

MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
August 18, 1999

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Tobin, Ms. Freundlich, Mr. Church, Mr. Fleischer, Mr. Williams; also, Michael Sullivan, Esq., Michael Zichelli, Assistant Secretary, and Tehuti Barrett, Assistant Secretary

ABSENT: Ms. O'Connell, Mr. Spivey

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 September 15, 1999 meeting.

Mr. Williams joined the meeting.

On motion by, Mr. Church seconded by Mr. Fleischer, the **Minutes of the July 21, 1999** regular meeting were adopted, Mr. Chapman, Ms. Freundlich, Mr. Williams, and Mr. Tobin abstaining.

On motion by Mr. Fleischer, seconded by Mr. Church, the following **Memorializing Resolution of Mark & Kanchi Bordick, 162 Summit Avenue**, was adopted Mr. Chapman, Ms Freundlich, Mr. Williams, and Mr. Tobin abstaining.

WHEREAS, Mark and Kanchi Bordick, owners, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a 4 foot easterly side yard setback where a greater setback is required pursuant to **Montclair Code Section 224-40C(1)** in connection with the construction of an addition and a deck on property designated as Lot 17 in Block 2607 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Barry J. Agostinho & Associates, Land Surveyors, dated June 15, 1995 with the addition drawn in by hand by the applicant.

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 21, 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 has approximate dimensions of 50 feet by 186 feet and contains a 2-1/2 story frame dwelling.

2. The applicants' proposal is to construct an addition onto the rear of their dwelling to create an eat-in kitchen area to accommodate their growing family. They are also proposing to construct a 12-foot by 32-foot deck. The proposed side yard setback is 4 feet as measured from the closest portion of the addition to the easterly side lot line.

3. The applicants demonstrated that due to the interior configuration of the house, there are no other reasonable options for expansion of the kitchen.

4. The 12'-6" by 18'-9" one-story expansion would be in line with the existing sidewall of the dwelling and would square off the existing house.

5. There is no need for the deck to encroach because a conforming deck would suite the applicants needs.

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 FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Mark & Kanchi Bordick is hereby approved, 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 the constructed to meet the 6-foot setback.

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 Dorian Vallejo, 31 Brookfield Road**, was adopted, Mr. Chapman, Ms Freundlich, Mr. Williams, and Mr. Tobin abstaining:

WHEREAS, Dorian Vallejo, owner, did make application to the Board of Adjustment of

the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a 4.5-foot easterly side yard setback where a greater setback is required pursuant to **Montclair Code Section 224-40C(1)** in connection with the construction of an addition on property designated as Lot 24 in Block 1705 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., Land Surveyors, dated July 6, 1998 with the proposed coverage area of the addition drawn in by hand by the applicant. Also submitted were plan view drawings prepared by Risa Perlmutter Goldstein, Architect, dated June 23, 1999.

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 21, 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 has approximate dimensions of 35 feet by 215 feet and contains a 2-1/2 story frame dwelling.
2. The proposed side yard setback as measured from the closest portion of the addition to the westerly side lot line is 4.5 feet and 7.84 feet from the easterly side lot line.
3. The applicant's proposal is to construct a third floor addition onto the rear of the dwelling to create an art studio. The proposed art studio addition will be used as workspace for the applicant to perform his artwork.
4. The proposed use as an art studio is consistent with the code for home occupations.
5. The 16-foot by 22-foot one-story, third floor addition will maintain the same lines as the existing sidewalls of the dwelling.

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 FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Dorian Vallejo is hereby approved, 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.

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. Fleischer, seconded by Mr. Spivey, the following **Memorializing Resolution of William & Francis Adams, 8 Carolin Road**, was adopted, Mr. Chapman and Ms. Freundlich abstaining:

WHEREAS, William & Francis Adams, owners, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a 4'-9" westerly side yard setback where a greater setback is required pursuant to **Montclair Code Section 224-40C(1)** in connection with the construction of an addition on property designated as Lot 26 in Block 3502 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a site plan and drawings prepared by Sionas Architecture, dated June 22.

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 21, 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 has approximate dimensions of 56 feet by 86 feet and contains a 2-story frame dwelling and a detached garage.
2. The proposed side yard setback as measured from the closest portion of the addition to the westerly side lot line is 4 feet 9 inches from the westerly side lot line.
3. The applicants' proposal is to construct a second floor bathroom addition on the west side at the rear of the dwelling.
4. The situation of the house as relates to the westerly property line is askew, and the addition will follow the footprint of the first floor space below.

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 FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of William & Francis Adams is hereby approved.

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 on the application of **Nathan Jones, 555 Park Street**. Rory Jones (Mr. Jones), resident, Roger DeNiscia, Professional Planner, and Robert Heller, of Nexus Greenhouse Corporation, were sworn. Attorney Grant Gille described the nature of the application.

The following items were marked for identification:

- A-1 Construction documents prepared by Nexus Greenhouse Corporation
- A-2 Property survey prepared by Richard J. Hingos, Inc., dated August 31, 1998
- A-3 Site plan drawing without setbacks

Mr. Jones stated that he is a floral designer and has been growing orchids for the past 20 years. His business, Line Star Orchids, Inc. does floral design for a variety of companies such as fashion corporations and florists, most of whom are located in Manhattan. He usually does the design work and the arrangements on the clients' premises. He also enters his floral arrangements into different orchid exhibits around the country. Mr. Jones exclaimed that the purpose for the greenhouse would be for personal enjoyment at home and for preparation for orchid shows. He does not commercially advertise his business and has no intentions of using the premises for commercial purposes. Most of his advertising is by word of mouth and business cards given out at orchid shows. He stated that his van has the name and address of his company because vehicles with commercial license plates operated in New York City must have a sign on the vehicle identifying the business.

Mr. Jones explained that the size of the greenhouse is very important for

proper growth and nurturing of the orchids, because certain temperatures must be maintained. Reducing the size of the structure would make it too small for maintaining the type of environment necessary for retaining those temperatures. The only type of lighting he intends to use is inside the greenhouse and would be incandescent lighting for visibility while walking through at night, he has no intention of using supplemental lighting for growing the flowers.

The applicant responded to questions from the public in attendance, regarding the size of the structure, the setbacks, and the use of chemicals in the greenhouse.

Chair Harrison called on the next witness, Mr. Robert Heller. Mr. Heller, designer and contractor, was sworn. Mr. Heller stated that the greenhouse design is a tubular shaped structure with a lexan roof, opaque walls, a flagstone and gravel floor, and no foundation, only footings for the supporting columns. The exhaust fans would be belt driven and mounted in boxes to aid in noise reduction. The proposed size for this greenhouse is on the smaller scale of what his company usually designs and builds. If the size of the structure were reduced, the temperatures necessary for growing the orchids would be very difficult to maintain.

The witness responded to inquiries from those in attendance concerned about the actual final design and ultimate size and use of the greenhouse.

Chair Harrison called on the next witness, Roger DeNiscia. Mr. DeNiscia, Professional Planner, was sworn. Mr. DeNiscia argued that in his opinion the structure and the use would be accessory to the principle dwelling and use because the applicant's intended use is to grow orchids for hobby. Upon his review of the plans and the site, he noticed that while the structure is larger in scale than most accessory structures on lots for residential use, the structure meets the setback and height requirements for the zone.

Following questions from the Board, the witness answered questions from the public with respect to his knowledge of any past or current similar type structures and uses.

The meeting was resumed following a brief recess.

Representatives for the Junior League of Montclair agreed to have their case postponed to be heard in September 15, 1999 meeting.

Chair Harrison opened the floor for public comment and testimony. Several members of the public testified in opposition to the application.

Attorney Grant Gille summed up by noting that it is not the applicant's intention to use the greenhouse for commercial purposes and the applicant would agree to remove the structure was he ceased to occupy the lot.

Following discussion, on motion by Mr. Church, seconded by Mr. Chapman, the Board unanimously voted to deny the request of the defendant, and determined that the

greenhouse is not a permitted use in the R-1 One-Family zone.

Chair Harrison then announced that the applicants would continue the application for a use variance at the next hearing slated for September 15, 1999.

Chair Harrison called on the application of **King's Super Markets, Inc. 650 Valley Road**. Attorney Joseph Steinberg introduced his clients and explained the nature of the application. Rand Kevin Rosenbaum, Senior Associate Architect, Rosenbaum Design Group described the contents of the signs and the dimensions, and explained that the aggregate square footage for the signs will be approximately 20 percent less than existing. The new signs, like the existing, will be internally illuminated but give off less light because of the difference in style. The new sign would be pin mounted so as to allow the light to glow off of the red brick wall background and around the duller green letters as opposed to shining out through the sign and out toward the street.

The following items were marked for identification:

- A-1 Actual size sample letter of the internally illuminated sign
- A-2 Photo of the existing front wall and sign
- A-3 Photo showing the front wall sign and the south side wall and entrance
- A-4 Photo of the existing north side wall and sign

Mr. Steinberg introduced Kevin Backalian, Director of Store Engineering and Development. Mr. Backalian explained that the signs will have florescent tube lighting with top and bottom connections. The store has and will continue to turn the lights for the signs off upon the stores closing each night. He stated that the signs represent the company's new standard look for signage and that all of the company's signs are internally illuminated.

After some discussion, on motion by Mr. Church, seconded by Mr. Tobin, the Board unanimously voted to approve the application, subject to the following condition:

1. The illumination of the sign shall be turned off at store closing or 10:00 p.m., whichever is earlier.

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