

**MINUTES OF THE BOARD OF ADJUSTMENT
APRIL 30, 2003**

PRESENT: Chair Harrison, Ms. Cockey, Ms. Costello, Vice Chair Fleischer, Mr. Gallardo, Mr. Haizel, and Ms. Rock-Bailey; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Flood and Mr. Susswein

Secretary Sammet called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison announced the continuation of the site plan and variance application of **Keith Ballentine, 395 Claremont Avenue**. Grant Gille, Esq., appeared as attorney for the applicant and Paul Jemas, Esq., appeared as attorney for interested parties who are objecting to the applicant's proposal.

Mr. Gille summarized the testimony from the previous hearing on the application and called Keith Ballentine, applicant, who was sworn. Mr. Ballentine stated that he has been the owner of the subject property for over 2 years and that he resides at the property. He stated that the proposed expansion to the structure is an improvement to the property and that he would continue to reside at the property. He continued by describing the existing and proposed arrangement of the dwelling units on the property. Mr. Ballentine stated that he is an electrical contractor and that the office for his business is located in Saddle Brook, New Jersey. He further stated that all correspondence and phone calls for his business are received at the Saddle Brook office and that there is currently no business office or business activity at the subject property. He also stated that prior to his knowledge that there were neighborhood concerns, he had met with his employees at the subject property at the start of the work day to delegate responsibilities for the work day and that this activity lasted about 10 to 20 minutes each day between 7:30 a.m. and 7:45 a.m. He stated that he presently has 5 employees and that 75 percent of his business is within Montclair and Glen Ridge. He also stated that the commercial vehicles associated with he business are now taken home by employees rather than stored on the property. He further stated that he would accept a condition of approval that would eliminate any and all business activity on the property.

The Board questioned Mr. Ballentine.

Mr. Jemas cross-examined Mr. Ballentine.

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

Mr. Jemas called Jerome Eben, Architect and Professional Planner, who was sworn and stated his qualifications. Mr. Eben stated that he had visited the site on December 1, 2002, and then a second time on December 7, 2002, then followed by a third site visit on March 19, 2003, and that he had reviewed all of the pertinent documents.

Marked into evidence were:

- O-1 Photoboard of the subject property, prepared by Jerome Eben, Architect, P.P.

Mr. Eben stated that the photographs on Exhibit O-1 were taken from the adjacent property on Prospect Avenue on December 4, 2002 and December 7, 2002. He stated that the photographs show 8 vehicles parked on the property as well as the garage on the property that measures 30 feet by 40 feet. He continued by describing the proposed conversion to 4 dwelling units and stated the proposal does not meet the conditional use requirements in the R-3 Zone and that the property is extremely undersized for the proposed use. He further stated that the rear of the subject property projects into the R-1 Zone and that the proposed conversion would have a negative impact on the adjacent single family properties. Mr. Eben stated that the existing driveway is too narrow to support the resulting volume of traffic and that a property with a larger frontage could provide the required width for a two-way driveway and allow for more landscaping. He also stated that the proposed addition does not conform to the height requirements of the ordinance.

Mr. Gille requested permission to enter an exhibit into evidence.

Marked into evidence was:

- A-6 Existing and proposed elevation drawings, prepared by Dassa Haines, dated October 10, 2002

Mr. Eben summarized his testimony.

The Board questioned Mr. Eben.

Mr. Gille cross-examined Mr. Eben.

Chair Harrison called for questions from the public for Mr. Eben. None were offered.

Mr. Jemas conducted a re-direct of Mr. Eben.

The Board questioned Mr. Eben.

Chair Harrison called for public comment.

Margaret Whitsett, 16 Prospect Avenue, was sworn. Ms. Whitsett stated that the property is already overdeveloped and that she has concerns about the applicant's business activity on the property. She also stated that approval of the application would affect the adjacent single-family properties in a negative manner and set a detrimental precedent for multifamily conversions.

The Board questioned Ms. Whitsett.

Kenneth Maykow, 5 Highland Avenue, was sworn and stated that his property abuts the subject property. Mr. Maykow stated his concerns regarding commercial activity on the property and the potential litter problems caused by the trash receptacles for a multifamily dwelling.

Marked into evidence were:

OA-1 – OA-8 Eight (8) photographs of the subject property

Mr. Maykow continued by describing the existing garage on the subject property and stated that the property is fully developed in its current state. He also expressed concerns regarding the potential landscape screening on top of the retaining wall adjacent to his property.

The Board questioned Mr. Maykow.

Mr. Maykow stated that the photographs submitted as Exhibits OA-1 through OA-8 were taken the week prior to the March 19, 2003 hearing on the application.

Virginia Finder, 12 Prospect Avenue, was sworn and stated that the property is already overdeveloped and that the proposed addition would only exacerbate flooding and erosion problems for the properties down slope of the site.

Dan Mette, 10 Prospect Avenue, was sworn and stated his opposition to the proposal. He stated that the existing dwelling is already too large, that there are too many vehicles accessing the site presently, and that the proposal would exacerbate drainage problems.

Mr. Gille called Martin Dassa, Architect and Professional Planner, who was still under oath. Mr. Dassa stated that the height of the proposed addition conforms to the ordinance. He also stated that the driveway and parking area are adequate for the use and that the parking spaces could be defined without striping. He further stated that the applicant is no longer using the property for any commercial activity whatsoever and that the garage contains recreational vehicles owned by the applicant. He continued by stating that drainage problems could be mitigated with engineering improvements. Mr. Dassa reviewed the conditional use requirements and stated that the proposed density is less than the permitted density and that the aesthetics of the site would be improved.

He also stated that the applicant would agree to additional screening of the parking area.

The Board questioned Mr. Dassa.

Mr. Jemas cross-examined Mr. Dassa.

The Board questioned Mr. Dassa.

Chair Harrison called for questions and comments from the public.

Margaret Whitsett, 16 Prospect Avenue, who was still under oath, stated that there is not enough space on the property to provide adequate screening of the parking area and garage.

Dan Mette, 10 Prospect Avenue, who was still under oath, asked what effects a drywell on the subject property would have on properties downhill of the subject property.

Virginia Finder, 12 Prospect Avenue, who was still under oath, stated that a storm water detention system would not work and that any drainage improvements should take storm water off the site and into the storm sewer system.

Kenneth Maykow, 5 Highland Avenue, who was still under oath, stated that the retaining wall between his property and the subject property does not screen the parking area from his view and inquired about the possibility of 20-foot tall trees being planted along the property line.

Mr. Gille questioned Mr. Dassa.

Mr. Jemas cross-examined Mr. Dassa.

Mr. Jemas gave his closing remarks.

Mr. Gille gave his closing remarks.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, it was resolved to approve the site plan and variance application, Ms. Costello and Ms. Rock-Bailey voting in the negative, subject to the following conditions:

1. No commercial uses of any kind shall be permitted on the subject property.

2. The applicant shall comply with the comments and recommendations contained in Paragraphs 2 through 4 of the letter from the Board Engineer, W. Thomas Watkinson, P.E., P.P., dated October 23, 2002.

3. The applicant shall submit a stormwater management plan to ensure that there will be no increased runoff onto adjoining properties from the detached -[garage or the new addition, which plan shall be subject to review and approval by the Board Engineer.

4. The applicant shall install a six-foot board-on-board fence along the easterly side line of the property extending from the rear of the new addition to the rear property line.

5. The parking area shall remain gravel and shall not be paved.

6. The applicant shall plant shade trees approved by the Planning Department which shall be a minimum of 15-feet high at the time of planting and installed at 10-foot intervals around the perimeter of the property extending from the beginning of the parking area on the westerly side of the property and along the rear property line and easterly side line to a point parallel with the front of the detached garage.

7. There shall be no more than three outdoor parking spaces in the rear yard of the property and the northerly end of the parking area shall be approximately delineated to prevent cars from parking too close to the garage.

8. No indoor or outdoor parking spaces shall be rented to anyone who does not reside on the property.

9. The applicant shall execute and record a deed restriction reciting all of the aforementioned conditions, which deed shall be reviewed and approved by the Board Attorney and recorded in the Essex County Register's Office prior to the issuance of a Certificate of Occupancy for the four-family dwelling.

10. The site plan shall be revised so as to eliminate any intrusion of the porch/terrace into the required 6-foot setback area on the westerly side of the property.

11. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

12. The applicant shall be responsible for all inspection fees required pursuant to Montclair Code Section 202-27.

On motion by Mr. Fleischer, seconded by Ms. Costello the meeting was adjourned.