex County Docket No. ESX-L-5586-02
- A-4 Letter to Michael J. Murphy from the Montclair Planning Department, dated September 8, 2005

Mr. Murphy described the above Exhibits. He stated that he purchased the subject property in 1999 with the intention of developing a single-family home and

stated that, at the time, he foresaw the need for retaining walls on the site due to its steep natural grade of approximately 28 to 30 percent. He stated that he thereafter acquired the adjoining property to the south and subsequently had grading and drainage plans for both sites prepared and submitted to the Montclair Building Department for building permits and to the Montclair Engineering Department for Steep Slope review. He stated that, at that time, he was informed by the Planning Department that no variances were required for the proposed site work, including any retaining walls. He continued by stating that he received the required permits and completed the site work on both sites, including the construction of a major portion of the retaining walls. He further stated that as work began on the site, certain neighbors filed an action with the New Jersey Superior Court seeking to stop the proposed work, including the removal of trees from his property and the construction of any retaining walls. He stated that the Judge who heard the case held the permits issued by the Township to be valid and that upon appeal by the opposing neighbors, the Appellate Division affirmed the previous Court's decision. He stated that he was then incorrectly advised by his prior counsel that it was safe to proceed with the construction.

The Board questioned Mr. Murphy. Mr. Murphy stated that he is not certain whether a home will be constructed on the subject property and that he was advised by his engineers that the construction of the dwelling on the adjoining lot to the south would be easier once the site work on the subject property was completed because a level staging area was provided by the grading plan.

Mr. Owen questioned Mr. Murphy.

Marked into evidence were:

- O-1 Portion of the Montclair Tax Map that includes the properties involved
- O-2 Photograph of the subject property prior to trees being removed that depicts trees marked for cutting

Mr. Murphy stated that he is not certain whether a principal structure will be constructed on the subject property. He stated that tree removal on the subject property commenced at some point in early June 2002 and also stated that he does not recognize Exhibit O-2 as a photograph of trees that were marked on his property for cutting. He stated that it was his understating that the lawsuit was over after the Appellate Division denied the objectors' appeal and that the retaining wall on the subject property is approximately 165 feet wide as it adjoins the Adler property.

Mr. Traum stated that he did not have any questions for Mr. Murphy.

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

Mr. Trawinski called Darrell Alvarez, Professional Engineer, who was sworn and stated his qualifications. Mr. Alvarez stated that he did the engineering studies of the

site prior to the construction of the retaining wall as well as the recent studies. He described the drainage plans and the structural integrity of the retaining wall and stated that both have been designed well over typical standards.

The Board questioned Mr. Alvarez. Mr. Alvarez stated that geo-grid fabric was added to every course of the existing segmental block retaining wall and that if top layers of the retaining wall were removed, it would likely compromise the stability of the courses below it, possibly requiring extensive demolition of the wall. He also stated that although it would be difficult, it is possible to construct either a segmental block or poured concrete retaining wall right up to the property line.

Mr. Owen questioned Mr. Alvarez.

Marked into evidence were:

O-3 Plans prepared by Gregory Comito & Associates, revised to May 29, 2002, which were the plans submitted at the time for building permits

O-4 Letter from Darrell Alvarez, P.E., R.A., to the Montclair Building Department, dated November 13, 2002

Mr. Alvarez confirmed that the plans submitted at the time for building permits indicated a retaining wall that would be 12 feet maximum in height and that the existing retaining wall exceeds 12 feet in maximum height.

Mr. Traum questioned Mr. Alvarez. Mr. Alvarez described the proposed back-filling at the bottom of the existing retaining wall and groundcover options. He stated that the height of a retaining wall is measured from finished grade at the bottom of the exposed wall to the top of the wall.

Mr. Trawinski conducted a redirect of Mr. Alvarez. Mr. Alvarez stated that there is a note on the plans that indicates that the geo-grid fabric is not depicted at every course for clarity, although it has been installed at every course of the retaining wall.

Mr. Trawinski called Paul Szmajda, Landscape Architect, who was sworn and stated his qualifications. Mr. Szmajda identified and described the report he prepared as part of the application. He compared the existing retaining wall to a code compliant wall and described the proposed planting plan designed to provide an evergreen screen for the retaining wall.

Marked not evidence were:

A-5 Rendered Planting Plan, with color photographs of proposed plantings, prepared by Keller & Kirkpatrick, revised to September 12, 2005

- A-6 Enlarged photograph, from Appendix D of the Keller & Kirkpatrick report, depicting the projected growth of the proposed Arborvitae
- A-7 Enlarged photograph depicting projected growth of the proposed ivy and hedgerow after 5 to 7 years
- A-8 Rendered depiction of conforming retaining wall layout, with color, on a board, taken from Appendix C the Keller & Kirkpatrick report, no date

Mr. Szmaida stated that a conforming wall would not offer any measurable aesthetic benefit when compared to the existing wall with the proposed landscaping.

The Board questioned Mr. Szmaida. Mr. Szmaida described how the proposed plantings could be maintained by the applicant and stated that it would not be necessary to trespass on any neighboring lot.

Mr. Owen questioned Mr. Szmaida. Mr. Szmaida stated that it would be possible to reconstruct a set of retaining walls using 2 tiers of walls.

Mr. Trawinski recalled Mr. Murphy. Mr. Murphy stated that he is seeking the variance to place a fence at the top of the retaining wall because setting the fence back as required by the ordinance creates an attractive nuisance for children to get onto the 4-foot corridor between the fence and the top of the retaining wall.

Chair Harrison called for a short break. Upon returning, Mr. Trawinski stated that the applicant has decided to leave the location of the fence proposed at the top of the wall to the Board's discretion.

Mr. Trawinski called Christopher Healy, Real Estate Appraiser and Real Estate Broker, who was sworn and stated his qualifications.

Marked into evidence was:

- A-9 Appraiser's Report dated January 31, 2005, prepared by Christopher J. Healy of Metropolitan Appraisal Services

Mr. Healy described the report he prepared for the subject property. He stated that he has worked with numerous properties in the vicinity of the subject property and properties in similar hilly areas in Essex County and that in his experience he has never reduced the value of a property due to the existence of a retaining wall.

The Board questioned Mr. Healy. Mr. Healy stated that retaining walls in the area of the subject property are a common phenomenon and that he has never noted a negative reaction to retaining walls in the real estate market.

Mr. Owen questioned Mr. Healy. Mr. Healy stated that he has never done any detailed studies on retaining walls alone or the effect of different retaining wall options.

Chair Harrison announced that the application would be continued at a special hearing to be held on Monday, November 29, 2005 at 7:30 p.m. in the Council Chambers and that no further notice would be given.

Chair Harrison called the application of **Dr. and Mrs. Bernard Crawford, 35 Parkway**. Assistant Secretary Charreun stated that the plans have been revised and that the proposed accessory structure now complies with the required height and that the only variance required is for locating the accessory structure within the front yard of the property.

Dr. Crawford and David Hottenroth, Architect, were sworn and Mr. Hottenroth described the plans. Dr. Crawford described the proposed layout and stated that the proposed plan offers his family the best aesthetic and functional use of the rear yard and that a conforming plan limits the amount of rear yard space that is available to his family. He also stated that his property is a corner lot and that the proposed accessory structure would not be located any closer to Edgemont Road than the garage located on the adjoining property on Edgemont Road, which is also a corner lot.

The Board questioned the applicant and Mr. Hottenroth. Mr. Hottenroth described the previous version of the plan and compared it to the revised version presently before the Board. Mr. Crawford stated that an extensive landscaping plan has been developed for the property which would include the required landscaping in the 10-foot side yard setback of the swimming pool which would comply with the ordinance requirements.

Chair Harrison called for questions and comments from the public.

Kathleen Vanderwoort, 35 Watchung Avenue, was sworn and stated that her property would be the most negatively impacted by the proposed structure, which is out of character with the accessory structures in the neighborhood. She stated that the Board should deny the application.

William Simon, 37 Watchung Avenue was sworn and stated his opposition to the application.

David Connolly, 33 Watchung Avenue was sworn and stated that he is opposed to the application. He stated that the proposed accessory structure is out of scale with the existing accessory structures in the neighborhood.

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

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