

**MINUTES OF THE BOARD OF ADJUSTMENT
JANUARY 19, 2000**

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Church, Mr. Tobin, Ms. O'Connell, Mr. Spivey, Ms. Freundlich, Mr. Williams; also, Michael Sullivan, Esq., and Karen Kadus, Secretary.

ABSENT: Mr. Fleischer, and Michael Zichelli, Assistant Secretary.

Ms. Kadus called the roll and announced the regular meeting of the Board which had been advertised in accordance with the Open Public Meeting Act.

On motion by Mr. Chapman, seconded by Mr. Church, the **Minutes of December 8, 1999** were unanimously adopted, Mr. Tobin abstaining.

On motion by Mr. Chapman, seconded by Mr. Church, Mr. Harrison was elected Chair for 2000, Mr. Harrison abstaining.

On motion by Mr. Tobin, seconded by Mr. Williams, Mr. Church was elected Vice Chair for 2000, Mr. Church abstaining.

On motion by Mr. Church, seconded by Mr. Chapman, Mr. Zichelli was appointed Secretary for 2000.

On motion by Mr. Tobin, seconded by Williams, Ms. Kadus was appointed Assistant Secretary for 2000.

On motion by Mr. Chapman, seconded by Mr. Church, Mr. Sullivan was appointed as Board Attorney for 2000.

On motion by Ms. Freundlich, seconded by Mr. Chapman, Mr. Watkinson was appointed as Board Engineer for 2000.

On motion by Mr. Chapman, seconded by Mr. Church, the following **Resolution Memorializing** the approval of **Homecorp, 68 Elmwood Avenue** , was adopted, Messrs. Tobin and Williams abstaining::

WHEREAS, Homes of Montclair Ecumincal Corp., owner, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for the provision of only three on site parking spaces where four are required pursuant to Montclair Code Section 224-91 and a 3 foot side setback where a greater setback is required pursuant to Montclair Code Section 224-94 in connection with the construction of a parking area on property designated as Lot 2 in Block 3004 on the Township Tax Map and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant submitted a site plan prepared by Studio Architects, P.C., Inc. dated October 8, 2000; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 8, 1999 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served; and

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

1. The applicant proposes to convert the existing abandoned structure from a one family house into a two family dwelling. The newly created living quarters will be utilized for low to moderate income housing.
2. The subject property contains a single family house in a congested neighborhood where parking is a problem. The applicant proposes to construct only three parking spaces in lieu of the requirement to provide four on site parking spaces. The parking spaces will only be set back three feet from the property line. This proposal represents a minimal deviation from the ordinance, which is appropriate given the physical constraints of the property and results in no adverse impact to the adjacent properties.
3. The proposal to extend the driveway and construct a parking area in the rear of the property for 3 parking spaces constitutes appropriate municipal action consistent with the purposes of the Municipal Land Use Law and will result in a benefit to the neighborhood.
4. Approval of this application will provide needed on-site parking which will not adversely impact the character of the existing neighborhood and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance 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 the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within variance application of Homes of Montclair Ecumenical Corp. is hereby approved subject to the following conditions:

1. The applicant install solid fencing material around the parking area to shield the adjoining property owners from the headlights of the vehicles.

3. Any lighting to be installed in the parking area shall be shielded so as to minimize impact on adjacent properties.

4. The applicant shall receive the written approval from the Planning Department prior to any paving on site.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council and Township Clerk.

On motion by Mr. Chapman, seconded by Mr. Church, the following **Resolution Memorializing the approval of Ellen Silver & Edward Eisenberg, 128 Summit Avenue**, was adopted, Mr. Tobin abstaining:

WHEREAS, Ellen Silver & Edward Eisenberg, owners, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a 4 foot westerly side yard setback where a greater setback is required pursuant to Montclair Code Section 224-40C(1) in connection with the construction of an addition on property designated as Lot 9 in Block 3505 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicants submitted a site drawing and floor plan prepared by William Godsall & Associates, Architects, dated September 10, 1999; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 8, 1999 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property has approximate dimensions of 67 feet by 180 feet and contains a single-family dwelling and accessory building in the rear.
2. The house sits on an irregular angle on the rectangular lot with a narrow side yard.
3. The applicants' proposal is to construct an addition onto the rear of the dwelling to accommodate an eat-in kitchen. The proposed side yard setback is 4 feet as measured from the closest portion of the addition to the westerly side lot line.

4. The applicants demonstrated that due to the interior configuration of there are no other options as to where the proposed kitchen addition can be located.
5. The 14-foot by 22-foot two-story expansion is in line with the existing side wall of the dwelling.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance 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 the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Ellen Silver & Edward Eisenberg is hereby approved, subject to the following condition:

1. The addition shall be built no closer to the side property line than the existing structure.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicants, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

Chair Harrison called for the hearing on the application of **Michael and Ellen Stein, 175 Eagle Rock Way**. Mr. Sullivan gave some background about the previous application which was denied and resulted in litigation. Mr. Stein has returned to the Board, he said, as part of a proposed settlement of the litigation with a different driveway configuration. He noted that there were 6 eligible members to vote, as Mr. Spivey did not hear the original variance application.

Michael Stein, 175 Eagle Rock Way, was sworn as the owner and applicant. He described his revised plan to bring the parking area farther from the street towards the house, angle the driveway and to realign the walkway to the house. A front yard parking variance was still required because the cars would still be closer to the street than the front wall of his house. He noted that this design would enable him to install more plantings to shield the parking area from view. He said that he would

relocate the play equipment 4 or 5 feet to the south to provide enough room for the new driveway. He proposes to install a gravel rather than a paved surface.

Marked into evidence was:

A-1 Drawing of driveway plan dated November 2, 1998 with revisions in color

The Board discussed the application. On motion by Mr. Chapman, seconded by Mr. Tobin, it was resolved to approve the front yard parking variance, in strict accordance with Exhibit A-1, Ms. Freundlich voting in the negative.

Ms. O'Connell joined the meeting.

Chair Harrison called for the hearing on the application of **Over the Rainbow, 32 Pleasant Avenue**. Mr. Spivey stepped down due to a conflict of interest. Grant Gille, Esq., appeared as attorney for the applicant, and Nancy Lottinville, Esq., appeared as attorney for certain objectors (Dunbar, Compere and Thomas families).

Mr. Gille opened by stating that the application was for a use variance to locate a day care center in a former nursing home in a residential zone. He stated that a day care center is an inherently beneficial use recognized by the courts, that the property was unique in its size, and that the building had not been used as a house for more than 50 years. He would present 4 witnesses.

Mr. Lottinville stated that although the building was not recently used as a single-family home, it was residential as a nursing home. She noted that the State allows family day care in residential zones, but not child care centers, for good reason. She stressed the impact of such a use on the neighborhood.

Marked into evidence were:

A-1 Site Plan prepared by Mylan Architectural Group, Jan. 4, 2000

A-2 Engineering plans prepared by Bertin Engineering, Jan. 6, 2000

A-3 Site Plan on board, color.

A-4 Site plan on board, color, showing impervious surfaces

A-5 Floor plans on board

A-6 Floor plans on board

A-7 Historic sites inventory sheet

A-8 Letter from Over the Rainbow, Dec. 7, 1998

- A-9 Letter from Mr. Siegal, attorney for Bailey,
- O-1 Morristown area yellow pages excerpt
- O-2 Montclair area yellow pages excerpt

Dennis Mylan, architect and planner, was sworn. He described the residential neighborhood and a history of the subject property. The house was built in 1888 and was a substantial estate with gardens which originally occupied a much larger property. It had become a nursing home and was used as such for 36 residents until it closed several years ago. The nursing home had 15 to 20 staff per day, with 7 to 10 in the evenings and 3 overnight.

Mr. Mylan then described the site plan. He indicated the location of the play area, the parking area, entrance and exit driveways and drop-off area. He noted that the applicant will have 100 children at the site, with 17 staff persons. He reviewed the floor plans. Parking would be provided for 22 vehicles.

Mr. Mylan said that the use is inherently beneficial, that the lot is large and can easily accommodate the proposed use, and that the interior renovations made for the nursing home makes the conversion less difficult. There would be no traffic in the evenings or on the weekends, except for occasional use for special events. He also reviewed the Board Engineer's memorandum of January 12.

The Board questioned the witness, followed by Ms. Lottinville, who inquired about the configuration of the building, the history of the site and the anticipated occupancy.

The Board took a brief recess.

Upon reconvening, Ms. Lottinville continued her questions.

Lorraine Confair, President of Over the Rainbow, was sworn. She said that she began her day care center in a church in 1981. She moved to another church since then but needs a larger facility. The center is inspected every year by the State. She noted that 85% of her children are from Montclair, that her program is year-round, from 7:30 a.m. to 6:30 p.m.

Marked into evidence were:

- A-10 Play equipment catalog
- A-11 Play equipment photos

She described the outdoor play area and what equipment it may have. She reviewed the staffing set by the State. Ms. Confair noted the urgent need in Montclair for infant care, in that it is not available in many nearby locations due to the stringent space requirements of the State. She plans to have infant care at the new location. Her staff would likely be 18 persons at the maximum at any one time.

Ms. Confair explained that the State performed a courtesy inspection at her request to determine whether it was feasible to use the building for child care. She said the State found it to be feasible.

Marked into evidence were:

A-12A & B Graph showing student arrival times.

Due to the lateness of the hour, it was decided to continue the hearing at the February 16 meeting, at which time Ms. Lottinville will have an opportunity to question Ms. Confair.

On motion by Mr. Church, seconded by Mr. Williams, the meeting was adjourned at 11:35 p.m.