



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 July 18, 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. Moore, Mr. Reynolds, Mr. Allen, Mr. Simon, Mr. Caulfield, Mr. Sullivan and Mr. Petto.

### **APPROVAL OF MINUTES:**

#### **June 20, 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. Reynolds to approve the minutes as amended. The minutes were approved unanimously with Mr. Moore abstaining.

### **RESOLUTION:**

**Resolution for [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 resolution to the Board. A motion to approve the resolution as submitted was offered by Mr. Fleischer, seconded by Mr. Reynolds. The resolution was approved unanimously with Mr. Moore abstaining.

**Resolution for [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 resolution to the Board. A few edits to the resolution were offered. A motion to approve the resolution as amended was offered by Mr. Fleischer, seconded by Mr. Reynolds. The resolution was approved unanimously with Mr. Moore abstaining.

**Resolution for [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 resolution to the Board. A few edits to the resolution were offered. A motion to approve the resolution as amended was offered by Mr. Fleischer,

seconded by Mr. Reynolds. The resolution was approved unanimously with Mr. Moore abstaining.

**OLD BUSINESS – RESIDENTIAL:**

**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 updated submission to the Board, which noted the proposed location of the volleyball court to be located in the rear yard. He noted that the size of the yard and volleyball court and meeting the required setbacks for the proposed storage shed would impact use of the volleyball court.

Mr. Reynolds noted that the width of the lot would impact the placement of the shed with respect to the court. He asked if the applicant could comply with the required rear yard setback of 6 feet to eliminate one variance request. Mr. Lerner stated that he would agree to comply with the required rear yard setback.

Mr. Harrison asked for a detailed review of the width of the volleyball court, the location of the tree on the lot and the proposed shed location. Mr. Lerner reviewed the plans in greater detail.

Mr. McCullough asked if there would be any impacts of the proposed volleyball court on the neighboring properties. Mr. Lerner stated that the court would be played parallel to the property line thus limiting impact to the adjacent property.

Ms. Harris reviewed the plans and noted a discrepancy for the width of the volleyball court. Mr. Lerner clarified for the board the width of the net and placement of the poles.

No comments nor questions from the public were offered.

Final comments from the Board were then accepted.

Mr. Caulfield stated that he would be in favor as the property is well maintained and the proposed location of the shed in the rear is good. He also noted that the applicant was only seeking one variance for the side yard which was an improvement over the original application seeking side and rear yard setback variances.

Ms. Harris stated that she would be in favor of granting a variance for a four-foot side yard setback to allow for space to access the side of the shed.

Mr. Simon stated agreement with the four-foot side yard setback and agreed that eliminating the rear yard setback variance was an improvement of the application.

Mr. Moore stated that he agreed with the previous comments by the Board members and would be in favor.

Mr. Fleischer stated that he would be in favor of either a 3 or 4-foot side yard setback for the shed.

Mr. Reynolds stated that he would be in favor of the application and that a 3-foot side yard setback would be acceptable. He noted that there is no fencing between the lots at the proposed shed location.

Mr. Allen agreed and stated he would be in favor due to the elimination of the rear yard setback variance and a minimum 3-foot side yard setback.

Mr. McCullough agreed with the previous Board comments.

Mr. Harrison stated that he agreed with the Board comments. He stated that elimination of the rear yard setback and a 4-foot side yard setback would be acceptable.

A motion was made by Mr. Fleischer, seconded by Mr. Reynolds to approve the variance of the required side yard setback with a minimum setback of 4 feet. The application was approved unanimously.

**App. 2559: 35 Afterglow Way. Zachary & Lauren Zeltzer.** *Bulk variance of maximum permitted building width in R-1 One-Family Zone.*

Mr. Harrison introduced the application to the Board. Present for the application was Zachary Zeltzer and architect Edmundo Lopez.

Mr. Lopez reviewed the application for the Board. He introduced Exhibit A-1, a digital 3-D SketchUp model of the dwelling and the site and Exhibit A-2, a series of photographs of the site.

Mr. Lopez reviewed the proposed addition of the indoor swimming pool to the Board by reviewing Exhibits A-1 and A-2. He noted the proposed location to the side of the dwelling was due to the steep and terraced rear yard area. He stated that the pool would be located off the basement/lower level of the dwelling, constructed to the rear of a 12-foot retaining wall, shielding visibility from the road.

Mr. Lopez noted that a garage addition is nearing completion on the north side of the dwelling. He stated that the addition of the proposed indoor swimming pool required the variance as the dwelling will exceed the maximum permitted building width for the zone.

Questions from the Board were then accepted.

Mr. Fleischer stated that additional information was needed on the slope of the site and other alternative locations available to the applicant to locate the proposed addition. He also noted that the proposed indoor swimming pool could have been contemplated as part of the now under construction garage addition.

Mr. Caulfield asked if the driveway on the subject property was shared with an adjacent dwelling. Mr. Lopez replied yes, noting that the adjacent dwelling at 35B Afterglow Way was accessed from the subject property's driveway.

Ms. Harris stated that the elevation changes between each of the rear terraces should be clearer for the Board to review.

Mr. Harrison stated that a topographic survey of the property would be needed to better illustrate the configuration of the lot. He asked if the applicant would consider having a topographic survey prepared and returning to the Board's August meeting for further review.

Mr. Zeltzer agreed to Mr. Harrison's request.

Questions from the public were then accepted.

Ms. Laurie Fuchs Myers, 35B Afterglow Way, asked if the existing foliage along the driveway, adjacent to the proposed addition would be retained to shield the addition. Mr. Lopez replied yes, noting that landscaping along the edge of the area would be retained, however, he noted that some would be removed to accommodate the addition.

Mr. Petto announced that the application would be continued to the August 15, 2018 meeting of the Board with no further notice.

**App. 2563: 430 Upper Mountain Avenue. John Giorgi.** *Bulk variance of required front yard setback in the R-1 One-Family Zone.*

Mr. Harrison introduced the application to the Board. No one was present representing the applicant.

The Board discussed dismissal of the application without prejudice, subject to the following conditions:

1. The applicant shall have until December 31, 2018 to re-file the application.
2. The applicant shall not be required to pay any and all fees associated with re-filing the application.
3. The applicant shall complete all required notice for the application re-filing, including new notice to all property owners within 200 feet and publication in the official newspapers.

A motion was made by Mr. Allen, seconded by Mr. Fleischer to dismiss the application without prejudice, subject to the conditions. The motion was approved unanimously.

**NEW BUSINESS – NON-RESIDENTIAL:**

**App. 2525: 320 Orange Road. New Cingular Wireless PCS, LLC.** *Conditional use variance and site plan application for installation of wireless telecommunications facility.*

Mr. Petto announced that the applicant has provided a correspondence requesting an adjournment to the November 7, 2018 meeting of the Board. He noted that the applicant would complete new notice for this hearing date.

**App. 2561: 111-113 Grove Street & 63 Walnut Street. Green Partners, LLC & Walnut Grove Partners, LLC.** *Major site plan application following use variance approval for commercial development in N-C, C-2 and R-2 zone districts.*

Mr. Harrison recused himself from consideration of the application. Mr. Fleischer assumed the role of Chair.

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

Mr. Trembulak reviewed the application for the Board. He noted that the applicant is returning to the Board for final site plan approval following approval of the use and parking variances for the development of the new two-story retail and office building at the subject property.

Mr. Trembulak introduced Paul Sionas, architect for the applicant.

Mr. Sionas introduced Exhibit A-1, a PowerPoint presentation, reviewing the proposed site plan application for the Board. Mr. Sionas presented his presentation in detail for the Board.

Following the presentation, questions from the Board were then accepted.

Mr. Simon asked about trash removal from the site. He asked if there was sufficient space in the rear corner of the lot to access and remove trash. Mr. Sionas stated that vehicles for trash collection would enter from Grove Street or Walnut Street and back up to the trash enclosure. Mr. Simon asked if the trash enclosure would serve all tenants. Mr. Sionas replied yes.

Mr. Caulfield asked if the trash enclosure would be sufficient should a restaurant use occupy a space in the building. Mr. Sionas replied yes.

Mr. Caulfield asked if there would be room for table and chairs along Walnut Street. Mr. Sionas replied yes and noted that the building would be setback along this property line to accommodate an outdoor seating area.

Mr. McCullough referred to the plans and noted that the interior has not yet been configured. Mr. Sionas stated that the interior has not yet been planned to allow for future tenant flexibility.

Mr. McCullough asked if the outdoor tables and chairs would be stored inside. Mr. Sionas stated he did not know.

Mr. Simon asked about the lighting and if any would be illuminated for 24 hours a day. Mr. Sionas stated that it would depend on the tenants in the building, however he noted that after hours typically there is minimal site lighting.

Mr. Steven Plofker, the applicant, was sworn in to testify. Mr. Plofker stated that most site lighting would be on only when stores are open.

Mr. Fleischer asked if the height of the parapet wall would screen the mechanical equipment. Mr. Sionas replied yes.

Mr. Fleischer asked about the fence along the eastern property line and if it could be 5 feet in height to screen the parking area from the adjacent residential zone. Mr. Sionas replied yes.

Mr. Fleischer asked if the proposed light poles along Grove Street in the parking area could be relocated inside the property and the proposed retaining wall. Mr. Sionas replied yes.

Mr. Fleischer asked for a review of the interior floor heights of the building. Mr. Sionas reviewed the heights in detail and noted that a height variance is needed by the applicant. Mr. Fleischer suggested that, since the applicant is seeking a variance, the second-floor height be increased from 10 feet to 11 feet to improve the second-floor office space. Mr. Plofker agreed.

Mr. Moore asked about runoff from the roof and recommended that a green roof be installed.

Mr. Fleischer asked about loading for a potential restaurant use and other uses at the site. He recommended that the applicant designate certain parking spaces on the site to accommodate loading during certain hours. Mr. Sionas agreed and noted that select spaces along the rear of the building could be used.

Mr. Fleischer also recommended a condition of approval that no loading be conducted on Walnut and Grove Streets.

Mr. Fleischer asked about the front yard parking variance and if the site could be reconfigured to eliminate the front yard parking. Mr. Plofker stated that the site could be reconfigured, however, he noted that it would not be best for the retail uses at the site. He noted that there is no on-street parking along Grove Street and having parking visible from the street will invite visitors to the site.

Questions from the public were then accepted.

Carmel Loughman, 26 Walnut Street, asked about the fence and retaining wall along the eastern property edge adjacent to the residential district. She asked if shrubbery could be planted along the outside face of the proposed fence to screen it from the residential area. Mr. Sionas replied yes.

Ms. Loughman asked if the species of trees have been finalized for the site plan. Mr. Sionas stated that some have been selected by the final are still to be determined.

Ms. Loughman asked if there would be trash receptacles along the street adjacent to the pedestrian area. Mr. Sionas replied yes.

Ms. Loughman asked if the height of the building at 117 Walnut Street was reviewed. Mr. Sionas stated that it had not been evaluated.

Ms. Loughman asked how snow removal from the site would be handled. Mr. Plofker stated that it would be removed from the site and not piled on-site.

Ms. Loughman asked if there would be some lighting at the site particularly for pedestrian during the evening hours after arriving from the train and walking home. Mr. Plofker replied yes.

Mr. Trembulak then introduced Corey Chase, traffic engineer for the applicant.

Mr. Chase reviewed the site. He noted that currently there are 3 access points to the site and that the applicant proposes to reduce the access points to 2 only and move the entry/exit drives as far from the corner intersection of Walnut/Grove as possible.

Mr. Chase also noted that there would be full entry from Grove and a right turn only exit on to Grove Street.

Mr. Chase stated that there would be 24-foot width aisles through the parking areas.

Mr. Chase also noted that there was sufficient width on Grove Street to allow vehicles waiting to enter from southbound Grove Street to be bypassed by traffic in the southbound direction.

Mr. Chase also noted that there are two on-site areas that could accommodate loading; the front yard parking area on Grove Street and at the rear of the building along the southern façade.

Questions from the Board were then accepted.

Mr. Allen asked about the width of the travel lane on southbound Grove Street. Mr. Chase stated that the travel lane is 17 feet in width, sufficient to allow for bypass traffic.

Mr. Fleischer asked how many spaces would need to be signed for a loading area on the southern façade of the building. He suggested a loading period from 7am to 9am. Mr. Chase stated that spaces 19 through 23, as marked on the plans could be signed for loading and that 7am-9am was appropriate.

Mr. Fleischer stated that he had concerns about the entry to the site from southbound Grove Street and the volume of traffic in proximity to the train crossing just south on Grove Street.

Mr. Chase suggested that the applicant could install a concrete island to limit ingress from Grove Street to northbound traffic only.

Final comments from the public were then accepted.

Timothy Bray, 109 Lorraine Avenue, stated that he was a developer who has worked in the immediate area. He stated that the proposal by the applicant is favorable over the existing conditions of the site. He stated that the visibility of available parking from Grove Street is important to the site as well.

Diane Mancini, 57 Walnut Street, stated that she has been a 30-year resident of the area. She stated appreciation for the applicant's professionalism and transparency through the process. She stated that parking was important to maintain in the area, especially in the winter and on Saturdays during the Walnut Street Farmer's Market.

Mr. Trembulak then summarized the application proceedings for the Board. He noted that there are many benefits of the improvement of the site and that the existing auto uses will be eliminated. He stated that the application will revitalize this corner lot.

Final comments from the Board were then accepted.

Ms. Harris stated that she would be in favor of the application. She stated that the building lights under the canopy should be illuminated through 10pm. She stated that she had no concerns regarding the requested front yard parking variance. She recommended the applicant consider the height of the retaining wall in this area so that parking does remain partially visible.

Mr. Simon stated that he would be in favor and noted that the traffic concerns would not be a significant problem.

Mr. Moore stated that he would be in favor and recommended that the applicant contain some of the storm water management through the roof system.

Mr. Reynolds stated that he would be in favor and appreciated the changes to the lighting and landscaping.

Mr. Allen stated that he would be in favor. He also stated appreciation for the change of the driveway entry from Grove Street to eliminate the southbound left turn into the site.

Mr. McCullough stated that he would be in favor. He stated that the parking lot area should remain accessible to emergency vehicles and recommended that any concrete island at Grove Street be installed to allow for emergency vehicle entry.

Mr. Fleischer stated that he would be in favor and reviewed the conditions of approval:

1. The plans shall be revised to permit a maximum building height of up to 29 feet.
2. The plans shall be revised to reduce the height of the retaining wall along the southerly property line from 4.8 feet to 4.5 feet in order to comply with Montclair Code Section 347-27.1.
3. The plans shall be revised to increase the height of the proposed fence along the easterly property line which abuts the R-2 Two-Family Zone District from 4.5 feet to 5 feet in order to comply with Montclair Code Section 281-9F.
4. The species of street trees proposed along Grove and Walnut Streets shall be approved by the Township Arborist pursuant to Montclair Code Section 281-8.2C(2)b.
5. The applicants shall pay the required nonresidential development fee in accordance with Montclair Code Section 202-43.
6. Site lighting shall comply with Montclair Code Section 281-8.3E and the three pole-mounted light fixtures along Grove Street shall be replaced with light fixtures mounted within the wall structures.
7. Under canopy lighting shall remain on until midnight.
8. Automobile parking shall be prohibited in spaces 19 through 23 between the hours of 7 and 9 a.m. to permit truck unloading and provide off-street loading space, as required under Montclair Code 347-103.
9. Street loading and unloading on Grove and Walnut Streets shall be prohibited.
10. The applicants shall comply with and satisfy the comments contained in the June 2 and July 12, 2018 reports issued by W. Thomas Watkinson, P.E., C.M.E., Montclair Zoning Board Engineer.
11. The applicant shall revise the first floor plans to allow for the addition or removal of storefront entrance doors in order to accommodate tenant requirements for the proposed retail spaces on the first floor of the building.
12. A concrete mountable island shall be installed at the ingress/egress drive on Grove Street limiting ingress only to northbound vehicular traffic on Grove Street and egress to northbound travel on Grove Street by right turn only
13. Lattice and vegetation shall be added along the outside of the fence located on the easterly side of the property.
14. Runoff from the roof shall be utilized for irrigation of onsite plantings.
15. The applicants shall be bound by representations made on its behalf by its attorney and professionals during the course of the public hearings.
16. The applicants 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 offered by Mr. Reynolds, seconded by Ms. Harris. The application was approved unanimously.

**ADJOURNMENT**

A motion to adjourn was offered by Mr. Reynolds, seconded by Mr. McCullough. The meeting was adjourned at 11:35pm.

Respectfully submitted,

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

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