

MINUTES OF THE BOARD OF ADJUSTMENT
January 17, 2001

PRESENT: Chair Harrison, Vice Chair Fleischer, Ms. Costello, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey, Mr. Susswein; also, Michael Sullivan, Esq., Karen Kadus, Secretary and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Chapman, Mr. Williams

Ms. Kadus called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the **Minutes of the December 7, 2000** special meeting were adopted, Ms. Costello and Mr. Susswein abstaining.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey, the **Minutes of the December 13, 2000** regular meeting were adopted as modified, Ms. Costello and Mr. Susswein abstaining.

Chair Harrison welcomed new Board members, Carol Costello and Harvey Susswein.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, Mr. Harrison was elected Chair for 2001.

On motion by Ms. Rock-Bailey, seconded by Mr. Haizel, Mr. Fleischer was elected Vice Chair for 2001.

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, Ms. Kadus was appointed Secretary for 2001.

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, Mr. Sammet was appointed Assistant Secretary for 2001.

On motion by Vice Chair Fleischer, seconded by Mr. Haizel, Mr. Sullivan was appointed as Board Attorney for 2001.

On motion by Vice Chair Fleischer, seconded by Mr. Gallardo, Mr. Watkinson was appointed as Board Engineer for 2001.

Secretary Kadus announced that the variance application of **Steven Lauda and Ralph Latoracca, Murray Street** would be carried to the February 14, 2001 regular meeting of the Board of Adjustment at the request of the applicant.

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Mr. and Mrs. Scott Troeller, 96 Prospect Avenue**, was adopted, Chair Harrison, Vice Chair Fleischer, Ms. Costello, Mr. Haizel and Mr. Susswein abstaining:

WHEREAS, Mr. and Mrs. Scott Troeller, owners, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJS40:55D-70c to allow for the construction of a detached, two-car garage in the front yard which is prohibited pursuant to **Montclair Code Section 347-34B** on property designated as Lot 19 in Block 406 on the Township Tax Map and located in the R-O Mountainside Zone; and

WHEREAS, the applicants submitted a property survey prepared by Richard J. Hingos, Land Surveyor, dated September 24, 1999 and a site plan and elevations prepared by Way & Associates Architects, dated September 7, 2000; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on November 8, 2000 and December 7, 2000 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 is a corner lot measuring approximately 31,560 square feet in size with frontage on both Prospect Avenue and Edgewood Terrace, and contains a single-family house and an inground swimming pool.
2. The applicant's proposal is to construct a detached, two-car garage in the Edgewood Terrace front yard. The proposed garage location will utilize an existing curb cut on Edgewood Terrace.
3. The proposed placement of the garage and its design will not adversely impact the historical architectural qualities of the existing house.
4. The existing driveway at the rear of the house will be removed resulting in a decrease in the amount of impervious surface on site.
5. The proposed location of the garage makes efficient use of the property.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant did meet the proofs required to support the granting of the variance from **Montclair Code Section 347-34B**; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Mr. and Mrs. Scott Troeller is hereby approved;

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

On motion by Vice Chair Fleischer, seconded by Mr. Gallardo, the following Resolution memorializing the denial of the variance application of **Kramer Communities, LLC, 61-63 North Mountain Avenue**, was adopted as modified, Ms. Costello, Mr. Haizel, and Mr. Susswein abstaining:

WHEREAS, Kramer Communities, LLC, as owner, did make application to the Board of Adjustment of the Township of Montclair, as amended, for a variance pursuant to *N.J.S.A. 40:55D-70d(1)* to construct 7 townhouse units and 10 flat units contrary to Montclair Code Section 347-41 as well as preliminary and final site plan approval on property located at 61-63 North Mountain Avenue and designated as Lot 24 in Block 1507 on the Township tax map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a site plan prepared by Professional Planning & Engineering Corporation dated November 3, 2000 as well as floor plans and elevations prepared by William G. Brown, Architects, Sheet A-1 dated November, 2000; Sheet A-2 dated October 31, 2000, Sheets A-3, A-4 dated October 30, 2000 and Sheets A-5, A-6 dated November 2, 2000; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on June 1, 15, September 6, 13, October 18, November 15, and December 7, 2000 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, the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is triangular in shape and consists of approximately 1.25 acres with frontage along North Mountain Avenue. At the time of the application, the property contained a 2-1/2 story house in the front of the property ("main house") and a 2-1/2 story house to the rear ("rear house"), both believed to be originally constructed in the 1860's. The main house, listed as a single family use on the municipality's property record card, suffered substantial fire damage in 1999 and was demolished by the owner in November 2000. By resolution of the Board of Adjustment on October 25, 1961 and the Board of Commissioners on November 14, 1961, Alan and Margaret Ruprecht received permission to convert the rear house to a two family dwelling use.

2. By resolution adopted on January 22, 1959, the Board of Adjustment denied the application of Joseph Veteri to allow three, two story garden apartment buildings containing a total of 24 units. By resolution adopted on May 25, 1961, the Board of Adjustment denied the application of Abraham Braverman to erect garden apartment type buildings to accommodate 19 units. At the time both applications were decided by the Board of Adjustment, the property was split-zoned in that the property for a depth of 200 feet from North Mountain Avenue was situated in the R-1 Zone while the remaining 160 feet of lot depth to the rear was situated in the R-3 (Garden Apartment) Zone.

3. Subsequent to the aforementioned denials by the Board of Adjustment and at least since 1987, the Zoning Ordinance was amended to include the entire tract in the R-1 Zone. The applicant's proposal to construct 17 units would substantially impair the clear intent of the governing body's recent amendment to designate the entire property in the R-1 Zone.

4. The proposal is contrary to the intent and purpose of the 1986 Master Plan which seeks to continue using the greater proportion of the Town's land for single-family, owner-occupied homes and to discourage designating additional areas for multi-family use beyond those presently zoned. The proposed density of 13.6 units per acre also violates the Master Plan maximum ranging between 3.1 to 6.6 units per acre in the R-1 Zone. The aforementioned objectives were reaffirmed in the 1999 Master Plan Re-examination which also recognized increased efforts to preserve single family zones included the elimination of senior housing in one-family zones as a conditional use.

5. The 1992 Master Plan Re-examination Report recognized that the current mixture of housing structure types and balance of owners and renters is considered appropriate for Montclair.

6. Although the property is located entirely within the R-1 Zone, the applicant went to great lengths to attempt to prove compliance with the standards of the R-3 Zone. The Board recognized the fact that the subject property borders the R-3 Zone to the south as well as the NC Zone to the east. The proposed use, however, is not a transitional use as the applicant is effectively trying to include this property in the R-3 Zone. Zoning lines have to be drawn somewhere if the zone plan is to have any real purpose and the erosion of border areas through variances is destructive of sound zoning and cannot be allowed except where special circumstances beyond those ordinarily associated with zone borders are shown. *Cerdel Constr. Co., Inc. v. East Hanover Tp.*, 86 N.J. 303 (1981); *Mayer v. Montclair Bd. of Adjustment*, 32 N.J. 130 (1960).

7. The applicant failed to prove "special reasons" or that the Municipal Land Use Law would be advanced or that 17 residential units promotes the general welfare because the proposed site is particularly suitable for the proposed use.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant failed to prove the requisite special reasons for the granting of this application and failed to prove by a preponderance of the evidence that the proposed relief 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;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of the Kramer Communities, LLC, for a variance pursuant to *N.J.S.A. 40:55D-70d(1)* to construct 7 townhouse units and 10 flat units as well as preliminary and final site plan approval is hereby denied.

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. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Maryanne and Patrick Fenelon, 1 Ferncliff Terrace**, was adopted as modified, Vice Chair Fleischer, Ms. Costello, and Mr. Susswein abstaining:

WHEREAS, Maryanne and Patrick Fenelon, owners of property at **1 Ferncliff Terrace**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *NJSA40:55D-70c* to allow a central air conditioning unit in the front yard of their single family residence designated as Lot 3 in Block 4408 on the Township Tax Map and located in the R-1 One Family Residential Zone pursuant to **Montclair Code Section 347-46C**; and

WHEREAS, the applicants submitted a property survey; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 13, 2000 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 is a corner lot, measures approximately 13,394 square feet in size and contains a 2 story single-family dwelling.
2. The applicants' proposal is to place a central air conditioning unit in the Cleveland Road front yard.
3. The proposed central air conditioning unit will measure 33 inches deep by 33 inches wide at the base with a height of 35 inches.

4. The unique configuration of the single-family dwelling on the property prevents the applicants from placing the central air conditioning unit at a conforming location on the property.

5. Several shrubs exist and additional shrubs are proposed adjacent to the air conditioning unit at the Cleveland Road frontage which will screen it from public view.

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 RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Maryanne and Patrick Fenelon is hereby approved, subject to the following condition:

1. The applicants shall adhere to the portion of the landscaping plan for the westerly side of the principal structure, prepared by Blue Meadow Landscape Architects, dated December 1, 2000.

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

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **John and Grace DePaola, 558 Park Street**, was adopted as modified, Vice Chair Fleischer, Ms. Costello, and Mr. Susswein abstaining:

WHEREAS, **John and Grace DePaola**, owners of property at **558 Park Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a side yard setback less than that required pursuant to **Montclair Code Section 347-46B** and from **Montclair Code Section 347-46A(1)** to allow for a height greater than that permitted in connection with the construction of a two-car garage on property designated as Lot 19 in Block 2801 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicants submitted a property survey prepared by Borrie, McDonald and Watson, dated September 10, 1986 and elevations prepared by Just Outbuildings that depict the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 13, 2000 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:

6. The subject property is approximately 12,350 square feet in size and contains a 2 ½ story single-family dwelling.

7. The applicants' proposal is to construct a two-car garage in the southwesterly corner of the property where their existing garage is situated.

8. The existing two-car garage has side yard setbacks of approximately 1.2 feet on the westerly side, 1.77 feet on the southerly side and 3.12 feet on the northerly side.

9. The proposed side yard setbacks will equal that of the existing garage except for the northerly side yard setback which will measure approximately 2 feet from the closest portion of the garage.

10. The proposed two-car garage will measure approximately 24 feet in length and the second story will be used as a storage area.

11. At the hearing the applicants withdrew their request for a height variance.

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 side yard setback 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 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 John and Grace DePaola is hereby approved, subject to the following condition:

1. The rear wall and southerly side wall of the garage shall be constructed on the existing setback lines.
2. The northerly side wall of the garage shall be no closer than 2 feet to the northerly property line.

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.

On motion by Mr. Gallardo, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Sherwood and Dugar Racine, 60 North Willow Street**, was adopted as modified, Vice Chair Fleischer, Ms. Costello, and Mr. Susswein abstaining:

WHEREAS, Sherwood and Dugar Racine, owners of property at 60 North Willow Street, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for the construction of a front yard parking area pursuant to **Montclair Code Section 347-52** in that off-street parking areas shall not be located between the main building and the curb of the street on which the building fronts and **Montclair Code Section 347-104** in that the parking area will be set back less than 4 feet from the property lines and from **Montclair Code Section 347-102B** in that a 9 foot by 19 foot parking space is required and a smaller parking space is proposed, on property designated as Lot 31 in Block 3203 on the Township Tax Maps and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicants submitted written arguments, photos of the site and neighborhood, a site plan sketch and a property survey; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 13, 2000 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 dimensions of approximately 35 feet by 179 feet and contains a 2 ½ story two family dwelling having side yard setbacks of approximately 3 feet and 5 feet. The property survey incorrectly depicts a smaller front yard than actually exists. There is approximately 20 feet available to park one car without an overhang into the public right-of-way on the north side of the front steps.

2. The applicants proposed to create a front yard parking area because it is not possible to gain vehicular access to their rear yard due to the proximity of his dwelling to the northerly and southerly side lot lines; thus leaving the front yard as the only available yard area in which to place parking.

3. The applicant has been unable to find secure overnight parking for vehicles in proximity to his property.

4. On street parking is scarce due to the location of several commercial uses on the street and the density of the neighborhood.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant met the proofs required to support the granting of a variance from Montclair Code Section 347-52, Montclair Code Section 347-104 and Montclair Code Section 347-102B; and

WHEREAS, the Board, based on 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 N.J.S.A.40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant 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 N.J.S.A.40:55D-70c(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Sherwood and Dugar Racine is hereby approved subject to the following conditions:

1. The parking space created shall not encroach into the public right-of-way.
2. The parking space shall be located on the northerly side of the steps located in the front of the principal structure.

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

Chair Harrison announced the continuation of the variance application of **Montclair Community Church, 143 Watchung Avenue**. Grant Gille, Esq. appeared as attorney for the applicant. Mr. Gille summarized the application and testimony given to date.

Mr. Gille called Alkis Dimopoulos, Traffic Engineer, Simoff Associates, he was sworn.

Marked into evidence was:

- A-10 Memorandum from Hal Simoff, PE, dated October 10, 2000.
- A-11 Memorandum from Hal Simoff, PE, dated November 6, 2000.

Mr. Dimopoulos stated that traffic counts were conducted in July and October of 2000. He further stated that it was determined that the existing level of service would not change if the proposed church addition was built. He described the proposed parking area including the number of spaces and its potential use as a drop-off and pick-up area for children and the elderly who come to the church.

Marked into evidence was:

- A-12 Cover sheet of plans prepared by The Mylan Architectural Group, dated March 10, 2000, with parking lots highlighted.
- A-13 Handout showing parking lots.

Mr. Dimopoulos stated that there are 3 public parking areas in the vicinity of the church including the Watchung Parking Plaza, Fairfield Parking Plaza and Watchung Avenue Extension. Mr. Dimopoulos recommended that parishioners use the public lots on Watchung Avenue but explained that using the Fairfield lot would be unlikely. He further stated that approximately 60 to 70 cars park on Watchung Avenue while church services are attended and that the public lots could accommodate those vehicles on Sunday mornings.

The Board questioned Mr. Dimopoulos.

Chair Harrison called for questions from the public for Mr. Dimopoulos.

Mr. David Theobald of 140 Watchung Avenue asked how many parking spaces were available in the public parking lots when he conducted his study.

Mr. Neal Brohm of 96 Airdale Road, West Orange asked if there are signs identifying crosswalks in the area.

Ms. Nancy Arney of Watchung Avenue asked how many parking spaces would be lost along Watchung Avenue if the proposed driveway was constructed.

Ms. Elise Renkert, congregation member, asked if handicapped parishioners would have a safe way to get to the church without the proposed parking lot.

Chair Harrison announced that the variance application of **Omnipoint Communications, 5 Roosevelt Place** would be carried to the February 14, 2001 regular meeting of the Board and no further notice would be given. Rick Skolnick, Esq., attorney for the applicant, consented to an extension of time.

Chair Harrison announced that the application of **Barry Pote, 72 Greenwood Avenue** would be carried to a March 7, 2001 special meeting of the Board and that no further notice would be given. Barry Pote, applicant, consented to an extension of time.

The Board took a short recess.

Carl Herman, Esq., 135 Watchung Avenue, called Mary Krugman, historic preservation consultant, she was sworn.

Marked into evidence was:

- O-1 Mary Krugman's resume.
- O-2 Bibliography
- O-3 1974 and 2001 maps of the neighborhood showing building footprints.
- O-4 Map of the Marlboro Park Historic District.
- O-5 Chronology
- O-6 Packet of historic maps dating from 1878 to 1933.
- O-7 Collection of neighborhood properties from the Inventory of Historic, Cultural and Architectural Resources.
- O-8 Collection of photographs of neighborhood properties.
- O-9 Collection of historic photographs.
- O-10 Excerpt from the Historic Preservation Element of the Township Master Plan.
- O-11 Façade analysis.

Ms. Krugman described the architectural styles in the neighborhood and stated that the Marlboro Park Historic District is listed on the State Register of Historic Places and in the Historic Preservation Element of the Township Master Plan. Ms. Krugman stated that the existing church building could be eligible for historic register listing under "Criteria A".

Ms. Krugman stated that the proposed design would have an adverse effect on the character of the Marlboro Park Historic District since it is not visually compatible with the surrounding architecture. She described the layout of buildings on individual lots in the district and stated that the proposed project is not reflective of existing characteristics. Ms. Krugman further stated that the proposed addition would damage or call for the removal of historic features on the existing church building. Ms. Krugman

described revisions that could be made to the proposed project which could make it more compatible with the historic district.

The Board questioned Ms. Krugman.

Mr. Gille cross-examined Ms. Krugman.

Chair Harrison called for questions from the public for Ms. Krugman.

Mr. Louis Latore of 131 Watchung Avenue asked if the church was located in the Marlboro Park Historic District.

Ms. Marge Laird of 160 Watchung Avenue asked if a modern structure built in the historic district would have an effect on property values.

Mr. Jeff Rogers, staff, Montclair Community Church, asked what changes to the proposed plans would make them more compatible with the historic district.

Mr. David Theobald of 140 Watchung Avenue asked how the architectural style along Watchung Avenue could be characterized.

Ms. Barbara Wiglie, congregation member, asked how a church building could be compared with residential structures.

Ms. Elise Renkert, congregation member, asked how children and the elderly could travel between two separate buildings on the site during poor weather.

Chair Harrison called for public testimony from those members in the audience who would not be able to attend the next Board meeting.

M. Joane Budd, 61 Orchard Street, Bloomfield, stated that the church has been a great source of support for her family.

Chair Harrison stated that the application would continue to be heard at the February 14, 2001 regular meeting of the Board of Adjustment, and no further notice would be given.

Chair Harrison called for the continuation of the variance application of **Petia Morozov, 432 Highland Avenue**. Grant Gille, Esq., attorney for the applicant, and Calvin Trevnen, Esq., attorney representing certain objectors, both stated the number of witnesses they intended to call.

Chair Harrison stated that due to the late hour the application would continue to be heard at the February 14, 2001 regular meeting of the Board of Adjustment, and no further notice would be given.

Chair Harrison advised Board members to forward any comments on the **Draft 2000 Board of Adjustment Annual Report** to Ms. Kadus.

On motion by Vice Chair Fleischer, seconded by Mr. Gallardo, the meeting was adjourned at 11:20p.m.