

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**April 12, 2000**

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

ABSENT: Mr. Chapman, Mr. Williams

Ms. Kadus called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meeting Act.

On motion by Mr. Tobin, seconded by Vice Chair Church, the **Minutes of the April 5, 2000** regular meeting were adopted as modified.

Mr. Spivey joined the meeting.

On motion by Vice Chair Church, seconded by Chair Harrison, the following **Resolution Memorializing** the approval of a variance application of **Scott and Lisa Niedermayer, 32 Prospect Avenue** was adopted.

**WHEREAS, Scott and Lisa Niedermayer**, 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 side yard setback which is less than that required by Montclair Code Section 224-28C(1) in connection with the proposed construction of an accessory garage in the rear yard on property designated as Lot 8.01 in Block 406 on the Township Tax Map and located in the R-O Mountainside One Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by James E. Drumm, Land Surveyor, dated June 21, 1996 with the accessory garage drawn on the survey; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 13, 2000, 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 subject property measures approximately 106 feet by 200 feet and contains a single-family dwelling with an asphalt drive leading to the rear of the house.

2. The applicants propose to construct a 3 car detached garage in the rear corner of their property which will have dimensions of 23 feet by 34 feet.
3. Located in the rear yard are several trees, one of which is a copper beech tree of significant size which the applicants wish to preserve.
4. The proposed garage would be closer to the side property line than the ordinance allows in order to clear the root system of the copper beech tree. Additional landscaping around the garage was planned.
5. The proposed garage meets the rear setback and maximum height requirements of the zoning ordinance.

**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 NJSA 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 Lisa and Scott Neidermayer for a variance pursuant to N.J.S.A. 40:55D-70c to construct an accessory garage is hereby approved, 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.

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

On motion by Mr. Tobin, seconded by Vice Chair Church, the following **Resolution Memorializing** the approval of a variance application of **Joseph Quinones, 428 Grove Street** was adopted.

**WHEREAS**, **Joseph Quinones**, 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 front yard setback which is less than that required by Montclair Code Section 224-40B(2) in connection with the proposed construction of an addition onto his house on property designated as Lot 27 in Block 3504 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 Shepard and Shepard, Inc., Land Surveyors, depicting the location of the new construction, and Addition Layout Details dated October 28, 1999; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 15, 2000, 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 subject property is a corner lot at the intersection of Grove Street and Wildwood Avenue and contains a single-family dwelling which has a deficient front yard setback of approximately 15 feet along the Wildwood Avenue frontage.
2. There is a garage space within the principal dwelling accessed from a driveway on Wildwood Avenue.
3. The applicant proposes to eliminate the interior garage space and build an addition to the rear of the dwelling and construct an accessory garage in the rear yard. The existing macadam driveway will be removed.
4. The new addition will follow the existing southerly side wall of the dwelling and will be set in approximately 2.5 feet from the dwelling's Wildwood Avenue façade.
5. The new addition will provide for a larger kitchen and a great room to accommodate the applicant's family.
6. The proposed garage meets the requirements of the zoning ordinance.

**WHEREAS**, the Board, based on 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 NJSA 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 Joseph Quinones for a variance pursuant to N.J.S.A. 40:55D-70c to construct an addition to his principal dwelling is hereby approved, 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.

**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 **David and Azita Staubach, 12 Argyle Road**. Mr. Staubach, applicant and owner, was sworn. Mr. Staubach described the deck and one-story addition proposed for his home which required a variance because it was too close to the property line. There was a prior application on the same property in September of 1987 in which the same plan was approved.

The Board questioned the applicant. On motion by Ms. O'Connell, seconded by Mr. Tobin, it was resolved to approve the variance, subject to the following condition:

1. Only the bay window and deck stairs may be closer to the rear property line than the existing wall of the dwelling.

Mr. Fleischer joined the meeting.

Chair Harrison called for a continuation of the application of **Over the Rainbow, 32 Pleasant Avenue**. Mr. Spivey recused himself. Grant Gille, Esq. appeared as attorney for the applicant. Ms. Lottinville, Esq. appeared as attorney for certain objectors.

Ms. Lottinville called Ms. Jill Hartman, professional planner. She was sworn. Ms. Hartman described her qualifications. Ms. Hartman described the site, the surrounding neighborhood and the project proposal. Ms. Hartman stated that she reviewed the Township of Montclair Zoning Ordinance and Master Plan Re-examination Report and stated that the Township of Montclair Master Plan calls for a preservation of one-family zones. Ms. Hartman stated that New Jersey statutes allow for the placement of day care centers of any size anywhere outside of residential zones. Ms. Hartman then stated that the Township of Montclair contains a sufficient amount of non-residentially zoned space for the placement of day care centers. Ms. Hartman continued by stating that the previous use or senior housing was much more consistent with the residential character of the neighborhood. Ms. Hartman stated that the parking area has lighting that is non-residential in nature and that there is insufficient buffering proposed between the parking area and adjacent residences. Ms. Hartman then stated that the day care center would disrupt the neighborhood.

The Board questioned Ms. Hartman.

Mr. Gille cross-examined Ms. Hartman.

Chair Harrison opened the meeting to questions from the public for Ms. Hartman.

Ms. Gloria Clark of 13 Amelia Street asked if Ms. Hartman was aware of the senior housing available on Orange Road and if she was aware that day care operations are licensed by the County.

Ms. Lottinville conducted a redirect of Ms. Hartman.

Chair Harrison addressed Steven Aspero, Esq., attorney for Kramer Communities, LLC. Chair Harrison stated that it was unlikely that the site plan and variance application of **Kramer Communities, LLC, 61-63 North Mountain Avenue** would be heard that evening. The Board and Mr. Aspero agreed to hear the case on the May 17, 2000 regularly scheduled meeting of the Board of Adjustment.

The Board took a short recess.

Upon reconvening, the meeting was open to public questions and comments.

Ms. Mary Jones of 10 Pleasant Avenue was sworn. Ms. Jones made a statement describing the Pleasant Avenue Block Association and surrounding neighborhood.

Ms. Ester Siskin of 230 Park Street was sworn. Ms. Siskin stated that Over the Rainbow provides excellent day care for her children and that it is difficult to find available day care in Montclair.

Ms. Gloria Clark of 13 Amelia Street was sworn. Ms. Clark described the site history and stated her support for the project.

Ms. Judith Rue of 7 Jefferson Place was sworn. Ms. Rue stated that she could not anticipate that the noise generated by children would be too distracting. Ms. Rue described the quality of service given by Over the Rainbow and the need for day care facilities at the southern end of the Township of Montclair.

Ms. Ida Mia, staff member of Over the Rainbow was sworn. Ms. Mia described the quality care given by Over the Rainbow and the need for quality day care in the Township.

Mr. Michael Pollo of 47 Pleasant Avenue was sworn. Mr. Pollo read from a prepared statement which described his support for the project.

Ms. Rhonda Reed of 119 High Street was sworn. Ms. Reed stated her concerns over site accessibility for emergency vehicles, potential for parking problems and children's safety.

Dr. Al Davis of 5 Manor Court was sworn. Dr. Davis stated his opposition to the project due to the potential negative impacts on traffic and parking that it would generate.

Dr. Tanya Carter of 5 Orchard Court was sworn. Dr. Carter stated her concern for children's safety due to heavy traffic in the area and that the noise from children playing would be distracting to those who work at home.

Ms. Kate Jenkins of 25 Pleasant Avenue was sworn. Ms. Jenkins described the nursing home that once occupied the site.

Ms. Denise Powell of 39 Cedar Avenue was sworn. Ms. Powell stated that the noise generated from children playing is pleasant.

Dr. Nicole McGrath of 9 Orchard Court was sworn. Dr. McGrath stated her concern over noise, traffic and parking demand that the day care center would generate.

Mr. Michael McTigue of 169 Orange Road was sworn. Mr. McTigue stated his support for the project.

Mr. Kevin Jenkins of 119 High Street was sworn. Mr. Jenkins stated his concern regarding residential overcrowding if the day care center was allowed.

Ms. Miriam Sampson of 16 Saint Lukes Place was sworn. Ms. Sampson stated her concerns over traffic congestion in town.

Mr. Ernest Clark of 13 Amelia Street was sworn. Mr. Clark stated his support for the project.

Chair Harrison announced that the public hearing was closed and the application would be continued at a special meeting of the Board on May 24, 2000 and that no further notice would be given. At that time Mr. Gille and Ms. Lottinville will make closing statements of no longer than 20 minutes each and the Board would vote on the application.

The meeting was adjourned at 11:42 p.m.