

**RESOLUTION
BOARD OF ADJUSTMENT
TOWNSHIP OF MONTCLAIR**

**Mountain Avenue Partners, LLC
77 Upper Mountain Avenue**

October 17, 2007

WHEREAS, Mountain Avenue Partners, LLC, owner of property located at 77 Upper Mountain Avenue, designated as Lot 1 in Block 1502 on the Montclair Township Tax Maps, filed an application with the Board of Adjustment of the Township of Montclair for variances associated with a proposal to construct an addition onto the rear of the single family dwelling on the property, a front yard parking area, and a fence or a retaining wall and fence combination along the front and rear property lines.; and

WHEREAS, the applicant applied for the following variances pursuant to N.J.S.A. 40:55D-70c;

A variance from Montclair Code Section 347-33B(2) to permit a setback of less than 50 feet from Alpine Street for the proposed addition; and

A variance from Montclair Code Section 347-34B to permit an off-street parking area between the dwelling and Upper Mountain Avenue; and

A variance from Montclair Code Section 347-27B(2) to permit a 7-foot tall fence along a section of the Alpine Street front property line and a section of the rear property line that also does not meet the requirement of an open fence design; and

A variance from Montclair Code Section 347-27.1F to permit a retaining wall and fence combination along the rear property line that will exceed the maximum permitted height of 4½ feet along a section of the rear property line; and

WHEREAS, the applicant submitted a property survey, dated August 21, 2002, and architectural plans prepared by John Reimnitz, Architect, P.C., dated May 25, 2007, and landscape plans, prepared by Sigrid Morgan, Landscape Architecture, dated July 13, 2007; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 15, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

WHEREAS, at the meeting, the applicant submitted revised architectural plans dated August 13, 2007, and a revised landscape plan dated August 15, 2007; and

WHEREAS, the Board carefully reviewed the testimony presented and established the following findings:

8 The Board determined that, with certain modifications such as setting the fence back and providing landscaping in front of the fence, this variance could be approved considering the unique characteristics of Alpine Street, such as the topography of the area, the visibility of the rear yard, as well as the fact that there are no sidewalks on Alpine Street and no homes have their main front entrance on Alpine Street.

9. At the meeting, the applicant eliminated the variance required for the fencing forward of the rear corner of the proposed addition along the southerly side line, which is limited to 4½ feet in height and must be of open design.

10 The revised landscape plans submitted at the meeting depicted a retaining wall with a maximum height of 4 feet along the rear property line, with a 4-foot tall solid fence in the ground set back 1 foot from the top of the retaining wall. This results in a maximum combined height of 8 feet in an area of the lot where the maximum combined height is limited to 4½ feet. The applicant offered to replace the solid wood fence at the top of the retaining wall with an open fence to reduce the impact to the adjoining property.

11. The Board determined that the requested variance for the combined retaining wall and fence height along the rear property line could not be granted, since there is sufficient space on the property to design a fully conforming option that would achieve the objective of the applicant and not have a negative affect on the adjoining property; and

WHEREAS, the Board, based on the foregoing findings, for the variances requested to permit a parking area between the dwelling and the street and to permit a fence and retaining wall combination that exceeds the maximum height permitted along the rear property line, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, for the variances requested to permit a parking area between the dwelling and the street and to permit a fence and retaining wall combination that exceeds the maximum height permitted along the rear property line, concluded that the applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of N.J.S.A. 40:55D-70c(2)

WHEREAS, the Board, based on the foregoing findings, for the variances requested for the Alpine Street front setback of the proposed addition and the height and design of the 7-foot fence in the Alpine Street front yard, concluded that the applicant proved peculiar

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l a n d s c a p e a r c h i t e c t u r e

**77 Upper Mountain
Plant List**

September 4, 2007

The following plant list is typical of the range of plants likely to be used on the Alpine Street side of the proposed fence at 77 Upper Mountain. It would be a mix of evergreen shrubs, deciduous shrubs, and ornamental grasses to break down the mass of the fence and provide seasonal interest.

Evergreen:

- Boxwood
- Japanese Holly
- Leucothoe
- Cherry Laurel

Deciduous:

- Japanese Barberry cultivars
- Burning Bush
- Forsythia
- Viburnum

Ornamental Grasses:

- Tufted Hair Grass
- Switch Grass
- Fountain Grass