

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

PRESENT: Vice Chair Chapman, Ms. O'Connell, Ms. Freundlich, Mr. Fleischer, Mr. Spivey; also, Michael Sullivan, Esq., Michael Zichelli, Assistant Secretary, and Tehuti Barrett, Assistant Secretary

ABSENT: Chair Harrison, Mr. Church, Mr. Tobin, Mr. Williams, 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. Fleischer, seconded by Ms. Freundlich, the **Minutes of the February 17, 1999** regular meeting were adopted, Ms. O'Connell and Mr. Spivey abstaining.

On motion by Mr. Fleischer, seconded by Ms. Freundlich, the **Minutes of the Closed Session of the February 17, 1999** regular meeting were adopted, Ms. O'Connell and Mr. Spivey abstaining.

On motion by Mr. Fleischer, seconded by Mr. Chapman, the following **Memorializing Resolution of John and Elizabeth Fazio, 6 Cornell Way**, was adopted, Ms. O'Connell, Mr. Spivey abstaining:

WHEREAS, John and Elizabeth Fazio, owners of property at 6 Cornell Way, 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 24 foot rear yard setback where a greater setback is required pursuant to Montclair Code Section 224-34C in connection with the construction of a roof addition on property designated as Lot 79 in Block 4702 of the Township Tax Map and located in the R-0(a) Mountainside Zone; and

WHEREAS, the applicants submitted plan and elevations prepared by James P. DePalma, Architect revision dated December 14, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 17, 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 applicants' proposal is to construct a one-story roof over the patio on the southerly side of their single-family home.

2. The proposed southerly roof addition meets the height and side yard setback requirements, but does not meet the minimum required rear yard setback of

thirty feet.

3. The property forms an irregular pentagon shaped lot causing the eastern portion of the rear yard to be unusually shorter thus making it difficult to conform to the rear yard setback requirement.

4. The adjacent property to the west has a deck that sits along the same setback line as the proposed roof, and the 24-foot rear yard setback will be generally in line with the surrounding structures.

5. The installation of the roof will not result in a significant reduction of natural light that the area would otherwise receive if the roof were not to be installed.

WHEREAS, the Board, based on 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 RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of John and Elizabeth Fazio is hereby approved subject to the following condition:

1. The structure must remain an open-air patio and may not be enclosed.

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. Fleischer, seconded by Ms. Chapman, the following **Memorializing Resolution of Bette and Bruce Goldstein, 31 Parkway** was adopted, Ms. Freundlich, Ms. O'Connell, Mr. Spivey abstaining:

WHEREAS, Bette and Bruce Goldstein, 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 construct a front porch addition pursuant to Montclair Code Section 224-40B(1) on property designated as Lot 31 in Block 1608 on the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Capasco and Hingos, Inc., dated February 5, 1990, and a partial first floor plan view prepared by Susan Chandler, Architect, dated January 19, 1999, and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 17, 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 is an interior lot, which measures approximately 58 feet by 170 feet and contains a 2-1/2 story single family dwelling and a detached garage.

2. The applicants' proposal is to construct a 26-foot by 8-foot front porch addition at an elevation of 2 feet above grade with a cantilevered canvas cover that can be rolled up and stored. A variance is necessary due to the fact that the porch will not meet the average front yard setback of the adjacent properties.

3. The applicants stated that the addition would be similar to there next door neighbor's porch and not negatively impact the community.

4. The Board was not convinced that the applicants explored alternative plans, which conform to the zoning ordinance, such as a patio. The Board also determined that the location of the proposed front porch addition would protrude beyond the setback line for the front yard reducing open space and would be a detriment to the streetscape and neighborhood which is inconsistent with the intent and purpose of the zoning ordinance.

5. The applicants 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 on the aforementioned findings, concluded that the applicants failed to prove peculiar and exceptional practical difficulties and exceptional and undue hardship in their efforts to comply with, and meet the proofs required to support the granting of the variance pursuant to Montclair Code Section 224-40B(1); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Bette and Bruce Goldstein is hereby denied; and

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. Fleischer, seconded by Mr. Freundlich, the following **Memorializing Resolution Hawthorne Gates Estates, 21-23 Hawthorne Place** was adopted, Ms. O'Connell, Mr. Spivey, abstaining:

WHEREAS, Hawthorne Gates Estates, 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 install an air conditioning condenser unit in the front yard pursuant to Montclair Code Section 224-47 on property designated as Lot 11.01 in Block 3108 on the Township Tax Map and located in the R-2 Two Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Richard Hingos, Inc., dated December 2, 1998, to which the applicant added the location of the proposed air conditioning condenser unit; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 17, 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 is a corner lot which measures approximately 79 feet by 127 feet and contains a two family dwelling.
2. The applicant's proposal is to install a ground mounted air conditioning unit in the front yard facing Gates Avenue.
3. The applicant argued that due to the structural configuration of the dwelling, it would be difficult, inefficient and expensive to place the air conditioning unit in the rear of the property. Due to that fact that the dwelling is a new building, the Board was not convinced the applicant had adequately explored alternatives with respect to placing the air conditioning unit in a conforming location on the property, nor proved the inefficiency of placing the condenser unit in a conforming location.
4. The location of the proposed air conditioning condenser unit represents an unreasonable visual intrusion into the front yard reducing open space and would be a detriment to the streetscape and neighborhood which is inconsistent with the intent and purpose of the zoning ordinance.
5. 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 on the aforementioned findings, concluded that the applicant had not met the proofs required to support the granting of the variance from Montclair Code Section 224-47; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Hawthorne Gates Estates is hereby denied; and

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.

Mr. Zichelli announced that the application for **Diana and Brian Gallagher, 96 Buckingham Road** is withdrawn at the applicants' request.

Vice Chair Chapman called for the application of **Todd H. Behling, 70A North Willow Street**. Mr. Behling, owner, was sworn. Mr. Behling stated that he is seeking a front yard parking variance to create two parking spaces. He described the layout of the property. He stated that due to the narrowness of the lot and the intrusion of Tony's Brook through a portion of the lot, it is not possible to provide parking anywhere on lot except in front of the house. Mr. Behling stated that due to the high volume of vehicles parked all along this block coupled with the parking restrictions for the street it is extremely difficult to park near his house.

The following items were marked for identification:

- A-1 Property survey by Martin A. Grant dated 9/8/97.
- A-2 Application pamphlet stamp dated February 23, 1999.

Mr. Behling noted that his situation is comparable to his immediately adjoining neighbors who were approved for a front yard parking variance for three parking spaces. He stated that he is seeking a variance for only two parking spaces.

The meeting was open to public comment.

Mr. Russell Knight of 66 North Willow came forth and was sworn. Mr. Knight asked the Board to deny the front yard parking variance arguing that it will only add to deterioration of the neighborhood. He added that residents who are offered such variance often abuse the privilege, and park their cars outside of the permitted area.

The following items were marked for identification:

- O-1-3 Photographs, dated March 7, 1999, of a parked car in front of 70 North Willow Street overhanging into public right-of-way.
- O-4 & O-5 Photographs, dated March 8, 1999, of the proposed parking area for 70A North Willow Street
- O-6 Photograph, dated March 16, 1999, of a car in front of a house on Sylvan Place overhanging into the right of way.

O-7 & O-8 Photographs, dated March 16, 1999, taken from the corner of Erie Street and Sylvan Place, of a parked car overhanging in the public right-of-way.

Mr. Knight stated that the applicant should explore the possibility of renting a parking space in one of the nearby lots.

Mr. Behling stated that he has asked many of the surrounding property owners for parking and has not been successful.

Mr. Lee Osborne of 70 North Willow Street was sworn. Mr. Osborne stated his support for the application and reiterated the difficulty in finding adequate parking arrangements in the community.

After some discussion, on motion by Mr. Fleischer, seconded by Ms. O'Connell, the Board voted to approve the application, subject to the following conditions:

1. The landscaping proposed along the façade of the house shall be reduced in size to allow for the accommodation of a 10' wide by 17' long parking space.
2. All cars parked on the property must not extend beyond the property line into the public right of way.
3. One parking space per dwelling unit shall be made available to each of the residential units.

Vice Chair Chapman announced that due to the lack of seven members able to hear the application, the hearing of the use variance application of **James A. Schweppe, 732-734 & 736 Valley Road** will be carried to the next regular meeting of April 14, 1999.

On motion by Mr. Fleischer, seconded by Ms. O'Connell, the Board went into closed session.

The Board opened the meeting into public session. Vice Chair Chapman announced that the Board has authorized Board Attorney Sullivan to pursue litigation filed by **Michael Stein, 175 Eagle Rock Way.**

On motion by Mr. Fleischer, seconded by Ms. O'Connell, the meeting was adjourned.