

**MINUTES OF THE BOARD OF ADJUSTMENT
MAY 15, 2002**

PRESENT: Chair Harrison, Ms. Brooks, Mr. Chapman, Ms. Costello, Vice Chair Fleischer, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey, Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Planning Technician

ABSENT: None

Secretary 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 Mr. Haizel, the **Minutes of the April 24, 2002** special meeting were adopted as modified, Mr. Susswein abstaining.

On motion by Mr. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **David and Anne Sailer, 223 Valley Road** was adopted as modified, Vice Chair Fleischer, Ms. Costello, and Mr. Gallardo abstaining:

WHEREAS, David and Anne Sailer, owners of property at **223 Valley Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for parking in a front yard pursuant to **Montclair Code Section 347-46C** and to allow for parking space dimensions less than that required pursuant to **Montclair Code Section 347-102B** on property designated as Lot 19 in Block 1605 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a site plan prepared by Mark A. Palus, P.E, P.P., dated January 17, 2002 and a property survey prepared by DMC Associates Inc., dated December 13, 2001; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 10, 2002 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 an interior lot, measures 45 feet in width and contains a 2-½ story single-family dwelling.

2. A shared driveway and depressed curb was utilized by both the applicants and adjacent property owner at 49 Brunswick Road. However, no legal agreement granting permission for the applicants to use the portion of the driveway and depressed curb located on the adjacent property was ever documented.

3. The current owner of the adjacent property at 49 Brunswick Road has notified the applicants that they may no longer access the shared driveway from his property, thereby preventing the applicants from accessing their portion of the driveway.

4. The applicants propose to widen their existing curb cut from 8 feet to 12 feet, and create a parking area in the front yard of the property with 2 parking spaces, each measuring 9 feet wide by 18 feet long.

5. The width of the lot and configuration of the single-family dwelling on the lot prevents the applicants from constructing a parking area in a conforming location.

6. The existing public parking lots are located at excessive distances from the applicants' property, and existing on-street parking regulations in the vicinity of the applicants' property restrict them from parking on-street overnight.

7. The area in the front yard of the applicants' property is limited in size, and therefore the parking area as proposed does not allow for viable and effective ingress and egress of the vehicles accessing the applicants' property.

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 for front yard parking 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 for front yard parking 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 David and Anne Sailer for a variance pursuant to N.J.S.A. 40:55D-70c to construct a front yard parking area is hereby approved subject to the following conditions:

1. The parking area shall be designed in strict accordance with the revised plan prepared by Mark A. Palus, dated April 11, 2002.

2. The unpaved areas indicated in the revised plan shall remain unpaved.

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. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Mr. and Mrs. Stuart Mayer, 14 Kenneth Road** was adopted, Vice Chair Fleischer, Ms. Costello, and Mr. Gallardo abstaining:

WHEREAS, Mr. and Mrs. Stuart Mayer, owners of property at **14 Kenneth Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for front yard setbacks less than that required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of several additions to the dwelling on property designated as Lot 7 in Block 3707 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Farro Associates, received by the Planning Department on February 22, 2002 and a site plan, floor plans, and elevations prepared by Kapuscinski Luongo Architects, revised to April 3, 2002, that depicts the new construction; and elevation drawings that depicts the new construction and the immediate topography of the site, revised to April 10, 2002; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 10, 2002 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 at the intersection of Kenneth Road and Windermere Road and contains a 2½-story, one-family dwelling with an attached garage.

2. The existing dwelling on the property has a non-conforming front yard setback of 31.4 feet at the Kenneth Road frontage due to the greater setback of 36.75 feet of the adjacent dwelling on Kenneth Road, and a non-conforming front yard of 9.3 feet at the Windermere Road frontage where a minimum of 25 feet is required.

3. The applicants' proposal is to construct a one-story addition at the northwesterly corner of the dwelling and several additions at the rear of the dwelling

including a two-story addition and 2, one-story additions. An open exterior stairway is also proposed at the southeasterly corner of the dwelling.

4. The proposed front yard setback for the new construction at the Kenneth Road frontage is 32.33 feet and 10.3 feet at the Windermere Road frontage. All height, side and rear yard setback requirements are met. The open exterior stairway at the southeasterly corner of the dwelling projects partially onto an existing 8-foot wide sanitary and storm sewer easement.

5. The additions as proposed are setback further than the existing dwelling on the property in both the Kenneth Road and Windermere Road front yards.

6. Due to the topography of the site, the proposed construction would not affect the underground streams in the vicinity of the subject 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 Mr. and Mrs. Stuart Mayer is hereby approved subject to the following condition:

1. The proposed exterior stairway located at the southeasterly corner of the dwelling which projects partially onto the existing sanitary and storm easement be approved by the Township Engineer.

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 Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Shailendra and Priya Ghorpade, 11 Mulford Lane** was adopted as modified, Vice Chair Fleischer, Ms. Costello, and Mr. Gallardo abstaining:

WHEREAS, Shailendra and Priya Ghorpade, owners of property at **11 Mulford Lane**, 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 front yard setback less than that required pursuant to **Montclair Code Section 347-39B(1)** in connection with the construction of additions onto an existing dwelling on property designated as Lot 7 in Block 204 on the Township Tax Map and located in the R-O(a) One-Family Zone; and

WHEREAS, the applicants submitted floor plans and elevations prepared by William G. Brown, Architects, dated October 8, 2001, a property survey prepared by Gerald G. Capasso, dated May 15, 1991, depicting a site plan, and a property survey prepared by PPE Professional Planning and Engineering Corp., dated September 19, 2001, depicting the existing conditions; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 10, 2002 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 contains a one-story, single-family dwelling with an attached garage.
2. The existing structure on the property has a non-conforming front yard setback of approximately 38.85 feet measured from the southerly front corner of the dwelling and approximately 42.09 feet measured from the northerly front corner of the dwelling.
3. The applicants' proposal is to construct a two-story addition over the existing building foundation and first floor decking and a two-story addition at the northerly side of the existing structure. The applicants also propose to construct a portico at the existing front entrance of the dwelling and construct a new deck in the rear yard.
4. The proposed front yard setback of the portico is approximately 35.48 feet, and the proposed front yard setbacks are approximately 40.09 feet measured to the southerly front corner of the building and approximately 40.26 feet measured to the northerly front corner of the building. The proposed rear deck meets the rear yard and side yard setback requirements.
5. The applicants demonstrated that the proposed front yard setback of the two-story addition over the existing foundation and the proposed front yard setback two-story addition at the northerly side of the dwelling are in keeping with the established front yard setbacks of the existing dwellings on Mulford Lane and would not have an adverse impact on the surrounding properties.

6. The applicants also demonstrated that the proposed portico is to be built over an existing exterior stairway and that the proposed front yard setback of the portico would not have an adverse impact on the surrounding properties.

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 variance application of Shailendra and Priya Ghorpade is hereby approved, subject to the following conditions:

1. The applicant shall comply with comments 1, 3, and comment 4 as corrected, of the Board Engineer's letter dated April 8, 2002.
2. The portico at the front of the dwelling shall be built no closer than 35 feet to the front property line.
3. The northerly addition shall be built no closer than 40 feet to the front property line.

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 the variance application of **Michael and Lauren Zichelli, 119 Chestnut Street**. David Owen, Esq., appeared as attorney for the applicants.

Ms. Brooks stepped down for this application.

Mr. Owen described the application and stated that there is strong evidence that the accessory structure on the applicants' property was previously used as a carriage house and that the application meets 5 of the 6 conditions of the conditional use requirements of the Zoning Ordinance. He stated that the applicants would provide the 4 required off-street parking spaces and that 3 of the parking spaces

would be enclosed within the garage on the first level of the carriage house. He continued by stating that the applicants do not meet Condition B, which requires a minimum lot frontage of 150 feet and a minimum of lot area of 20,000 square feet. He continued by stating that the applicants' lot is ample in size and is still appropriate for the proposed use. He further stated that the applicants have proposed a condition to the Board that the principal dwelling shall remain a single-family dwelling.

Mr. Owen called Michael Zichelli, applicant and owner of property at 119 Chestnut Street, who was sworn. Mr. Zichelli stated that he is currently renovating the entire property and that it is the largest property on the block. He stated that the principal dwelling on the property is a Victorian home built sometime between 1881 and 1890, and that the carriage house was constructed between the years of 1890 and 1906. He stated that he intends to renovate the carriage house.

Mr. Zichelli stated that the principal dwelling was very likely a rooming house in the past. He continued by stating that he intends to maintain the principal dwelling as a single-family dwelling and that the carriage house would be occupied by a maximum of 2 persons within the single dwelling unit.

Mr. Zichelli described the carriage house on his property. He stated that there are 3 parking spaces inside the carriage house on the first level. He further stated that the first level of the carriage house was formerly used for the storage of carriages and horses and that many of the characteristic features of carriage houses still remain. He stated that the second level of the carriage house contains a work room and 2 finished rooms for human occupancy. He stated that the finished rooms had definitely been occupied in the past.

Mr. Zichelli stated that the carriage house has existing pipes for running water, natural gas lines, telephone lines, and the remnants of an outhouse. He stated that the principal dwelling was retrofitted for plumbing and connected to the sewer system around 1935.

Marked into evidence was:

- A-1 Photoboard of the exterior of the main house and carriage house at 119 Chestnut Street
- A-2 Photoboard of the interior of the carriage house at 119 Chestnut Street

Mr. Zichelli described exhibits A-1 and A-2. He stated that he has spoken to his neighbors about the proposed carriage house and that he has received no objections.

The Board questioned Mr. Zichelli.

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

David Owen called Paul Sionas, Architect and Planner, who was sworn. Mr. Sionas described the property at 119 Chestnut Street. He described the setbacks of the carriage house, interior layout and exterior of the carriage house. He stated that the finished rooms within of the carriage house will contain the new kitchen and bathroom and that the working room would contain the new bedroom and living area. He stated that no additions or dormers are proposed as part of the carriage house renovation.

Mr. Sionas stated that the Zoning ordinance requires a minimum lot area of 20,000 square feet and a minimum lot frontage of 150 feet for the re-establishment of a carriage house and that the applicants' property measures 16,042 square feet and has a 75-foot frontage. He stated that the variance the applicants are seeking is a D(3) variance because they do not meet all the conditions of a permitted conditional use in the R-2 Zone. He also stated that a D(3) variance entails a lesser burden of proof on the applicants. Mr. Sionas stated there is sufficient space on the property for additional residential use and that the renovation of the carriage house creates a more desirable visual environment. He also stated that the site is appropriate for the proposed use. He further stated that the application does not represent a detriment to the public good or adjacent properties. He continued by stating that the applicants' existing lot size is conforming for two-family use in the R-2 Zone.

The Board questioned Mr. Sionas.

Chair Harrison called for question from the public for Mr. Sionas. None were offered.

Chair Harrison called for public comment. None were offered.

The Board discussed the application.

On motion by Mr. Chapman seconded by Ms. Rock-Bailey, it was resolved to approve the variance application, subject to the following condition:

1. The approval is subject to a deed restriction that the 2½-story wood frame dwelling ("main house") shall be used for single family residential use only. The deed restriction shall explicitly state that it is for the benefit of the public but may not be modified as any other condition of the development approval. The deed restriction shall be enforceable by the municipality and the cost of such enforcement, including reasonable attorney fees, shall be the obligation of the property owners. The property owners shall execute and record a deed reciting this condition prior to the occupancy of the carriage house.

Chair Harrison called the variance application of **Russell Huewe, 576 Highland Avenue**. Russell Huewe, owner and applicant, was sworn.

Mr. Huewe stated that he is presently renovating his house and constructing an addition to the rear of the house and that he is seeking to add 2 central air conditioning units as part of the renovation. He stated that the rear yard of his property is not a suitable location for the 2 air condensers because of the limited usable rear yard space due to the steep sloping grade. He further stated that the location of windows and doors of the addition being constructed at the rear of his house restricts the placement of the proposed air condensers against the exterior walls of the addition. He also stated that the front yard is not a suitable location for the proposed units due to objections from nearby residents. He continued by stating that the side yard setbacks on his property measure approximately 6 feet on each side and that although the 4-foot side yard setback requirement cannot be achieved, the northerly side yard is the best location for the proposed air condenser units.

Mr. Huewe stated that he has spoken to his neighbor to the north, at 580 Highland Avenue, and that there was no objection to the proposed location of the 2 air condensers.

Marked into evidence was:

A-1 through A-9 Photographs of the property at 576 Highland, taken
by Russell Huewe

The Board questioned the Mr. Huewe.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Mr. Haizel, it was resolved to deny the variance application.

Chair Harrison called for a short recess.

Chair Harrison called the site plan and variance application of **Augustus and Diane Riegraf, 16 Montclair Avenue**. Grant Gille, Esq. appeared as attorney for the applicants. Mr. Gille described the application and the variances requested and stated that the property is presently under contract to be purchased by a new owner contingent upon approval of the application. He stated that the property has had a commercial component within the 3-story building at the rear of the property since the early 20th century and that the current owner has used the accessory building on the property in conjunction with his plumbing business. Mr. Gille stated that the present or future owners could continue to use the 3-story building with the same or a similar non-conforming use, demolish the structure, or put the structure to a conforming accessory use. He stated that the age of the 3-story building is a positive attribute and that the

building is structurally sound. He further stated that the 3-story building is too large to be reasonable utilized by a conforming accessory use in the R-2 Zone.

Mr. Gille stated that the application proposes to convert the building into 3 1200 square foot dwelling units with 2 bedrooms each. He also stated that off-street parking for 4 total dwelling units on the property is being provided and that landscaping is being added to the site. Mr. Gille stated that although the application does not meet the parking requirements of the New Jersey Residential Site Improvement Standards, the Montclair Zoning Ordinance requirements are being met. He also stated that a new fence height of 4.5 feet is proposed where required by ordinance on the property and that a variance for fence height is no longer required.

Marked into evidence was:

- A-1 Architectural Plans on 3 Sheets, prepared by Crincoli Group Architecture, dated March 13, 2002
- A-2 Revised Sheet A-2 Floor Plans, prepared by Crincoli Group Architecture, no revision date
- A-3 Bollard Lighting Information and Detail Sheet
- A-4 Wall-mounted Light Fixture Information and Detail Sheet
- A-5 Board-Mounted Color Rendering of SP-1 Site Plan and a portion of Sheet A-1 Elevations
- A-6 Property Survey of 16 Montclair

Mr. Gille called Rico Crincoli, Architect, who was sworn. Mr. Crincoli stated his qualifications as an architect and described the property and the application. He stated that the intention of the conversion is to create loft style apartments marketed to New York City commuters. He stated that the business office located in the basement of the single-family dwelling on the property would be removed. He stated that a raised patio and exterior basement entrance door would be removed to accommodate a portion of the parking required by the proposed plan and that the existing driveway would be widened from 15 feet to 18 feet in order to comply with the ordinance requirements for a two-way drive. He also stated that the existing site is entirely paved with no landscaping and that the applicants propose to install landscaping and reduce the amount of impervious cover.

Mr. Crincoli stated that the entrance to the converted 3-story building would be located at the rear of the building. He also stated that the plan proposes 7 parking spaces, which complies with the Zoning ordinance requirements. He stated that in order to fulfill the ordinance requirement of providing one-third of the proposed parking within a garage, an additional structure would have to be added to the site. Mr.

Crincoli described the parking layout and vehicle circulation on the site. He stated that the proposed parking spaces would be striped and that the vehicles parked in the parallel parking spaces would do a three-point turn to pull out of the parallel spaces and exit the property.

Mr. Crincoli stated that no basement or attic is proposed for the converted 3-story building. He also described the proposed changes to the exterior of the 3-story building. He stated that a new roof would be placed on the building and that the exterior would be repointed. He continued by describing the proposed lighting for the site. He stated that the wall-mounted light fixtures would illuminate the building wall surface and not spill over to adjacent properties. He also stated that the proposed bollard fixtures are below the height of the proposed fencing for the site and that they would not be visible from adjacent properties. He described the proposed fencing for the site and stated that the existing chain link fencing would be replaced by board-on-board fencing and that the proposed fencing meets the zoning height requirements. He also stated that a 7-foot high board-on-board fence trash enclosure is proposed for the westerly end of the property and that trashcans would be used rather than a dumpster.

The Board questioned Mr. Crincoli.

Mr. Gille requested a brief recess and upon return requested a postponement of the application so that the applicants could revise their plans.

Chair Harrison announced that postponement of the variance application to the June 12, 2002 meeting at the request of the applicant and that no further notice would be given. He also announced that revised plans must be submitted to the Planning Department for the public to view by May 31, 2002.

Chair Harrison announced the **Discussion of Annual Report**. The Board discussed the 2001 Draft Annual Report and it was determined that the rationale for the recommended zoning ordinance amendments should be noted within the report. The Board also determined that the criteria within the recommended zoning ordinance revisions for determining the front yard setback of interior and corner lots in the R-0, R-0(a), R-1, and R-2 Zones should be revised and that the recommended zoning ordinance amendments from the 2000 Annual Report should be carried to the 2001 Annual Report.

Chair Harrison called for a discussion regarding pending **Litigation**.

On motion by Mr. Fleischer, seconded by Mr. Chapman, it was resolved that the Board Attorney would represent the Board of Adjustment in appeal of the Board's decision on the application of **Frank Curto, 51 Walnut Street**.

On motion by Mr. Chapman, seconded by Mr. Haizel the meeting was adjourned.