

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
FEBRUARY 17, 1999**

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Church, Ms. Freundlich, Mr. Tobin, Mr. Fleischer; also, Michael Sullivan, Esq., Michael Zichelli, Assistant Secretary, and Tehuti Barrett, Assistant Secretary

ABSENT: Ms. O'Connell, Mr. Williams, Mr. Spivey and Ms. Kadus

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.

On motion by Mr. Chapman, seconded by Ms. Freundlich, the **Minutes of the January 20, 1999** regular meeting were adopted, Mr. Fleischer abstaining.

On motion by Mr. Chapman, seconded by Mr. Tobin, the following **Memorializing Resolution of Samuel LaForte and Anthony Miele, 47-49 New Street**, was adopted, Mr. Fleischer abstaining:

WHEREAS, Samuel LaForte & Anthony Miele, 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 to allow a six foot front yard setback where a twenty-five foot setback is required pursuant to Montclair Code Section 224-46 in connection with the construction of a new house on property designated as Lot 64 in Block 3111 on the Township Tax Map and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicants submitted a site drawing prepared by Way & Associates, architects, dated November 9, 1998 and property survey prepared by Clark Surveying & Mapping Company, dated June 9, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on January 20, 1999 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 71 feet by 100 feet and contains a residential structure destroyed by fire.
2. The applicants' proposal is to demolish the existing structure and build a new two family house. The proposed front yard setback for the new house is 6 feet as measured from the closest portion of covered porch to the front lot line. All other setback requirements will be met.

3. The existing structure has a front yard setback less than 2 feet and the average setback of the adjoining properties is 6 feet. The proposed new house will generally be in line with the adjacent properties.

4. The general design and placement of the structure on the lot is consistent with the historic streetscape of this neighborhood, and a structure that met the front yard setback requirement would detract from the overall appearance of the street.

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 N.J.S.A.40:55D-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 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 Samuel LaForte & Anthony Miele is hereby approved, subject to the following conditions:

1. The front yard setback of the covered porch be no less than 6 feet.
2. The applicants shall construct the house in strict accordance with the October 15, 1998 Resolution of the Township Historic Preservation Commission.

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 Mr. Church, the following **Memorializing Resolution of Vincent Cabbage, 75 Club Road** was adopted, Mr. Fleischer abstaining:

WHEREAS, Vincent Cabbage, 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 2 foot rear yard setback where a greater setback is required pursuant to Montclair Code Section 224-41 in connection with the construction of an addition to his detached garage on property designated as Lot 46 in Block 3706 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a site drawing and floor plan prepared by Christopher A. Mann, Architect, dated October 25, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on January 20, 1999 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 80 feet by 122 feet and contains a single-family dwelling and accessory building in the rear.
2. The applicant's proposal is to construct an addition onto the side of his existing detached garage. The proposed rear yard setback is 2 feet as measured from the closest portion of the addition to the rear lot line.
3. The existing garage is less than 2 feet from the rear property line, and the proposed one-story expansion is in line with the existing rear wall of the accessory structure.
4. Constructing an addition which met the required rear yard setback requirements onto the existing garage would result in an illogical floor plan which could not accommodate two cars.

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 Vincent Cabbage is hereby 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.

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. Freundlich, the following **Memorializing Resolution of Pasquale and Caroline De Esposito, 42 Elm Street** was adopted, Mr. Fleischer abstaining:

WHEREAS, Pasquale and Caroline DeEsposito, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70d(1) to allow a professional office for a pension/actuary business on property located at 42 Elm Street and designated as Lot 2 in Block 3109 and located in the R-2 Two Family Zone; and

WHEREAS, the applicants submitted plans prepared by Sionas Architecture, P.C. dated November 12, 1998; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 20, 1999, 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 building was constructed on or about 1957 and initially used as a dental office. Subsequently, the zoning on the property was changed rendering the use nonconforming. By resolution adopted in August 1988, the Board of Adjustment granted a use variance to permit a research medical journalism practice on the property.

2. The application contemplates a professional office for a pension/actuary business. The applicants contemplate three employees with infrequent visits from clients at the site.

3. The proposed use is less intense than the prior uses on the property over the past 40 years. As a result, approval of this application promotes the general welfare consistent with N.J.S.A. 40:55D-2a.

4. The existing one story building located on a lot approximately 30 feet by 120 feet cannot reasonably be developed for residential use and based upon the longstanding preexisting nonconforming uses on the property, the proposed site is particularly suitable for the proposed use.

5. Based upon the Board's particular knowledge of local conditions, the proposed use will not adversely impact the neighborhood.

6. The nature of the proposed use is not inconsistent with the intent and purpose of the master plan which seeks to promote appropriate uses consistent with the general welfare.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the application of Pasqual and Caroline DeEsposito for a use variance to allow a professional office for a pension/actuary business is hereby approved 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.

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

Mr. Zichelli announced the withdrawal of the application of **Kenneth and Cynthia Kresch, 62 Plymouth Street** at the applicants' request.

Chair Harrison announced that the application for **Diana and Brian Gallagher, 96 Buckingham Road**, will be continued at the March 17, 1999 meeting.

Chair Harrison called for the application of **John and Elizabeth Fazio, 6 Cornell Way**. Mr. and Mrs. Fazio, owners, were sworn. Mr. Fazio stated that they are seeking a rear yard setback variance for the installation of a roof over their existing patio. They stated that the new roof, which will replace the canvas that once covered the existing cantilever frame, will be permanent.

The following items were marked for identification:

- A-1 Photos of the frame without the canvas cover.
- A-2 Photos of the awning.

The applicants stated that because the canvas is worn out, they would like to have a permanent overhead fixture. They added that the roof addition would not enclose the porch. They stated that the proposed columns strictly serve as support for the frame and not for the installation of walls or glass.

Members of the Board asked if the applicants had considered reducing the size of the roof structure so that they may meet setback requirements and to describe the setbacks of the surrounding structures.

The applicants described the surrounding setbacks and described the design difficulties in creating a conforming roof structure.

After some discussion, on motion by Mr. Chapman, seconded by Mr. Church, the Board voted to approve the application, subject to the following condition, Ms. O'Connell abstaining:

1. Structure must remain as an open-air patio and may not be enclosed.

Chair Harrison called for the application of **Bette & Bruce Goldstein, 31 Parkway**. Mrs. Goldstein, owner, was sworn. Mrs. Goldstein stated that she and her husband are seeking a variance to construct a front porch addition. She stated that a variance is required because the porch will be forward of the average setback of the adjoining properties. Mrs. Goldstein described the proposed location and layout of the addition. She explained that the addition will have a canvas cover that would extend out 8 feet from the house, and that the porch floor would be the same height, 2 feet above grade, as the existing stoop. She then described the proposed landscaping.

Members of the Board asked Mrs. Goldstein if she has considered installing a ground level patio which would not require a variance. They also asked her to further describe the design of the porch.

Mrs. Goldstein stated that the porch addition would be similar to her next door neighbor's porch.

After some discussion, on motion by Mr. Church, seconded by Mr. Chapman, the Board voted to deny the application, Mrs. Freundlich voting to approve.

Chair Harrison called for the application of **Hawthorne Gates Estates, 21-23 Hawthorne Place**. Mr. Wayne Thomas, owner, was sworn. Mr. Thomas explained that he is seeking a variance to place an air conditioning condenser under the balcony in the front yard facing Gates Avenue. Mr. Thomas stated that he would be planting shrubbery to conceal the unit.

Mr. Thomas explained that he had considered placing the unit in the rear yard on the opposite side of the building. He stated that placing the unit in this location would cause it to run less efficiently, and make it more expensive to install and operate. Mr. Thomas also stated that the neighbors would have to listen to the noise of two condensers. He argued that placing the unit on the Gates Avenue side of the dwelling would have less of an impact because the noise of the unit could be absorbed by the bushes.

The following item was marked as an exhibit.

A-1 Subdivision map of lots 11.01 and 11.02 prepared by Hingos Inc., dated June 1, 1994.

Members of the Board asked the applicant to describe the exact inefficiencies of placing the unit in the rear and to review other conforming locations.

Mr. James Walker of 24 Prospect Terrace spoke in opposition to the application. He argued that the overall design and subsequent construction of the houses were poorly done and were without consideration for the neighborhood.

The Board discussed the application. On motion by Mrs. Freundlich, seconded by Mr. Church, the application was unanimously denied.

On motion by Mr. Chapman, seconded by Mr. Church, the Board voted to go into closed session.

Upon reconvening in open session, Chair Harrison announced that Barry Pote has filed a suit against the Board. Chair Harrison stated that the Board has authorized Board Attorney Sullivan to defend the Board's decision to deny the application of **Mr. Barry Pote, 72 Greenwood Avenue.**

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