

MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
April 14, 1999

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

ABSENT: 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 Mr. Church, the **Minutes of the March 17, 1999** regular meeting were adopted, Chair Harrison, Mr. Williams, and Mr. Church abstaining.

On motion by Mr. Fleischer, seconded by Ms. Freundlich, the **Minutes of the Closed Session of the March 17, 1999** regular meeting were adopted, Chair Harrison, Mr. Williams, and Mr. Church abstaining.

On motion by Mr. Fleischer, seconded by Ms. O'Connell, the following **Memorializing Resolution of Todd H. Behling 70A North Willow Street**, was adopted, Chair Harrison, Mr. Williams, and Mr. Church abstaining:

WHEREAS, Todd Behling, owner of property at 70A North Willow Street, 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 for the construction of a front yard parking area pursuant to Montclair Code Section 224-47 in that off-street parking areas shall not be located between the main building and the curb of the street on which the building fronts and Montclair Code Section 224-94 in that the parking area will be set back less than 4 feet from the property lines, on property designated as Lot 25 in Block 3203 on the Township Tax Maps and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant submitted written arguments, photos of the site and neighborhood, a site plan sketch, a diagram of the neighborhood, and a property survey prepared by Martin A. Grant, Land Surveyor, dated September 8, 1997; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 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 has dimensions of approximately 37 feet by 169 feet and contains a 2 story two family dwelling. The structure has a northerly side yard setback of approximately 3.5 feet and is immediately adjacent to Toney's Brook on the southerly side. The brook then continues along the rear property line.

2. The applicant proposed to create a front yard parking area for two cars. It is not possible to gain vehicular access to his rear yard due to the proximity of his dwelling to the northerly side lot line, and the presence of Toney's Brook along the southerly lot line; thus leaving the front yard as the only available yard area in which to place parking.

3. The applicant has been unable to find secure overnight parking for vehicles within close proximity to his property.

4. On street parking is scarce due to the proximity of the lot to the surrounding commercial uses and the density of the neighborhood dwelling units.

5. The proposal is consistent with the immediate adjacent property.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant met the proofs required to support the granting of a variance from Montclair Code Section 224-47 and Montclair Code Section 224-94; 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 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 RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Todd Behling is hereby approved subject to the following conditions:

1. The landscaping proposed along the facade 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.

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 called for the application of **Kent Hiteshew and Patricia Jenny, 166 Christopher Street**. Ms. Jenny, owner, was sworn. Mr. John Way, Architect, was sworn. Mr. Way stated that the applicants are seeking a front yard setback variance for the 6 feet by 34 feet addition to the sun porch. He described the layout of the property and the size of the existing sun porch noting that his clients feel that the porch is too small for practical usage. He also pointed out that the lot was of considerable size, and that there would be plenty of space remaining in the front yard after construction of the addition. He argued that there are several other lots of equal or lesser dimensions with closer setbacks than the proposed setback for his clients' addition.

The following items were marked for identification:

- A-1 Plans prepared by Way & Associates.
- A-2 Photo board of the interior and exterior of the Sun Porch.
- A-3 Photo board of the interior and exterior of the Sun Porch.
- A-4 Board with a photocopy of Sanborn map, property survey, and an elevation view drawing.
- A-5 Board with a photocopy of Sanborn map showing the surrounding area.

The Board asked Mr. Way if they needed to extend out 6 feet. Mr. Way responded by saying that they would agree to extend out 5 feet. The Board asked if the screened-in porch would remain. Mr. Way said the screened-in porch would remain.

After some discussion, on motion by Mr. Tobin, seconded by Mr. Fleischer, the Board unanimously voted to approve the application, subject to the following conditions:

1. The addition may not extend out more than five (5) feet.
2. New shrubbery, similar to the shrubbery that will be removed, must be planted.

Ms. O'Connell and Ms. Freundlich exited the hearing.

Chair Harrison called for the application of **James A. Schweppe, 732-734 & 736 Valley Road**. David Owen, attorney for Mr. Schweppe, gave a description of the layout of the adjacent lots and the immediate surrounding area. He stated that the current parking areas are congested and in need of repair. He reminded the Board that

a use variance was granted for common use. He explained that there will not be a change of use, that the current ingress and egress pattern is hazardous and that by removing the barrier that now separates the two lots, these hazards would be eliminated.

The following items were marked for identification:

- A-1 Existing site plan by McCumsey - Petry, P.C.
- A-2 Proposed site plan by McCumsey – Petry, P.C.

Paul Sionas, Architect and Planner was sworn.

The following item was marked for identification:

A-3 (A-D) Photos of existing conditions and immediate surroundings of buildings.

Mr. Sionas explained that the property is located at the northwest corner of Valley Road and Laurel Place where there was previously a building with six storefronts. He further explained that proposal includes improvements on drainage, traffic flow, parking, and overall aesthetics.

The following item was marked for identification:

- A-4 SP-2, Site Plan drawing number 2.

Mr. Sionas continued with the proposed plan indicating that there will be new concrete sidewalk along Laurel Place, and the asphalt portion of sidewalk will be replaced with grass. Also, a 4'-6" high board on board fence will be installed, and several 5'-6" tall evergreen trees will be planted along the westerly property line. The driveway on Laurel Place will be relocated to the center of the parking lot and widened. Adjacent to the driveway will be an 8" high berm and several evergreen Ink Berry bushes.

The following items were marked for identification:

- A-5 Elevation drawing of the building and the parking lot entrance as viewed from 6 Laurel Place.
- A-6 SP-3 Site Plan Details.
- A-7 Acceptance letter from Essex County Planning Board.

Chair Harrison opened the floor to the public.

Luke Iovine of 65 Elston Road asked how many people does Schweppe employ, and when are the staff meetings held.

Ana Leijnicks of 5 Laurel Place expressed her concern about the proposed inlet screen and asked who would be responsible for cleaning the swale that

leads to that inlet located between her property and the Schweppe property.

Michael Siporin of 6 Laurel Place asked how long do the employee meetings normally last.

Mr. Larry Kern, P.E., presented to the Board as a traffic expert, was sworn. Mr. Kern answered questioned from the Board, Mr. Owens, and the public. He gave testimony on the current traffic problems and stated that the proposed parking lot design would alleviate the existing traffic problems.

Chair Harrison opened the floor to the public for comment.

Mr. Luke Iovine of 65 Elston Road was sworn and asked the applicant to explain what he meant by adequate site distance.

The following items were marked for identification:

O-1 to O-6 Photographs of the parking situation in the immediate area.

Mr. Iovine strongly suggested that a sign be installed to indicate the location of the fire lane.

Mr. Siporin suggested that the proposed plan be scaled down and that the existing median not be removed, and instead considerations should be given to creating a turn around.

Mr. John Silla of 408 Upper Mountain Avenue, owner of the corner lot on Belden Place said he is generally in favor of the project, but want to be assured that the traffic and parking concerns be eliminated.

Ana Lejnieks of 5 Laurel Place would like to have shrubbery planted for privacy and trees planted for shade.

The following item was marked for identification:

A-8 Letter from David Owen to Michael Sullivan dated March 16, 1999.

The applicant was informed that six of the seven Board members were present and was asked if they were willing to proceed with the voting.

The applicant understood and was willing to proceed with six members.

After some discussion, on motion by Mr. Church, seconded by Mr. Fleischer, the application was approved, subject to the following conditions, Mr. Spivey abstaining:

1. The applicant shall comply with the Board engineer's review list dated March 15, 1999.

2. The applicant shall obtain Essex County Planning Board approval.
3. The applicant shall install the landscaping as testified at the public hearing including installation of two shade trees on either side of the Laurel Place driveway opening to be approved by the Township arborist.
4. The applicant shall install a center line and directional arrows on the driveway opening on Valley Road.
5. The applicant shall retain the existing "No Parking / Fire Lane" signs along the Valley Road driveway.
6. Grating shall be installed over the stormwater pipe opening to preclude large objects from entering. In the event any objects enter the pipe obstructing flow, the applicant shall clear same within 48 hours.
7. The applicant shall submit documentation to satisfy the Board engineer that the proposed development will not adversely impact any wetlands or related buffer areas and that NJDEP approval is not required. In the event the Board engineer is not satisfied, the applicant shall obtain a Letter of Interpretation or Letter of Non-Applicability from NJDEP.
8. The applicant's attorney shall prepare and file cross easements for parking which form shall be approved by the Board attorney.
9. With the exception of limited security lighting related to the residential use, site lighting shall be turned off no later than 10:00 p.m. every evening.

On motion by Mr. Fleischer, seconded by Mr. Church, the Board went into closed session.

Upon returning from closed session, on motion by Mr. Church, seconded by Mr. Fleischer, the meeting was adjourned.