



Township of Montclair

205 Claremont Avenue

Montclair, NJ 07042

tel: 973-509-4954

fax: 973-509-4943

MONTCLAIR ZONING BOARD OF ADJUSTMENT



**Graham Petto, P.P., AICP**  
Assistant Planner  
Department of Planning and Community Development  
[gpetto@montclairnjusa.org](mailto:gpetto@montclairnjusa.org)

## MINUTES OF THE BOARD OF ADJUSTMENT June 20, 2018

**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. McCullough, Ms. Harris, Mr. Allen, Mr. Simon, Mr. Caulfield, Mr. Sullivan and Mr. Petto. were excused. Mr. Reynolds arrived at 7:45pm. Mr. Moore was absent.

### **APPROVAL OF MINUTES:**

#### **May 16, 2018 Minutes**

Chair Harrison introduced the minutes for review by the Board. A few edits to the minutes were offered. A motion was made by Mr. Fleischer, seconded by Mr. McCullough to approve the minutes as amended. The minutes were approved unanimously with Mr. Allen, Mr. Simon and Mr. Caulfield abstaining.

### **RESOLUTION:**

**Resolution for [App. 2553: 284 Park Street. Peter J Derba III.](#) Bulk variance of required rear yard setback for new addition in R-2 zone.**

Mr. Harrison introduced the resolution to the Board. An edit to the resolution was noted. A motion was made by Mr. Fleischer, seconded by Ms. Harris to approve the resolution as amended. The resolution was approved unanimously with Mr. Allen, Mr. Simon and Mr. Caulfield abstaining.

**Resolution for [App. 2554: 12 Willowdale Court. Imbar Meidani.](#) Bulk variance of the side yard setback for new addition to principal dwelling and site yard setback for new accessory structure in R-1 zone.**

Mr. Harrison introduced the resolution to the Board. A motion was made by Mr. Fleischer, seconded by Ms. Harris to approve the resolution. The resolution was approved unanimously with Mr. Allen, Mr. Simon and Mr. Caulfield abstaining.

### **REQUEST FOR EXTENSION:**

**[App. 2491: 62 Wildwood Avenue.](#) Variance of the required minimum lot width in the R-1: One Family Zone.**

Mr. Harrison introduced the extension request to the Board. It was noted that the applicant has requested a 150 day extension of the variance approval.

A motion was made by Mr. Fleischer to approve the extension request, seconded by Mr. Allen. The extension request was approved unanimously.

**NEW BUSINESS – RESIDENTIAL:**

**App. 2552: 3 Eagle Rock Way. Jamie Anthony.** *Bulk variance of required side and rear yard setbacks for new addition to corner lot in R-O zone.*

Mr. Harrison introduced the application to the Board. Present for the application was the applicant, Jamie Anthony.

Mr. Anthony reviewed the proposed addition to the dwelling. He noted that the addition would improve the dwelling and add an additional entry door adjacent to the driveway and garage on the property for ease of entry. Mr. Anthony also noted that the existing porch area would be better insulated to serve as more efficient living space. Finally, he noted that an architect sensitive to the historic style of the home had been selected.

Questions from members of the Board were then accepted.

Mr. Fleischer asked if the reason for the addition was to improve entry from the driveway area. Mr. Anthony replied yes and noted that currently there is only one entry door to the dwelling, the front door along the front façade on Eagle Rock Way.

Mr. Caulfield asked about the elevation change between the subject property and the adjacent property to the east along Gates Avenue. Mr. Anthony replied that there is a small retaining wall in this area and that some hedges will be planted for additional screening.

Mr. McCullough asked about use of the existing sunroom porch area. Mr. Anthony stated that it presently has limited use as it is not well insulated. He stated that it would be insulated to make it part of the interior space of the dwelling.

Mr. McCullough noted the report issued by the Historic Preservation Commission and asked if the applicant would return to the HPC to present finish materials. Mr. Anthony stated that he would present materials to the HPC.

Mr. Simon asked for a review of the addition for the new entry. Mr. Anthony stated that the proposed addition would extend toward the side property line to align with the existing setback of the dwelling from this side property line.

Mr. Harrison asked if the addition could be reconfigured to align with the rear of the dwelling. Mr. Anthony stated that the proposed entry area was best configured for function and also noted that the entry area would be enclosed in glass, minimizing the visual impact.

No questions nor comments from the public were offered on the application.

Final comments from the Board were then accepted.

Mr. Caulfield stated that he understood the need of the applicant to construct an addition to improve entry to the dwelling from the driveway area. He noted some concern about the variance for the side yard setback but overall would be in favor of the application.

Ms. Harris stated that she would be in favor and noted that a buffer between the subject property and the adjacent property to the east would be needed to screen the addition.

Mr. Simon stated that he would be in favor, noting that the addition is proposed in the best location on the lot.

Mr. Fleischer stated that he would be in favor. He noted that the proposed entry vestibule does stick out, however he noted that corner lots are very difficult due to the yard configuration. He stated he would be in favor.

Mr. Reynolds stated that he would be in favor and stated appreciation for the historic sensitive design of the addition.

Mr. Allen stated he would be in favor.

Mr. McCullough stated that he would be in favor. He stated that the architectural plans don't clearly present the use of the proposed addition, however he agreed that the design of the addition is consistent with the historic dwelling. He stated he would be in favor.

Mr. Harrison stated that he would be in favor noting that the addition would improve function and create an entry to the dwelling from the garage. He stated that approval would not impair the zone plan nor be a detriment to the public good. He stated that a condition should be included to have the applicant return to the HPC for final review of all finish materials.

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

**[App. 2556: 4 Macopin Avenue. Michelle Bender & Robert Posada.](#)** *Bulk variance of accessory structure rear and side yard setback in the R-1 One-Family Zone District.*

Mr. Harrison introduced the application to the Board. Present for the application was attorney Mark Maryanski representing the applicant.

Mr. Maryanski summarized the application to construct a new garage in the location of a former garage on the property. He noted that the previous garage was the subject of a fire and has been lost.

Mr. Maryanski introduced Michelle Bender, owner of the subject property to testify. Ms. Bender stated that they have lived in the dwelling for 18 years. She noted that the garage is located in a small notched area of the property along the rear property line. She stated that there is a 10 foot wide driveway leading to the garage. She also noted that the rear yard is relatively small inside and that a deck attached to the dwelling projects into the rear yard which limits the ability to move the garage to another location.

Questions from members of the Board were then accepted.

Mr. Fleischer asked if there would be fire rated construction of the side walls of the garage, given the very small setbacks proposed. Mr. Maryanski stated that the applicant had no concerns about meeting fire rated construction requirements.

Mr. Fleischer noted that the plans did not include a scaled survey of the subject property. Mr. Maryanski introduced Exhibit A-1, a scaled property survey for review by the Board.

Mr. Allen asked how far apart the garage on the subject property would be from the garage on the adjacent property. Ms. Bender stated that the new garage would be in the same location and that the current garages are about one foot apart. Mr. Allen expressed concern about fire safety given how close the structures are and what is typically stored within garages, i.e. gas-powered lawn mowers, etc.

Mr. Reynolds asked about compliance with building codes for fire safety. Mr. Maryanski stated that the architect could speak to those items.

Mr. Maryanski then introduced Steven Taylor, architect for the applicant.

Mr. Taylor reviewed the plans for the proposed garage. He stated that the proposed garage would match the existing garage exactly, maintaining the appearance and reusing the foundation. He noted that the side walls would be fire rated and comply with all building code requirements. He also noted that the garage could not be pulled forward very far given that the deck and existing house location limit use of the rear yard for a garage.

Mr. Fleischer stated that he had concerns about safety of the proposed garage location given the history of fire in the previous garage. He stated that the new garage should not have any windows, should be of fire proof construction, have a door to exit to the rear and gutters that do not overhang the adjacent property.

Mr. Simon asked about the rear of the garage. He asked what is located on the adjacent property specifically that may impact exit from the garage to the rear. Ms. Bender stated that there are only bushes along the adjacent property and that there is not currently a fence in this area.

Mr. Simon asked if the garage could be shifted two feet forward. Mr. Taylor stated that this would require a new foundation and that the plan is to reuse the existing foundation.

Mr. Caulfield asked if the cause of the fire that destroyed the current garage is known. Ms. Bender replied no.

Mr. Reynolds asked if the garage would also be used for storage. Ms. Bender replied yes and stated that the garage would store bikes, wagons, snow shovels, etc.

Mr. Reynolds asked Mr. Taylor how the construction use of the building would be classified. Mr. Taylor stated it would be a utility use.

Mr. Harrison asked if the foundation had been evaluated to determine the ability to reuse it for the new garage. Mr. Taylor replied no.

Mr. Harrison asked about the proposed roof overhangs that would extend over the property of the proposed garage. Mr. Taylor stated the roof would be modified to eliminate the overhangs.

Mr. Maryanski then summarized the application for the Board. He stated that hardship does exist due to the loss of the previous garage and the location of the former garage.

He also noted that the garage had been in this location for many years with no detriment.

No questions nor comments from the public were offered.

Final comments from the Board were then accepted.

Ms. Harris stated that the application was difficult to consider and that she would listen to comments from fellow Board members.

Mr. Simon stated that the new garage should be moved forward to comply with the required rear yard setback if the foundation cannot be reused.

Mr. Fleischer stated that he still has a number of concerns regarding safety of the garage in the proposed location. He stated that there should be the following conditions of any approval, including all windows be eliminated, the garage be built of non-combustible construction, a minimum 2-hour rated fire wall on the eastern wall of the garage and that all gutters/leaders be directed onto the applicant's property.

Mr. Reynolds stated that the lot is rather small and that should the applicant reuse the foundation the building code will require fire proof construction given the close proximity to adjacent properties. Mr. Reynolds agreed that if the foundation cannot be reused the garage should be moved forward on the lot.

Mr. Allen stated that if the garage is to be constructed in the same location that the new garage should be of fire-rated construction.

Mr. McCullough thanked the applicant for their willingness to reconstruct the garage. He stated that he needs to consider both the short-term solution to restore their garage but also the long term impact to the public good of locating the garage in such a tight location.

Mr. Caulfield stated that he would be in favor of the application with the recommendations from other members of the Board.

Mr. Harrison first addressed the additional Code sections cited by the Planning review of the application. He stated that the applicant will not require a variance from the required parking area setback back, given that the proposed parking is within the garage structure. However, he noted that the applicant would require a variance of the required parking space width, where 8 feet is proposed and 9 feet is required.

Mr. Harrison stated that the shape of the lot, the location of the deck on the property does limit the ability of the applicant to move the garage on the property. He stated he had no concern about the 8 foot parking space width and no concern about the proposed 4.1 foot rear yard setback of the garage. He also supported the fire rated condition the other members had discussed.

Mr. Reynolds made a motion to approve the application with a condition that if the foundation is not reusable, the garage must have a side yard setback of 3 feet and 4.1 feet from the rear.

Mr. Harrison summarized the conditions. He stated that if the foundation can be reused, the side and rear yard variances requested by the applicant can be granted. He also

noted that the roof overhangs should be eliminated, the leaders and gutters be directed onto the subject property and the construction be fire rated.

Mr. Reynold's motion was seconded by Mr. Allen. The motion was denied with Mr. Harrison, Mr. Fleischer, Mr. McCullough and Ms. Harris voting in opposition and Mr. Reynolds, Mr. Allen and Mr. Simon voting in support.

Mr. Harrison then offered a new alternative to approve the application with the following conditions:

1. The minimum side yard setback for the proposed garage structure is to be no less than 3 feet.
2. The minimum rear yard setback for the proposed garage structure is to be no less than 4 feet.
3. The proposed garage structure shall have a rear door to access the rear yard setback area and perform any routine maintenance.
4. All gutters and downspouts are to be directed onto the subject property with no discharge onto adjacent properties.

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

**App. 2560: 11 Montclair Avenue. Steven Lerner.** *Bulk variance of accessory structure side yard setback in the R-2 Two-Family Zone District.*

Mr. Harrison introduced the application to the Board.

Present for the application was the applicant, Steven Lerner.

Mr. Lerner reviewed the proposed shed location for the Board. He stated that the proposed shed would be 10 feet by 14 feet in size. He stated that the shed would be located in the northeastern corner of the lot.

Mr. Simon asked about the existing concrete slab on the property and if the shed could be located on the slab. Mr. Lerner stated that due to moisture and drainage the shed would need to be placed on a new bed of gravel.

Ms. Harris asked about the purpose of the old concrete slab. Mr. Lerner stated that it was the location of a former garage on the property.

Mr. Fleischer stated that the applicant has not presented any reasoning or justification for the variance request and the need for a reduced setback. Mr. Lerner stated that a large portion of the rear yard would be used by a new volleyball net and the shed would need to be in the corner to accommodate the space for volleyball.

Mr. McCullough asked why the shed could not sit on the concrete slab. Mr. Lerner stated that a rock base was needed for the shed for drainage.

Mr. Harrison advised the applicant that the Board could proceed to a vote on the application or Mr. Lerner could return to the July Board meeting with additional information on the shed variance request.

Mr. Lerner agreed to return to the Board for the July meeting.

Mr. Harrison announced that the application would be continued to the July 18, 2018 meeting of the Board with no further notice.

**NEW BUSINESS – NON-RESIDENTIAL:**

**App. 2531: 87-89 Valley Road. BG Holdings, LLC.** *Determination of res judicata for use variance for medical office in the R-2: Two-Family zone district. [The applicant has requested to adjourn to the July 18, 2018 meeting.](#)*

Mr. Petto announced that the applicant has requested to carry the application to the July 18, 2018 Board meeting date. He stated that the applicant has already published notice for the application and noted that there would be no further notice published.

**App. 2555: 6-12 Baldwin Street. MDZ Management, LLC.** *Use variance for expansion of non-conforming use in N-C zone district for addition to building and site plan.*

Mr. Harrison introduced the application to the Board. Present for the application was attorney for the applicant, Bob Gaccione.

Mr. Gaccione reviewed the proposed application for expansion of the kitchen area at Nicolo's Bakery, which is housed at the subject property. He noted that the expansion of the kitchen is to accommodate a refrigerator/freezer in a 130 sq. ft. addition. He also noted that the application is before the Board as the wholesale use is not permitted in the zone district. Finally, Mr. Gaccione noted that the applicant would agree to combine the two lots of the subject properties.

Mr. Gaccione then introduced Don Zecchino of Nicolo's Bakery.

Mr. Zecchino stated that the business has been at the subject location for 51 years. He noted that the bakery had received prior approval by the Board for a larger addition to the building. However, he stated that after some evaluation, they determined the return on investment would not sustain the addition.

Mr. Zecchino stated that the new addition under this application is much smaller and only to accommodate the refrigerator/freezer for the separate prep kitchen. He stated that there would be no expansion in the amount of wholesale production at the site.

Mr. Zecchino also noted that there are not parking issues at the current property.

Questions from members of the Board were then accepted.

Mr. Harrison referred to the previous resolution issued by the Board for the larger expansion. He asked to review the previous conditions of approval from the Board and if they had been completed by the bakery.

Mr. Gaccione reviewed the previous conditions with Mr. Zecchino.

Mr. Zecchino noted that the landscaping improvements, "No Parking" sign, and lighting improvements have all been completed. He stated that the striping of the parking area and the pedestrian path through the parking area were not completed.

Mr. Gaccione then introduced John Guadagnoli, architect for the applicant.

Mr. Guadagnoli reviewed the site for the Board. He reviewed the proposed lighting and noted that there would be no change in the signage. He also noted that the application had been reviewed by both the Development Review Committee and the Historic Preservation Commission. He finally noted that there will be new screening atop the addition and existing eastern façade wall to screen the mechanical equipment.

Questions from members of the Board were then accepted.

Mr. Fleischer asked about the lot configuration. Mr. Petto reviewed the configuration of the lot and yards following the consolidation of the two lots.

Mr. Fleischer asked if the trash enclosure could be moved 2 feet to meet a 6 foot setback. Mr. Guadagnoli replied yes.

Mr. Caulfied asked about the parking area between the garage and the residential building and if additional spaces could be striped in this area. Mr. Guadagnoli stated that these spaces could be striped to better delineated.

Mr. Harrison asked for a review of the parking calculation. He noted that the parking requirements listed in the application are the same as the previous application, when the proposed addition under this application is much smaller. Mr. Guadagnoli stated he would update his calculations and provide them to the Board in a few minutes.

Mr. Gaccione then introduced Gerard Haizel, professional planner for the applicant.

Mr. Haizel reviewed the application for the Board. He noted that the existing building housing the bakery has two apartments, each one-bedroom on the upper floors. He noted that the plan to consolidate the lots would eliminate a variance identified in the Planning report. He noted that the applicant is seeking variance relief under d(2) for an expansion of a non-conforming use in the zone.

Mr. Haizel reviewed the impact of the variances and noted that the impervious coverage variance is an existing condition, as is the use which has been on the site for more than 50 years.

Mr. Guadagnoli returned to testify on the calculated parking requirement. He noted that the existing uses on the site, including residential and the retail/wholesale use would require 19 parking spaces. He noted that the applicant will provide a total of 19 parking spaces on site, thus eliminating the requested parking variance from the application.

Mr. Gaccione then summarized the application for the Board.

He noted that the subject property has been granted variance relief in 1988 and 1994 as a wholesale bakery. He stated that there is no history of parking problems at the site and also noted that the applicant will consolidate the lots and comply with the requested 6 foot setback for the trash enclosure.

Mr. Gaccione stated that the improvements to the site would improve the retail operation and also allow for better access to the building from the ADA parking space.

Final comments from the Board were then accepted.

Mr. Simon stated that he would be in favor and that the application would be an improvement for the site.

Mr. Fleischer stated he would be in favor. He noted that the parking variance has been eliminated and that he has no concern with the three smaller parking stalls requiring waivers along the proposed addition.

Mr. Reynolds stated that he would be in favor. He noted that the elimination of the parking variance was another benefit of the application.

Mr. Allen stated he would be in favor.

Mr. McCullough stated he would be in favor

Mr. Caulfield stated he would be in favor

Ms. Harris stated she would be in favor

Mr. Harrison stated that he would be in favor. He stated that there was sufficient justification presented for the expansion and noted that it is smaller than the previously proposed expansion. He stated that he would also be in favor of the parking space size waiver.

Mr. Harrison summarized the conditions of approval for the Board:

1. The applicant shall merge the two lots by filing a consolidation deed with the Essex County Register's Office.
2. The applicant shall comply with and satisfy conditions 1, 3, 4, 6 and 7 contained in the Board's May 20, 2015 resolution.
3. The applicant shall comply with and satisfy conditions 1 through 3 contained in the Historic Preservation Commission Report dated May 24, 2018.
4. The applicant shall comply with and satisfy comment 2 contained in the June 16, 2018 report issued by W. Thomas Watkinson, P.E., C.M.E., Montclair Zoning Board Engineer.
5. The plans shall be revised to provide a minimum 6-foot northerly side yard setback for the trash enclosure.
6. The plans shall be revised (including the zoning chart) to add 4 conforming parking spaces between the two-family building and the garage.
7. The applicant shall comply with the lighting standards contained in Montclair Code Section 281-8.3E.
8. The plans shall be revised to reflect a further expansion to the east of the proposed addition of approximately 7 inches and a reduction in the size of the two immediately adjacent parking spaces to 9 feet in width by 18 feet in depth.
9. The applicant shall be bound by all representations made on its behalf by its attorney and professionals during the course of the public hearing.
10. 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, seconded by Mr. Reynolds to approve the application with the conditions stated by Mr. Harrison. The application was approved unanimously.

**ADJOURNMENT**

A motion to adjourn was offered by Mr. Fleischer, seconded by Mr. McCullough. The meeting was adjourned at 10:20pm.

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  
Assistant Secretary  
Zoning Board of Adjustment