

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
JANUARY 20, 1999**

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Church, Ms. Freundlich, Ms. O'Connell, Mr. Tobin; also, Michael Sullivan, Esq., Karen Kadus, Secretary, Michael Zichelli, Assistant Secretary, and Tehuti Barrett, Junior Engineer

ABSENT: Mr. Williams and Mr. Fleischer

Mr. Zichelli called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meeting Act.

The Board held the **Election of Officers**.

On motion by Mr. Church, seconded by Mr. Tobin, Mr. Harrison was appointed Chair, Chair Harrison abstaining.

On motion by Mr. Tobin, seconded by Mr. Church, Mr. Chapman was appointed as Vice Chair, Vice Chair Chapman abstaining.

On motion by Mr. Church, seconded by Ms. Freundlich, Ms. Karen Kadus was unanimously appointed Secretary.

On motion by Mr. Harrison, seconded by Mr. Church, Mr. Zichelli and Mr. Barrett were unanimously appointed as Assistant Secretaries.

The Board discussed the **Appointments of Board Attorney and Engineer**.

On motion by Mr. Tobin, seconded by Mr. Church, Mr. Michael Sullivan was unanimously appointed as Board Attorney.

On motion by Mr. Chapman, seconded by Mr. Church, Mr. Thomas Watkinson was unanimously appointed as Board Engineer.

On motion by Mr. Chapman, seconded by Ms. O'Connell, the **Minutes of the December 9, 1999** regular meeting were unanimously adopted.

On motion by Mr. Chapman, seconded by Mr. Church, the following **Memorializing Resolution of Robert P. Convertino, 157 Highland Avenue**, was unanimously adopted:

WHEREAS, Robert Convertino, owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to allow a 6 foot easterly side yard setback where a greater setback is required pursuant to Montclair Code Section 224-48C(1) in connection with the construction of an addition

on property designated as Lot 22 in Block 504 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant submitted a property survey prepared by Farro Associates, Land Surveyors, dated September 1, 1998 with the addition drawn in by hand by the applicant.

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 9, 1998 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 60 feet by 233 feet and contains a single-family dwelling.

2. The applicant's proposal is to construct an addition onto the rear of the dwelling to accommodate an eat-in kitchen for his family. The proposed side yard setback is 6 feet as measured from the closest portion of the addition to the easterly side lot line.

3. The applicant demonstrated that due to the interior configuration of the house, there are no other reasonable options as to where the proposed kitchen addition can be located.

4. The 12 feet by 10 feet one-story expansion is in line with the existing side wall of the dwelling.

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 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 FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Robert Convertino is hereby approved, subject to the following condition:

1. The addition shall follow the line of the existing house and be built no closer to the side property line than 6 feet.

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. Chapman, seconded by Ms. O'Connell, the following **Memorializing Resolution of Michael and Ellen Stein, 175 Eagle Rock Way**, was adopted, Chair Harrison and Mr. Tobin abstaining:

WHEREAS, Michael and Ellen Stein, as owners, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c(1) to construct an off street parking area between the main building and the curb of the street on which with building fronts contrary to Montclair Code Section 224-29(D) on property designated as Lot 6 in Block 103 on the Township tax map and located in the R-1 One Family; and

WHEREAS, the applicants submitted a minor site plan prepared by Nelson Engineering Associates, Inc. dated November 2, 1998; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on October 21 and December 9, 1998, 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 applicants recently acquired the property and seek to construct a 20 foot wide off street parking area to accommodate two vehicles in the front yard between the house and curb contrary to Montclair Code Section 224-29(D).

2. The Board was not persuaded by the applicants' argument that there is a "compelling need" for additional on site parking. The property contains existing on site parking in the single lane driveway and garage and parking is available along Eagle Rock Way.

3. The applicants argued that it was virtually impossible and/or inappropriate to provide a conforming on site parking area. The Board found unpersuasive the applicants' argument that a conforming parking area would require a driveway alignment with an unsafe sight distance. Moreover, the applicants could relocate the existing children's play area to the northwest of the existing home to accommodate a conforming parking area. While the applicants preferred not to relocate the children's play area, the option exists and the applicants failed to prove a "hardship" as required under N.J.S.A. 40:55D-70c(1).

4. The Board was not convinced that this property was “unique”, as many other properties in the area of the subject property and in the township share similar physical characteristics and are located on streets with similar curvature and grade as Eagle Rock Way.

5. The visual intrusion resulting from the applicants’ plan would reduce light, air and open space in the front yard between the main building and the curb which would result in aesthetic detriment to the neighborhood and be contrary to the purposes of the Municipal Land Use Law.

6. Granting of this variance, without sufficient justification, would undermine the intent and purpose of the zone plan and zoning ordinance particularly because there are other properties similarly situated which could make the same arguments advanced herein rendering the ordinance meaningless.

WHEREAS, the Board, based on the foregoing findings concluded that the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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 zoning ordinance pursuant to *N.J.S.A. 40:55D-70c(1)*; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Michael and Ellen Stein for a variance to construct an off street parking area is hereby denied.

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

On motion by Mr. Chapman, seconded by Ms. Freundlich, the following **Memorializing Resolution of the Montclair Child Development Center, Inc., 45 Elm Street**, was unanimously adopted:

WHEREAS, Montclair Child Development Center, Inc., did make application to the Board of Adjustment of the Township of Montclair for minor subdivision, site plan approval and variances on property designated as Lot 10 in Block 3100 on the Township tax map and located in the R-3 Garden Group Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d* to allow expansion of the applicant’s use of the property as a Head Start classroom facility contrary to Montclair Code Section 224-100.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow 46 parking spaces where a minimum of 72 are required in connection with the St. Vincent Nursing Home use contrary to Montclair Code Section 224-91.

3. A variance pursuant to N.J.S.A. 40:55D-70c to allow creation of a parking area in front of the building on Fulton Street contrary to Montclair Code Section 224-53D.

4. A variance pursuant to N.J.S.A. 40:55D-70c as there will be no setbacks or required screening for the paved parking areas from the new lot line contemplated by the subdivision through the parking lot contrary to Montclair Code Section 224-53D.

WHEREAS, the applicant submitted a subdivision map prepared by John A. Doolittle, P.A. dated October 13, 1998 as well as a site plan identified as sheet SP-1 dated August 4, 1998 and floor plans identified as sheets A-1 and A-2 dated August 19, 1998 prepared by Associated Architects, P.C.; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 9, 1998, 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 application contemplates subdivision of the existing 2.5 acre tract with frontage on Elm, Washington and Fulton Streets into two lots. The lot on the northwesterly side of the property will consist of approximately 81,100 square feet and will contain the existing St. Vincent's Nursing Home which is a 141 bed long term care facility (St. Vincent lot). The proposed lot on the southeasterly side of the property will consist of approximately 30,000 square feet which contains two buildings to be utilized by the applicant and connected as part of this application (Montclair Child Development Center lot).

2. Montclair Child Development Center's use of the property as a Head Start classroom facility is an inherently beneficial use, which promotes the general welfare.

3. The proposed addition will connect the two story classroom building with the existing one story annex building and provide a main entrance with handicapped access on the Montclair Child Development Center lot. The addition represents a modest expansion, which will not result in any adverse impact to the neighborhood.

4. The proposed five car parking area in front of the building on Fulton Street on the Montclair Child Development Center lot represents appropriate development of the site in light of the applicant's use of the property existing on the site.

5. The plan provides 46 spaces on the St. Vincent lot for the nursing home use, which requires a minimum of 72 spaces. Saint Vincent's Nursing Home has obtained permission from the Mother Seton Residence across the street to use the parking area adjacent to the residence for the parking of vehicles.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved 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;

WHEREAS, the Board, based on the foregoing findings concluded that the applicant proved 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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Montclair Child Development Center, Inc. for minor subdivision, site plan approval and variances is hereby approved subject to the following conditions:

1. The subdivision map shall be modified so that no parking spaces are bifurcated by the proposed subdivision line.
2. The handicapped parking space proposed at the southerly corner of the classroom buildings shall conform to ordinance regulations.
3. The Montclair Child Development Center lot shall provide as least 20 onsite parking spaces.
4. The offsite parking lot across the street at the Mother Seton Residence shall be striped and at least 26 parking spaces shall be available for St. Vincent's use.
5. In the event the use of the St. Vincent lot changes and the subsequent use requires more than 72 parking spaces, or if the new use requires less than 72 parking spaces but the lot across the street is unavailable, and as a result there are an insufficient amount of spaces on the St. Vincent's lot, a variance shall be required.
6. The applicant shall provide a cross access easement (which shall provide ingress and egress be available by frontward movement of buses) for review and approval by the Board attorney to be filed simultaneously with perfection of the subdivision.
7. The conditions of the resolution shall be attached to and recorded with the deed and all subsequent conveyances.
8. A prospective purchaser of the Saint Vincent lot shall be informed during contract negotiations of the conditions of approval contained in this resolution.
9. The applicant shall obtain County Planning Board approval.

10. The applicant shall provide the details of the trash storage area to be located in the rear parking area for approval by the Board Engineer.

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

Chair Harrison called for the application of **Samuel LaForte and Anthony Miele, 47-49 New Street**. Mr. LaForte and Mr. Miele, owners, were sworn. Mr. LaForte stated that they are seeking a front yard setback variance for the construction of a new house. He stated that he is seeking a front yard setback variance in order to keep the proposed house consistent with the existing front yard setbacks of the other houses on the street. Marked for identification was the following:

A-1 Photo Board of structure and rendering

Mr. LaForte compared the setback of the existing fire damage structure to his proposed setback. He stated that the existing building is 1-1/2 feet from the property line and that the average setback of the adjoining properties is approximately 6 feet. Marked for identification was the following:

A-2 Drawing showing streetscape.

Mr. LaForte stated that they are participating in the Neighborhood Rehabilitation Improvement Program and that their proposal required Historic Preservation review. He stated that he has presented his proposal to the Montclair Historic Preservation Commission and that they are in support of his variance application.

Members of the Board asked Mr. LaForte to clarify the setbacks. Mr. LaForte stated that the steps would be less than 6 feet from the property line, adding that the front of the porch was used as the measuring point in determining the setback line. Marked for identification was the following:

A-3 Floor Plans

Ms. Mary Krugman, Historic Preservation Consultant, was sworn. Ms. Krugman stated that the proposal is consistent with the streetscape and general design of the neighborhood.

Mr. Anthony Miele stated that the proposed building will help maintain the character of the neighborhood.

On motion by Mr. Chapman, seconded by Mr. Church, the application was unanimously approved subject to the following conditions:

1. The front yard setback of the covered porch shall be no less than 6feet.

2. The applicants shall construct the house in strict accordance with the October 15, 1998 Resolution of the Township Historic Preservation Commission.

Chair Harrison called for the application of **Cynthia and Kenneth Kresch, 62 Plymouth Street**. Mr. and Mrs. Kresch, owners, were sworn. The applicants described their proposal to place an air conditioning unit in their side yard. Mr. Kresch stated that they are seeking a side yard setback for the proposed condenser unit. Mrs. Kresch then described the proposed location and the layout of the property.

Mrs. Kresch stated that hedges between their property and the adjoining property would block the neighbor's view of the condenser unit.

Members of the Board asked the Kreschs what the distance was between the applicants' house and the neighbors' house and to further describe any landscaping, alternative locations, and the noise level of the units.

Kevin and Leigh Klenki of 60 Plymouth Street were sworn. Mr. and Mrs. Klenki stated that they have the same type of unit and that because of the landscape of the property and the barrier of hedges, they would not be able to see nor hear the unit and that they are in support of the application.

The Board began discussion of the application.

Mr. Kresch requested that the Board postpone voting on the application so that the applicants can prepare more detailed testimony for the Board's review. The Board discussed this request. Chair Harrison stated that the application will be continued at the next regular meeting on February 17, 1999 and that no further notice will be given.

Chair Harrison called for the application of **Vincent Cabbage, 75 Club Road**. Mr. Cabbage, owner, was sworn. Mr. Cabbage explained that he is seeking a rear yard setback variance to extend his garage in order to accommodate two cars. He stated that the addition to his detached garage will be consistent with the rest of the neighborhood, because most of the other properties have garages that can accommodate two cars. Mr. Cabbage stated that his vehicle has been broken into because it had to be parked overnight in the driveway. Mr. Cabbage stated that he had considered relocating the garage so he could avoid a setback violation, but that this was not a viable solution because in relocating his garage, he would have to demolish a portion of his deck and remove a tree.

Peter Vigil, owner of 86 Inwood Avenue, was sworn. He stated that he is opposed to the extension because it will only add to the problem of neighborhood congestion. He also stated that there is a tree on the property line that separates his property from Mr. Cabbage's and that the tree may be destroyed by the addition.

Mr. Cabbage stated that his design took into consideration the tree and that he intends to preserve it.

Mr. Thomas Carol, owner of 84 Inwood Avenue, was sworn. He stated his opposition to the application.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Mr. Tobin, the application was unanimously approved subject to the following conditions:

1. The garage addition shall not exceed a width of more than 4 feet.
2. The rear of the addition shall follow line of existing wall of the garage.
3. No soil disturbance shall occur more than 1 foot beyond the rear wall and easterly wall of the addition.

A brief recess was taken.

Upon reconvening, Chair Harrison called for the application of **Mrs. Caroline DeEsposito, 42 Elm Street**. Chair Harrison stated that there are only six Board members and that since the application is a use variance, five affirmative votes are required for approval. The applicant was offered the opportunity to carry the application to the next regular meeting.

Calvin Trevenen, Esq. appeared on behalf of the applicant. He stated that the applicant understands the requirement for five affirmative votes and wishes to proceed with the hearing.

Mr. Trevenen stated that the applicant is seeking a use variance to move a pension/actuary business into this building which previously received a variance for a medical research journalism use. He stated that Mrs. DeEsposito's business is currently located in West Orange and that she employs three people and receives no more than one client visit per year. He then stated that her hours of operation are typically 8:30am to 6:00pm.

Mrs. DeEsposito, owner under contract, was sworn. She described the use of the first floor office space and explained that the basement would be used for storage. She stated that no clients have a need to visit her site because her business employees meet the clients at their site.

Mr. Paul Sionas, architect and planner, was sworn. Mr. Sionas described the previous variance granted for the property, the previous number of employees on the site, the parking situation on site and on the street, and the types of surrounding uses. He stated that the proposed use would be less intensive than the prior use. He also gave special reasons as to why he felt this property should receive a use variance. He stated that the usage of the property as a pension services will not result in any detriment to the public good.

After Board discussion, on motion by Ms. Freundlich, seconded by Mr. Chapman, the application was approved unanimously subject to the following conditions:

1. The proposed sign shall not exceed 16 inches by 24 inches and shall be placed at the same location on the building as the current sign.
2. No more than six persons shall be working at the site at any one time.
3. The proposed use is limited to professional office (excluding medical and dental) with infrequent client visits.
4. Within 60 days of applicants' acquisition of the property, applicants shall record a deed setting forth the conditions of this approval. These conditions may be modified subject to the approval of the Montclair Board of Adjustment.

The meeting was adjourned.