

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
FEBRUARY 16, 2000**

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

ABSENT: Mr. Fleischer

Ms. Kadus called the roll and announced the regular meeting of the Montclair Board of Adjustment for which notice had been given in accordance with the Open Public Meeting Act.

On motion by Mr. Chapman, seconded by Ms. O'Connell, the **Minutes of the January 19, 2000** meeting were approved.

On motion by Mr. Williams, seconded by Mr. Tobin, the **Minutes of the January 26, 2000** meeting were approved.

On motion by Mr. Chapman, seconded by Mr. Tobin, the **Minutes of the February 3, 2000** meeting were approved, Ms. O'Connell and Mr. Williams abstaining.

Vice Chair Church joined the meeting.

Chair Harrison called for the hearing on **Howard Silver, 121 Forest Street**. David Owen, Esq., appeared as attorney for the applicant and explained the proposal to improve a corner lot for commercial and residential parking.

Mr. Spivey joined the meeting.

J. Michael Petry, engineer, was sworn. Mr. Petry described the subject parcel and the neighborhood. Marked into evidence were:

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| A-1 | Existing conditions and photos on board |
| A-2 | Colored site plan on board |

He described the parcel as being unkept, and overgrown. He said that a portion of a culvert runs through the corner of the site. The property contained a dwelling which was demolished when the property was condemned by the State Dept. of Transportation to allow work on the culvert. The property had been used by neighbors for parking he said.

Mr. Silver's office complex is across the street and this lot would serve as overflow parking for those uses. The floodway and flood hazard area within which this property lies severely restricts its usage and development, he said. Mr. Petry said that DEP allows no structures to be built within the floodway, including pavement.

In support of the use variance for the commercial/residential parking area as a principal use, Mr. Petry said that the lot cannot reasonably be developed for a permitted use because of its size and its location in the floodway. It is particularly suited for parking, he explained, because its corner location allows for one-way traffic flow. It was also used as parking for a number of years after demolition of the house.

Howard Silver, owner, was sworn. He explained that there are 13 tenants of his office complex across the street, including a theater, church, exterminator, artists, etc. He said that the parking area would serve as overflow parking for those uses and for residents in the area who need off-street parking overnight.

Dan Sackerman, 11 Sylvan Place, was sworn. He asked if the sidewalks were in good condition, and whether the gravel would be a safety hazard.

Marked into evidence was:

A-3 Letter Brief, prepared by David Owen, Esq., dated Feb. 10, 2000

The Board discussed the application. On motion by Mr. Tobin, seconded by Mr. Chapman, the use variance was approved.

On motion by Ms. O'Connell, seconded by Mr. Williams, it was unanimously resolved to approve the variance for no 4 foot wide setback around the parking area.

On motion by Mr. Chapman, seconded by Vice Chair Church, it was resolved to approve the variance for a 6 foot high fence section beginning at the end of the neighbor's 6 foot fence and ending at the intersection with the easterly lot line, Ms. O'Connell voting in the negative, subject to the condition that no fence be constructed in the floodway and that the fence have two finished sides.

On motion by Mr. Williams, seconded by Vice Chair Church, it was resolved to approve the variance for gravel in lieu of pavement, Ms. Freundlich abstaining, subject to the conditions that the applicant first make application to pave the lot to DEP, and if denied, it be gravel of 3/4" quarry processed stone and swept up daily by the applicant. If paved, it must be striped in accordance with the applicant's site plan depicting a total of 10 spaces.

On motion by Vice Chair Church, seconded by Mr. Chapman, it was resolved to approve the site plan, subject to the following conditions:

1. The applicant shall make a good faith effort to obtain DEP approval to pave the parking lot. In the event DEP approval cannot be obtained, the applicant shall install 3/4 inch quarry process stone.

2. In the event the parking area is constructed with gravel, the applicant shall maintain the property on a daily basis so that any displaced gravel shall be returned to the property.

3. The parking area shall be limited to no more than 10 parking spaces and if paved, shall be striped in accordance with the site plan.

4. The applicant shall install wheel stops so as to prevent damage to the stockade fence and to delineate the parking spaces.

5. One directional sign shall be installed either on the fence if the lot is gravel, or on the pavement (an arrow) if paved.

6. The proposed fence shall be double sided and shall not exceed 4-1/2 feet in height except a 6 foot high fence shall be permitted along the northerly property line extending easterly from the existing fence to the easterly property line. No fence shall be constructed in the floodway.

The Board took a short recess.

Upon reconvening, Chair Harrison announced that the application of **Mathew Ponzio, MD, 185 Wildwood Avenue** would be carried to the February 23 meeting, second on the agenda.

Mr. Spivey left the meeting.

Chair Harrison called for a continuation of the application of **Over the Rainbow, 32 Pleasant Avenue**. Grant Gille, Esq. appeared as attorney for the applicant, and Nancy Lottinville, Esq. appeared as attorney for certain objectors. The Board members questioned the last witness, Ms. Confair, who was still under oath. Ms. Lottinville then

questioned Ms. Confair about staffing, pickup/dropoff scheduling, special events, and parking issues.

Mr. Taylor, 7 Orchard Court, asked if the location of the property was safe for children given the condition of the adjacent neighbor's rear yard.

Sharon Turner, Manor Court, asked if the applicant had a business plan.

Carolyn Wells, 17 High Street, asked about noise from the children.

Mary Jones, 10 Pleasant Avenue, asked about signage identifying the use and the number of cars generated.

Gloria Clark, 13 Amelia Street, asked if the swimming pool would be reopened.

Steven Ewing, Vice President at Schoor DePalma, consulting engineers and planners, was sworn. He explained that he took sound level readings at the subject property and at the existing property on Church Street in December 1999. The levels of noise at the existing property on Church Street, ranging from 53.2 to 55.9 dba for background noise and 56 to 59 dba for total noise with 30 children, were below the State standard for daytime activity (65 dba).

Marked into evidence was:

A-13 Figure 1. Typical Range of Common Sounds

He noted that doubling the number of children in the play area will not double the dba level. He did not anticipate that the total noise at the new site would result in a dba reading above 65 dba.

The Board questioned the witness.

Ms. Lottinville questioned the witness.

Mr. Gille indicated that he had one more witness. Due to the late hour, it was decided to continue the hearing on March 15.

On motion by Mr. Chapman, seconded by Vice Chair Church, the following **Resolution Memorializing** the approval of the variance application of **Michael Stein, 175 Eagle Rock Avenue**, was adopted, Mrs. Freundlich abstaining:

WHEREAS, Michael Stein and Ellen Schwartz, as owners, made application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J. S.A. 40:55D-70c(l) to construct an off street parking area between the main building and the curb of the street on which the 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 Zone which was denied by resolution adopted by the Board on January 20, 1999; and

WHEREAS, owners filed a complaint in lieu of prerogative writs entitled *Michael S. Stein and Ellen S. Schwartz vs. Montclair Township Board of Adjustment* captioned in the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-2433-99 seeking review of the Board's denial; and

WHEREAS, plaintiffs submitted a revised plan for settlement purposes by correspondence to the Board on November 24, 1999 which sought a variance pursuant to N.J. S.A. 40:55D-70c(l) to construct an off street parking area between the main building and the curb of the street on which the building fronts contrary to Montclair Code Section 224-29(D); and

WHEREAS, this revised plan was considered by the Board of Adjustment at its regular meeting held on January 19, 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; and

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

1. The size of the proposed off street parking area to accommodate two vehicles has been revised to 18 feet x 18 feet.

2. The off street parking area has been moved in a southerly direction toward the rear of the property so that it now extends beyond the front setback of the existing house as much as and approximately 5 feet further south than the driveway originally proposed as depicted on the revised plan. As a result of this change, the existing swing set would be moved approximately 4.5 feet to the south.

3. The revised plan eliminates the walkway from the street to the back door and creates a new walkway from the driveway to the back door. This revision enables the property owners to add additional landscaping in the area immediately to the east of the proposed parking area which will provide a substantial buffer.

4. The subject property is improved by a 2-1/2 story frame dwelling with a garage located underneath the dwelling. The driveway leading to the garage contains a substantial slope of approximately 10% grade. The driveway provides parking for one vehicle and the recessed garage provides parking for a second vehicle.

5. The subject property fronts on Eagle Rock Way and then curves sharply in a southeasterly direction at the eastern most corner of the property. In addition to the sharp curve, the road contains a grade of approximately 16% and is heavily trafficked and not well suited for the parking of vehicles.

6. Due to the unique conditions of Eagle Rock Way and the subject property, the revised plan submitted to the Board provides the most appropriate location for two off street parking spaces.

7. The location of the proposed parking space will be barely visible, if at all, and consequently will have no adverse impact on area properties.

8. The granting of the requested variance, in this unique case, is not inconsistent with the intent and purpose of the zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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(l);

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within revised plan of Michael Stein and Ellen Schwartz for a variance to construct an off street parking area to accommodate two cars is hereby approved subject to the following conditions:

1. The parking area shall be as depicted on Exhibit A-1 entered into evidence at the public hearing on January 19, 2000.

2. The parking of vehicles on the property shall be outside of the public right of way.

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

The meeting was adjourned at 11:42 p.m.