

**MINUTES OF THE BOARD OF ADJUSTMENT  
May 24, 2000**

PRESENT: Chair Harrison, Vice Chair Church, Mr. Chapman, Mr. Fleischer, Ms. Freundlich, Ms. O'Connell, , Mr. Tobin, Mr. Williams; also, Alan Trembulak, Esq., Karen Kadus, Secretary and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Spivey

Ms. Kadus 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. Williams, seconded by Mr. Tobin, the **Minutes of the May 17, 2000** regular meeting were adopted, Vice Chair Church, Mr. Chapman and Ms. Freundlich abstaining.

On motion by Mr. Tobin, seconded by Ms. O'Connell, the following **Resolution Memorializing** the approval of a variance application of **Eric Schwimmer and Alyce Gottesman, 28 Clinton Avenue** was adopted as modified, Vice Chair Church, Mr. Chapman and Ms. Freundlich abstaining.

**WHEREAS, Eric Schwimmer and Alyce Gottesman**, owners of property at **28 Clinton Avenue**, 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 side yard setback less than that required pursuant to **Montclair Code Section 224-40C(1)** in connection with the construction of an addition and deck on property designated as Lot 13 in Block 1301 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by Wayne F. Holman PLS. Apgar Associates, Engineers-Planners-Land Surveyors dated July 8, 1992 and a site plan prepared by Arturo Palombo Architecture, LLC, dated July 8, 1992; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 17, 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 notice; and

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

1. The subject property is approximately 14,402 square feet in size and contains a 2 story single-family dwelling.

2. The applicants' proposal is to construct an addition onto the rear of the dwelling to accommodate a mudroom, eat-in kitchen, breakfast nook and master bathroom.

3. The existing side wall of the house is not parallel to the northerly lot line resulting in a 4.97 foot setback from the closest point of the dwelling to the lot line.

4. The proposed side yard setback is 4.97 feet as measured from the closest portion of both the addition and deck to the northerly side lot line.

5. The two-story expansion is parallel to the existing side wall of the dwelling and all height, front and rear setback requirements are met.

**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 Eric Schimmer and Alyce Gottesman is hereby approved, subject to the following condition:

1. The addition shall be built no closer to the side property line than the existing structure.

**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.

Chair Harrison called for the selection of a meeting date for **Kramer Communities LLC, 61-63 North Mountain Avenue**. Steven Aspero, Esq., attorney for the applicant, offered a number of dates where his expert witnesses would be available. The Board members checked their availability. After some discussion, it was decided to hold the first hearing on June 1, 2000 and no further notice would be given.

Chair Harrison called for a continuation of the application of **Over the Rainbow, 32 Pleasant Avenue**. Grant Gille, Esq. appeared as attorney for the applicant, and

Nancy Lottinville, Esq. appeared as attorney for certain objectors. Ms. Lottinville described some recent developments in case law regarding use variances and how the proposed use is inherently beneficial but still commercial in nature. Ms. Lottinville stated that enrollment in Montclair day care facilities as compared to childhood population of certain ages suggests that many children enrolled in Montclair day care facilities come from out of town. Ms. Lottinville stated that the site can not handle the anticipated traffic generated by the proposed use and that parking provided is also inadequate. Ms. Lottinville continued by stating that the use would be a substantial detriment to the public good based upon anticipated noise and traffic congestion. Ms. Lottinville then stated that the proposed use would result in a complete and total re-orientation of the neighborhood. Ms. Lottinville stated that the Township of Montclair Master Plan makes note of the negative impacts of churches which may include day care facilities in residential zones.

Mr. Gille described the site plan and variances requested as part of the proposal. Mr. Gille stated that testimony given by expert witnesses proves that there will be minimal noise levels generated from the proposed use. Mr. Gille stated benefits of the proposal including the need for infant and toddler day care and the preservation of an historic building. Mr. Gille continued by stating that the proposed use would not substantially impact neighborhood character or impair the goals of the zone plan.

The Board discussed the application. Mr. Trembulak gave an overview of the legal matters that pertain to this application.

Chair Harrison stated that given the amendments to the Municipal Land Use Law concerning childcare facilities, he believes that the proposed use should not be considered inherently beneficial, he believed that if appropriate conditions were imposed, the applicant had met both positive and negative criteria and qualified for a use variance. Chair Harrison considered a condition that the day care center be open only during daytime hours and five days a week. Chair Harrison then stated that although there will be traffic impacts, testimony given shows that a traffic level of service "A" will be maintained.

Mr. Tobin stated concerns over the number of children to be cared for at the facility.

Ms. Freundlich stated concerns over the number of children and over the potential of a congested drop-off area.

Vice Chair Church stated that he does not believe this proposal qualifies as an inherently beneficial use and that by allowing this variance a precedent would be set in the south end of the Township allowing similar use variances.

Mr. Chapman stated that he is in favor of the application and that it does not qualify as an inherently beneficial use.

Mr. Fleischer stated he does not believe that the proposed use would adversely effect neighborhood character or the public good.

Mr. Williams stated that he believes that the use will effect neighborhood character and adversely impact the public good.

Ms. O'Connell stated that she was in favor of the application. Ms. O'Connell then stated that she believes that the use is well suited for the site and the Township of Montclair has a need for additional day care facilities.

On motion by Mr. Fleischer, seconded by Mr. Chapman, it was resolved to approve the use variance, Vice Chair Church and Ms. Freundlich voting in the negative subject to the following conditions:

1. All outstanding municipal taxes shall be paid in full.
2. The applicant shall obtain soil erosion and sediment control plan certification from the Hudson-Essex-Passaic Soil Conservation District.
3. The applicant shall obtain and record an easement from the adjacent property owner to the north (Block 2903, Lot 23.01) to permit ingress and egress over that portion of the driveway which encroaches onto the adjacent property in a form to be approved by the Board attorney.
4. The applicant shall consult with the Fire Department concerning access for fire trucks and shall make any requested changes, however, if additional pavement is required closer to the existing tulip tree immediately adjacent to the driveway, the applicant shall reappear before the Board for further review.
5. A conforming fence shall be placed on the southerly and westerly sides of the play area, and the applicant shall maintain the existing evergreen plantings on the southerly side of the play area.
6. The applicant shall add a row of evergreens where none currently exist along the southerly side of the large play area. The applicant shall be required to maintain the aforementioned evergreens as well as existing plantings located along the southerly, easterly and westerly portions of the play area.
7. Except for special events (nights and weekends), hours of operation shall be limited by permitting staff on site only between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday.
8. No more than 12 special events shall be permitted in the course of a year.
9. All exterior lighting shall be on timers and shall be off except during the time period between one-half hour immediately preceding and following permitted hours of operation.

10. The applicant shall not exceed the lesser of 100 children on site at any one time or the maximum amount permitted by the State of New Jersey.

11. No children older than 6 years of age are permitted.

12. The applicant shall replace dead street trees on the site.

The Board took a short recess.

Chair Harrison announced the variance application of **Fredric and Cheryl Dworkin, 149-153 Valley Road**. Mr. J. Arthur Johnsen, Architect, and Ms. Cheryl Dworkin, applicant and owner, were sworn. Mr. Johnsen described the side-yard setback and parking variances requested. Mr. Johnsen stated that a 12-foot wide driveway would provide a sufficient side yard setback when the adjacent lot was considered. Mr. Johnsen then stated that sufficient parking for the use on the lot is provided on the lot and that a parking variance was only needed for the site plan as a whole. He noted the sizes of the apartments and stated that it would be more practical to have three apartments rather than two. Ms. Dworkin gave a brief history of the house which originally was a two-family and then used by her family as a single-family home. Ms. Dworkin stated that the second kitchen was never removed from the house and that it is currently used as a legal two-family dwelling.

The Board questioned the applicant.

On motion by Ms. Freundlich, seconded by Mr. Chapman it was resolved to approve the application subject to the following conditions:

1. The applicants shall comply with all conditions set forth in the Planning Board Resolution, dated March 13, 2000.
2. The applicants shall obtain approval from the Essex County Planning Board and comply with any and all conditions of that approval.
3. All parking improvements on the subject property and the adjacent property shall be completed prior to the issuance of a certificate of occupancy for the additional dwelling unit on the subject property.

Chair Harrison announced the variance application of **Maureen and Dan DiFilippo, 17 Glenside Terrace**. Ms. Maureen DiFilippo, applicant and owner, was sworn. Ms. DiFilippo described the proposed location of her central air conditioning unit on the side of her new addition.

Ms. DiFilippo stated that the addition onto her home was completed in September of 1999 and that the new central air conditioning unit would be used to cool

that addition. Ms. DiFilippo stated that there is an existing central air conditioning unit towards the front of the house. Ms. DiFilippo described the layout of her property and that it would be difficult to locate the new unit elsewhere.

The Board questioned the applicant.

Chair Harrison stated that new public notice would have to be given since it was determined that both central air conditioning units require a variance. Chair Harrison requested that the applicant bring more information on the addition to the Board including architectural plans. Chair Harrison also requested that a description of the size of the proposed air conditioning unit be presented to the Board.

Chair Harrison stated that the application would be continued at the June 21, 2000 regular meeting of the Board of Adjustment.

The meeting was adjourned at 10:50 p.m.