

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**July 16, 2003**

PRESENT: Chair Harrison, Vice Chair Fleischer, Mr. Gallardo, Ms. Rock-Bailey, and Mr. Susswein; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Sammet, Secretary, Ms. Cockey, Ms. Costello, Mr. Flood, and Mr. Haizel

Assistant Secretary Charreun 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. Gallardo, seconded by Mr. Susswein, the **Minutes of the June 18, 2003** regular meeting were adopted, Vice Chair Fleischer and Ms. Rock-Bailey abstaining.

On motion by Mr. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Leslie and Reggie Lucas, 344 Highland Avenue** was adopted, Vice Chair Fleischer and Ms. Rock-Bailey abstaining:

**WHEREAS, Leslie and Reggie Lucas**, owners of property at **344 Highland Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a fence height taller than that permitted pursuant to **Montclair Code Section 347-27A(2)** on property designated as Lot 2 in Block 703 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by Capasso and Hingos, Inc., dated December 29, 1988, a fence location plan prepared by the applicants on a copy of the property survey, undated, and a magnified fence location plan containing additional details, prepared by the applicants and undated; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 18, 2003 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 Highland Avenue and Bradford Avenue and contains a 2½-story dwelling and a detached garage that is accessible via a driveway that runs from Highland Avenue to Bradford Avenue behind the dwelling.

2. The applicants propose to enclose the Bradford Avenue front yard of their property with a fence, a portion of which measures 6½ feet in height.

3. Due to the location of the existing dwelling, detached garage, and driveway on the subject property, there is not sufficient usable backyard space on the subject property, which renders the Bradford Avenue front yard as the most suitable location on the property for outdoor use.

4. The elevation change on Bradford Avenue exacerbates the negative impacts associated with the high volume of vehicular traffic at the intersection and the lack of privacy on the subject property.

5. Based upon the Board's particular knowledge of local conditions, the proposed 6½-foot tall fence will not adversely impact the public good.

**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 Leslie and Reggie Lucas is hereby approved, subject to the following condition:

1. The proposed fence shall conform to the maximum height requirements of the Zoning Ordinance in the front yard area of the property located between the dwelling and Highland Avenue.

**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. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the denial of the variance application of **Gerald & Linda Blume, 296 North Mountain Avenue** was adopted as modified Vice Chair Fleischer and Ms. Rock-Bailey abstaining:

**WHEREAS**, Gerald Blume, 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 18 in Block 603 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 Richard J. Hingos, Inc., dated February 16, 1998, with the proposed location of the central air conditioning units indicated, and a sheet of central air conditioning unit specifications from the manufacturer; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 18, 2003 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 with a street frontage width of 60 feet, measuring approximately 11,047 square feet, and contains a 2½-story single-family dwelling and a detached garage.
2. The applicant's proposal is to relocate two central air conditioning units from a conforming location in the rear yard to the southerly side yard of his property providing a side yard setback of approximately 1.5 feet where 6 feet is required.
3. The applicant testified that that there is limited usable outdoor yard space on his property due to the steep grade and limited width of the lot and that the present location of the central air conditioning units in the rear yard detracts from the enjoyment of the usable outdoor space on his property.
4. The applicant failed to demonstrate that there is no other practical location on the property for the air conditioning units and did not demonstrate any hardship with relation to space on his property.
5. The existing conforming location of the central air conditioning units is a practical location for those central air conditioning units.

**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 Gerald Blume, for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to allow a 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.

On motion by Mr. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Bela Schwartz & June Zimmerman, 446 Park Street** was adopted, Vice Chair Fleischer and Ms. Rock-Bailey abstaining:

**WHEREAS, Bela Schwartz and June Zimmerman**, owners of property at **446 Park Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70c* to allow for a setback less than that required pursuant to **Montclair Code Section 306-6D** in connection with the installation of a swimming pool heater on property designated as Lot 18 in Block 3603 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by DMC Associates, Inc., dated April 12, 2002, with the proposed location of the swimming pool heater indicated by the applicants, and a swimming pool heater specification sheet from the manufacturer; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 18, 2003 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 20,364 square feet and contains a 2½-story single-family dwelling, a detached garage, and an inground swimming pool in the rear yard.

2. The applicants' proposal is to install a swimming pool heater in the rear yard of the property, which would be set back from the southerly side property line approximately 6½ feet, in lieu of the required 10 feet for swimming pool equipment.

3. Due to the location of the existing pool equipment and the existing patio located between the inground swimming pool and the pool equipment, the proposed location of the swimming pool heater is the most practical location on the property.

4. In addition to the screening provided by the detached garage on the subject property as well as dense plantings along the southerly property line, a fence enclosure around the pool equipment would eliminate any potential adverse impact on neighboring 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 Bela Schwartz and June Zimmerman is hereby approved, subject to the following conditions:

1. A fence enclosure shall be constructed around the pool equipment area.
2. The applicants shall apply for and obtain all necessary building permits within 30 days.

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

On motion by Mr. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Andrew Groelinger, 120 Chestnut Street** was adopted, Vice Chair Fleischer and Ms. Rock-Bailey abstaining:

**WHEREAS, Andrew Groelinger**, owner of property at **120 Chestnut 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 a westerly 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 20 in Block 2401 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated November 20, 2002 and a site plan prepared on a copy of the survey, a rear elevation plan, and a floor plan prepared by the applicant, dated April 11, 2003, that depicts the new construction; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on June 18, 2003 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 has a street frontage width of approximately 45.51 feet and contains a 2½-story single-family dwelling with a one-story section at the rear of the dwelling.
2. The existing dwelling has a nonconforming westerly side yard setback of approximately 4.21 feet measured from the northwesterly corner of the dwelling.
3. The applicant's proposal is to construct a second-story addition over the existing one-story section at the rear of the dwelling which conforms to the height and rear yard setback requirements but does not meet the side yard setback requirement of 6 feet in the westerly side yard.
4. The proposed addition will be aligned with the existing exterior walls of the single-story portion of the dwelling and will also be set back approximately 4.21 feet from the westerly side property line.
5. Based upon the Board's particular knowledge of local conditions, the proposed addition is consistent with the character of the neighborhood and will not adversely impact the public good.

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant 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 applicant 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 Andrew Groelinger is hereby approved; and

**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.

Assistant Secretary Charreun announced that the site plan and variance application of **The Salvation Army, 159 Glenridge Avenue** has been postponed at the request of the applicant until the August 20, 2003 regular meeting of the Board of Adjustment, that the applicant has granted the Board an extension of time through August 20, 2003 for which to act on the application, and that no further notice would be given.

Chair Harrison called the variance application of **The Fortunato Group, 127 Pine Street**. Richard Fortunato, Esq., gave his appearance and was sworn. Mr. Fortunato described the proposed wall-mounted sign and the subject property. He stated that the office building on the site is located far from the street and that the narrow frontage of the lot makes the building difficult to see from the street. He also stated that the subject property is located adjacent to the railroad tracks and that visitors driving to the property have a difficult time locating the building. He continued by stating that the proposed wall-mounted sign meets all of the zoning requirements except the maximum mounting height.

The Board questioned Mr. Fortunato.

Mr. Fortunato stated that the proposed wall-mounted sign could not be mounted at a conforming height from grade because it would interfere with the existing windows of the building.

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. Fleischer, seconded by Mr. Gallardo, the variance application was approved.

Chair Harrison called the variance application of **Cynthia Brendzel, 588 Grove Street**. Mr. Gallardo recused himself for this application. Cynthia Brendzel, owner, and Andrew Masters, resident of the subject property, appeared before the Board. Mr. Masters was sworn and described the proposed addition to the dwelling. He stated that the one-story addition would contain a powder room, a mudroom, and a new stairway that would lead into the basement. He also stated that the existing stairway to the basement would be removed in order to expand the existing kitchen.

The Board questioned Mr. Masters.

Mr. Masters stated that the exterior walls and roof overhang of the proposed addition would be aligned with the existing exterior walls and roof overhang of the dwelling.

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. Fleischer, seconded by Ms. Rock-Bailey, the variance application was approved, subject to the following condition:

1. The exterior walls and roof overhang of the proposed addition shall be aligned with that of the existing dwelling.

Mr. Gallardo rejoined the Board.

Chair Harrison called the variance application of **Ann L. Stallman, 360 Upper Mountain Avenue**. Ann Stallman, owner, was sworn and described the proposed addition and outdoor deck. She stated that the addition would contain a new bathroom. She also stated that her property is at the corner of Upper Mountain Avenue and Bradford Avenue and that the required front yard setback from Bradford Avenue, based on the average setback of the two nearest dwellings on Bradford Avenue, is approximately 40 feet.

The Board questioned the applicant.

Ms. Stallman stated that the proposed deck would meet the required rear yard setback of 25 feet. She also stated that the proposed front yard setback from Bradford Avenue is approximately 35 feet.

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. Fleischer, seconded by Mr. Gallardo, the variance application was approved, subject to the following condition:

1. The northerly wall of the proposed bathroom addition shall join the existing rear wall of the dwelling at a point that is two feet further from Bradford Avenue than the existing northerly rear corner of the dwelling, and shall be oriented parallel to the existing side wall and perpendicular to the existing rear wall of the dwelling.

On motion by Mr. Gallardo, seconded by Mr. Susswein, an extension of time was granted on the approval of the site plan and variance application of **Evergreen I, LLC, 29 Park Street**, until December 31, 2003.

On motion by Mr. Gallardo, seconded by Mr. Susswein, the meeting was adjourned.