

**MINUTES OF THE BOARD OF ADJUSTMENT
FEBRUARY 13, 2002**

PRESENT: Chair Harrison, Mr. Chapman, Vice Chair Fleischer, Ms. Rock-Bailey, Mr. Susswein; also, Michael Sullivan, Esq., Ms. Kadus, Assistant Secretary, and Mr. Charreun, Planning Technician

ABSENT: Ms. Brooks, Ms. Costello, Mr. Gallardo, Mr. Haizel, and Mr. Sammet, Secretary

Assistant Secretary 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. Chapman, seconded by Ms. Rock-Bailey, the **Minutes of the January 16, 2002** regular meeting were adopted as modified, Mr. Susswein abstaining.

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Rising Mount Zion Baptist Church, 27 Monroe Place** was adopted as modified, Mr. Susswein abstaining:

WHEREAS, Rising Mount Zion Baptist Church, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct an addition to the front of the church building to contain a wheelchair/casket lift and create a new paved driveway/walkway on property designated as Lot 11 in Block 4101 on the Township tax map and located in the R-2 Two Family Zone; and

WHEREAS, the applicant requested a variance pursuant to *N.J.S.A.* 40:55D-70c to permit a 10 foot front yard setback where a minimum of 25 feet is required pursuant to Montclair Code Section 347-51; and

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Tonu Vanderer, Architect, dated June 18, 2001, revised July 2001; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on January 16, 2002 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 application contemplates the construction of a 9 foot by 10 foot

addition to the front of the church building adjacent to the existing entry stairway to be used as a wheelchair/casket lift enclosure. The addition measures 24 feet in height and includes a roof that will extend over the main entrance to the church. Also proposed is a 9-foot wide paved walkway to the street.

2. The proposal represents a benefit to the public as it facilitates access to the church for individuals with disabilities.

3. Based upon the location and floor plan of the existing church, there are no other realistic alternatives to provide the lift.

4. The proposed addition does not encroach any further than the existing front walls of the buildings on either side and is not inconsistent with the development of the neighborhood which contains a number of nonconforming front yard setbacks.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship 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 *N.J.S.A. 40:55D-70c(1)*; and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause 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 application of Rising Mount Zion Baptist Church, for a front yard setback variance is hereby approved subject to the following conditions:

1. The addition shall match the color and stucco of the existing church building.

2. The applicant may provide a drop curb at the street provided it does not allow for vehicular access.

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 Ms. Rock-Bailey, the following

Resolution memorializing the approval of the site plan and variance application of **Senior Care and Activities Center, 105 Walnut Street** was adopted as modified, Mr. Susswein abstaining:

WHEREAS, Senior Care and Activities Center, did make application to the Board of Adjustment of the Township of Montclair to construct a new one-story building and parking area for an adult day health care center on property designated as Lot 13 in Block 3209 on the Township tax map and located in the C-2 General Business and Light Manufacturing Zone; and

WHEREAS, the applicant sought site plan approval and variances as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(1)* to allow the proposed use which is not a permitted use in the C-2 Zone pursuant to Montclair Code Section 347-84.
2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow less than the required 20 foot rear yard setback pursuant to Montclair Code Section 347-88B.
3. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow a parking area within the required front yard setback pursuant to Montclair Code Section 347-89C.
4. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit a total of 25 parking stalls where a minimum of 83 are required pursuant to Montclair Code Section 347-101.
5. Variances pursuant to *N.J.S.A. 40:55D-70c* to allow the proposed wall mounted signs to exceed the maximum permitted height of 24 inches pursuant to Montclair Code Section 347-109A(4).
6. Variances pursuant to *N.J.S.A. 40:55D-70c* to allow the proposed wall mounted signs to be mounted outside the building sign location band required by Montclair Code Section 347-109A(5).

WHEREAS, the applicant submitted a site plan, floor plans and details prepared by the Mylan Architectural Group bearing a final revision date of October 26, 2001 as well as a property survey prepared by Langan Engineering and Environmental Services dated August 22, 2001; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2002 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 applicant proposes to construct a new one-story building to be utilized as an adult day health care center with on site parking which is consistent with other uses which have been found to be "inherently beneficial". See e.g., *Devlon Inc. v. Township of Lafayette Zoning Board of Adjustment*, (App. Div. 1989) (residential health care facility); *Jayber, Inc. v. Municipal Council*, 238 N.J. Super. 165 (App. Div. 1990) (congregant care housing facility for senior citizens); *Children's Inst. v. Verona Tp. Bd.*, 290 N.J. Super. 350 (App. Div. 1996) (school for handicapped children).

2. The application contemplates the demolition of two buildings currently in disrepair, the reduction of impervious coverage and the introduction of landscaping which represents a substantial aesthetic improvement to the property and results in a public benefit.

3. The Zoning Ordinance does not specifically provide a parking requirement for the proposed use. Classifying the proposed use as a commercial recreation center (the category which most nearly approximates the use) results in a requirement of 83 parking spaces which is excessive for the proposed use. The testimony established that the proposed 25 parking stalls including four in the required front yard setback is reasonable based upon site constraints and is adequate to meet the needs of the applicant.

4. The proposed size and location of the wall mounted sign facing Greenwood Avenue is aesthetically appropriate and will facilitate identification of the site. With respect to the proposed wall mounted sign facing Walnut Street, the Board finds the applicant failed to adequately meet the statutory proofs necessary to grant a variance to allow a height in excess of 24 inches and can provide a sign which conforms to this requirement. The proposed location of the wall mounted sign facing Walnut Street outside the building sign location band is appropriate, however, given site constraints.

5. The proposed use is not inconsistent with the broad range of permitted uses in the zone and will not substantially impair the intent and purpose of the master plan.

6. Based upon the Boards particular knowledge of local conditions, the proposed development is not inconsistent with the development of the neighborhood and will 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 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that with the exception of the maximum height of the Walnut Street sign, the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved 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

WHEREAS, the Board, based on the aforementioned findings, concluded that with the exception of the maximum height of the Walnut Street sign, the applicant proved that the purposes 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 would not cause 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)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of the Senior Care and Activities Center, for a variance to exceed the maximum permitted height of the wall mounted sign facing Walnut Street is hereby denied.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of the Senior Care and Activities Center, for site plan approval and variances to permit an adult day health care center, rear yard setback, number of parking spaces, parking within the required front yard setback, maximum height of the wall mounted sign facing Greenwood Avenue and wall mounted signs to be permitted to be located outside the building sign location band is approved subject to the following conditions:

1. The light fixture closest to the building on the adjacent corner property shall be relocated to the west as stipulated by the applicant.
2. The proposed use of the property shall be limited to an adult day health care center.
3. The existing 10 foot wide easement for the benefit of the adjacent DeCamp property shall be extinguished as of record.
4. The existing easement for the benefit of Block 3209, Lot 14 shall be maintained and ingress and egress shall be afforded said property owner to permit vehicles to traverse the subject property and exit onto Greenwood Avenue which shall be recorded.
5. The proposed building shall be moved forward to the right-of-way line of Walnut Street and to provide a minimum 6 foot rear yard setback.

6. The traffic island shall be reduced by 10 feet to the south to provide additional turning area.

7. The applicant shall comply with items 1 through 4 and 6 through 10 contained in the correspondence dated January 3, 2002 from W. Thomas Watkinson, III Engineering and Planning, P.C. With respect to item 5, the proposed storm water inlet shall be constructed only if the Board Engineer determines it will control runoff from the applicant's site. As to item 11, the applicant shall install granite block curb except concrete curb may be installed along Greenwood Avenue if approved by the Engineering Department. The applicant shall comply with item 13, however, should the apron require removal of existing adjacent street tree, the applicant shall replace same to be approved by the Township Arborist. The applicant shall not be required to comply with item 12.

8. The wall mounted sign facing Walnut Street shall not exceed 24 inches in height.

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

Mr. Fleischer joined the meeting.

Chair Harrison called the variance application of **Stephen Feldberg and Mary Knowles, 190 Summit Avenue**. Mr. Feldberg and Ms. Knowles, owners of property at 190 Summit Avenue, were sworn.

Marked into evidence was:

A-1 Statement in support of the variance request, prepared by the applicants, dated October 30, 2001

Ms. Knowles stated that the proposed location for the air condensers in the Summit Avenue front yard of their corner property is the most suitable location because the rear yard of the property is entirely decked and their only side yard is 3 feet wide. She stated that mature shrubs presently exist in the proposed location of the units and that these shrubs would effectively screen the units from public view and absorb the noise produced by the units. Ms. Knowles also stated that she and Mr. Feldberg have discussed their plans to locate the air condensers in their front yard with the surrounding neighbors and that no objection was raised.

The Board questioned the applicants.

Ms. Knowles stated that the deck is 4 feet high and that the contractor

who they have hired to install the units has informed them that there is not enough clearance under the deck to allow for the proper air circulation needed to operate and maintain the air condensers.

Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for public comment. None were offered.

The Board discussed the application.

On motion by Fleischer seconded by Chapman, it was resolved to approve the variance application.

Chair Harrison called the variance application of **Gordon B. Keil, 45 Brunswick Road**. Mr. Keil, owner of property at 45 Brunswick Road, was sworn. Mr. Keil stated that he has expanded the garage located on his property to provide a third bay and additional storage space and that the construction is nearly complete. He stated that he had applied for the building permits to do this work in October of 2000, and that the proposed project at the time was approved. He continued by stating that in October of 2001 he received a letter from the Township informing him that he would require a variance for the construction because of a deficient side yard setback. Mr. Keil stated that the new roof structure is the construction being cited for a variance and that the first story wall is pre-existing and does not require a variance.

Mr. Keil stated that the vertical expansion of the existing nonconforming wall of the garage does not require a variance in his opinion. He further stated that it would be unfair to stop construction and require a variance at this stage. Mr. Keil continued by stating that he plans to use the garage strictly for the parking of vehicles, storage, and a play area for his children on the second level.

Marked into evidence was:

- A-1 Submission for the application of a variance, prepared by applicant
- A-2 Original submission for Building Permit, south view elevation, prepared by the applicant

Mr. Keil stated that he relied on the permit he was issued and spent a considerable amount of time and money on the project and has built the garage according to permits.

- A-3 Photo of garage taken May 28, 2001
- A-4 Rendering of the garage, modified to meet the required side yard setback, prepared by the applicant

Mr. Keil stated that the Township had sent an inspector to his property on May 29, 2001 following complaints from neighbors concerning the construction of the garage, and that there were no violations cited at that time. He stated that the Township had ample opportunity to stop the construction at the time of the inspection as well as during the initial review of the permit.

Mr. Keil stated that the garage that has been built is an aesthetic improvement to the property and the neighborhood and enhances his property value as well as the surrounding property values. Mr. Keil further stated that the garage poses no detriment to the public good.

The Board questioned Mr. Keil.

Mr. Keil stated that the roof originally sloped in an easterly and westerly direction and that the new roof slopes in a northerly and southerly direction. Mr. Keil stated that the Building office had placed a Stop Construction Notice on the garage construction in August of 2001. He stated that this Notice was posted due to concerns over possible electric work being done without a permit and the possibility that the dormers being built onto the garage were exceeding the height limit. He further stated that these issues were resolved by mid-September and that he was given permission to proceed with the construction.

Chair Harrison called for question from the public.

Ana Hazard, 227 Valley Road, asked which of the previously existing garage walls still remain.

Robin Keil, owner of property at 45 Brunswick Road, was sworn. Ms. Keil stated that from the previously existing garage footprint, the west and north walls have remained, roughly six feet of the south wall still remains, and that the east wall has been removed entirely.

Philip Hazard, 227 Valley Road, asked if he should have been notified of the variance application, and when was permission granted to proceed with construction following the Stop Work Notice in August of 2001.

Ana Hazard, 227 Valley Road, asked if the applicant had any documentation indicating that the height calculations he supplied to the Township had been inspected for compliance.

Chair Harrison called for public comment.

Philip Hazard, 227 Valley Road, was sworn. Mr. Hazard stated that the garage that has been built is extremely intrusive to his property.

Ana Hazard, 227 Valley Road, was sworn. Ms. Hazard stated that the garage is oversized.

Marked into evidence was:

- O-1a-b Photos of garage after construction
- O-1c-e Photos of garage before construction
- O-1f-l Photos of garage after construction

Barbara and Samuel Freund, 1 Wendover Road, were sworn. Mr. Freund stated that the garage is oversized and that the drawings submitted to the Township were inaccurate. Ms. Freund stated that the garage is oversized and that the variance should not be approved.

Ted Mattox, 39 Brunswick Road, was sworn. Mr. Mattox stated his support for the variance application.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Susswein, it was resolved to deny the variance application, Chair Harrison and Mr. Chapman voting in the negative.

Chair Harrison called the variance application of **Glenn Tetzloff, 249 Midland Avenue**. Glenn Tetzloff, applicant and owner of property at 249 Midland Avenue, was sworn. Mr. Tetzloff described the proposed roofed front entry porch to be built onto the front of the existing dwelling on his property. He stated that a porch similar to what is being proposed had existed on the dwelling on his property and the adjacent properties in the past, and that these porches have since been removed, changing the front yard setback determination.

Marked into evidence was:

- A-1 Photo of the existing dwelling at 249 Midland Avenue
- A-2 Photos of neighboring dwellings

Paul Sionas, Architect, was sworn. Mr. Sionas described the proposed porch. He stated that the existing smaller porch would be removed and replaced by a new roofed porch. Mr. Sionas stated that the design of the proposed porch would be more in keeping with the front porch styles presently existing on Midland Avenue. Mr. Sionas described the variances sought by the applicant. He stated that the existing northerly side yard setback of the dwelling on the property is 5 feet and that the new porch would be aligned with this sidewall of the home. Mr. Sionas stated that the required front yard setback for the new porch is 53.1 feet and that the application

proposes 51.5-foot front yard setback. He stated that the proposed porch has a 7-foot usable width to allow for chairs and similar furnishings. Mr. Sionas stated that the Sanborn Map of the property depicts that a similarly sized front porch previously existed on the applicant's property, as well as the adjacent properties. Mr. Sionas stated that the proposed plan would not cause any detriment to the surrounding neighborhood.

The Board questioned Mr. Sionas.

Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for public comment.

Merwyn Kinkade, 257 Midland Avenue, was sworn. Mr. Kinkade stated that when he moved into his home on Midland Avenue in 1974, the applicant's home and the two adjoining properties on Midland Avenue had the large front porches depicted on the Sanborn Map. He also stated that the proposed porch would be a benefit to the property and the neighborhood.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Chapman, the variance application was approved.

Chair Harrison called **Eugene Lieber and Mary Tasker, 74 Central Avenue**. Eugene Lieber, applicant and owner of property at 74 Central Avenue, was sworn. Mr. Lieber described the enclosed porch addition proposed to be built onto the rear of his home. Mr. Lieber described the variance request and stated that the rear of his property slants sharply and that the design of the addition attempts to minimize the encroachment into the rear yard as much as possible. He stated that currently the kitchen in his home has no eat-in area and that his dining room is small and that the addition would accommodate an eating area as well as an indoor recreational space. Mr. Lieber stated that the proposed addition will add beauty and value to his home. He also stated that a six-foot stockade fence along his rear property line helps to minimize any adverse visual effects the addition may have on adjoining properties and that his rear yard is buffered by the woods that abut his rear property line.

The Board questioned the applicant.

Mr. Lieber stated that the location of the porch addition would not interfere with vehicles accessing the garage.

Chair Harrison called for questions from the public. None were offered.

Chair Harrison called for public comment. None were offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey, the variance application was approved, subject to the following conditions:

1. A 3-foot minimum separation shall be provided between the enclosed porch and the existing detached garage.
2. The addition shall be built no closer than 15 feet from the rear property line.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the meeting was adjourned.