



*Graham Petto, P.P., AICP  
Assistant Planner  
Department of Planning and Community Development  
gpetto@montclairnjusa.org*

**MINUTES OF THE BOARD OF ADJUSTMENT  
December 21, 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, Mr. Reynolds, Ms. Baggs, Mr. Moore (departed at 10:55pm), Mr. Allen, Ms. Chowaneic, Mr. LaVail, Ms. Daye, Mr. Sullivan, and Mr. Petto. Ms. Baggs arrived at 7:45pm. Mr. McCullough was absent.

**APPROVAL OF MINUTES:**

Mr. Harrison introduced the minutes of the November 16, 2016 Board meeting. He noted a few edits to the minutes as presented. Ms. Chowaneic noted a few minor edits. A motion was made by Mr. Fleischer, seconded by Mr. LaVail to approve the minutes as amended. The minutes were approved unanimously with Mr. Reynolds, Mr. Moore and Mr. Allen abstaining.

**2017 SCHEDULE OF MEETINGS:**

Mr. Harrison introduced the schedule for consideration by the Board. The Board discussed the proposed schedule and modified dates based upon input from Board members. A motion was made by Mr. Fleischer, seconded by Mr. Reynolds to adopt the 2017 Schedule of Meetings as follows:

January 18	April 19	July 19	October 11
February 8	May 10	August 16	November 8
March 15	June 21	September 13	December 20

The schedule was approved unanimously.

**RESOLUTION FOR BOARD PROFESSIONALS:**

Mr. Harrison introduced the resolutions for consideration by the Board for Board Attorney and Board Engineer. Mr. Harrison noted that the proposals received for 2017 reflect the same terms as the existing contracts for 2016. A motion was made by Mr. Fleischer, seconded by Ms. Baggs. The resolutions were approved unanimously.

**OLD BUSINESS:**

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

Mr. Harrison introduced the resolution. He noted a few minor edits to the resolution as presented. A motion was made by Mr. Fleischer, seconded by Ms. Baggs to adopt the resolution as amended. The resolution was approved unanimously with Mr. Reynolds, Mr. Moore and Mr. Allen abstaining.

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

Mr. Harrison introduced the resolution. He noted a few minor edits to the resolution as presented. Ms. Baggs also noted an edit. A motion was made by Mr. Fleischer, seconded by Ms. Baggs to adopt the resolution as amended. The resolution was approved unanimously with Mr. Reynolds, Mr. Moore and Mr. Allen abstaining.

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

Mr. Harrison introduced the resolution. He noted a few minor edits to the resolution as presented. A motion was made by Mr. Fleischer, seconded by Ms. Baggs to adopt the resolution as amended. The resolution was approved unanimously with Mr. Reynolds, Mr. Moore and Mr. Allen abstaining.

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

Mr. Harrison introduced the application. Present for the application were the applicants Mr. Frank Cano and Ms. Stephanie Webster.

Mr. Cano reviewed the updated renderings and photos provided to the Board for the application. He noted that the photos depicted a dormer addition on a neighbor's dwelling that he hoped to replicate on his property.

Questions from the Board were then accepted.

Mr. Fleischer stated that the property to which Mr. Cano had referred, 559 Upper Mountain Avenue, was the subject of a variance case previously before the Board. He noted that case was one of the first variance applications following the change to the ordinance regarding height. He noted that since that application, the Board has not been as permissive. He stated that recent precedent has been towards retaining the appearance of a dormer and not an additional story.

Mr. Harrison asked if the width of the proposed third floor dormer would be the same as the floor below. Mr. Cano replied yes.

Mr. LaVail asked for clarification of the roof. Mr. Cano noted that the roof would wrap the dormer just as the floor below. He noted the roof would be slightly narrower due to the diminished slope.

Mr. Cano introduced Exhibit A-2, the updated plans and photos and reviewed the proposed roof line of the addition. Mr. Cano stated that the intent was to be consistent with the other dwellings on the block.

Ms. Webster stated that the purpose of the addition was to accommodate their growing family. She stated that they need sufficient space to stay in Montclair. She noted that presently there is only one full bathroom and the proposed addition will add a second full bathroom.

Ms. Chowaneic asked if there was any other space in the dwelling to construct a bathroom. Ms. Webster stated that there was no other practical location to accommodate a bathroom.

Mr. Cano stated that a nearby dwelling has a dormer that does not extend the width of the dwelling and it is inconsistent with other homes in the area.

Mr. Allen asked for a review of members eligible for the application. Mr. Petto noted that Board members Mr. Harrison, Mr. Fleischer, Ms. Baggs, Ms. Chowaneic and Mr. LaVail would be eligible for the application.

Mr. Fleischer noted that as presented, the bedroom proposed on the 3<sup>rd</sup> floor under the new dormer would be 25-30 feet in length. He noted that this is a very large bedroom and could be reduced in size. He stated that the dormer could be reduced in width by 3 feet on each side. He stated this would ensure the addition appears as a dormer and not a third story.

Nicholas Michelmore, Palisades, NY, builder for the applicant was then introduced. Mr. Michelmore stated that code requires a 7 foot ceiling height for bedrooms and. He also noted that the proposed bedroom, while long is only 13 feet wide as presented.

Mr. Fleischer stated that he is stating that the length of the room could be reduced by 3 feet on each side of the dormer.

Mr. Harrison stated that the Board is trying to determine the size of the variance given the maximum requirement for dormers is 50% and a full dormer would be considered an additional story.

Ms. Webster stated that they appreciated the opportunity to work with the Board and want to be consistent with the neighborhood.

Final comments from the board were then accepted.

Mr. LaVail stated that he was not in support of the application as presented but would support a reduced width dormer with 3 feet from each side removed.

Ms. Baggs stated that she agreed with Mr. LaVail. She stated that granting a variance for the full width of the dwelling would weaken the zoning ordinance and set a bad precedent. She stated that a reduced size dormer would still meet the needs of the applicant.

Ms. Chowaneic stated that she agreed with the comments by other Board members. She stated that the reduced width by 3 feet on each side was a good compromise.

Mr. Harrison stated that he agreed with other comments by Board members. He stated that the applicant has justified the dormer location on the rear of the dwelling. He also noted that there are solar panels affixed to the roof on the front of the dwelling which prohibit a dormer location on the front.

Mr. Harrison stated that approval of the variance would not be detrimental to the zone plan.

Mr. Fleischer clarified that the dormer would be set in 3 feet from each side wall of the dwelling.

Mr. Harrison also stated that the addition should be maintained as a dormer.

A motion was made by Ms. Baggs, seconded by Mr. Fleischer to approve the application with the conditions as stated. The variance was approved unanimously with Mr. Reynolds, Mr. Allen, Mr. Moore and Ms. Daye abstaining.

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

Mr. Harrison recused himself from the application.

Mr. Fleischer introduced the application. Present for the applicant was Alan Trembulak, attorney for the applicant.

Mr. Trembulak summarized the application and reviewed the past testimony at the September meeting of the Board. He noted that architect Paul Sionas had presented plans for the property and the Carriage House relocation and rehabilitation. He also noted that traffic and planning testimony had been presented noting that the proposed medical use would result in 18 additional weekday trips and 27 additional trips on Saturdays. He also noted that there was a shared parking opportunity to accommodate parking on-site between the hotel use and the proposed medical office use.

Mr. Trembulak then introduced Paul Sionas, architect for the applicant, to review revisions to the plans since the September meeting.

Mr. Sionas presented Exhibit A-2 a PowerPoint presentation of the new plans. Mr. Sionas noted the following changes to the plans in his presentation:

1. A walkway from the sidewalk along Claremont Avenue was added along the driveway to the parking lot to allow pedestrian access to the handicap accessible entrance at the rear of the relocated Carriage House.
2. The HVAC units have been relocated to the western side of the relocated Carriage House.
3. The driveway for the multi-family dwelling at 323 Claremont Avenue has been retained with 2 tandem parking spaces.
4. Four parking spaces in the parking lot near the rear of 323 Claremont Avenue are to be marked reserved for tenants of 323 Claremont.
5. Revisions to the plans were also made to address comments by Board Engineer Tom Watkinson from his November 26, 2016 memo.

Mr. Sionas noted that the Carriage House location can be shifted eastward or westward should the Board choose. He noted that the HPC had requested the Carriage House be moved eastward to allow for more space along the driveway.

Finally, Mr. Sionas noted that with the 2 tandem parking spaces the total number of spaces between the two properties would be 71.

Questions from the Board were then accepted.

Mr. Fleischer asked for clarification of changes to the paving for the front of the Georgian Inn on the previously approved plan for that property. Mr. Sionas referred to slide 7 of his presentation and noted that Board Engineer Tom Watkinson had recommended adjustments to the crown of the driveway to adjust flow of water. Mr. Sionas also noted that Mr. Watkinson had recommended permeable pavers be used for this portion of the driveway as well.

Mr. Fleischer noted that the parking has increased to 71 spaces total. He stated concern for safety with respect to the tandem spaces for the residents of 323 Claremont Avenue. He noted that they will have to back out of the driveway onto Claremont Avenue which can be busy. He stated that he would prefer two fewer spaces on site rather than having residents back out of the driveway. He noted that these two tandem spaces could be removed and instead 6 spaces in the lot could be reserved for residents, up from the proposed 4.

Mr. LaVail asked if the driveway for 323 Claremont Avenue could go through and access the rear parking lot. Mr. Fleischer stated that would not be preferable as the driveway for the residences should not be used to access the larger shared parking lot.

Mr. Fleischer note that previously the distance between the dwelling at 323 Claremont and the relocated Carriage House was 20 feet. He noted that with the newly added sidewalk and shifting of the Carriage House, the distance between the relocated Carriage House and 323 Claremont is now only 16.5 feet. He asked if the Carriage House could be moved 2 feet to the west to allow for more open space adjacent to 323 Claremont. Mr. Sionas replied yes. Mr. Fleischer noted that there should still be sufficient room for the HVAC units to be shielded from view along the western façade of the Carriage House.

Mr. LaVail noted that the HVAC units for 323 Claremont Avenue are located along the western façade of that building adjacent to the proposed Carriage House location. He stated that the units for the Carriage House could be located along the eastern façade of the Carriage House which would consolidated all HVAC units for both structures in the common side yard. Mr. Fleischer noted that this would have a negative impact on the residential units with such a consolidation.

Mr. Reynolds stated that the driveway for 323 Claremont Avenue should be retained. He noted that if the hotel use is busy, issues may arise with the dedicated residential spaces in the parking lot and having the tandem spaces outside the lot would be beneficial.

Mr. Allen stated that backing out of driveways along Claremont Avenue is not uncommon. He agreed that consolidating all HVAC units in the common side yard

would be very noisy. He also agreed that the driveway should be retained as it is an added convenience for the residents.

Ms. Baggs stated that she saw both sides regarding the driveway. She noted that additional green space around the dwelling would also be beneficial.

Mr. Reynolds asked about access to the dumpster in the parking lot with the adjacent parking spaces. Mr. Sionas noted that parking stalls 37 and 38 would be signed with "No Parking" during specified trash collection periods.

Questions from the public were then accepted.

John Matis, 319 Claremont Avenue, asked what the normal conditions are for commercial lots adjacent to residential uses. Mr. Sionas noted that there are specific Site Plan standards in the Township Code that specify setbacks, landscaping, etc. to buffer commercial uses from adjacent uses.

Mr. Matis noted concern about the perpendicular parking along the fence. He stated that the fence along his property has been damaged due to snow piling against it when plowed in the parking area.

Mr. Matis asked if the trash collection times had been identified yet. Mr. Sionas stated that has not yet been determined and would be up to the applicant.

Mr. Matis asked if the Board has ever required greater setbacks than those permitted by the Township Code. Mr. Fleischer replied no.

Ms. Baggs asked Mr. Matis for his opinion regarding the proposed tandem parking spaces and driveway for 323 Claremont Avenue. Mr. Matis stated that there is often heavy traffic along Claremont Avenue which prevents backing out of his driveway. He noted that he has installed a turnaround in his rear yard to drive out of his driveway.

Mr. Fleischer noted that while there is a four foot setback along the parking lot on the subject properties, the setback narrows to only 2.5 feet along the tandem parking and driveway of 323 Claremont Avenue. He also noted that there are no plantings in this area. Mr. Sionas noted that there are not plantings in this area to ensure visibility for drivers backing out of the driveway. Mr. Fleischer stated that if the driveway were retained, he would recommend increasing the setback of the driveway and tandem parking to four feet.

Catherine Shandler, 7 Highmont Terrace, stated concern about noise from the 5 proposed HVAC units along the western side of the relocated Carriage House. She asked if anything could be done to mitigate the sound. Mr. Sionas stated that there are sound blankets for the units that can reduce sound. He also noted that the applicant can agree to address this.

Mr. Fleischer noted that the proposed HVAC units are not large commercial scale units.

Mr. Matis asked if the type of medical office use had been identified. Mr. Sionas replied no.

Mr. Trembulak then introduced Richard Keller, planner for the applicant.

Mr. Keller introduced Exhibit A-3 a map of the area of the subject properties.

Mr. Keller reviewed the subdivision and application history for the properties. He noted that the intent is to retain the commercial uses on one lot.

Mr. Keller reviewed the relocation of the Carriage House and the need for a use variance for the proposed medical office use in the Carriage House.

Mr. Keller reviewed the requested parking variance by the applicant, where 91 spaces are required and 71 spaces are proposed. He noted the shared parking arrangement among the uses on the site.

Mr. Keller also reviewed the bulk variances for the tandem parking setback and side yard setback of the relocated Carriage House.

Mr. Keller noted that the property was previously used for a commercial use and that the proposed medical office use is a low intensity use and serves as a transition between commercial uses in the adjacent OR-3 zone and other residential uses.

Mr. Keller referred to the HPC memo and noted that the HPC supported the relocation of the building.

Mr. Keller also noted that the Township Master Plan recommended rezoning the subject properties to OR-3 to better reflect the commercial use.

Questions from the Board were then accepted.

Ms. Baggs asked what the proposed hours of use would be and asked for information as to whether the proposed use would be noisy or quiet. Mr. Keller noted that there has been no testimony specific to hours of use. He stated that the use hours of operation would be consistent with a traditional doctor office. He noted that the traffic testimony did indicate peak hours of 10am to 2pm during weekdays and also peak hours on Saturday. He stated that there would be minimal noise from the property as the proposed use is similar to office use. He stated that there would be no additional noise and that the main activity and entrance to the building are located at the rear of the Carriage House.

Ms. Baggs asked about the (c) variance for the parking setback of 2.5 feet and asked where this was located. Mr. Keller noted this was for the proposed tandem parking spaces in the driveway for 323 Claremont Avenue, not the larger parking lot where the proposed setback meets the requirements of the Township Code.

The Board then welcomed final comments on the application from the public.

John Matis, 319 Claremont Avenue, addressed the Board. Mr. Matis stated that he has been living through construction at the subject property for the renovation of the Georgian Inn. He stated that he understands the projects will improve the town. He stated that he is not concerned about the relocation of the Carriage House. He asked if the Mountain Historic District was to be considered for residential uses. He noted that the applicant has purchased 317 Claremont Avenue and may want to convert that building to office use as well. He stated that if the intent is to convert all these properties to office use, the area should be rezoned to better reflect the use. He stated this may warrant additional study. He stated concern about the parking lots and the large number of children that use the corner of North Mountain and Claremont Avenues

as a bus stop. He also noted that the shared parking arrangement will make the parking lot busy throughout the day at all times.

Mr. Matis also noted concerns about security and visibility of the rear parking lot. He noted that the parking lot abuts his property with a fence and vegetation only. He noted that the parking lot is not monitored. Mr. Matis stated that the impacts of additional traffic in the lot and visibility of the lot will impact security. He stated that the application will further commercialize the neighborhood and that the Township should consider rezoning the area.

Mr. Fleischer asked Mr. Matis if his lot extended northward to roughly the midpoint of the Carriage House in its current location. Mr. Matis replied yes.

Mr. Fleischer asked about issues raised by Mr. Matis regarding concern for safety of children. Mr. Matis noted that children who reside in the 3-family at 323 Claremont currently use the parking lot for recreation. He stated this is something these residents will have to deal with.

Mr. Fleischer noted that safety can be addressed. He noted that the originally proposed spaces to the rear of 323 Claremont have been eliminated to add a small rear yard to the dwelling on the lot. He also noted that a fence could be added to surround this rear yard as a buffer from the adjacent parking lot. Mr. Fleischer also stated that it was proposed to eliminate the tandem parking and driveway to increase green space as well.

Mr. Matis stated that the situation is difficult with the commercial and residential lots so co-mingled.

Mr. Fleischer stated that the subject property has already been approved to function as a parking lot for the Georgian Inn. Mr. Matis stated that he is just concern about additional commercial development.

Catherine Shandler, 7 Highmont Terrace, addressed the Board. Ms. Shandler stated agreement with the concerns raised by Mr. Matis. She noted that she does not reside right next door to the property, however she has concerns about the timing and frequency of trash removal of the property. She also noted that there was no specific testimony about the hours of operation. Ms. Shandler stated that moving the Carriage House will look better for the area. She stated concern about traffic at the intersection of North Mountain Avenue and Claremont Avenue and noted that the use would present a traffic problem. Overall Ms. Shandler stated she was pleased with the proposed use in light of the previously proposed banquet use.

Mr. Trembulak then summarized the application, requested variances and site plan components for the Board.

Final comments from the Board were then accepted.

Mr. Moore stated that he likes the concept of re-using the Carriage House. He stated that the medical office use is beneficial to the area which needs more medical services. He stated appreciation for the consideration of impacts to the adjacent residential uses. He noted that he would like to hear form other members of the Board but overall he appreciates the property will be reused and no longer will be a vacant eyesore.

Ms. Baggs stated that the application has a lot of merits. She stated that generally she was in favor most variances requested and that the application would be a benefit to this corner in the Township. She noted that the property has been identified in the Master Plan as needing special treatment. She stated that the use variance application is appropriate and sensitive to the residential uses in the area. She stated that, according to the testimony presented, the tandem spaces are not required and could be accommodated in the parking lot to the rear with additional reserved spaces. She noted that the driveway could exacerbate traffic issues in the area. Ms. Baggs also noted that eliminating the driveway would improve the pedestrian safety as well. She stated that the additional green space around the historic property is consistent with the request of the HPC. She also noted that she supports a fence around the rear yard of the 3-family at 323 Claremont. Finally, Ms. Baggs noted that the Carriage House should be shifted 2 feet to the west as discussed by Mr. Fleischer.

Mr. Reynolds stated agreement that the Carriage House should be shifted 2 feet to the west. He stated that the resident from 319 Claremont Avenue should address the Council regarding a possible rezoning of the area. He noted that relocating the Carriage House to front on the street will add value to the neighborhood. He stated that it appears there will be no detrimental impacts of the medical use. He stated that the applicant underwent careful consideration of the reuse. Mr. Reynolds stated that the proposed use is not as intensive as the previously proposed banquet use. He stated that current application is a good solution and that he would be in favor.

Mr. Allen stated that he agreed with shifting the Carriage House 2 feet to the west. He stated that the driveway at 323 Claremont should remain to improve access to the front of the residence. He stated that the proposed medical office use is good for the site and that he would be in favor.

Ms. Chowaneic stated appreciation for the testimony presented by the applicant. She stated that the medical office use does not feel out of character for the area and will not have an impact. She stated that the driveway should remain at 323 Claremont Avenue and agreed with Mr. Allen. She stated that there should be additional separation and privacy from the rear yard of 323 Claremont and the parking area. Ms. Chowaneic stated that there should be a total of 6 dedicated, marked spaces for the 3-family dwelling at 323 Claremont.

Mr. LaVail stated that generally he was in favor of the application. He stated that he has mixed feelings on the conditions discussed by other Board members. He stated that he supports moving the building 2 feet to the west and the fencing of the rear yard of the dwelling at 323 Claremont Avenue. He said that while the removal of the driveway at 323 Claremont may look better, he also understands the convenience. He agreed that there should be 6 dedicated spaces for residents.

Mr. Fleischer stated that he was generally in favor of the application. He stated that the driveway and tandem spaces at 323 Claremont Avenue can be complicated to manage among multi-family tenants. He stated that perhaps only one tandem space should be located in the driveway and 5 dedicated spaces should be reserved in the lot for the 3-family dwelling at 323 Claremont. He stated that the northernmost space could be

eliminated and replaced with lawn to increase green space. Mr. Fleischer stated agreement that the Carriage House should be moved 2 feet to the west.

Ms. Baggs summarized the conditions as discussed by the Board:

1. The applicant shall comply with and satisfy comments 1 and 2 contained in the November 26, 2016 review memorandum prepared by W. Thomas Watkinson, P.E., P.P., Board Engineer.
2. The carriage house shall be relocated 2 feet to the west.
3. The northerly most tandem parking space identified as space No. 70 shall be eliminated and replaced with lawn.
4. The parking spaces designated as spaces No. 43 through 47 and 71 shall be reserved for the exclusive use of the three family dwelling on Lot 19.
5. A 4 foot high fence shall be installed between the rear yard of the three family dwelling and the parking area to the north, the type and location subject to review and approval by the Planning Department.
6. The minor subdivision approval shall expire 190 days from the date of adoption of this resolution unless within such period a plat in conformity with such approval and the provisions of the "Map Filing Law" or a Deed clearly describing the approved minor subdivision is filed with the county recording officer, the Municipal Engineer and Municipal Tax Assessor in accordance with N.J.S.A. 40:55D-47d, unless further extended by the Board.
7. The applicant shall return to the Montclair Historic Preservation Commission for review of the plans.
8. The applicant shall be bound by representations made on its behalf by its attorney and professionals during the course of the public hearing.
9. The applicants shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection of review of this matter.

A motion was made by Mr. LaVail, seconded by Mr. Reynolds to approve the application with the conditions as stated. The application was approved unanimously with Ms. Daye abstaining.

The Board then took a brief recess.

#### **NEW BUSINESS:**

The Board returned from a brief recess. Mr. Harrison returned to the meeting.

**App. 2475: Alfred & Keren Poor. 24 South Mountain Avenue. *Bulk variances for height of building and rear yard setback.***

Mr. Harrison introduced the application. Present for the applicant was John Veteri, Jr., attorney for the applicant.

Mr. Veteri summarized the application for the proposed additions to the subject property and reviewed the variances required under the application.

Mr. Alfred Poor, applicant of 34 Valley Road, addressed the Board. Mr. Poor noted that his family has resided in Montclair since 2004. He stated that their previous home sold

in just 5 days and that they have been looking to relocate closer to downtown. He noted that the subject property is the ideal location for their family and they intend to reside in the home.

Mr. Veteri then introduced Mr. Dan D'Agostino of Plan Architecture.

Mr. D'Agostino introduced Exhibit A-1, a colored rendering of the proposed dwelling. He reviewed the proposed addition and noted that the addition would be in line with the existing rear yard setback of the dwelling.

Questions from the Board were the accepted.

Mr. LaVail asked for clarification of the front yard setback. Mr. D'Agostino reviewed the front yard setback and noted that the addition conformed to the required setback.

Final comments from the Board were then accepted.

Ms. Baggs stated that she would be in favor of the application. She noted that it was a technical approval for an existing condition as the existing dwelling is located within the rear yard setback. She stated that the proposed addition is an improvement to the house and also noted that drainage on-site will be addressed by the applicant.

Mr. Fleischer stated that he would be in favor of the variance due to the existing condition. He noted that the proposed addition was in line with the existing condition.

Mr. Reynolds stated he would be in favor of the application.

Mr. Allen stated he would be in favor of the application.

Ms. Chowaneic stated she would be in favor of the application for the same reasons and stated that it would be a great improvement.

Ms. Daye stated she would be in favor of the application.

Mr. LaVail stated he would be in favor of the application.

Mr. Moore stated he would be in favor of the application and noted the design was a good concept.

Mr. Harrison stated he would be in favor of the application. He stated that the design was more in keeping with the neighborhood. He also noted that there was no impairment or detriment to the zone plan. He also noted that the applicant should conform to the conditions stated by Board Engineer Tom Watkinson in his memo dated December 20, 2016.

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

Following the application, Mr. Moore departed the meeting at 10:55pm.

**App. 2477: Valdeci Borgo. 435 Grove Street. Bulk variance for front yard setback.**

Mr. Harrison introduced the application. Present for the application was Valdeci Borgo, applicant and Mike Sweebe, architect for the applicant.

Mr. Sweebe reviewed the plans for the proposed additions to the dwelling on the subject property. He also noted that the front porch is proposed to be uncovered, but there is also an alternative developed for the applicant to cover the porch.

Questions from the Board were then accepted.

Ms. Baggs noted that the home appears as a 1 ½ story dwelling from the front. She asked if the additional mass could be shifted rearward to retain the appearance at the front. Mr. Sweebe noted that such an adjustment would result in a loss of roughly half of the second floor square footage.

Mr. Fleischer stated that he was comfortable with the proposal for the addition with the uncovered front porch alternative. He asked what the purpose of the porch was. Mr. Sweebe stated that it was a design element to create additional outdoor living space.

Mr. Harrison asked what the existing setback of the property was. Mr. Sweebe noted it is 37.6 feet.

Mr. Harrison referred to the survey and noted that it says the setback is 37.35 feet.

Mr. Harrison asked how far the covered porch would reduce the setback. Mr. Sweebe stated that the porch would reduce the setback by 8 feet.

Ms. Baggs noted that there is a canopy extending about 4 feet from the second floor which further projects into the front yard. Mr. Sweebe noted that the projection is 18 inches beyond the line of the first floor below.

Mr. Harrison stated that the Board should evaluate the impact of the projection into the front yard. He noted that the average front yard setback of the 3 adjacent houses is 37.1 feet, excluding the house on the opposite side of the entrance to Brookdale Park.

The Board discussed and evaluated the front yard setback and determined the following conditions of approval:

1. At no point will the addition structure be any closer than 36.1 feet
2. At no point will the second floor be more than 18 inches closer to the front property line than the first floor.
3. The canopy over uncovered front porch is to be no closer than 36.1 feet to the front property line.

Final comments from the Board were then accepted.

Mr. Fleischer stated that he would be in favor of the application with the condition as stated.

Mr. Reynolds stated that he would be in favor of the application with the condition as stated.

Mr. Allen stated he would be in favor.

Ms. Chowaneic stated that she would be in favor of the application with the condition as stated.

Ms. Daye stated she would be in favor.

Mr. LaVail stated he would be in favor.

Ms. Baggs stated she would be in favor.

Mr. Harrison stated he would be in favor of the application. He noted that the house front yard setback calculation is difficult due to the large setback of 447 Grove Street and the entrance to Brookdale Park which separates that property from other adjacent lots. He stated that there would be no impairment to the zone plan.

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

**App. 2478: Joseph & Donna Wilson. 213 Highland Avenue. Bulk variance for rear yard setback.**

Mr. Petto announced that the applicant has requested an adjournment to the January 18, 2017 Board of Adjustment meeting date to allow additional time to complete the notice requirement.

### **Board Discussion: Existing Structures**

Mr. Fleischer introduced the discussion and noted that it can be difficult for the Board to determine what constitutes reuse of an existing structure. He stated that there is limited clarity on what constitutes reuse, is it studs, is it walls, etc. He noted this is important when reviewing variance applications.

Mr. Sullivan noted that the definition of structure in the Municipal Land Use Law is very broad and can include foundations. He stated that this may be best addressed on a case-by-case basis.

Mr. Harrison noted that court cases have struck down ordinances that establish a fixed percentage of the structure removed. He noted that case law has required applicants to return when a structure is removed more significantly than originally approved.

Mr. Fleischer stated that some municipalities do have percentages relating to amount of structures to be reused.

Mr. Harrison noted that courts have not looked favorably on such ordinances.

Ms. Baggs asked about reuse of foundations and how this would impact consideration of rebuilding non-conforming structures.

Mr. Harrison noted that the Board is to consider such variance requests for reconstruction in this example.

Mr. Sullivan stated that this will need to be reviewed on a case-by-case basis as the circumstances for each will be unique.

Mr. Fleischer stated that foundations are located below ground and should not be considered a structure.

Mr. Sullivan stated that the Land Use Law does in fact regard foundations as structure.

Mr. Harrison noted that this has been seen with regard to reuse of foundations for garages where applicants propose to rebuild garages.

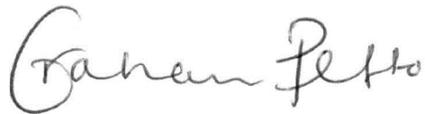
Mr. Sullivan re-stated the definition of structure from the MLUL.

Ms. Baggs asked about abandonment of pre-existing non-conforming use. Mr. Harrison stated that courts have struck down ordinances setting specific time periods for non-use after which the use is considered abandoned noting that courts have said that applicants are entitled to demonstrate that the use was never intended to be abandoned.

**ADJOURNMENT**

A motion to adjourn was offered by Mr. Fleischer, seconded by Ms. Baggs. The meeting was adjourned at 11:35pm, December 21, 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