

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
JANUARY 21, 1997**

PRESENT: Chair Harrison, Vice Chair Chapman, Mmes. Holden, O'Connell, Freundlich, Messrs. Church, Fleischer, Tobin, and Williams; also Michael Sullivan, Esq., and Mr. Zichelli.

ABSENT: Karen Kadus.

Mr. Zichelli called the roll and announced it to be a regular meeting of the Montclair Board of Adjustment for which notice had been given in accordance with the Open Public Meetings Act.

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

On motion by Mr. Fleischer, seconded by Mr. Chapman, Mr. William Harrison was unanimously appointed Chair, Mr. Harrison abstaining.

On motion by Ms. Holden, seconded by Mr. Fleischer, Mr. Robert Chapman was unanimously appointed Vice Chair, Mr. Chapman abstaining.

On motion by Mr. Fleischer, seconded by Mr. Chapman, Ms. Karen Kadus was appointed Secretary and Mr. Michael Zichelli, appointed Vice Secretary unanimously.

Mr. Church and Mr. Tobin joined the meeting.

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

On motion by Mr. Fleischer, seconded by Ms. Freundlich, Michael Sullivan, Esq. was appointed Board Attorney.

On motion by Mr. Chapman, seconded by Mr. Fleischer, Mr. W. Thomas. Watkinson, was appointed Board Engineer.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the **Minutes of the December 10, 1997** were adopted, Ms. Holden and Mr. Williams abstaining.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following **Memorializing Resolution of Harry Hahn, 145 Walnut Street** was adopted, Ms. Holden and Mr. Williams abstaining:

WHEREAS, Harry Hahn, owner, 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 224-53(D) 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 224-94 in

that the parking area will be set back less than 4 feet from the westerly side property line, on property designated as Lot 13 in Block 3202 on the Township Tax Maps and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Thomas M. Ernst & Associates, Land Surveyors, dated September 24, 1997, with the proposed parking area drawn by the applicant; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 10, 1997 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, at the hearing, the applicant presented a revised drawing which eliminated his request for a side yard setback variance under Montclair Code Section 224-94; and

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

1. The subject property has dimensions of 30 feet by 77 feet and contains a 2 1/2 story single-family house.
2. The proposed parking area would have dimensions of 9 feet by 19 feet. A portion of the enclosed porch had been removed to allow for the creation of this parking area for one vehicle.
3. The applicant argued that he could not gain access to a rear yard parking area due to the placement of the dwelling 6.8 feet from the westerly side property line and less on the easterly side.
4. The applicant has not adequately demonstrated his effort to find alternative off-street parking including obtaining access to the rear of his property.
5. The location of the proposed parking area represents an unreasonable visual intrusion into the front yard reducing open space and would result in the detriment to the adjacent property owners which is inconsistent with the intent and purpose of the zoning ordinance.
6. The applicant failed to cite the purposes of the Municipal Land Use Law which would be advanced or any public benefit which would result in granting the application.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant had not met the proofs required to support the granting of a variance from Montclair Code Section 224-53(D); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Harry Hahn is hereby denied.

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. Chapman, seconded by Mr. Fleischer, the following **Memorializing Resolution of Paul Rotunda, 83 Park Street** was adopted, Ms. Holden and Mr. Williams abstaining:

WHEREAS, Paul Rotunda, DMD, owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow the conversion of his basement storage space into general office space without providing adequate on-site parking pursuant to Montclair Code Section 224-91, on property designated as Lot 20 in Block 2312 on the Township Tax Maps and located in the OR-3 Garden Apartment and Office Building Zone; and

WHEREAS, the applicant submitted a property survey dated September 12, 1997, prepared by John A. Doolittle & Co., Engineers and Surveyor; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 10, 1997 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 property consists of a mixed use building containing a 1,200 square foot dental office on the first floor and an apartment on the second floor. The 1,058 square foot basement is used for storage.
2. The applicant proposes to convert the basement level into general office space to be rented to a non-medical professional. The upstairs apartment will remain.
3. The existing parking area accommodates 12 vehicles, including 2 garage spaces. The total number of parking spaces required after the basement conversion is 13, based upon 1 space per 150 square feet of medical space and 1 space per 250 square feet of general office space. In this zone, no parking for the residential use is required in a mixed use building.
4. Of the 12 spaces shown on the site plan, one space blocks entry to two other spaces. There is no room to expand the parking area, except to create a separate parking area on the north side of the property. There is street parking along Park Street and Walnut Street.
5. The applicant currently shares an access driveway with the adjacent neighbor on Park Street, although no formal written agreement exists.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant had met the proofs required to support a granting of a variance from Montclair Code Section 224-91 subject to certain conditions; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance of Paul Rotunda, DMD, is hereby approved, subject to the following conditions:

1. Parking space #5 shall be striped.
2. The use of the basement shall be for a non-medical office.
3. If the applicant loses the right to use the driveway on the adjoining property, he shall return to the Board of Adjustment for review.

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

On motion by Mr. Fleischer, seconded by Mr. Chapman, the following **Memorializing Resolution of Jane Haburay and Anthony Herling, 97 Central Avenue** was adopted, Ms. Holden and Mr. Williams abstaining:

WHEREAS, Anthony Herrling and Jane Haburay, did file an appeal with the Board of Adjustment of the Township of Montclair pursuant to Montclair Code Section 147-21A(l) of the Administrative Officer's decision that a residential addition under construction pursuant to a building permit complies with applicable zoning ordinances on property located at 97 Central Avenue and designated as Lot 33.01 in Block 2401 on the Township tax map; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 10, 1997, at which time the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is located at 97 Central Avenue and is identified as Block 2401, Lot on the Montclair Township Tax Map. It consists of a total of 27,509 square feet. It is a "flag lot" and provides a 30 foot wide "staff" to Central Avenue. The flag portion of the property is separated from Central Avenue by neighboring Lot 33 that is approximately 200 feet deep.
2. The subject property contains a single family home and a detached garage which are set back 3.41 feet and 2.48 feet respectively from the northerly property line.
3. On October 21, 1997 a building permit was issued by Montclair Township to the owners of the property, Howard Conroy and Margaret Goss to construct an

addition between the existing dwelling and existing garage. The addition provides a six foot setback from the northerly property line.

4. Construction proceeded to foundation excavation, laying the foundation, and laying the basement block walls and other improvements. On November 10, 1997, the appellants, Anthony Herrling and Jane Haburay, owners of 14 Brunswick Road, filed an appeal pursuant to N.J.S.A. 40:550-70a and appealed the issuance of the building permit and in particular the administrative officer's decision to permit the addition to be located six feet from the northerly property line. As a result, Montclair Township issued a stop construction order on November 13, 1997.

5. Appellants, who own contiguous property to the north contended that the addition's setback from the northerly property line should be 25 feet instead of six feet because the space between the northerly side of the existing home and garage and the northerly property line constitutes a rear yard, requiring a 25 foot setback, rather than a side yard, requiring a six foot setback. Their contention was contrary to the administrative officer's determination that under the Montclair Township zoning ordinance the yard in question is a side yard and therefore the addition must be set back only six feet from the northerly property line.

6. The subject property was created by subdivision in June 1986 when the Montclair Township Planning Board approved a two lot subdivision of a tract that at the time encompassed existing lots 33 and 33.01. The application was made by Montclair Kimberley Academy in order to create separate lots for the two dwellings then located on the tract. The application did not require any variances but did require a lot width waiver for the 30 foot wide staff of the flag lot because a 60 foot lot width minimum was required. The Planning Board granted the lot width waiver, noting in particular that the proposed subdivision would eliminate the nonconformity of having two dwellings on one lot and provide adequate access to the rear dwelling and preserve the existing pattern of development because it would not be possible to construct a third dwelling on the tract without requesting further waivers or variances.

7. The administrative officer's decision to permit a six foot setback from the northerly property line was proper and valid. She correctly determined that the front yard of the subject property is the portion of the lot between the home and the street line of Central Avenue, consistent with the zoning ordinance's definition of "front yard". The front yard includes the staff of the flag lot and all of the land between the home and neighboring Lot 33.

8. The administrative officer was correct not to establish the front yard based upon locations of doorways or entries to the home, which might result in the location of the front yard along the southerly side of the property. Had she decided otherwise, she would have been inconsistent with the definition of front yard and would also have subjected Montclair Township to the whim of property owners who could avoid the zoning regulations and simply define their various "yards" by their selection of doorways or entries to their homes.

9. The administrative officer also correctly determined that the rear lot line is opposite the front lot line, consistent with the zoning ordinance and prevailing planning and zoning criteria. This determination of the rear lot line established the rear yard of the subject property to be a 25 foot wide strip of land running parallel to the L-shaped property line at the easterly extreme of the property. Because the addition is not located within the 25 foot rear yard setback, the zoning officer correctly determined that no rear yard variance would be necessary.

10. The administrative officer also correctly identified the side yards of the property consistent with the zoning ordinance and determined the side yards to be "the yard situated between the principal I building or buildings on the side line of the lot and extending through from the front yard to the rear yard". Her determination that the addition met the six foot side yard setback to the north of the subject building and the 10 foot side yard setback to the south of the building was also a proper interpretation of the zoning ordinance. Her determination that no side yard setback variance was needed for the addition is consistent with both the zoning ordinance and sound planning practice.

11. Section 224-100 of the zoning ordinance specifically permits additions to nonconforming structures without the need for a variance for existing nonconformities. The administrative officer's reading of this particular provision correctly noted that no variance was needed for the existing home or garage provided the addition met the setback controls of the zoning ordinance.

12. The appellants' suggestion that a rear yard runs along the northerly property line because this northerly property line abuts the rear yards of other properties is inconsistent with both the zoning ordinance and sound planning practice. Many properties in the area, particularly corner lots, have rear yards that abut side yards.

13. The appellants' planner conceded during his testimony that at least as to the subject property, it is not simple to define the front, rear, and side yards and that the issue is a "judgment call". In addition, he chose not to apply all the definitions set forth in the zoning ordinance. This testimony and approach is insufficient to overcome the administrative officer's decision.

14. The administrative officer's decision is consistent with her decision made in connection with the 1986 subdivision. In her May 12, 1986 planning report, she noted that no variances were required in connection with the subdivision. She determined that a lot width waiver was necessary and that the front yard of the property was oriented towards Central Avenue.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within appeal filed by Anthony Herrling and Jane Haburay regarding a residential addition at 97 Central Avenue is hereby denied.

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

Mr. Zichelli read a letter from James Andrews, Esq., attorney for **Decamp Bus Line, 100 Greenwood Avenue**, requesting an adjournment. Chair Harrison announced that the application would be carried to the next regular meeting of the Board of Adjustment on February 18, 1998.

Chair Harrison called for the application of **Vincent and Helen La Selva, 29 Watchung Plaza**. Gesuele Lodato, Esq. appeared as attorney for the applicant. Mr. Paul Sionas, architect and planner, was sworn. Mr. Sionas stated that the applicant is seeking a use variance for the creation of two second story apartments above an existing commercial space. He stated that due to the small lot size, the density requirement only allows for one dwelling unit, and the applicant seeks to construct two.

Mr. Sionas reviewed the existing conditions of the site, the previous use of the building, the square footage and the impervious surface. He then reviewed the proposal for two apartments. Marked for identification were the following:

- A-1 Colored Site Plan, prepared by Sionas Architecture, revision dated October 29, 1997 (returned to applicant)
- A-2 Photo Board of existing site conditions (returned to applicant)

Mr. Sionas described the proposed elevations, drainage, lighting, and awnings. He reviewed the NC Zoning ordinance requirements. He then described the request for variances from the density requirement, setback minimums and the on site parking requirement. He stated that the property is in proximity to the railroad station, bus stop and public parking facilities. Mr. Sionas reviewed the negative criteria and special reasons in support of the variances requested.

Members of the Board asked Mr. Sionas to review the proposed rents, the construction time, the density requirements, and the Housing and Urban Development standards. Marked for identification was the following:

- A-3 Photograph of the rear of the site (returned to applicant)

Ms. Helen La Selva, owner, was sworn. Ms. La Selva described the proposed rents and the appropriateness of two apartments. She stated that she has secured two parking permits in the Watchung Parking Plaza.

Members of the Board asked Ms. La Selva to describe the parking permits, trash collection procedure and the size of the lot.

The meeting was open to public comment, none was made.

Mr. Lodato summarized the application.

Mr. Sullivan reviewed the variances requested.

After some discussion, a motion was made by Mr. Chapman to approve the application subject to conditions. The motion was seconded by Mr. Church. Only four affirmative votes were received in favor of the application. Since five are required for the approval of a use variance, the application was denied. The applicant was offered the opportunity to request a vote on the setback and parking variances. The applicant chose not to request a vote.

Chair Harrison	Yes	Mr. Fleischer	No	Ms. O'Connell	No
Mr. Chapman	Yes	Ms. Freundlich	Yes	Mr. Tobin	Abstain
Mr. Church	Yes	Ms. Holden	No	Mr. Williams	Abstain

Ms. O'Connell stepped down for the hearing of the following application.

Chair Harrison called for the application of **Bobbi and Steven Plofker, 49 Highland Avenue**. Steven Plofker, owner, and Eric Von Hoffman, landscape designer, were sworn. Mr. Von Hoffman represented himself as a landscape architect.

Mr. Plofker reviewed his request for the construction of a pergola, an accessory structure, in the front yard of his property. He stated that his lot has a large sloping front yard and small rear yard. Through the use of a pergola, he stated that he can create a front yard space which is useable by his family.

Mr. Von Hoffman described the site. Marked for identification were the following:

- A-1 Presentation Board with containing a property survey and plan for the pergola (returned to applicant)
- A-2 Photo Board (returned to applicant)

Mr. Von Hoffman reviewed the height and setbacks of the structure. He stated that no lighting is proposed. He described the construction and landscaping. Mr. Von Hoffman stated that the pergola will be an asset to the streetscape.

Mr. Plofker stated that none of his adjoining neighbors object to the pergola.

Ms. Plofker was sworn. She stated that the pergola will provide her children with a safe place to play.

Members of the Board asked the applicants to further describe the structure, the setbacks and any similar structures in Montclair.

The meeting was open to public comment. Susan Noran of 64 Prospect Avenue stated that the applicants' rear yard is a suitable area for outdoor use.

After some discussion, on motion by Mr. Fleischer, seconded by Mr. Chapman, the application was denied, Mr. Church and Ms. Holden voting to approve.

Chair Harrison	Yes	Mr. Fleischer	Yes	Ms. O'Connell	Abstain
Mr. Chapman	Yes	Ms. Freundlich	Yes	Mr. Tobin	Yes
Mr. Church	No	Ms. Holden	No	Mr. Williams	Abstain

Ms. O'Connell rejoined the Board.

Chair Harrison called for the application of the **Montclair Breast Center, 39 South Fullerton Avenue**. Larry Olive, Esq. appeared as attorney for the applicant. Mr. Olive stated that the applicant seeks a variance to construct a free standing sign which exceeds the maximum size requirements of the ordinance. Dr. Nancy Elliot and Mr. Glen Hirsch of the Breast Center were sworn.

Dr. Elliot described the services provided by the Breast Center and the client base. She stated that they see approximately 150 people a week.

Mr. Hirsch stated that many people have trouble finding their location and that due to the large amount of tenants in the building, a larger sign is necessary.

Mr. Roger DeNiscia, planner, was sworn. Marked for identification was the following:

A-1 Photo board of existing exterior conditions

Mr. DeNiscia reviewed the nature of the site, the building setbacks and the zoning requirements for a sign. He stated that a larger freestanding sign will improve the visibility to pedestrians and motorist. He also stated that a large wall mounted sign can be erected under the current ordinance, but a freestanding sign is more suitable for the location. He reviewed the surrounding signs and stated that the sign would not be a detriment to the surrounding area and would provide enhanced visibility.

Members of the Board asked Mr. DeNiscia to review the sign ordinance, the square footage requirements and the lighting.

Mr. Olive summarized the application.

After some discussion, on motion by Ms. O'Connell, seconded by Mr. Church, the application was approved subject to the following conditions, Chair Harrison and Mr. Fleischer voting in the negative:

1. All wall mounted and window signs on the property shall be removed.

- 2. The proposed sign shall not be internally illuminated and if externally illuminated shall conform to the ordinance and such lighting shall be screened.
- 3. The sign shall be located at least five feet from the property line.
- 4. The sign shall not exceed 6.5 feet in height and 16.5 square feet.

Chair Harrison	No	Mr. Fleischer	No	Ms. O'Connell	Yes
Mr. Chapman	Yes	Ms. Freundlich	Abstain	Mr. Tobin	Abstain
Mr. Church	Yes	Ms. Holden	Yes	Mr. Williams	Abstain

The meeting was adjourned at 11: 20 p.m.