

**MINUTES OF THE BOARD OF ADJUSTMENT
JUNE 20, 2001**

PRESENT: Chair Harrison, Vice Chair Fleischer, Ms. Brooks, Mr. Chapman, Mr. Gallardo, Ms. Rock-Bailey, Mr. Susswein; also, Michael Sullivan, Esq., Ms. Kadus, Secretary, Donald Sammet, Assistant Secretary and Nicholas Graviano, Land Use Planner

ABSENT: Ms. Costello and Mr. Haizel

Secretary 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 Meetings Act.

Mr. Harrison welcomed new board member Cynthia Brooks to the Board.

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, the **Minutes of the May 16, 2001** regular meeting were adopted as modified, Vice Chair Fleischer and Ms. Brooks abstaining.

On motion by Mr. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Edmund and Marina Gaetjens, 34 Clinton Avenue** was adopted as modified, Vice Chair Fleischer and Ms. Brooks abstaining:

WHEREAS, Edmund and Marina Gaetjens, owners of property at **34 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 347-33C(1)** in connection with the construction of a detached, two-car garage on property designated as Lot 16 in Block 1301 on the Township Tax Map and located in the R-O Mountainside Zone; and

WHEREAS, the applicants submitted a property survey prepared by Capasso and Hingos, Inc., dated September 26, 1992 and elevations and floor plans prepared by Francis C. Klein and Associates, Architects, dated March 7, 2001; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on April 11, 2001 and May 16, 2001 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 measures approximately 17,249 square feet in size and contains a 2 ½ story single-family dwelling and detached garage.

2. The applicants' proposal is to demolish the existing detached garage and construct a new detached, two-car garage in the northwesterly corner of the property. The proposed garage location will utilize an existing driveway and curb cut on Clinton Avenue.

3. The location of the proposed garage and resulting driveway extension would likely result in the damage of a large tree on a neighbor's property and therefore would result in a detriment to the adjacent property owners which is inconsistent with the intent and purpose of the zoning ordinance.

4. The applicants failed to prove that the strict application of the Zoning Ordinance would result in peculiar and exceptional practical difficulties, or exceptional and undue hardship in constructing a detached garage on the property.

5. The applicant failed to cite the purposes of the Municipal Land Use Law which would be advanced or any public benefit which would result in granting the application.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicants had not met the proofs required to support the granting of a variance from **Montclair Code Section 347-33C(1)**; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Edmund and Marina Gaetjens is hereby denied.

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

On motion by Mr. Chapman, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **Barry Pote, 72 Greenwood Avenue** was adopted, Vice Chair Fleischer and Ms. Brooks abstaining:

WHEREAS, Barry Pote, as owner, did make application to the Board of Adjustment of the Township of Montclair to modify a condition of a resolution adopted by the Board on July 15, 1998 so as to permit installation of a "people door" on property designated as Lot 26 in Block 3208 on the Township tax map and located in the R-2, Two Family Residential Zone; and

WHEREAS, the Board previously denied the request based upon the doctrine of *res judicata* pursuant to a resolution adopted December 9, 1998, however, following

institution of suit, the matter was remanded to the Board for a full hearing pursuant to Court Order dated February 13, 2001; and

WHEREAS, the applicant submitted a floor plan and elevation drawing prepared by J. Arthur Johnsen, Architect, received October 18, 2000; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on March 7 and May 16, 2001, at which time it was established that notice was properly published and the property owners within 200 feet of the subject property in question had been properly served; and

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

1. By resolution adopted on July 15, 1998, the Board of Adjustment granted a variance pursuant to *N.J.S.A. 40:55D-70d* to utilize an existing vacant building for storage contrary to Montclair Code Section 224-42. The approval was subject to a number of conditions including the following:

6. The façade above the level of the garage door shall be preserved and maintained. The façade shall be preserved as exists except that one of the openings may be cut to allow an opening to extend to the ground.

2. The applicant now seeks to modify the aforementioned condition to allow a "people door" on the right side of the overhead garage door.

3. There is nothing particularly unique or significant about the façade of the building which would preclude installation of the proposed door.

4. Installation of the door will provide a method of access for individuals without having to open the overhead garage door which will result in less noise and constitutes a benefit to the general public.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant met the requisite statutory criteria pursuant to *N.J.S.A. 40:55D-70d* to modify the aforementioned approval;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Barry Pote, to modify condition 6 of the July 15, 1998 resolution to allow installation of a "people door" is hereby approved subject to the following condition:

1. All conditions of the July 15, 1998 resolution remain in full force and effect except condition 6 as modified herein.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council and Township Clerk.

On motion by Mr. Chapman, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **Robert Beinish and Carol Taylor, 7 Marion Road** was adopted, Vice Chair Fleischer and Ms. Brooks abstaining:

WHEREAS, Robert Beinish and Carol Taylor, owners of property at **7 Marion Road**, 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 347-45C(1)** in connection with the construction of an addition on property designated as Lot 12 in Block 1804 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Shepard and Shepard, Inc. dated August 13, 1998, and a floor plans and elevations prepared by John Thomas Collins, Architect, dated March 2001 that depict the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on May 16, 2001 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 17,206 square feet in size and contains a 2 ½ story single-family dwelling.
2. The applicants' proposal is to construct a one-story kitchen and family room addition onto the rear of the dwelling.
3. The existing side wall of the house is not parallel to the easterly lot line resulting in a 2.3 foot setback from the closest point of the dwelling to the lot line.
4. The proposed side yard setback is approximately 2.3 feet as measured from the closest portion of the addition.
5. The one-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 Robert Beinish and Carol Taylor is hereby approved, subject to the following conditions:

1. The addition shall not extend more than fifteen (15) feet from the rear of the existing house.
2. The addition shall follow the easterly line of the existing structure.
3. All portions of the roof overhang shall be located entirely on the subject property.

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.

Secretary Kadus announced the adjournment of the application for **Steve Lauda, Murray Street**. Calvin Trevenen, Esq., consented to an extension of time and stated that property owners within 200 feet of the parcel will be re-notified. Chair Harrison stated that the application could be dismissed without prejudice if the applicant is not ready to proceed by September of 2001.

Secretary Kadus also announced the adjournment of the application for **Family Services League, 204 Claremont Avenue** to the July, 18 2001 regular meeting of the Board and that no further notice would be given. Calvin Trevenen, Esquire, for the applicant, consented to an extension of time.

Secretary Kadus announced the adjournment of the application for **150-152 Forest L.L.C., 150-152 Forest Street** to the July 18, 2001 regular meeting. The applicant did not serve notice in the proper time frame and another notice must be given.

Chair Harrison announced the variance application of **Two Countries, 18-20 Willard Place**. Elaine Rissotti, Esq. appeared as the attorney for the applicant. Ms. Rissotti called Anthony Church, Architect and he was sworn. Ms. Rissotti and Mr. Church

described the application. Mr. Church stated that the structure previously located on the site was in poor condition due to fire damage and was subsequently demolished. He also stated that the proposed structure would have the same building footprint as the previous structure and that the overall height of the proposed structure was less than that of the previous structure. Mr. Church described the surrounding land uses, he also stated that 3 parking spaces would be provided on site.

The Board questioned the applicants.

Chair Harrison called for questions and comments from the public.

Phyllis Burgis, 98 Grove Street, came forward and was sworn. She stated that there is a lack of parking in the neighborhood and was concerned about the increased vehicular traffic resulting from the proposed project.

Lorraine Gardner, 98 Grove Street, came forward and was sworn. She stated that she did not feel that the construction of a four-family dwelling was appropriate in a two-family zone.

The Board discussed the application.

On a motion by Vice Chair Fleischer, seconded by Mr. Gallardo, it was resolved to deny the request for a use variance.

On a motion by Vice Chair Fleischer, seconded by Mr. Gallardo, it was resolved to approve the setback and parking variances for future construction on the site with the following conditions:

1. The new structure shall follow the existing foundation.
2. The applicant shall comply with conditions #2 through #7 in the Board Engineers Report.
3. Three parking spaces shall be provided

Chair Harrison announced the variance hearing on the application of **37 North Fullerton Associates L.L.C., 37 North Fullerton Avenue**. Calvin Trevenen, Esquire, appeared as the attorney for the applicant. He described the application.

Mr. Trevenen called Dr. Nancy Elliot, Director of the Montclair Breast Center, and she was sworn. She described the nature of the practice and the reasons for relocating the practice to 37 North Fullerton Avenue including the lack of parking at her previous location and the desire to combine their practice with that of a plastic surgeon. She stated that there are usually 10 full-time employees and three part-time employees on staff and that her patient load is 6 to 8 patients at one time.

Marked into evidence was:

A-1 A brochure for the Montclair Breast Center

The Board questioned Dr. Elliot.

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

Mr. Trevenen called Dr. Allen Rosen, Chief of Plastic Surgery, Mountainside Hospital, and he was sworn.

Marked into evidence was:

A-2 A brochure for Dr. Rosen's practice

Dr. Rosen described the nature of his practice and how he works in conjunction with Dr. Elliot to provide a comprehensive approach to health care. He stated that he has twelve full-time staff members and that he usually cares for 5 to 10 patients at one time.

Marked into evidence were:

A-3 Amendment to Contract for the Purchase and Sale of Real Estate between 37 North Fullerton Associates, LLC (the "buyer") and Vincenzina Nibaldi and Salvatore Bode (the "seller"), dated January 12, 2001

A-4 A Deed between Matthew Klank (Grantor) and FEC Mortgage Corporation (Grantee), dated March 21, 2001.

A-5 A Deed between FEC Mortgage Corporation, by Interbay Funding, LLC its Attorney in Fact (Grantor) and 37 North Fullerton Associates LLC (Grantee), dated June 29, 2000.

A-6 A Deed between Forest Green, Inc (Grantor) and John Anderson, Jr., Lonna Hooks, Juanita Hooks and Helen K. Anderson (Grantee) dated December 13, 1990

Chair Harrison called for questions and comments from the public.

Neal O'Shea, 24 Forest Street, asked how long Dr. Rosen has owned 28 Forest Street. He also asked what repairs had Dr. Rosen made to the property and if there was any radioactive waste generated by his medical practices.

McKinley Hatcher, 34 Forest Street, asked what Dr. Rosen's plans were for 28 Forest Street.

Chair Harrison announced that there would not be sufficient time to hear the **Montclair Community Church** application and that it would be first on the agenda on the July 18, 2001, regular meeting. Secretary Kadus stated that no further notice would be given. Grant Gille, Esq, agreed to an extension of time for the applicant.

The Board took a short recess.

Mr. Trevenen called Susan Adams, a manger of residential real estate properties on North Fullerton Avenue, and she was sworn. She stated that she was the manager of apartment complexes at 39-41 North Fullerton Avenue, 43 North Fullerton Avenue and 45 North Fullerton Avenue. Ms. Adams stated that parking is a problem in the area and the potential use of the parking lot at 37 North Fullerton Avenue would benefit her tenants and the neighborhood. She further stated that the applicants offered parking for her tenants on evenings and weekends.

The Board questioned Ms. Adams.

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

Mr. Trevenen called Denis Mylan, Architect, and he was sworn.

Marked into evidence were:

- A-7 Plans previously approved by the Planning Board, dated July 31, 2000
- A-8 Colored rendering of the proposed site plan
- A-9 Photo of a home similar to what could be built at 28 Forest Street

Mr. Mylan provided background information on the prior approval from the Planning Board. He stated that access to the parking area would be controlled by a gate and that the lot would have 48 parking spaces. He remarked that the lot would be graded with all run-off draining to catch basins. He stated that the lot would have a loop circulation pattern. Mr Mylan described how the lot would be enclosed with a 4 foot high chain link fence and lined with arborvitae standing at least 7 to 8 feet at the time of planting. He commented that the lighting on the site would be shielded to insure that there would be no spillage of light onto residential properties. Mr. Mylan stated that he reviewed the comments made by the Board Engineer and will meet them.

Marked into evidence were:

- A-10 A letter from the Mylan Architectural Group to Tom Watkinson, Board Engineer, dated May 9, 2001
- A-11 Site plan showing parking layout for 26 and 28 Forest Street

The Board questioned Mr. Mylan.

Chair Harrison called for questions or comments from the public.

McKinley Hatcher, 34 Forest Street, asked questions regarding the location of fencing and landscaping.

Neal O'Shea, 24 Forest Street, asked how noise from the parking lot would be buffered. He also asked how long the construction process would take and how construction vehicles would enter the site.

Mr. Trevenen called Peter Steck, P.P., and he was worn.

Marked into evidence was:

A-12 Tax maps and Sandborn maps on a board

Mr. Steck stated that the lot sizes on Forest Street can be reduced and still meet the lot size requirements in the subdivision ordinance. He also stated that the garages located on Forest Street are not typical for the R-2 Two-Family Zone.

Marked into evidence were:

A-13 Photographs on a board

A-14 Photographs on a board

Mr. Steck stated that the OR-3 Garden Apartment and Office Building Zone permits shared parking and that 22 spaces would encroach to the R-2 Two Family Zone. He described how the proposed development is more aesthetically pleasing than what currently exists and that cars parked for commercial uses have the same visual effects as cars parked for residential uses. He expressed how he felt that taking land from deep lots on Forest Street created less negative impacts on the neighborhood than removing buildings along North Fullerton Street for more parking. He continued by stating that after the subdivision, the lots located in the R-2 Zone would still meet lot sizes required for subdivisions with new streets. Mr. Steck stated that he believed that the project would benefit the neighborhood.

The Board questioned Mr. Steck.

Chair Harrison called for questions or comments from the public.

Rob Sopkin came forward and asked questions concerning details of the project.

Chair Harrison called for comments from the public.

Neal O'Shea, 24 Forest Street, came forward and was sworn. He voiced concerns regarding the access of an easement that leads to his property. He stated that he was opposed to having a commercial parking lot abutting his backyard.

Marked into evidence was:

O-1 Photographs of 24, 26 and 28 Forest Street on 6 pages

McKinley Hatcher, 34 Forest Street, came forward and was sworn. He stated that the deep backyard of his property was one of the reasons that he bought the home and the construction of a commercial parking lot would detract from the enjoyment of his property.

Denise O'Shea, 24 Forest Street, came forward and was sworn. Ms. O'Shea stated that the proposed lot would take away from her privacy. She also stated that the lot would create noise and that she was afraid that the easement that leads to her parking area would be blocked occasionally.

Vincenzina Nibaldi, 26 Forest Street, came forward and was sworn. She stated that a partial payment of taxes was made and that she would make additional payments in the future. She also stated that she has tried to accommodate her neighbors for easy access to the easement. She said that the money gained from the sale of the land would be used to make improvements on her house.

Calvin Trevenen summarized the application.

The Board discussed the application.

On a motion by Vice Chair Fleischer seconded by Mr. Chapman, it was resolved to deny the request for a variance, with Mr. Susswein abstaining.

On a motion by Mr. Gallardo, seconded by Mr. Chapman, it was resolved to approve the request by **William and Jennifer Haughton, 14 Braemore Road** to extend for one year, the variance approval due to expire on July 19, 2001.

The meeting adjourned at 12:50 a.m.