

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT**  
**July 21, 1999**

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

ABSENT: Vice Chair Chapman, Ms. Freundlich, Mr. Williams, Mr. Tobin

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.

At the applicant's request, the variance application of **Ralph Silas, 84 Mission Street** was postponed until the August 18 meeting.

Due to erroneous notification, the application of **Nathan Jones, 555 Park Street** was postponed until the August 18 meeting.

Mr. Spivey joined the meeting.

Kenneth Meiser, Esq. appeared, to request an extension of time on the subdivision approval of the **Montclair Child Development Corporation, 45 Elm Street** until September 30, 1999.

On motion by Mr. Church, seconded by Mr. Fleischer, **Montclair Childhood Development Corporation, 45 Elm Street** was granted an extension of time for filing of their subdivision map.

On motion by Mr. Church seconded by Mr. Fleischer, the **Minutes of the June 21, 1999** regular meeting were adopted.

On motion by Mr. Fleischer, seconded by Ms. O'Connell, the following **Memorializing Resolution of Thomas O'Brien, 2 Belvidere Place**, was adopted:

WHEREAS, Thomas O'Brien, owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow the placement of air conditioning units in the front yard which is prohibited pursuant to **Montclair Code Section 244-41E** on property designated as Lot 14 in Block 1514 on the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Richard F. Smith, Jr., Land Surveyor, dated November 25, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 16, 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 is a corner lot measuring approximately 52 feet by 114 feet with frontage on both Belvidere Place and Chestnut Street, and contains a single-family house and a detached garage.

2. The applicant's proposal is to install 2 ground mounted air conditioning units adjacent to the southerly side of the house in the Chestnut Street front yard.

3. The units would be equally visible if installed in the rear yard, as permitted, and there is not an adequate setback distance in the side yard for installation of the units.

4. The proposed placement would provide the best location for the units to operate most efficiently.

5. The proposed location of the air conditioning condenser units does not represent an unreasonable visual intrusion into the southerly front yard and will not result in increased detriment to the adjacent property owners which is consistent with the intent and purpose of the zoning ordinance.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant did meet the proofs required to support the granting of the variance from **Montclair Code Section 244-41E**; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Thomas O'Brien is hereby approved subject to the following condition;

1. The applicant shall plant evergreen shrubbery along the rear and side property lines, with a minimum height equal to the height of the condensers.

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. Church, seconded by Mr. Fleischer, the following **Memorializing Resolution of Constance Gill, 80 Grove Street**, was adopted:

WHEREAS, Constance Gill, owner, did make application to the Board of Adjustment of the Township of Montclair for a variance to install three air conditioning condenser units in the side yard and to construct a driveway and parking area on property designated as Lot 27 in Block 3212 on the Township Tax Map and located in the R-3 Garden Group Zone; and

WHEREAS, the applicant submitted a site plan and elevations prepared by Constance Gill, Architect, dated May 18, 1999; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 16, 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 applicant requested variances pursuant to N.J.S.A.40:55D-70c for failure to comply with the following:

- (a) **Montclair Code Section 224-53D** in that the applicant proposes to install three air conditioning condenser units less than the required three foot setback distance from the side property line;
- (b) **Montclair Code Section 224-94** in that the applicant proposes to create parking areas with a setback less than 4 feet from the property line;
- (c) **Montclair Code Section 224-92B** in that several of the proposed parking stalls will not meet the minimum size requirements;
- (d) **Montclair Code Section 224-92A** in that the applicant proposes to construct a gravel driveway in lieu of pavement;
- (e) **Montclair Code Section 224-92C** in that the driveway will be less than ten feet wide;

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

1. The subject property measures approximately 63 feet by 200 feet and contains a two-family house.

2. The applicant's proposal is to install three ground mounted air conditioning units in the southerly side yard. The applicant argued that due to the roof overhang and lack of gutters on the house, it would be difficult and inefficient to place the air conditioning units in conformance with the side yard setback requirements. The Board was not convinced the applicant had adequately explored alternatives with respect to placing the air conditioning units in a conforming location on the property, nor proved the inefficiency of placing the condenser units in a conforming location.

3. The location of the proposed air conditioning condenser units represents an unreasonable visual intrusion into the side yard reducing open space and would be a detriment to the neighborhood which is inconsistent with the intent and purpose of the zoning ordinance.

4. In conjunction with the conversion of the house from a two-family dwelling to a three-family dwelling, the applicant previously received approval for the construction of a five car parking area which would have a setback less than four feet with stalls that would not meet the minimum size requirements. The Board found the applicant is proposing to keep the house as a two-family structure, that a five car parking area was not required and that four cars can be accommodated on the site without requiring the loss of the four-foot buffer or creation of undersized spaces.

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 above listed aspects of the application.

6. Regarding the applicant's proposal to construct a gravel driveway contrary to **Montclair Code section 224-92A**, the Board found that due to the limited scope of the development, no public purpose would be served by requiring the applicant to pave the driveway.

7. The proposed 8-foot driveway is necessitated by the location of the existing dwelling and the vegetation on the property line. To mandate this provision would work an undue hardship upon the applicant.

WHEREAS, in regards to the air conditioning units place within the side yard setback and the construction of a five car parking area which would have a setback less than four feet with stalls that would not meet the minimum size requirements, the Board, based on the aforementioned findings, concluded that the applicant had not met the proofs required to support the granting of the variances from **Montclair Code Section 224-53D**, **Montclair Code Section 224-94**, **Montclair Code Section 224-92B**; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant's request for a variance to construct an 8 foot wide gravel driveway, 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's request for variance to construct an 8 foot wide gravel driveway, 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 variances requested from **Montclair Code Section 224-53D**, **Montclair Code Section 224-94**, **Montclair Code Section 224-92B** as part of the application of Constance Gill, regarding the placement of air conditioning units within

the side yard setback and the construction of five car parking area which would have a setback less than four feet with stalls that would not meet the minimum size requirements, is hereby denied; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the variances requested from **Montclair Code Section 224-92A** and **Montclair Code Section 224-92C** as part of the application of Constance Gill, regarding the request for variances from the construction of an 8 foot wide gravel driveway, is hereby approved subject to the following conditions:

1. No more than four parking spaces may be constructed, all of which shall conform to the ordinance.

2. A four-foot buffer shall be maintained between the property line and the newly created parking spaces.

3. The first ten feet of driveway beyond the sidewalk must be constructed of a solid material such as asphalt or gravel in concrete matrix.

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. Fleischer, seconded by Mr. Spivey, the following **Memorializing Resolution of Greg Seymore-Cullins, 122 Watchung Avenue**, was adopted:

WHEREAS, Greg Seymore-Cullins, owner, did make application to the Board of Adjustment of the Township of Montclair for variances to install an internally illuminated free standing sign, a roof sign and an awning sign with external illumination directed onto it at property located at 122 Watchung Avenue. The property is designated as Lot 20 in Block 2506 on the Township Tax Map and located in the N-C Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted a site plan and elevations prepared by Hugh Boyd, Architect, dated January 21, 1999; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 16, 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 applicant requested variances pursuant to N.J.S.A.40:55D-70c for failure to comply with the following:

- (a) **Montclair Code Section 224-99.1** in that the proposed internally illuminated free standing sign will have a setback less than the required 5 foot minimum

from the nearest property line, will exceed the maximum permitted sign area of 8 s.f., and will stand higher than the maximum permitted sign height of 6 feet;

- (b) **Montclair Code Section 224-99.1(C)** in that the lettering will be located above the bottom 12 inches of the awning, will exceed the maximum permitted 6 inch height, and the awning will have illumination directed onto it;
- (c) **Montclair Code Section 224-99.1(H)** in that free standing signs are only permitted in lieu of wall mounted and window signs;
- (d) **Montclair Code Section 224-97(D)** in that roof signs are prohibited; and

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

1. The subject property measures approximately 195 feet by 76 feet and contains a one-story masonry retail building.
2. The property contains a 41-space parking lot, and a one-story masonry structure with approximately 4990 s.f. of retail space. The structure has a front setback of approximately 143 feet from the right-of-way line.
3. The applicant proposes both a roof sign and freestanding sign. No other building in the surrounding area has a roof sign, and the proposed free standing sign would be similar in height to the adjacent gas station sign. The proposed roof sign and the free standing sign represent an unreasonable visual intrusion to the surrounding properties and would be a detriment to the neighborhood, which is inconsistent with the intent and purpose of the zoning ordinance.
4. 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 variances for the roof sign and the free standing sign.
5. The design and material of the proposed awning sign are of favorable character and quality, and the impact of the external illumination of the awning on the surrounding area will be minimal given the substantial setback of the structure.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant's request for a freestanding sign and a roof sign failed to meet the proofs required to support the granting of the variances from **Montclair Code Section 224-99.1**, **Montclair Code Section 224-99.1(H)**, **Montclair Code Section 224-97(D)** respectively; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant's request for a variance to install the awning sign from **Montclair Code Section 224-99.1(C)** 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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variances requested from **Montclair Code Section 224-99.1**, **Montclair Code Section 224-99.1(H)**, and **Montclair Code Section 224-97(D)** as part of the application of Greg Seymore-Cullins, Inc. are hereby denied; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the variance requested from **Montclair Code Section 224-99.1(C)** as part of the application of Greg Seymore-Cullins, Inc. is hereby approved subject to the following conditions;

1. The lettering for the awning sign shall not exceed the proposed size and shall not extend beyond the designated signage area.

2. The existing freestanding sign must be removed and a new free standing is not permitted.

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.

Chair Harrison called for the application of **Dorian Vallejo, 31 Brookfield Road**. Mr. Vallejo, owner, was sworn. Mr. Goldstein, a professional architect and planner in the state of New Jersey, was sworn.

The following items were marked for identification:

- A-1 Photo copy of Sanborn map of immediate surrounding area
- A-2 Board of elevation and site plan drawings, and pictures of house

Mr. Goldstein referenced the Sanborn map to show that the applicant has the narrowest lot on the block. He explained that the existing setbacks would not be reduced because the addition would be constructed within the existing roofline setback. The center of the addition is the highest point and serves to provide natural light for the applicant's art studio where he would work as an artist.

The meeting was opened for public comment. Robert Wright of 33 Brookfield Road came forth to express his support for the application for the construction of the proposed addition.

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

1. The addition shall follow the line of the existing house and be built no closer to the side property line than the existing sidewalls of the dwelling.

Chair Harrison called for the application of **Mark & Kanchi Bordick, 162 Summit Avenue**. Mr. Bordick was sworn as owner. Susan Goddard, Designer, was sworn. Mr. Bordick stated that the setback of the addition would be the same as the setback for the existing structure because the walls for the addition will follow the same line as the existing house. The height of the one story addition would also be the same as the existing first floor height and no landscaping and exterior lighting would change. Mr. Bordick added that he and his wife needed the extra kitchen space to accommodate their growing family. He said he did consider jogging the addition in to make it 18.5 feet by 12.5 feet, but he wanted to square the house off to give the appearance that the house was originally constructed that way.

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

1. The addition shall follow the line of the existing house and be built no closer to the side property line than 4 feet.
2. The proposed deck shall be constructed to meet the 6-foot setback.

Chair Harrison called for the application of **William & Francis Adams, 8 Carolin Road**. Mr. Adams, owner, was sworn. Paul Sionas was sworn as an architect and planner. Mr. Adams stated that he and his wife wish to expand their second floor bathroom 4 feet wide by 11 feet 2 inches deep at the rear of their house.

The following items were marked for identification:

A-1 Blueprint drawing SP-1 of elevation floor plans, prepared by Sionas Architecture, P.C., dated June 22, 1999.

Mr. Sionas explained that the existing setback is 4'-9" on the side of the proposed addition. This proposed setback will be the same as the setback of the first floor footprint and will match the alignment of the existing roof. The house sits askew on the lot causing the westerly lot line to be closer to the rear of the house.

Following some discussion, on motion by Mr. Church, seconded by Mr. Fleischer, the Board unanimously voted to approve the application:

Mr. Sullivan stated that **Barry Pote, 72 Greenwood Avenue** is continuing with the lawsuit claiming that his civil rights are being violated. The court refused applicant allow the applicant to amend his complaint that his civil rights were violated.

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