

**MINUTES OF THE BOARD OF ADJUSTMENT
APRIL 11, 2001**

PRESENT: Chair Harrison, Vice Chair Fleischer, Mr. Chapman, Ms. Costello, Mr. Haizel, Ms. Rock-Bailey, Mr. Susswein; also, Michael Sullivan, Esq., and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Gallardo and Secretary Kadus

Mr. Sammet 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 March 21, 2001** regular meeting were adopted as modified, Chair Harrison abstaining.

On motion by Mr. Chapman, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Mark and Maria Tylek, 321 Highland Avenue**, was adopted, Chair Harrison abstaining:

WHEREAS, **Mark and Maria Tylek**, owners of property at **321 Highland Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow an 4.78 foot side yard setback where a greater setback is required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of an addition on property designated as Lot 3 in Block 705 on the Township of Montclair Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Mark Lee Baker, Licensed Land Surveyor, dated November 21, 2000 and a site plan prepared by the applicant, received by the Planning Department on January 8, 2001; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 21, 2001 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 were granted a front yard setback variance from the Board of Adjustment on July 15, 2001.

2. The addition as constructed has resulted in a side yard setback deficiency in that the 4.78 foot setback is less than the 6 foot minimum setback required.

3. The resulting side yard setback deficiency was due to an error by the land surveyor, architect or building contractor in the planning and construction phases of the project.

4. The encroachment is minor in nature and does not significantly impact the adjacent property.

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 NJSA40:55D-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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Mark and Maria Tylek is hereby approved;

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. Chapman, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Jennie Brown, 3 Park Terrace**, was adopted as modified, Chair Harrison abstaining:

WHEREAS, Jennie D. Brown, owner of property at **3 Park Terrace**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a rear yard setback less than that required pursuant to **Montclair Code Section 347-46B** and from **Montclair Code Section 347-46A(2)(b)** to allow for a lesser front yard setback than that permitted in connection with the expansion of a two-car garage on property designated as Lot 12 in Block 2805 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Alfred J. Clark, LS, dated January 7, 1969, and a site plan and elevations prepared by Arthur S. Katz that illustrates the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 21, 2001 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, approximately 11,960 square feet in size, and contains a 2 ½ story single-family dwelling.
2. The applicant's proposal is to extend a two-car garage located in the northeasterly corner of the property.
3. The existing two-car garage has a rear yard setback of approximately 1.0 feet, and a front yard setback from Alexander Avenue of approximately 20 feet.
4. The proposed rear yard setback will equal that of the existing garage.
5. The applicant's vehicle does not fit inside the existing garage requiring the applicant to keep the garage door open at all times. This condition results in the exposure of the vehicle to the elements and theft, and the garage to infestation with pests.
6. The extension of the garage towards Alexander Avenue will measure 4 feet 8 inches in length and will accommodate the applicant's vehicle allowing the applicant to close the garage door.

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 NJSA40:55D-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 rear yard and front yard setback 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 the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Jennie D. Brown is hereby approved, subject to the following conditions:

1. The side wall of the garage shall be constructed on the existing setback lines.
2. The extension shall not exceed 4 feet 8 inches in length.

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. Haizel, the following Resolution memorializing the approval of the variance application of **Marc D. Charney, 266 Midland Avenue**, was adopted as modified, Chair Harrison abstaining:

WHEREAS, Marc D. Charney, owner of property at **266 Midland Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c from **Montclair Code Section 347-45B(2)** to allow for a front yard setback less than that required and from **Montclair Code Section 347-45C(2)** to allow for a side yard setback less than that required in connection with the construction of an addition and a screened porch on property designated as Lot 10 in Block 2501 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by James M. Helb, PE, LS, PP, dated May 5, 1999 and a site plan, floor plan and elevations prepared by Lawrence Korinda, Architect, dated December 6, 2000; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 21, 2001 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 approximately 6,250 square feet in size and contains a two and one half story single-family dwelling.
2. The applicant's proposal is to construct a screened porch onto the Holland Terrace frontage of the dwelling and also to construct an addition to the westerly side of the dwelling to provide for a breakfast room and laundry room to accommodate the applicant's family.

3. The proposed front yard setback along Holland Terrace is approximately 8 feet as measured from the closest portion of the screened porch.

4. The proposed side yard setback measures approximately 4.9 feet as measured from the closest portion of the addition.

5. The screened porch is parallel to the existing wall of the house fronting on Holland Terrace and all height, side and rear yard setback requirements will be met.

6. The one-story addition is parallel to the existing side wall of the dwelling and all height and rear setback requirements are met.

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 NJSA40:55D-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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Marc D. Charney is hereby approved subject to the following conditions:

1. The screened porch shall be no closer to Holland Terrace than the wall of the existing dwelling.

2. The addition shall be no closer to the side property line than the wall of the existing dwelling.

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.

Chair Harrison joined the meeting.

On motion by Vice Chair Fleischer, seconded by Mr. Haizel, the **Minutes of the March 7, 2001** regular meeting were adopted, Mr. Chapman and Ms. Rock-

Bailey abstaining.

On motion by Vice Chair Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the denial of the variance application of **Petia Morozov, 532 Highland Avenue**, was adopted as modified, Mr. Chapman abstaining:

WHEREAS, Petia Morozov, as 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 permit construction of a single family dwelling on a vacant lot with lot width of 54 feet where a minimum of 60 feet is required by Montclair Code Section 347-44 on property designated as Lot 16 in Block 901 on the Township tax map and located in the R-1, One Family Zone; and

WHEREAS, the applicant submitted a boundary and topographic survey dated July 24, 2000 and a variance map dated August 21, 2000 prepared by McCumsey-Petry, P.C.; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on December 13, 2000 and March 7, 2001 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; and

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

1. The subject property (Block 901, Lot 16) is vacant land located at 532 Highland Avenue and has dimensions of 54 feet by 150 feet.
2. The adjacent parcel to the south (Block 901, Lot 15) is located at 530 Highland Avenue and has dimensions of 108 feet by 154 feet and is improved with a single family home constructed on or about 1950.
3. The aforementioned Lots 15 and 16 were in common ownership between February 1953 and December 1966. Although it was not established when the 60 foot minimum lot width requirement was first enacted, it is uncontroverted that as early as 1957 the requirement was in place.
4. During the period of common ownership, the property was used as a single parcel and the property owner's expert planning witness acknowledged the lots had merged.
5. The "hardship" with respect to nonconforming lot width was self created by a predecessor in title and not caused solely by the strict application of the zoning ordinance upon the particular property, which is insufficient for granting a variance under *N.J.S.A. 40:55D-70c(1)*.

6. The property owner offered insufficient evidence regarding attempts to purchase additional land and sell the subject property in order to alleviate the hardship. No documentation was offered into evidence, nor was the price established and thus such testimony was not persuasive to the Board, particularly in relation to the Steep Slope Ordinance.

7. The applicant failed to offer any testimony that any purposes of the Municipal Land Use Law would be advanced by the granting of this application or that any public benefit would arise pursuant to *N.J.S.A. 40:55D-70c(2)*.

8. During the course of the proceedings, the applicant offered two substantially different proposals for construction of a single family home. Neither plan was presented in sufficient detail to prove that it would not require additional variances or exceptions and would not cause substantial detriment to the public good.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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 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 not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove 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 Petia Morozov for a lot width variance to construct a single family home is hereby denied.

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 hearing on the application of **Jerome Gibbs, 124 Claremont Avenue**. Jerome Gibbs, applicant and owner, was sworn. Mr. Gibbs stated that he has owned the dwelling since 1971 and had previously used a neighbor's driveway for off-street parking. Mr. Gibbs further stated that the driveway is no longer available for use by him or his wife. Mr. Gibbs described how he does not want to partially pave his front yard for a driveway but he is in need of parking for two cars.

The Board questioned Mr. Gibbs.

Mr. Gibbs also stated that he has contacted other neighbors in an attempt to find parking, but none is available. He described how the location of the house and fence on his property prevents him from continuing the driveway to the rear yard.

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

The Board discussed the application.

On motion by Vice Chair Fleischer, seconded by Mr. Chapman, it was resolved to approve the variance requests.

Chair Harrison called for the continuation of the variance application of **Omnipoint Communications, 5 Roosevelt Place**. Richard Schkolnick, Esq., appeared as attorney for the applicant. Mr. Schkolnick reviewed the application and hearings to date.

Mr. Schkolnick called Timothy Kronk, Professional Planner, Cellular Realty Advisors, he was sworn.

Marked into evidence was:

A-4 Photographs on Board.

Mr. Kronk stated that the proposed location of the antennas would result in a minimal visual impact and they would not be visible from the public library at all.

Marked into evidence was:

A-5 Set of plans on 3 sheets, dated April 11, 2001.

A-6 Set of 10 photographs

Mr. Schkolnick called Lloyd Peery, Radio Frequency Engineer, Berliner Communications, he was sworn. Mr. Peery stated that antenna will be removed from a boom that exists on the penthouse and mounted to the wall of the penthouse instead. He also stated that the existing equipment cabinets will be moved from the front of the penthouse in order to allow for alternative antenna locations. Mr. Peery described the heights of the proposed antennas and stated that 3 antennas proposed will exceed the height of the penthouse by 18 inches. Mr. Peery continued by describing 6 different alternatives that he has formulated for antenna placement on the top of the building.

The Board questioned Mr. Peery.

Chair Harrison called for questions for Mr. Peery. None were offered.

Mr. Kronk came forward. He stated that the subject property is located in 2 separate zoning districts. He described Montclair's telecommunications ordinance and stated that all but 1 of the eight conditions in the ordinance have been met. Mr. Kronk stated that the deviation from the ordinance does not rise to a level to justify a denial of the variance request.

Mr. Kronk continued by stating that the 6 story building provides an excellent site for telecommunications equipment, that no noise or odors will come from the use, that the site will be unmanned and that no traffic impacts will occur. Mr. Kronk also described how the plans have been modified to reflect Board comments.

The Board questioned Mr. Kronk.

Chair Harrison called for questions for Mr. Kronk. None were offered.

Chair Harrison called for public comment. None was made.

The Board discussed the application.

On motion by Vice Chair Fleischer, seconded by Ms. Rock-Bailey, it was resolved to approve the variance request, subject to the following conditions:

1. The antennae shall not exceed the height of the existing structure on which they are mounted with the exception of the 3 antennae in the 150 degree sector which shall not exceed the height of the structure by more than 18 inches.

2. The antennae shall be painted to match the color of the structure to which they are affixed.

Chair Harrison announced the variance application of **Edmund and Marina Gaetjens, 34 Clinton Avenue**. Mr. Chapman recused himself. Edmund and Marina Gaetjens, applicants and owners, and Frances Klein, Architect, all were sworn.

Mr. Gaetjens stated that they plan to demolish an existing garage on their property and construct a new one. He described the layout of his property and said that an old tree in their backyard prevents them from meeting the setbacks required in the ordinance. He continued by stating that a paving block driveway is proposed along with new landscaping.

The Board questioned Mr. Gaetjens.

Mr. Gaetjens continued by stating that the proposed garage matches the architectural style of the existing dwelling and that the proposed location is the best location aesthetically. He also described locations of other detached garages in the

neighborhood and stated that their proposed location is consistent with what can be seen in the neighborhood.

Chair Harrison called for questions and comment from the public.

Rachel and Rodney Roth, both of 32 Clinton Avenue, were sworn. Mr. Roth stated that the proposed location of the garage may cause damage to a tree on their property. They described how the proposed garage setback is only 1.5 feet and their tree is only 30 inches from the property line.

Mr. Klein stated that the applicants are meeting the rear setback requirement and that the side yard setback requirement can not be met due to an existing tree on the applicants' property. He further stated that the existing garage is in poor shape and must be replaced.

The Board questioned the applicants.

After discussion, the applicants decided to revise their plans and present them to the Board at the May 16, 2001 regular meeting.

Chair Harrison called for a **Discussion of the Annual Report**.

On motion by Vice Chair Fleischer, seconded by Ms. Rock-Bailey, the Board resolved to approve the Year 2000 Annual Report as modified.

Assistant Secretary Sammet announced the postponement of the variance application of **Two Countries Construction, 18-20 Willard Place** to the May 16, 2001 regular meeting of the Board at the request of the applicant.

The meeting was adjourned.