



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT



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## **MINUTES OF THE BOARD OF ADJUSTMENT**

### **November 16, 2016**

**ORDER:** The meeting was called to order at 7:35 p.m. by Graham Petto. Mr. Petto read the notice of compliance with the New Jersey Open Public Meetings Act and indicated that appropriate notice was forwarded to the officially designated newspaper of Montclair and posted in the Municipal Building. The schedule of meetings is also posted on the Township website.

**ROLL CALL:** Mr. Petto called the roll. Present were Mr. Harrison, Mr. Fleischer, Ms. Baggs, Ms. Chowaneic, Mr. LaVail, Mr. Sullivan, and Mr. Petto. Mr. Moore, Mr. Allen and Mr. Reynolds were excused.

#### **APPROVAL OF MINUTES:**

Mr. Harrison introduced the minutes of the October 19, 2016 Board meeting. He noted a few edits to the minutes as presented. A motion was made by Ms. Baggs, seconded by Mr. LaVail to approve the minutes as amended. The minutes were approved unanimously with Mr. Fleischer and Ms. Chowaneic abstaining.

#### **OLD BUSINESS:**

**Resolution for App. 2465: Richard Stanton & June Raegner. 49 North Mountain Avenue.** *Use variance and site plan for professional office use in R-3 zone district.*

Mr. Harrison introduced the resolution. He noted a few minor edits to the resolution as presented.

Mr. Sullivan noted that only Mr. Harrison was eligible to vote on the resolution. Mr. Harrison made a motion to approve the resolution and voted to approve the resolution as amended. Mr. Fleischer, Ms. Baggs, Ms. Chowaneic, and Mr. LaVail abstained.

**Resolution for App. 2467: Trademark Sign (Capital One Bank). 605 Valley Road.** *Bulk variance for signage installation and automated teller machine replacement.*

Mr. Harrison introduced the resolution. Ms. Baggs made a motion approve the resolution as submitted, seconded by Mr. LaVail. The resolution was approved unanimously with Mr. Fleischer and Ms. Chowaneic abstaining.

**App. 2472: Frank Cano. 543 Upper Mountain Avenue.** *Bulk Variance for a 3rd story addition.*

Chair Harrison introduced the application. Present for the application was the applicant, Mr. Frank Cano.

Mr. Cano summarized the application. He noted that the intent was to extend the rear roof to create a dormer on the third floor. He stated that this would create a bathroom in

an existing bedroom on the third floor. He also noted that the dormer addition would create additional living space in the bedroom. Mr. Cano reviewed similar third floor dormers on properties in the neighborhood.

Questions from the Board were then accepted.

Mr. Fleischer asked if the addition would extend the full width of the dwelling. Mr. Cano replied yes and noted that other dwellings in the neighborhood have similar third story dormers that extend the width of the dwelling.

Mr. Harrison asked if the third story addition would be set into the existing roof line to appear as a dormer. Mr. Cano stated that the proposed dormer would extend the full width of the dwelling.

Mr. Fleischer stated that a dormer that extends the full width of the building would not appear as a full story but would have to appear as a dormer. Mr. Cano stated that the addition would be a dormer on the rear only and would not be a full story. He also noted it would not be visible from the front of the dwelling.

Mr. Petto asked Mr. Cano to clarify the proposed design of the dormer for the Board, noting the plans that had been previously distributed to the Board.

Mr. Cano summarized the application for the Board.

Final comments from the Board were then accepted.

Ms. Chowaneic stated that she was generally in favor of the application. She stated that she understood Mr. Fleischer's concern about the appearance of a dormer on the dwelling. She stated that consideration of both the short term and long term impact of the addition was important.

Mr. Fleischer stated that he was not in favor of the application as presented with the dormer extending the full width of the house. He noted that it does not appear as a dormer and would instead appear as a third story. He stated he was not in favor of the application as submitted.

Ms. Baggs stated that she agreed with the comments made by Mr. Fleischer.

Mr. LaVail stated that he agreed with the comments made by Mr. Fleischer. He stated that the addition would be more appropriate if it were designed as a dormer.

Mr. Harrison stated that the Board has previously reviewed requests for dormer additions, but they have not been for the full width of the dwelling. He stated that such an approval could impair the intent of the zone plan.

Mr. Fleischer stated that the dormer should be resized to be set in 3 feet on each side from the outer wall of the dwelling below.

Mr. Cano introduced Exhibit A-1, an updated rendering of the proposed addition. He noted that the dormer would be set within the roof.

Mr. Fleischer reiterated that the dormer should be resized to be set in 3 feet on each side from the outer wall of the dwelling below.

Mr. Harrison advised Mr. Cano that he may revise his plans to address the Board's concerns or he could elect to proceed to a vote this evening.

Mr. Cano stated that he would return to the December meeting of the Board to continue the application.

Mr. Harrison announced that the application would be carried to the December meeting of the Board with no further notice.

**App 2468: Yatin & Nelti Patel. 12 Frink Street. Bulk variances for construction of 2-family home in C-2 zone district.**

Chair Harrison introduced the application. Present on behalf of the applicant was attorney Richard Schneider.

Mr. LaVail recused himself from the application.

Mr. Schneider reviewed the past testimony before the Board on the application. He stated that the applicant has considered and addressed the constructive critique from the Board.

Mr. Schneider recalled Alan Feld, architect for the applicant.

Mr. Feld introduced Exhibit A-5, a colored site plan of the subject property. Mr. Feld summarized the changes based upon comments from the Board at the previous meeting. Those changes were as follows:

- The garage located within the building has been relocated from a side entry to a front entry from Frink Street.
- The front yard setback of the dwelling has been increased to eliminate the encroachment of the upper floor bay window into the Township right-of-way.
- The width of the driveway is now nine feet.
- The relocated garage will accommodate 2 parked vehicles in addition to 2 tandem parking spaces in the driveway.
- The zero foot side yard setback from the northern property line has been increased to three feet.
- The bedroom mix has been reconfigured to have 3 bedrooms in each units.
- The overall square footage of the building has been reduced.

Questions from the Board were then accepted.

Mr. Sullivan asked for clarification that there would be 3 bedrooms in each unit. Mr. Feld replied yes.

Mr. Harrison asked Mr. Feld to review the dimensions of the front yard setback for each story. Mr. Feld stated that the front yard setback for the first floor would be 5 feet and 3 feet for the second floor.

Mr. Fleischer asked if the front entry porch would be uncovered, which would impact the front yard setback. Mr. Feld stated it would not be covered.

Mr. Fleischer asked about the balcony space on the southern façade of the building and if it was important to the application. Mr. Feld stated that it would be an amenity space for the unit.

Ms. Baggs asked about the use of the 2 garage parking spaces and if they would belong to one unit only or if one space would be available for each unit. Mr. Schneider stated that there would be one space for each unit in the garage.

Ms. Chowaneic asked for a review of the entry to each unit. Mr. Feld reviewed the plans and noted the entry area for each unit. He noted that one would enter from the front and one from the rear beyond the tandem driveway parking.

Ms. Chowaneic asked what the width of the driveway was which would be the means of access to one unit. Mr. Feld stated the driveway would be nine feet in width.

Mr. Harrison asked if the flood hazard elevation was illustrated on the plan. Mr. Schneider noted that a letter from the applicant's engineer dated October 5 was prepared based upon the plans before the Board. Mr. Schneider distributed additional copies of the letter.

The Board reviewed the October 5 letter from the applicant's engineer.

Ms. Baggs asked about the first paragraph of the letter which notes that a permit by rule is permitted for construction or addition. She asked if these plans had been reviewed by the state. Mr. Schneider stated that the full plans were submitted to the state for review.

Ms. Baggs expressed concern that perhaps the plans were not reviewed by the State, as the cantilevered rear of the dwelling was located over the vegetated riparian area. She asked how this area could be maintained as vegetation if it were covered by the building. Mr. Schneider stated that the DEP received and reviewed the plans and had provided comments to the applicant.

Mr. Sullivan stated that the letter from the applicant's engineer could be provided to Board Engineer Tom Watkinson for additional review and satisfaction.

Mr. Harrison noted that the DEP letter does indicate construction of a new 2-family dwelling on the property. He stated that the Board could not second guess the DEP determination. He agreed that the letter should be sent to Tom Watkinson, Board Engineer, for review.

Mr. Fleischer asked about the 3 foot side yard setback along the northern property line and inquired how this area would be landscaped or finished with paving or stone. Mr. Schneider stated that the area would be landscape or finished as recommended by the Board.

Mr. Schneider then called Mr. David Karlebach, professional planner for the applicant.

Mr. Karlebach stated that he had visited the site and surrounding areas to review the application. He described the property for the Board in detail.

Mr. Karlebach introduced Exhibit A-7, a series of photos of the site. He reviewed the photos of the existing site for the Board.

Mr. Karlebach noted that the area is located close to the Walnut Street train station and also noted that there is mixed use development in the area.

Mr. Karlebach reviewed the setback variances sought by the applicant.

Mr. Karleback noted that the subject property has a buildable area of only 700 sq. ft. due to zoning requirements and the required riparian buffer area. He noted that there has been a trend for larger unit sizes.

Mr. Karlebach noted that the proposed height of the building is compliant with the zone requirements. He stated that the variance for the number of stories is due to the location of the garage within the dwelling.

Mr. Karlebach noted that there is an existing retaining wall along the front property line at both 6 and 10 Frink Street and that other buildings in the area have a zero foot front yard setback.

Mr. Karlebach summarized the requested variances and stated they would not have a detrimental impact on the zone.

Questions from the Board were then accepted.

Ms. Baggs asked about the parking and noted that there are 4 proposed on-site spaces. She asked how many on street parking spaces would be lost on Frink Street as a result of the curb cut for the driveway and the garage entry. Mr. Karlebach stated that most likely one on-street space would be lost as there is already an existing curb cut for a driveway on the subject property. He stated this one lost space, coupled with 4 new off-street spaces provided by the applicant would be a net gain of 3 spaces in the area.

Ms. Baggs asked about the subject property's proximity to the train station and what the justification was for providing 4 spaces given the transit access. Mr. Karlebach stated that the Township ordinance and the NJ RSIS requires 4 spaces for the proposed 2-family dwelling. He also noted that given the proximity to commercial uses in the area, it would be important to provide off-street parking for the dwelling.

Ms. Baggs asked if this application would require site plan approval. Mr. Sullivan stated that the application, which is for a two-family dwelling, would not require site plan approval.

Mr. Fleischer stated that he would like to see the width of the dwelling reduced by one foot to allow for an increase of the drive way by one foot. Mr. Fleischer asked if the proposed balconies on the south side were considered in relation to the side yard setback. Mr. Karlebach replied yes.

Mr. Harrison noted that the rear entrance to the second unit is through the driveway so widening the driveway would be good for the application.

Mr. Harrison asked about the proposed lot coverage where the applicant seeks to double the permitted lot coverage in the zone. Mr. Karlebach noted that the lot is undersized and that the size of the proposed building makes the coverage requirement difficult to meet. Mr. Karlebach noted that the Master Plan recommends 65% lot coverage in this area.

Mr. Harrison agreed that some of the requirements of the C-2 are difficult to meet for the proposed use.

Mr. Fleischer asked if the building coverage was calculated to include to footprint of the upper stories, which project over the first floor. Mr. Karlebach replied yes.

Mr. Schneider summarized the application and made final remarks. He noted that the applicant intends to reside within the dwelling.

Mr. Schneider stated that the applicant would be amenable to the following conditions of approval:

- The northern side yard is to be finished with stones
- The applicant is to satisfy any and all comments from the Board Engineer and obtain the appropriate NJ DEP permits for construction.
- The dwelling will be reduced by 1 foot in width to allow for a 1 foot expansion of the driveway.

Final comments from the Board were then accepted.

Mr. Fleischer stated that the proposed dwelling was an excellent use of the site in the area. He stated that the infill development is an excellent addition to the Township. He noted that while the variances are significant in number, the overall benefits of the project outweigh any detriments.

Ms. Baggs stated that she would be in favor of the application. She noted that the applicant has taken care to address concerns raised by the Board. She stated that the project would be a benefit to the area.

Ms. Chowaneic stated that she agreed with the comments by Mr. Fleischer and Ms. Baggs. She stated that there are many constraints of the site. She stated that the proposed conditions by the applicant would make the application better.

Mr. Harrison stated that the application was good. He noted that the Walnut Street area has become a popular area in the Township. He stated that parking is a problem in the area and that the application is beneficial as parking will be provided on-site. He stated that there is continuing improvement of the area. He stated that the current condition of the property allows ample justification for all variances. He stated that the application would not impair the zone plan, nor would it be a detriment.

Mr. Harrison summarized the conditions of approval:

1. The building width shall be reduced from 29 feet 11 inches in width to 28 feet 11 inches. A southwesterly side yard setback of 10 feet to the main building shall be provided exclusive of balconies and stairs/porch. This condition modifies the requested variance relief set forth in Paragraphs 4, 5 and 7 on Pages 1 and 2 of this Resolution.
2. The applicant shall comply with and satisfy comments 1 through 4 contained in the October 15, 2016 review memorandum prepared by W. Thomas Watkinson, P.E., P.P., Board Engineer. With respect to comment 3, the applicant shall provide Exhibit A-6 directly to Mr. Watkinson as well as any other information or documentation he requires.
3. The applicant shall provide a vegetative strip within the 3 foot setback along the northeasterly side of the property.
4. The applicant shall comply with the Township's development fee requirements set forth in Montclair Code Section 202-42.

5. The applicant's offsite improvements in the Township's right-of-way shall be subject to review and approval by the Township Engineer.
6. The applicant shall be bound by all representations made on its behalf by its attorney and professionals during the course of the public hearings.
7. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

A motion was made by Mr. Fleischer to approve the application with the conditions as stated, seconded by Ms. Baggs. The application was approved unanimously.

**App. 2469: Montclair Town Center, LLC. 37 North Mountain Avenue/323 Claremont Avenue.** *Office use in the R-3 zone district, site plan.*

Mr. Petto noted that a correspondence had been received from the applicant requesting an adjournment to the December meeting of the Board of Adjustment due to lack of members to hear the application.

Mr. Sullivan announced that the application would be continued to the December meeting of the Board with no further notice.

**App. 2471: Scarlet Real Estate, LLC. 126 Midland Avenue.** *Bulk variances for reconstruction of a dwelling.*

Chair Harrison introduced the application. Present for the applicant was attorney Alan Trembulak.

Mr. Trembulak reviewed the application for the Board. He then introduce Mark Marion, architect for the applicant.

Mr. Marion reviewed the existing conditions of the dwelling. Mr. Marion also reviewed the proposed dwelling, which would reuse the existing foundation from the existing dwelling.

Mr. Trembulak asked what the size of the new dwelling would be. Mr. Marion stated that it would be 2,456 sq. ft. in size with 4 bedrooms and 2.5 bathrooms.

Mr. Trembulak asked if the existing garage and driveway would be retained on the subject property. Mr. Marion replied yes.

Questions from the Board were then accepted.

Mr. Fleischer noted that the existing dwelling appears to have a basement. He asked if the basement would be extended beneath the proposed addition. Mr. Marion stated that the new space beneath the addition would be a crawl space only, not a full basement.

Mr. Fleischer asked if the proposed dwelling could be rotated to fit within the required side yard setback. He noted that the existing dwelling does not sit squarely on the lot. Mr. Fleischer asked how important it was to reuse the existing foundation. Mr. Marion stated that the existing foundation is very thick and quite old, given the age of the existing dwelling. He stated that it was also in good condition. Mr. Marion stated that removal of the foundation would require major construction.

Mr. Fleischer asked if the proposed dwelling would maintain the existing side yard setback and would not further encroach in the side yard. Mr. Marion replied yes, that the existing side yard setback would be maintained.

Mr. Harrison asked how the proposed crawl space beneath the addition would be accessed. Mr. Marion stated that access to the crawl space is required by building code. He stated that access could be provided from within the existing basement through existing window openings or new access could be added through the addition wall.

Mr. Harrison asked if the applicant would comply with the memo received from the Board Engineer. Mr. Trembulak replied yes.

Comments from the public were then accepted.

Juliana Ellman, 26 James Street, addressed the Board. She stated that the proposed 7 foot addition to the new dwelling towards James Street would detrimentally impact her dwelling next door. She stated that she purchased her home earlier in the year and noted that the view of the intersection at Midland Avenue and James Street was important to her property. She stated that the value of her home would be diminished due to the addition.

Steven Pasterick, 130 Midland Avenue Unit B, stated concern about the proximity of the dwelling on the subject property to the driveway located at 130 Midland Avenue. He noted concern about any proposed fencing at the subject property along the property line which would impact use of the driveway for 130 Midland Avenue.

Ms. Baggs asked Mr. Pasterick to note on the plans the location of the driveway in question.

Mr. Harrison asked Mr. Marion if any changes to the garage were proposed on the subject property. Mr. Marion replied no.

Mr. Harrison asked Mr. Marion to review the property survey provided in the application with respect to the concerns raised by Mr. Pasterick. Mr. Marion noted that the driveway for 130 Midland Avenue does cross onto the subject property.

Mr. Harrison asked if the applicant was proposing any fencing or other obstruction along the shared property line with 130 Midland Avenue that would impact the driveway for 130 Midland Avenue. Mr. Trembulak replied no.

Mr. Harrison stated that there should be no structure located in the side yard setback to protect use of the driveway at 130 Midland Avenue.

Final comments from the Board were then accepted.

Ms. Baggs stated that beside the reuse of the existing foundation, there were no other justifications presented by the applicant to grant the variance. She noted that the proposed new dwelling could fit on the subject property within the required setbacks. She noted that one aspect in favor of the application could be the respect of the relationship to the driveway for 130 Midland Avenue. Ms. Baggs stated that she would have liked more testimony on the condition of the foundation.

Mr. LaVail stated that he was torn about the application, he noted that in other instances the Board was open to non-conforming conditions that would not be worsened. However, he stated in this instance the foundation would need to be substantial to warrant the variance for reuse. Mr. LaVail stated that he was sympathetic to the neighbors. He noted that the sidewalk should be repaired as noted in the memo from the Board Engineer.

Ms. Chowaneic stated that she agreed with the comments made by Ms. Baggs regarding the foundation of the building. She stated she was not sure how she felt about the variance request.

Mr. Fleischer stated concerns regarding the retention of the foundation. He noted that the setback of the dwelling along James Street and the proposed setback is greater than the existing front yard setback of other homes along James Street to the west. He stated that further shifting of the property towards James Street may not be a benefit to the area. Mr. Fleischer also noted concern with respect to the driveway at 130 Midland Avenue. He stated that the proposed dwelling under the application could be constructed in a conforming location on the lot with a new foundation. He stated that the benefit of the non-conforming side yard would be lost with the removal of the house.

Mr. Harrison stated that the testimony by Ms. Ellman on the proposed addition was in response to a zoning compliant addition. He stated that the variance before the Board is unusual. He stated that the parking at the rear of the dwelling at 130 Midland Avenue is accessed by crossing onto the subject property. He stated that the Board has allowed reuse of garage foundations previously. Mr. Harrison stated that the Board could grant the variance but with a condition that if the foundation needs to be replaced, the new dwelling must conform to the side yard setback requirement.

Mr. Sullivan noted that the application required two variances, one for the side yard setback and one for the minimum lot width requirement.

The Board discussed the two variances sought by the applicant and members came to a consensus decision to grant the variance for the minimum lot width requirement only.

Mr. Harrison summarized the conditions of the application:

- No structures are permitted between the dwelling, both existing and proposed, and the property line to ensure access to the driveway for 130 Midland Avenue which crosses onto the subject property.
- The applicant is to adhere to the comments provided in the memorandum from Board Engineer Tom Watkinson.

A motion was made by Mr. Fleischer to grant the variance for the minimum lot width only with the conditions as stated. The motion was seconded by Mr. LaVail. The motion was approved unanimously.

### **NEW BUSINESS:**

**App. 2473: Andrew Moldovan. 60 Maple Avenue. *Bulk variance for front yard parking.***

Chair Harrison introduced the application. Present for the application was the applicant, Mr. Andrew Moldovan.

Mr. Moldovan stated that he purchased the property in April 2016. He noted that the property was listed for rent for approximately 3-4 months with no tenant interest. Mr. Moldovan cited the lack of parking as the reason for lack of tenant interest. He also noted that there is no overnight parking on the street.

Mr. Moldovan stated that he hired a contractor to install a driveway in the front yard of the subject property which has been completed.

Mr. Fleischer stated that granting the variance for front yard parking after the installation would set a precedent. He stated that this case would be difficult to justify and noted that the front yard parking issue is a concern throughout the Township.

Comments from the public were then accepted.

Mr. J. Anthony Dargan, 62 Maple Avenue, stated several concerns regarding the driveway. He noted concern about the impact on his property values. He also noted that as constructed there is insufficient space to maneuver out of the driveway. He stated that there is a narrow space between the driveway at the subject property and his property for on-street parking, which can obstruct the driveways. He stated that the curb cut was installed illegally can presents a safety risk.

Dr. Renee Baskerville asked Mr. Moldovan if he was aware of the restriction on front yard parking when the property was purchased. Mr. Moldovan replied no.

Dr. Baskerville stated that granting the variance would set an awful precedent to allow parking in front yards. She noted that many houses in the immediate area would like to add parking to their properties as well. She stated that approval of this variance would lead to increased inquiries about creating parking areas. She stated that the Board should deny the variance.

Comments from the Board were then accepted.

Mr. LaVail stated that he was not comfortable approving the variance and that it would be detrimental to the neighborhood.

Ms. Chowaneic stated that she agreed with Mr. LaVail and noted that the application would set a precedent that would be difficult in the Township.

Mr. Fleischer stated he would not be in favor of the application.

Ms. Baggs stated she would not be in favor of the application.

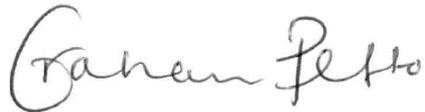
Mr. Harrison stated that he would not be in favor of the application. He noted that the property is a small lot and would need to be paved in its entirety.

A motion was made by Mr. Fleischer to deny the application, seconded by Mr. LaVail. The application was denied unanimously.

**ADJOURNMENT**

A motion to adjourn the meeting was offered by Mr. LaVail, seconded by Ms. Baggs. The meeting was adjourned at 10:10pm, November 16, 2016.

Respectfully submitted,

A handwritten signature in cursive script that reads "Graham Petto". The signature is written in black ink and is positioned above the typed name and title.

Graham Petto, P.P., AICP  
Zoning Board of Adjustment Assistant Secretary