

MINUTES OF THE BOARD OF ADJUSTMENT
June 21, 2000

PRESENT: Chair Harrison, Vice Chair Church, Mr. Chapman, Mr. Fleischer, Ms. Freundlich, Ms. Rock-Bailey, Mr. Williams; also, Michael Sullivan, Esq., Karen Kadus, Secretary and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Gallardo

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. Chapman seconded by Mr. Fleischer, the **Minutes of the May 24, 2000** special meeting were adopted as modified, Ms. Rock-Bailey abstaining.

On motion by Mr. Chapman seconded by Vice Chair Church, the **Minutes of the June 1, 2000** special meeting were adopted as modified.

Mr. Williams joined the meeting.

On motion by Mr. Fleischer, seconded by Mr. Chapman, the following Resolution Memorializing the approval of the site plan and variance application of **Over the Rainbow Nursery, Inc., 32 Pleasant Street** was adopted as modified, Vice Chair Church, Ms. Freundlich, Ms. Rock-Bailey and Mr. Williams abstaining:

WHEREAS, Over The Rainbow Nursery, Inc., did make application to the Board of Adjustment of the Township of Montclair for preliminary and final site plan approval in connection with a proposed child care center on property located at **32 Pleasant Avenue** and designated as Lot 21 in Block 2903 on the Township tax map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(1)* in that a child care center is not a permitted use in the R-1 One Family Zone pursuant to **Montclair Code Section 224-36**.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit more than 4 parking spaces contrary to **Montclair Code Section 224-38**.

3. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit installation of a 6 square foot sign which is prohibited by **Montclair Code Section 224-98**.

WHEREAS, the applicant submitted a site plan prepared by the Mylan Architectural Group bearing a final revision dated of January 4, 2000 as well as land and topographical surveys prepared by Bertin Engineering Associates, Inc., dated June 21, 1999; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on January 19, February 16, April 5, April 12, and May 24, 2000 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property and the adjacent property to the north which contains the access driveway had been properly served with notice; and

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

1. The subject property consists of approximately 1.8 acres and was initially utilized as an estate property in the late 19th century when the house was constructed. In 1947, the property was converted to a nursing home which continued until approximately 2 years ago. The applicant proposes a child care center which the applicant stipulated will be occupied by not more than 100 children at any one time. A 35 foot x 35 foot play area for toddlers will be situated behind the building at the northwest corner. A 155 foot x 72 foot play area will be located to the south of the existing building. No exterior changes are contemplated to the existing 2-1/2 story frame dwelling.
2. The proposed use advances the purposes of the Municipal Land Use Law namely, *N.J.S.A. 40:55D-2a* in that it provides a vital service recognized by the legislature in *N.J.S.A. 40:55D-66.5a* as well as the Master Plan Revision and Reexamination Report adopted by the Planning Board on December 13, 1999.
3. The applicant has operated a child care center in Montclair since 1981 at two different locations. The proposed move to the subject property will provide an appropriate location in which to meet the needs of the community consistent with *N.J.S.A. 40:55D-2g*.
4. Based upon the physical characteristics of the property and history of use, the site is particularly suited for the proposed child care center.
5. Approval of this application may provide some increased noise, however, it will not cause substantial detriment to the public good since the proposed use is compatible with the surrounding residential uses and will provide only a minimal increase in traffic which will not adversely impact levels of service in the area.

6. The proposed conversion of the property to a child care center which has not been used for residential purposes for over 50 years does not substantially impair the intent and purpose of the zone plan and zoning ordinance.

7. Section 224-38 permits "off-street parking for four (4) vehicles except in the case of conditional uses". The intent of this ordinance is to apply to one-family dwellings and not to a request for a use variance such as is the case here. Nevertheless, if a variance were determined to be required, the applicant's plan provides an appropriate number of parking spaces which is sufficient for the proposed use without adversely impacting neighboring properties.

8. The applicant sought a variance to permit a 6 square foot sign to be located at the driveway entrance. The applicant failed to prove any unique physical features or hardship or that any purposes of the Municipal Land Use Law would be advanced by approving the variance. Furthermore, the Board determined the proposed sign represents a visual intrusion inconsistent with the character of the neighborhood.

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the use variance, 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the applicant's request for a parking variance, the applicant proved the requisite positive and negative criteria to approve the variance pursuant to *N.J.S.A. 40:55D-70c(1) and (2)*; and

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the applicant's request for a sign variance, the applicant failed to prove the requisite positive and negative criteria to approve the variance pursuant to *N.J.S.A. 40:55D-70c(1) and (2)*; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Over The Rainbow Nursery, Inc., for preliminary and final site plan, use variance and parking variance is hereby approved 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.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the applicant's request for a sign variance is hereby denied.

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. Fleischer, seconded by Mr. Chapman, the following

Resolution Memorializing the approval of the variance application of **Fredric and Cheryl Dworkin, 153 Valley Road** was adopted as modified, Ms. Rock-Bailey abstaining:

WHEREAS, Fredric and Cheryl Dworkin, owners of property located at 153 Valley Road and designated as Block 1511 Lot 38 on the Montclair Township Tax Map, filed an application with the Board of Adjustment of the Township of Montclair, for approval to convert an existing two-family dwelling to a three-family dwelling; and

WHEREAS, the applicants applied for a variance pursuant to N.J.S.A. 40:55D-70d(3) to permit deviations from two conditional use standards set forth in Montclair Code Section 224-49B; and

WHEREAS, the applicants also applied for (a) a variance pursuant to N.J.S.A. 40:55D-70c to permit a side yard setback of 5 feet whereas a minimum setback of 10 feet is required by Montclair Code Section 224-40C(1); and (b) a variance pursuant to N.J.S.A. 40:55D-70c to permit a combined total of 23 off-street parking spaces for the subject property and the applicants' adjacent property, whereas a minimum of 26 spaces is required by Montclair Code Section 224-91; and

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by J. Arthur Johnsen, Architect, dated December 13, 1999; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment on May 24, 2000 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice of this application; and

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

1. The property is located in the NC Neighborhood Commercial Zone which permits both commercial and residential uses. The property is currently used as a two-family residence which the applicants seek to convert to a three-family residence.

2. The conversion of a two-family dwelling to a three-family dwelling is permitted as a conditional use in the NC Zone under Montclair Code Section 224-49B, provided certain conditions are met. The subject property complies with all of the conditions set forth in the ordinance except the following:

The ground coverage of the building, exclusive of open porches, garages or any other area not within the area occupied by normal living quarters, shall be not less than one thousand two hundred fifty (1,250) square feet; the area of the lot on which the building is

erected shall not be less than fifteen thousand (15,000) square feet within one hundred fifty (150) feet of the front street line; and the density shall not be greater than twenty-four (24) units per acre.

Fire escapes or stairways leading to the second or any other higher floor shall be completely enclosed within the building walls.

3. The subject property fails to comply with the aforementioned conditions in that the lot consists of only 4,577 square feet and the density requirement only allows for two dwelling units. In addition, the fire escape leading to the upper floors is not completely enclosed within building walls.

5. On March 13, 2000, the Planning Board granted site plan approval for the subject property and the applicants' adjacent property at 149-151 Valley Road. The Planning Board also granted a variance to permit a combined total of 23 off-street parking spaces for the two properties whereas a minimum of 25 spaces was required under Montclair Code Section 224-91. In light of the proposed conversion of the property from a two-family to a three-family residence, one additional off-street parking space is required and, therefore, a variance to permit this additional one-space parking deficiency is required.

7. The Board finds that the property's failure to satisfy the above mentioned conditions of Montclair Code Section 224-49B does not materially affect the appropriateness of the site for use as a three-family dwelling. The property continues to be in an appropriate location for a three-family dwelling notwithstanding the deviation from the aforementioned conditions. Coventry Square v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285 (1994). Furthermore, the Board finds that the conversion of the property from a two-family to a three-family residence will not have a substantial adverse impact on existing uses in the neighborhood or impair the intent and purpose of the zone plan or zoning ordinance.

8. For the reasons stated in the Planning Board's Resolution granting site plan approval, the Board finds that a variance from Montclair Code Section 224-91 to permit one additional parking space deficiency may be granted without any substantial adverse effect on adjoining properties and without impairing the intent and purpose of the zone plan and zoning ordinance.

9. The Board also finds that, although construction of a new third floor dormer and stairway on the southerly and rear sides of the property will be less than 5 feet from the property lines, a variance from Montclair Code Section 224-40C(1) is justified inasmuch as the setback deficiency is offset by the access driveway and the 12-foot distance between the subject building and the adjacent building.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved that the subject property is appropriate for use as a three-family residence notwithstanding the aforementioned deviations from the conditions set forth in

Montclair Code Section 224-49B, and that a variance from these conditions may be granted pursuant to pursuant to N.J.S.A. 40:55D-70d(3) without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance; and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants had established that the purposes of the Municipal Land Use Law would be advanced by a deviation from the requirements of Montclair Code Sections 224-91 and 224-40C(1) and that the benefits from the deviations would substantially outweigh any detriments and would not cause substantial detriment to the public good nor 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 Fredric and Cheryl Dworkin for variances from Montclair Code Sections 224-49B, 224-40C(1) and 224-91 be and is hereby approved in strict accordance with the site plan, floor plans and elevation drawings prepared by J. Arthur Johnsen, Architect, dated December 13, 1999, 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.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the applicants, the Township Manager, the Township Council, the Township Clerk, the Township Tax Assessor and the Construction Code Official.

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 her property and the proposed location of her central air conditioning unit on the side of her new addition. Ms. DiFilippo continued by stating that a central air conditioning unit was placed on the same side of the property as the proposed unit in June of 1995. Ms. DiFilippo stated that she was not aware that she needed to apply for a variance for that unit at that time. Ms. DiFilippo stated that the older unit could not handle the cooling of the new addition as well as the original portion of the residence. Ms. DiFillippo stated that the size of the proposed central air conditioning unit is 24 inches by 24 inches by 26 inches high. Ms. DiFilippo stated that she is willing to screen the new air conditioning unit from adjacent properties with shrubery.

Marked into evidence was:

A-1 Detail of proposed central air conditioning unit.

A-2 Blueprints of home addition.

The Board questioned the applicant.

The meeting was open to public questions and comments. None were made.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Vice Chair Church, Mr. Chapman voting in the negative, it was resolved to approve the variance, subject to the following conditions:

1. The applicant shall screen the central air conditioning units with appropriate landscaping.
2. The new central air conditioning unit shall be no closer to the property line than the existing unit.

Chair Harrison announced the variance application of **Imperial, Zazzaro & Calabro, PA, 499 Bloomfield Avenue**. Louis M. Masucci, Esq. appeared as attorney for the applicant. George Imperial, Esq., Principal, was sworn. Mr. Imperial stated that his clients need to be able to find his office easily, that the existing sign on the building is not easy to see and that the existing sign is often blocked by trucks parked on Bloomfield Avenue.

The Board questioned Mr. Imperial.

Chair Harrison opened the meeting to questions from the public for Mr. Imperial. None were offered.

Mr. Masucci called Mr. Robert Wilner, Private Investigator, employed by Imperial, Zazzaro & Calabro. He was sworn. Mr. Wilner described his qualifications and work history. Mr. Wilner stated that he helps to market the firm. Mr. Wilner continued by stating that for street level offices, a highly visible sign identifying the business is essential to help clients locate an office and to help generate new clients. Mr. Wilner stated that new clients often have difficulty locating the office. Mr. Wilner continued by describing sign code violations along Bloomfield Avenue.

The Board questioned Mr. Wilner.

Mr. Masucci conducted a redirect of Mr. Wilner.

The Board questioned Mr. Wilner.

Chair Harrison opened the meeting to questions from the public for Mr. Wilner. None were offered.

Mr. Masucci called Mr. David Fan of Signorama. He was sworn. Mr. Fan described his qualifications. Mr. Fan described the steps taken to create the proposed sign design including how letters would be mounted to the façade. Mr. Fan stated that a sign on the building could not be placed horizontally or across the façade since it would become too wide and block architectural details.

The Board questioned Mr. Fan.

Chair Harrison opened the meeting to questions from the public for Mr. Fan. None were offered.

Mr. Masucci re-called Mr. Wilner. Mr. Wilner stated that the façade is comprised of a foam-like material that has the appearance of stucco.

Marked into evidence was:

- A-1 Schedule of documents submitted including exhibits A through E.
- A-2 Original color photos presented in exhibit A-1.
- A-3 Original color photos presented in exhibit A-1.

Mr. Masucci stated that the proposed sign will assist clients in locating Imperial, Zazzaro & Calabro's office whereas a smaller sign that complies with the sign ordinance would make the office difficult to find for both Township residents and clients from other communities.

The meeting was open to public questions and comments. None were made.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Ms. Freundlich, it was resolved to deny the variance request.

The Board took a short recess.

Chair Harrison announced the variance application of **William and Jennifer Haughton, 14 Braemore Road**. Ms. Jennifer Haughton, applicant and owner, and Mr. Francis Klein, architect, were sworn. Ms. Haughton described the size of her proposed addition and its location. A variance was necessary because the front yard of

her property was on the north side due to the configuration of the lot at the bend of Braemore Road. Ms. Haughton stated that the front yard actually functions as a side yard.

Marked into evidence was:

- A-1 Color version of the addition blueprint.
- A-2 Photograph of the subject property.
- A-3 Property survey prepared by Richard J. Hingos, Inc., Professional Land Surveyors, dated June 2, 2000.

Mr. Klein described the location of the addition and its deficient front yard setback along the northerly lot line.

The Board questioned the applicant.

The meeting was open to public questions and comments. None were made.

The Board discussed the application.

On motion by Vice Chair Church, seconded by Ms. Freundlich and approved by all it resolved to approve the variance subject to the following condition:

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

Chair Harrison announced the variance application of **Jay Baumgardner, 64 Greenwood Avenue**. Mr. Jay Baumgardner, applicant and owner was sworn. Mr. Baumgardner described the site and floor plan of the proposed single-family dwelling to be built on the undersized lot. Mr. Baumgardner stated that he was the sole person to make an offer on the vacant property. Mr. Baumgardner continued by stating that he wished to preserve the rear yard as open space for recreational use by any future homeowner and therefore wished to provide an additional parking space on the side yard of the dwelling and not in the rear yard.

The Board questioned the applicant.

Marked into evidence was:

- A-1 Photo of house in Belleville.
- A-2 Photo of house in Bloomfield.

The meeting was open to public questions and comments.

Mr. William Ley of 68 Greenwood Avenue was sworn. Mr. Ley stated that the front and rear setbacks of the proposed structure are not in line with adjacent properties.

Mr. Michael DeBose of 66 Greenwood Avenue was sworn. Mr. DeBose objected to the proposed parking area in the side yard and stated that he would prefer that it be placed in the rear yard.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey it was resolved to approve the variance to allow construction on the undersized lot and deny the variance to allow parking in the side yard.

Chair Harrison announced the variance application of **James Foley, 149 North Mountain Avenue**. Mr. James Foley, owner and applicant, and Ms. Susan Yoo were sworn. Mr. Foley described his property and the size of the proposed addition. Mr. Foley stated that future renovations were to be made to the home. He described the location of the dwelling on the lot and how the addition followed the wall of the existing dwelling.

The Board questioned the applicant.

The meeting was open to public questions and comments. None were made.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Williams it was resolved to approve the variance subject to the following condition:

1. The applicant shall screen the foundation of the addition with appropriate landscaping.

On motion by Mr. Fleischer, seconded by Mr. Williams, the **Minutes of the June 15, 2000** special meeting were adopted as modified.

The meeting was adjourned at 11:04 p.m.