

**MINUTES OF THE BOARD OF ADJUSTMENT  
JUNE 19, 2002**

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

ABSENT: Ms. Rock-Bailey

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 May 6, 2002** special meeting were adopted as modified, Ms. Brooks abstaining.

On motion by Mr. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Michael and Lauren Zichelli, 119 Chestnut Street** was adopted as modified:

WHEREAS, Michael and Lauren Zichelli, as owners, did make application to the Board of Adjustment of the Township of Montclair to reestablish an existing carriage house on property designated as Lot 5 in Block 2304 on the Township tax map and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicants sought a variance pursuant to *N.J.S.A. 40:55D-70d(3)* to permit lot area of 16,106 square feet where a minimum of 20,000 square feet is required and lot width of 75 feet where a minimum of 150 feet is required pursuant to Montclair Code Section 347-9B.

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by Sionas Architecture, P.C. Sheet SP-1 dated December 18, 2001, Sheets A-1, A-2 dated January 9, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 15, 2002, 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; and

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

1. The subject property contains a 2-1/2 story frame dwelling ("main house") constructed around 1890. The structure has a history of multi-family use but is currently utilized as a single-family residence.

2. To the rear of the property exists a 1-1/2 story carriage house constructed around 1905 which is currently not occupied. The first floor of the carriage house formerly housed horses and carriages and contained an out house pit off of the ground floor. The second floor served as a residence for a groom. The structure meets the definition of a "carriage house" in compliance with Montclair Code Section 347-2.

3. There are no proposed changes to the exterior of the carriage house with the exception of new windows in existing openings at the west elevation of the cupola and two new skylights to be installed into the roof at the north elevation.

4. The application meets all of the conditional use standards contained in Montclair Code Section 347-9, except with respect to paragraph B which requires a minimum area of 20,000 square feet and a minimum lot width of 150 feet. The subject property contains lot area of 16,106 square feet and a lot width of 75 feet.

5. The Board determined the application proved "special reasons" as it provides sufficient space in an appropriate location for residential use and promotes a desirable visual environment consistent with the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2g,i* and the subject property continues to be an appropriate site for the conditional use.

6. Based upon the board's particular knowledge of local conditions, the reestablishment of the carriage house use is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

7. The Board determined the reestablishment of the carriage house use is not inconsistent with the intent and purpose of the master plan and zoning ordinance since the property can easily accommodate the carriage house use and the property owners have stipulated the main house shall be used for single family residential use only.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants 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 Michael and Lauren Zichelli, for a variance pursuant to *N.J.S.A. 40:55D-70d(3)* is hereby approved subject to the following condition:

1. The approval is subject to a deed restriction that the 2-1/2 story frame wood 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 and may only be modified through an application to the Board of Adjustment to modify the 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 occupancy of the carriage house. The deed shall be approved by the Board's Attorney prior to recording.

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. Gallardo, the following Resolution memorializing the denial of the variance application of **Russell Huewe, 576 Highland Avenue** was adopted:

**WHEREAS**, Russell Huewe, as owner, 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 347-46A(2)a** in connection with the installation of 2 central air conditioning units on property designated as Lot 14 in Block 902 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 James M. Helb, dated November 25, 2000 and a condenser location plan depicted on the survey, prepared by Lawrence P. Quirk, Architect, dated April 16, 2002; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 15, 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 measuring approximately 12,953 square feet and contains a 2½-story single-family dwelling and an attached garage.
2. The applicant's proposal is to install a two central air conditioning units in the northerly side yard of his property with a side yard setback of approximately 2.5 feet where 4 feet is required.
3. The applicant testified that proposed air conditioning units could not be placed in conforming locations on his property due to the location of the windows and doors of both the existing home and an addition presently being constructed to the home. The applicant also testified that there is limited usable rear yard space on his property due to the steep grade and that the adjacent property owner to the south of

his property has expressed objections to any location of the air conditioning units that would be visible from that property.

4. The applicant failed to demonstrate that there is no other practical location on the property for the air conditioning units. Further, the applicant did not demonstrate any hardship with relation to space on his property. As a result, any "hardship" is based on the location of the windows and doors of the new construction and is self-imposed.

**WHEREAS**, the Board, based on the foregoing findings concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variances could be granted without substantial detriment to public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to *N.J.S.A. 40:55D-70C(1)*; and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to 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 zoning ordinance pursuant to the requirements of *N.J.S.A. 40:55D-70C(2)*;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of Russell Huewe, for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to allow an northerly side yard setback less than the required side yard setback is hereby denied; and

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

Ms. Costello joined the meeting.

Chair Harrison called the site plan and variance application of **Evergreen I, LLC, 29 Park Street**. David Owen, Esq., appeared as attorney for the applicant. Mr. Owen described the application. Mr. Owen called Dr. Barry DiBernardo, managing owner of Evergreen I, LLC, who was sworn. Dr. DiBernardo stated that Evergreen I, LLC is the contract purchaser of the property at 29 Park Street. Dr. DiBernardo stated that he is a Board Certified Plastic Surgeon and that he intends to use the entire building at 29 Park Street for his medical practice. He stated that he lived and practiced in Montclair for the last 11 years and that he has been searching for a new facility for his practice in Montclair for the last 6 years. He stated that the building 29 Park Street is ideal for his practice.

The Board questioned Dr. DiBernardo.

Dr. DiBernardo stated that the facility currently used for his practice is leased and that he is seeking a location that he could own, allowing him to modify the building to suit the needs of his practice.

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

Mr. Owen called Paul Sionas, Architect, who was sworn. Mr. Sionas described the site. He stated that the driveway that serves the property from Park Street is shared with the law office next door. He also stated that the paved area at the rear of the building contains unmarked parking stalls. Mr. Sionas continued by describing the existing and proposed floor plans. Mr. Sionas described the two-story addition proposed for the rear of the building and stated that it would contain an elevator. Mr. Sionas described the proposed parking layout and stated that a total of 19 striped parking stall are proposed. He stated that parking spaces numbered 2 through 18 measure 8.5 feet wide by 19 feet long. He continued by stating that parking space number 19 measures 9 feet wide by 19 feet long and that parking space number 1 is reserved as a barrier-free stall measuring 8 feet wide by 19 feet long with a 5-foot wide, striped access aisle.

Mr. Sionas stated that the existing chain-link fence on the southerly property line is in poor condition and that a 5-foot high, open, black aluminum fence is proposed in lieu of the required solid fencing. He stated that the proposed fence matches the existing fence at the front of the adjacent YMCA property and that the proposed open fence faces the parking lot of the YMCA on the adjoining property. Mr. Sionas described the existing lighting on the site. He stated that the existing floodlight at the rear of the existing building would be relocated to the rear corner of the proposed addition. He also stated that 2 existing central air-conditioning units, presently on the ground at the rear of the building would be relocated to the flat portion of the roof at the easterly part of the building and that a 4-foot high solid wood fence would screen these units from the public view. He continued by describing the proposed refuse enclosure.

Marked into evidence was:

A-1 Drawing of the proposed Trash/Recycling Bin, prepared by Sionas Architecture, P.C., undated

Mr. Sionas described the proposed concrete patio and barrier-free ramp entrance. He stated that the proposed enclosed trash/recycling bin would be located below grade beneath the barrier-free parking space.

The Board questioned Mr. Sionas.

Mr. Owen stated that the applicant would accept a condition of approval

that would require the filing of a formal recorded easement benefiting both 29 and 31 Park Street, giving access rights to the shared vehicle access aisle area that lies on both properties.

Mr. Fleischer joined the meeting.

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

Mr. Owen called Peter Steck, Professional Planner, who was sworn.

Marked into evidence was:

- A-2 Sanborn map of 29 Park Street and vicinity with a Zoning overlay
- A-3 Photo-board containing 5 photographs of perspective views from 29 Park Street and views of 29 Park Street, taken by Mr. Steck in May of 2002

Mr. Steck described the existing conditions of the site and the applicant's proposal. He stated that immediate area of 29 Park Street is not retail in character due its separation from the retail shopping area because of the YMCA building and a parking deck to the south of the subject property. He further stated that 29 Park Street is directly adjacent to the OR-3 zone. Mr. Steck continued by describing the use and parking requirements of the C-1 zone and the variance and waiver requests of the applicant. Mr. Steck addressed the use variance request of the applicant and stated that existing building is not designed for retail use and is remote from the active retail area of the downtown. He also stated that the property is well suited and appropriate for office use and that it has been used as an office for all of its history. Mr. Steck stated that the existing building is not barrier-free and that the proposed changes to the building would make it fully accessible, and that by doing his the applicant is promoting a public purpose.

Mr. Steck stated that the on-site vehicle movement would be associated with an office use and that the dimensional deficiencies of the proposed parking and circulation plan are acceptable. He stated that the proposed open fence matches the style of an adjacent fence on the YMCA property and offers better security and visibility than the required solid fencing. He also stated that the 8.5-foot width of parking spaces numbered 2 through 18 is adequate for an office use. He continued by stating that 19 total parking spaces appears to be an accurate assessment of what is needed for the applicant's practice.

Mr. Steck stated that hardship evidence exists with regard to the applicant's requests for variances and waivers from dimensional requirements and that several purposes of the Municipal Land Use Law of New Jersey are served by the

application. He further stated that his opinion is that the application could be granted without a significant detriment or negative impact to the public good, the master plan, or the zoning ordinance.

The Board questioned Mr. Steck.

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

Chair Harrison called for public comment. None was offered.

Mr. Owen gave his closing remarks.

The Board discussed the application.

On motion by Mr. Chapman seconded by Mr. Haizel, it was resolved to approve the site plan and variance application, Mr. Fleischer abstaining, subject to the following conditions:

1. The owners of the subject property and the adjacent office building to the north shall execute cross-easements permitting driveway access and turnaround. The form of the cross-easements shall be approved by the Board Attorney and recorded in the Essex County Register's Office.

2. Parking space number 19 shall be eliminated and a 6 foot landscaped area in the easterly corner of the property shall be provided.

3. As a result of the preceding condition, 6 of the parking spaces designated as 2 through 18 shall provide a 9 foot width.

4. The plans shall be revised to include the proposed trash/recycling bin as depicted on Exhibit A-1.

5. The existing fuel tank shall be removed in compliance with all applicable governmental regulations.

Chair Harrison called the minor subdivision and variance application of **BJM Construction, Inc., 99 Willowdale Avenue**. Alan B. Siegel, Esq., appeared as attorney for the applicant. Mr. Siegel described the application and the subject property. He also described case law concerning the use variance request in connection with the proposed minor subdivision. He stated that the existing nonconforming multifamily dwelling on the property contains 5 residential units.

Marked into evidence was:

A-1 Photoboard of 99 Willowdale Avenue and vicinity

A-2 Floor Plan of the dwelling proposed for the proposed new lot, unnamed and undated

Mr. Siegel called Brian McCarthy, applicant and owner of BJM Construction, Inc., who was sworn. He stated that BJM Construction, Inc., is under contract to purchase the vacant lot that would be created if the proposed minor subdivision and variance application is approved. Mr. McCarthy described the dimensions of the existing lot and the proposed dimensions of the lots after subdivision. He stated that the required lot width is 60 feet at the street frontage and that both of the lots that would be created by the subdivision exceed this width requirement. He continued by stating that all height and setback requirements would be met on both of the new lots.

Mr. McCarthy described the floor plans of the dwelling on the proposed new lot and stated that the home would be priced at approximately \$400,000. He stated that the subdivision plan depicts the removal of a street tree to accommodate the driveway for the new dwelling and that the plan has been updated so that the driveway would be built at the other side of the proposed dwelling in order to preserve the existing street tree.

The Board questioned Mr. McCarthy.

Chair Harrison called for questions from the public for Mr. McCarthy.

John Bowles, 7 Willowdale Court, asked why the proposed dwelling is so large and what would be done with the large rear yard on the property.

Dolores Riley, asked what would be done with the existing home at 99 Willowdale Avenue and who owns the property.

Mr. Siegel called Esther Van Jones, resident of 99 Willowdale Avenue, who was sworn. Ms Van Jones stated that she has resided at the subject property since 1970. She stated that several greenhouses existed on the southerly side of the property at the time she arrived there and that the greenhouses were removed roughly a year after she arrived. She continued by stating that the southerly half of the property has remained unimproved for the last 29 years. She also stated that the existing multifamily on the property contains 5 dwelling units.

The Board questioned Ms. Van Jones.

Chair Harrison called for questions from the public for Ms. Van Jones.

Annette Strickland, 39 Draper Terrace, asked if 5 dwelling units exist in the dwelling at 99 Willowdale Avenue.

Richard Cook, 3 Willowdale Avenue, asked if anyone has ever lived in the basement of the dwelling.

Carol Brown, Franklin Place, asked if the existing dwelling is permitted to have 5 dwelling units.

Dolores Riley, asked if the existing nonconforming multifamily dwelling on the property would be grandfathered to future owners of 99 Willowdale Avenue.

Chair Harrison called for public comment.

Ed Bolden, 1 Ball Place, Maplewood, was sworn and asked the applicant if the plan would be revised so that the proposed dwelling will be in keeping with the established character of the neighborhood.

Rosita Sherman, 4 Willowdale Court, stated that the proposed dwelling is out of scale with the existing neighborhood.

Renee Albuoy, 9 Willowdale Court, stated that the average home in the area is only 25 feet wide and that the proposed dwelling is out of character with the neighborhood. Ms. Albuoy was sworn and stated that there are many problems associated with building the proposed dwelling.

John Bowles, 7 Willowdale Court, was sworn and stated he is concerned about future subdivision proposals on the subject lot creating more than 2 new lots. He also asked why the owner of 99 Willowdale Avenue is not present at the hearing.

Lawson Hepburn, 5 Willowdale Court, was sworn and stated that no other subdivision should be permitted on the subject property and that the proposed dwelling does not match the character of the neighborhood.

Mr. Siegel requested a continuance of the application so that the applicant may revise the subdivision plan. Mr. Siegel consented to grant the Board an extension of time on which to act on the application.

Chair Harrison announced that the application would be continued at the September 18, 2002 regular meeting of the Board of Adjustment and that no further would be given, unless there is a new variance request. Chair Harrison also announced that revised plans must be submitted to the Planning Department by September 6, 2002.

Chair Harrison called the variance application of **Marlene Hallman, 7 Woodland Avenue.** Marlene Hallman, owner and applicant, and Lou Racanelli, contractor for the project, were sworn. Mr. Racanelli stated that an existing open wooden stairway exists at the rear of the building and that it is in poor condition and needs to be rebuilt. Mr. Racanelli stated that stairway footprint was reduced as much as

possible and that the required side yard setbacks could not be met due to existing conditions on the property. He stated that the third floor landing has been scaled back and that the wood used for the new stairway would be treated lumber.

Ms. Hallman stated that all of the exits at the rear of the building are secondary exits and that the State is requiring her to rebuild the secondary stairway at the rear of the building.

The Board questioned the applicant and Mr. Racanelli.

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

Chair Harrison called for public comment. None was offered.

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

1. The proposed open exterior wooden stairway shall comply with all applicable Building Codes.
2. The new construction shall be built no closer to the easterly and westerly side property lines than the existing stairway.

On motion by Mr. Fleischer, seconded by Ms. Costello the meeting was adjourned.