

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
MAY 19,1999**

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

ABSENT: Vice Chair Chapman, Mr. Spivey, Karen 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. Tobin, seconded by Mr. Church, the **Minutes of the April 14, 1999** regular meeting were unanimously adopted.

On motion by Mr. Church, seconded by Mr. Tobin, the following **Memorializing Resolution of Patricia Jenny and Kent Hiteshew, 166 Christopher Street,** was unanimously adopted.

WHEREAS, Patricia Jenny and Kent Hiteshew, owners of property at 166 Christopher Street, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for the construction of an addition onto their single-family house pursuant to Montclair Code Section 224-40B(2) in that the addition will have a front yard setback from McDonough Street of less than twenty-five feet, on property designated as Lot 21 in Block 4514 on the Township Tax Maps and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicants submitted a site plan and partial floor plans prepared by Way and Associates, dated March 19, 1999; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 14, 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 at the intersection of Christopher Street and McDonough Street has dimensions of approximately 88 feet by 159 feet and consists of a 2-1/2 story single-family frame dwelling and a 2 car frame garage,

2. The proposed one story 6 feet by 34 feet addition is to be added onto the existing sun porch to give the porch total dimensions of approximately 15 feet 6 inches by 34 feet.

3. The architectural style of the addition will be in keeping with that of the house.
4. The front yard on McDonough Street slopes up from the sidewalk toward the house and has approximately 30 feet of yard area between the house and that sidewalk.
5. The existing screened porch will remain and is proposed to be enclosed for year round use.
6. The proposed addition will provide adequate light, air and open space and represents an aesthetic benefit to the property consistent with the purposes of the Municipal Land Use Law.
7. The proposed deviation is minimal and will not result in any adverse impact on area properties and based upon the foregoing, is not inconsistent with the intent and purpose of the zone plan and ordinance.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant has met the proofs required to support the granting of the variance from Montclair Code section 224-40B 2 ; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Patricia Jenny and Kent Hiteshew is hereby approved, subject to the following conditions:

1. The addition may not extend further than 5 feet from the existing sun porch.
2. New shrubbery, similar to the shrubbery that will be removed, must be planted between the southern property line and the addition.

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. Church, seconded by Mr. Williams, the following **Memorializing Resolution of James A. Schweppe, 732-736 Valley Road**, was staining.

WHEREAS, James A. Schweppe, as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval to expand the nonconforming parking area on property located at 732-734 & 736 Valley Road and designated as Lots 1 and 2 in Block 803 on the Township tax map and located in the R2 Two Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(2)* to expand a nonconforming use contrary to Montclair Code Section 224-42.
2. To allow a parking lot aisle width which varies from 21 feet to 22 feet where a minimum of 24 feet is required pursuant to Montclair Code Section 184-8.1 D.

WHEREAS, the applicant submitted a boundary and topographic survey prepared by McCumsey & Petry, P.C. dated January 11, 1999 and a site plan prepared by Sionas Architecture dated January 29, 1999; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on April 14, 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; and

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

1. The subject property consists of two adjacent lots located at the intersection of Valley Road and Laurel Place. Block 801, Lot 1 (732-734 Valley Road) has frontage on Valley Road and Laurel Place and contains a pharmacy, delicatessen, offices and apartment with parking in the rear. Block 803, Lot 2 (736 Valley Road) has frontage on Valley Road only and contains a realty company and apartment with parking in the rear.
2. Currently, the corner parking lot area (Lot 1) is accessed only via Laurel Place while the interior parking lot area (Lot 2) is accessed only via Valley Road. The application contemplates joining the two parking areas so that there will be one drivethrough parking area accessible from both Laurel Place and Valley Road. The application proposes increasing the total number of parking spaces from 31 to 35.
3. The application advances the purposes of the Municipal Land Use Law by promoting public safety and improving on-site traffic circulation pursuant to *N.J. S.A. 40:55D-2a,h* as cars will now pass safely and freely through either one of two driveways located on Laurel Place and Valley Road eliminating the necessity for cars to back out or k-turn out of a single driveway.
4. The application promotes a desirable visual environment pursuant to *N.J.S.A. 40:55D-2i* through various site improvements including extensive landscaping, paving of the parking area, installation of block curbing and fencing.
5. The proposed limited expansion of the parking lots will not increase traffic in the area and will not result in any adverse impact on the neighborhood.
6. The application is consistent with the intent and purpose of the Master Plan and Zoning Ordinance which favors reducing traffic congestion and improving on-site circulation with limited expansion.

7. The proposed parking lot aisle width which varies from 21 feet to 22 feet is reasonable given existing site constraints and within the general purpose and intent of the provisions for site plan review and literal enforcement of the 24 foot minimum requirement would exact undue hardship due to peculiar conditions pertaining to the land in question.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief 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;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of James A. Schweppe for site plan, use variance and waiver is hereby approved subject to the following conditions:

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,

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 called for the application of **Lisa and Michael Kirwan, 7 Clinton Avenue**. Attorney Grant Gille, representing the applicant described the proposal to construct a residential addition and submitted the following exhibits:

- A-1 Property survey prepared by Richard J. Hingos, Land Surveyor, dated September 28, 1995
- A-2 Site plan drawing prepared by Sally Ross
- A-3 Elevation and floor plan drawings prepared by Sally Ross
- A-4 Photo Board

Sheryl Field, Neuromuscular Therapist, was sworn. Ms. Field stated the Kirwan's daughter needs to exercise her muscles, and that in her professional experience, swimming pool therapy is one of the best treatments for people with muscular dystrophy. Ms. Field testified that a water temperature of 86°F is the most effective for this type of therapy and that other pools, whether public or private, are not kept at this temperature. Other factors important to the welfare of the child were that the water must be as germ free as possible and that the child's body should be kept warm once leaving the pool.

Sally Ross, design specialist, was sworn. Ms. Ross gave dimensions of the pool as 8 feet wide by 12 feet long by 4 feet deep. The pool will have an indoor filter which will be located inside the pool house. There are three lanterns with ambient type lighting proposed for the exterior of the pool house. The distance from the nearest structure on surrounding properties ranges from approximately 100 feet to 150 feet.

The following item was marked for identification:

- A-5 A photocopy of the Sanborn Map

Ms. Ross continued by describing the proposed landscaping stating that 10 feet to 20 feet high trees would be planted to provide screening. In response to questions from the Board, Ms. Ross stated that the pump for the pool would not run all day, no water will flow from the pool, and that the proposed exterior lanterns are not needed for the purposes of using the pool. It is possible to remove the pool and the proposed accessway to recreate a separate accessory structure in the future. The current setbacks are approximately 4" and 2" from the rear and 4'-2" and 3-1/2" from the side. The corners of the new expansion will be approximately 5'-9" from the side and 4' from the rear.

After some discussion, on motion by Mr. Church, seconded by Mr. Williams, the Board voted to approve the addition subject to the following condition, Mr. Fleischer abstaining:

1. Exterior lighting may not be installed around the pool house.

Chair Harrison called for the application of **Richard and John DiGeronimo, 420 Bloomfield Avenue**. Attorney David Owen stated that his clients are seeking a variance to add a second and third floor to their building to accommodate four new apartments. Paul Sionas, architect, was sworn.

The following item was, marked for identification:

A-1 Photo board of existing conditions

Mr. Sionas explained that the building currently contains a commercial specialty retail use that covers approximately 99 percent of the lot. He gave a brief description of the adjacent buildings.

The following items were marked for identification:

A-2 Architects drawing A1 prepared by Paul Sionas, Architect, dated August 25, 1999

A-3 Architects drawing A2 prepared by Paul Sionas, Architect, dated August 25, 1999

A-4 Architects elevation drawing A3

The applicants stated that they have applied for 8 permit parking spaces at the Township Clerk's office. They have a proposal for landscaping and a refuse storage area. The applicants stated that they will be seeking permission from the Township Council to furnish a 3 foot area behind the building with plantings.

The following items were marked for identification:

A-5 A letter from the applicants, to whom it concerns, addressing the status of their application for the parking permits with the Township Clerk's office.

Peter G. Steck, Professional Planner, was sworn. Mr. Steck illustrated that each of the units will have windows to the outside on three of the four sides, one facing the interior courtyard. Mr. Steck also testified that setting up apartments in the C-1 zone would be consistent with the purpose statement in the Montclair Zoning Ordinance for the C-1 zone, which encourages residential use in this zone.

The following items were marked for identification:

A-6 A photo board

A-7 Copy of the tax map highlighting the contrasts between conforming and nonconforming lots in the area

A-8 Typed sheet of residential and commercial density calculations

Mr. Steck added that there is an average of 1.56 units per property over the required maximum required density, as compared to proposed development which exceeds the permitted density by 1.24 units.

A-9 A map highlighting the nonconforming residential density in the surrounding area

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

- 1 . The applicants shall connect or direct the proposed new roof leaders to the existing drainage inlet in accordance with the recommendation of the Board's engineer dated May 18, 1999.
2. The proposed replacement tree shall be approved by the Township arborist.
3. No portion of the Township property may be used by the applicant, including landscaping, without prior approval from the Township Council.
4. The applicants shall provide a minimum of six permits for municipal parking spaces for use by the residential tenants of the building.

The meeting was adjourned.