

MINUTES OF THE BOARD OF ADJUSTMENT
March 15, 2000

PRESENT: Chair Harrison, Vice Chair Church, Mr. Chapman, Mr. Fleischer, Ms. Freundlich, Ms. O'Connell, Mr. Tobin, Mr. Williams; also, Michael Sullivan, Esq., Karen Kadus, Secretary and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Spivey

Ms. 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 Meeting Act.

On motion by Mr. Chapman seconded by Vice Chair Church, the **Minutes of the February 16, 2000** regular meeting were adopted.

Ms. Kadus stated that the **Minutes of the February 23, 2000** meeting had not been completed.

On motion by Mr. Tobin, seconded by Mr. Chapman, the following **Resolution Memorializing** the approval of the site plan and variance application of **Howard Silver, 121 Forest Street** was adopted as modified, Mr. Fleischer abstaining:

RESOLUTION
BOARD OF ADJUSTMENT
TOWNSHIP OF MONTCLAIR

Howard Silver
121 Forest Street

WHEREAS, Howard Silver, as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval to create a parking area as a principal use on property at 121 Forest Street and designated as Lot 1 in Block 3304 on the Township tax map and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A.* 40:55D-70d to create a parking area as a principal use which is not permitted in the R-2 Zone pursuant to Montclair Code Section 224-42.

2. A variance pursuant to *N.J.S.A.* 40:55D-70c to permit the parking area to be constructed with gravel rather than pavement as required by Montclair Code Section 224-92.

3. A variance pursuant to *N.J.S.A.* 40:55D-70c to permit installation of a 6 foot high stockade fence where fence heights over 4-1/2 feet are restricted to rear yards pursuant to Montclair Code Section 224-23.

4. A variance pursuant to *N.J.S.A.* 40:55D-70c for failure to provide a 4 foot wide landscaped setback required by Montclair Code Section 224-94.

WHEREAS, the applicant submitted a property survey prepared by Advance Land Services dated June 26, 1998 as well as a site plan, boundary and topographic survey prepared by McCumsey-Petry, P.C. dated October 11, 1999; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 16, 2000 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been served with notice; and

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

1. The subject property is a 33 foot by 150 foot vacant lot located at the intersection of Forest Street and Oak Place which is bisected by the floodway limit line.

2. The property previously contained a multi-family dwelling for more than 50 years. In the late 1990's, the property was condemned by the State and/or Essex County and the structure was removed in order to improve the bridge and road surfaces on Forest Street and Oak Place.

3. The property is located in close proximity to a variety of mixed uses. In particular, the subject property is adjacent to the C-2 Zone which includes the Walnut Plaza commercial complex which contains 13 different tenants.

4. Based upon the unique physical characteristics of the lot, it cannot reasonably be developed for residential use. The property is, however, particularly suited for the proposed use given the nature of area uses and the fact that it will promote the public welfare by providing needed off-street parking.

5. The Board finds it would be preferable to pave the parking lot rather than utilize gravel as proposed but recognizes DEP approval would be required. In the event DEP approval cannot be obtained, the applicant's utilization of small gravel combined with daily maintenance would be the most appropriate alternative.

6. Due to the physical constraints of the property, the applicant's request for a variance so as not to provide a 4 foot wide landscaped setback is reasonable and any adverse visual impact would be minimized by the installation of the stockade fence.

7. With respect to the applicant's request to allow a 6 foot high fence where fences over 4-1/2 feet are restricted to rear yards in the Zone, the Board finds such a fence would be appropriate only along the northerly property line extending easterly from the existing fence to the easterly property line. The proposed fence along the easterly side of the property as well as the fence along the northerly side of the property

to the west of the existing fence shall not exceed 4-1/2 feet mandated by the ordinance. The fence as restricted herein will provide sufficient screening and a desirable visual environment consistent with the purposes of the Municipal Land Use Law.

8. Based upon the Board's particular knowledge of local conditions, the applicant's proposal, subject to the conditions below, will not adversely impact area properties and is not inconsistent with 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 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

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)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Howard Silver, for site plan and variances is hereby approved 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.

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 announced the variance application of **Joseph Quinones, 428 Grove Street**. Mr. Quinones, applicant and owner, was sworn. Mr. Quinones stated that he proposes to construct a one-story addition on the rear of his dwelling which would provide his family additional living space and eliminate the existing garage which is located within the principal structure. He described the addition and its placement on the site. Mr. Quinones also stated that he proposes to construct a detached garage on his property. A variance was requested for the new addition to allow a front yard setback which is not in keeping with the front yard setback of the adjacent house on Wildwood Avenue.

The Board questioned the applicant.

The meeting was open to public questions and comments. None were made.

The Board discussed the application. On motion by Vice Chair Church, seconded by Mr. Chapman it was unanimously resolved to approve the variance, subject to the following conditions:

1. The garage shall be no closer to Wildwood Avenue than the wall of the new addition.
2. The proposed driveway shall be paved.

On motion by Vice Chair Church, seconded by Mr. Fleischer, the following **Resolution Memorializing** the approval of the site plan and variance application of the **Montclair Art Museum, 3 South Mountain Avenue/Bloomfield Avenue/St. Luke's Place** was adopted as modified, Mr. Chapman, Ms. O'Connell and Mr. Williams abstaining:

RESOLUTION
BOARD OF ADJUSTMENT
TOWNSHIP OF MONTCLAIR

Montclair Art Museum
3 South Mountain Avenue
Preliminary & Final Site Plan, Variances and Exception

WHEREAS, Montclair Art Museum, made application to the Board of Adjustment of the Township of Montclair for preliminary and final site plan approval in connection with a multi-use addition to the museum building and enlargement of the parking area on property located at 3 South Mountain Avenue and designated as Lots 1, 2, 3 and 30 in Block 1406 and located in the RO(a) One Family Residential Zone and 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(1)* in that museums are not permitted uses in the R-3 Garden Group Zone pursuant to Montclair Code Section 224-48.
2. A variance pursuant to *N.J.S.A. 40:55D-70d(3)* to allow 137 parking spaces where a minimum of 186 parking spaces are required pursuant to Montclair Code Section 224-25C(2)(b).
3. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow a 19 ½ foot front yard setback from Bloomfield Avenue where a minimum of 50 feet is required pursuant to Montclair Code Section 224-34B(2)(a).
4. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow building height of 44 feet where a maximum of 40 is permitted pursuant to Montclair Code Section 224-34A.
5. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow off street parking areas to be located between the main building and the curb of the street which is prohibited pursuant to Montclair Code Section 224-35D.

6. A variance pursuant to *N.J.S.A.* 40:55D-70c to allow two free standing signs which exceed the maximum number and maximum permitted sign area permitted by Montclair Code Section 224-98C.

7. A variance pursuant to *N.J.S.A.* 40:55D-70c to allow four banner signs which are prohibited by Montclair Code Section 224-97E.

8. A variance pursuant to *N.J.S.A.* 40:55D-70c to exceed the maximum permitted fence height contrary to Montclair Code Section 224-23.

9. A variance pursuant to *N.J.S.A.* 40:55D-70c to permit more than the maximum of four parking spaces allowed in the zone pursuant to Montclair Code Section 224-32.

10. An exception pursuant to *N.J.S.A.* 40:55D-51b to permit undersized parking spaces.

WHEREAS, the applicant submitted floor plans, site plan and landscape plans prepared by Beyer, Blinder, Belle, Architects and Planners, L.L.P. dated October 22, 1999 and bearing a final revision date of February 23, 2000; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on January 26, February 3, and February 23, 2000 at which time it was established that notice was properly published and the property owners within 200 feet of the subject property had been served with notice; and

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

1. The Museum is a non-profit, privately funded philanthropic institution which has existed within the Township for over 85 years. The Museum specializes in American and Native American Art and contains a vast collection of work by 19th

Century Montclair artist George Inness. The use advances the purposes of the Municipal Land Use Law and serves the general welfare by providing important educational and cultural benefits.

2. The site is particularly suited for the proposed use given its large size, extensive landscaping, central location and longstanding use as a museum.

3. One of the goals contained in the 1999 Township Master Plan Reexamination is to "...facilitate the growth of the artist community to stimulate the local economy and to market Township artists". Developing the downtown by focusing on art and culture is only possible because of the importance of the Montclair Art Museum.

4. The addition will preserve the historic integrity of the original building, provide handicap accessibility and improve functionality.

5. With respect to the proposed front yard setback on Bloomfield Avenue, the building is already nonconforming and the location of the proposed addition is the most appropriate given the existing structure and physical constraints of the property.

6. The proposed 44 feet building height is appropriate as it will allow for a skylight to provide natural light into the public area. The increase in height over the maximum permitted by ordinance will be barely discernable, if at all, from the street.

7. The plan provides 137 parking spaces which is sufficient to accommodate normal usage of the museum. Additional on site parking could be provided, however, it would necessitate removal of landscaping.

8. The site plan includes off street parking between the main building and St. Lukes Place. The building has frontage on three streets and there is no realistic way to

provide parking in compliance with the ordinance. The proposed location is the most appropriate given the physical constraints of the site.

9. The two proposed free standing signs to be located at the corners of Bloomfield Avenue and South Mountain Avenue and St. Lukes Place and Bloomfield Avenue will provide a public benefit in that they will facilitate identification of the museum and increase vehicular and pedestrian safety.

10. The application contemplates four proposed banner signs which project 6 feet 7 inches off the building each at a width of 4 feet 3 inches and height of 16 feet 3 inches. The proposed banner signs are consistent with museum use and will typically be used to identify special events.

11. The requested exception to permit undersized parking spaces is appropriate as such spaces can be designated for use by small cars.

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 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

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)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of the Montclair Art Museum for preliminary and final site plan, variances and exception is hereby approved subject to the following conditions:

1. The applicant shall file a perimeter deed consolidating Lots 1, 2, 3, and 30 in Block 1406 into a single lot.
2. The number and location of banners and free standing signs shall be as shown on Exhibit A-38 and no larger. No additional signs or banners shall be permitted.
3. The applicant shall obtain soil erosion and sediment control plan certification from the Hudson-Essex-Passaic Soil Conservation District.
4. The applicant shall obtain Essex County Planning Board approval.
5. The applicant shall satisfy condition 4 contained in the Board Engineer's reports dated January 13 and February 2, 2000.
6. The proposed light fixtures shall conform to Exhibit A-17.

7. All exterior lighting in the parking area shall not exceed 12 feet in height and the lights in the vicinity of the southerly property line shall be shielded so as to prevent spillover onto adjacent properties.

8. The proposed fence shall be 7 feet and solid and conform to the maximum size permitted by ordinance except that along the southerly side beginning at a point in alignment with the front edge of the foundation of the adjacent house, on Lot 4 in Block 1406 and shall conform to Exhibit A-32.

9. The existing fence that runs parallel to St. Luke's Place shall be removed.

10. The applicant shall adhere to the Board Engineer's recommendations on any drainage improvements related to the drainage structure at 29 South Mountain Avenue on its property as well as the adjacent property to the extent the owners consent.

11. The applicant propose with a maintenance program for the drainage structure on the subject property to be approved by the Board Engineer.

12. The revised drainage plans shall be reviewed by the Board Engineer and the applicant shall comply with all requirements imposed.

13. The applicant shall install mixed evergreens which grow to a height of at least 15 feet in the 10 foot planting strip along the southerly side of the property.

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 announced the variance application of **Over the Rainbow Nursery, Inc., 32 Pleasant Avenue**. Mr. Grant Gille explained that their traffic expert had not yet arrived to provide testimony. The Board agreed to hear the other scheduled application first.

Chair Harrison announced the variance application of **Scott and Lisa Niedermeyer, 32 Prospect Avenue**. Mrs. Lisa Niedermeyer who is applicant and owner, Mr. Francis Klein, Architect, and Ms. Jane Bonasera, Landscape Architect, were sworn. Mrs. Niedermeyer stated that she and her husband propose to construct a three car detached garage on their property. Mrs. Niedermeyer stated that the garage's proposed location was chosen in order to prevent the loss of an existing copper beech tree and to enhance the safety of her children's backyard play area by reducing any encroachment on it from the necessary driveway. A variance was requested to allow a side yard setback of six feet in lieu of the twelve foot minimum.

Mr. Francis Klein, Architect, described the subject parcel and adjacent properties. Marked into evidence was:

- A-1 Site plan and photograph on board
- A2a-f Photographs of the rear yard

Mr. Klein described an adjacent property to that of Scott and Lisa Niedermeyer, and how a garage on that property is located at a similar setback distance to what the applicants are proposing.

Ms. Jane Bonasera, Landscape Architect, described the copper beach tree and its aesthetic value to the property and neighborhood. She also described a row of evergreen plantings to be placed along the side yard setback of the garage. Marked into evidence was:

- A-3 Excerpt from a landscaping book

The Board questioned the applicant.

The meeting was open to public questions and comments. None were made.

The Board discussed the application. On motion by Mr. Chapman, seconded by Mr. Fleischer, it was resolved to approve the variance, subject to the following conditions:

1. The applicants' satellite antenna shall be brought into compliance with the zoning ordinance.
2. Taxes shall be paid to date.
3. A row of evergreen shrubs shall be planted along the 6 foot side yard setback of the garage.
4. The garage shall be one story only.

Chair Harrison announced the variance application of **Over the Rainbow Nursery, Inc., 32 Pleasant Avenue**. Mr. Grant Gille explained that their traffic expert was not available to provide testimony. Nancy Lottinville, attorney for the objectors stated that her two witnesses could not be called before the applicant's traffic expert. Ms. Kadus announced an available meeting date of April 5, 2000. Chair Harrison asked the parties involved if they would be available on April 5, 2000. All parties were available and agreed to continue on April 5, 2000. Chair Harrison announced that the application will be continued at the April 5, 2000 meeting and that no further notice will be given.

The meeting was adjourned at 8:40 p.m.