

**MINUTES OF THE BOARD OF ADJUSTMENT
AUGUST 21, 2002**

PRESENT: Chair Harrison, Ms. Brooks, Mr. Chapman, Vice Chair Fleischer, Ms. Rock-Bailey, Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Planning Technician

ABSENT: Ms. Costello, Mr. Gallardo, and Mr. Haizel

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.

Secretary Sammet announced that at the request of the applicants, the site plan and variance application of **John & Deborah Siverman, 16 Montclair Avenue** has been postponed until the September 18, 2002 regular meeting of the Board of Adjustment, that the Board has been granted an extension of time for which to act on the application, and that no further notice would be given.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the **Minutes of the July 17, 2002** regular meeting were adopted as modified, Ms. Brooks abstaining.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the variance application of **Steven Heydemann & Gail David, 9 Nassau Road** was adopted, Ms. Brooks abstaining:

WHEREAS, Steven Heydemann & Gail David, owners of property at **9 Nassau Road**, did make application to the Board of Adjustment of the Township of Montclair for a variances pursuant to NJSA40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(1)** and a side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of an two-story addition and an outdoor deck on property designated as Lot 5 in Block 2804 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Bernard W. Criscenzo, dated July 18, 1990 and a site plan, floor plans, and elevations prepared by Susan M. Chandler, Architect, dated June 7, 2002, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 17, 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 a through lot with frontages on Nassau Road and Mount Hebron Road, measures approximately 7,388.79 square feet, and contains a 2½-story one-family dwelling and a detached garage.
2. The applicants' proposal is to construct a two-story addition and an outdoor deck at the northerly side of the dwelling.
3. The proposed construction conforms to the height requirements but does not meet the front yard setback requirement in the Mount Hebron Road front yard and side yard setback requirements.
4. The subject property is narrow and irregularly shaped with angled side property lines. The plans indicate that the proposed addition and deck are aligned with the existing easterly and westerly side walls of the dwelling.
5. The existing through lot condition of the property is an unusual condition which places excessive hardship on the applicants.
6. The view of the proposed construction in the Mount Hebron Road front yard of the subject property is effectively screened by topographic conditions, existing trees and shrubs, as well as the existing garage on the property.

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 variances 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 variances 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 Steven Heydemann & Gail David is hereby approved subject to the following condition:

1. The addition shall be aligned with the westerly side wall of the existing dwelling.

2. The outdoor deck shall be aligned with the easterly side wall of the existing 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. Chapman, the following Resolution memorializing the approval of the variance application of **The Junior League of Montclair-Newark, Inc., 99 Lloyd Road** was adopted as modified, Ms. Brooks abstaining:

WHEREAS, The Junior League of Montclair-Newark, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70d for permission to allow the premises at 99 Lloyd Road to be used as a designer's show house open to the public during the period of May 6, 2003 through June 1, 2003 for the purpose of raising funds for charities supported by the Junior League of Montclair-Newark, on property designated as Lot 1 in Block 303 on the Township Tax Map and located in the R-0 Mountainside Zone. A variance is requested from **Montclair Code Section 347-29** in that the proposed use is not listed as a permitted use in the R-O Zone; and

WHEREAS, the applicant submitted a survey of the property, prepared by Farro Associates, dated March 13, 2000, and a 4-page document entitled "Schedule A to Variance Application", prepared by the applicant, undated; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 17, 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 Junior League of Montclair-Newark, has entered into an agreement with Michael A. & Jean A. Strahan, owners of the subject property, to allow the subject premises to be used temporarily as a show house.

2. The operation of a show house involves the redecorating and furnishing of the house and landscaping of the grounds by professional decorators and landscapers, and opening of the premises to the public for a period of time to tour the house and grounds.

3. The show house is intended to be open for public viewing commencing Tuesday, May 6, 2003 and ending Sunday, June 1, 2003 according to the following time schedule:

10 a.m. to 4 p.m. on Tuesday, Wednesday, Friday and Saturday,
10 a.m. to 8 p.m. on Thursday,
12:00 p.m. to 4:00 p.m. on Sundays
Closed to the public on Mondays except for Memorial Day from 10 a.m. to
4 p.m.; and

4. During the times of public viewing, the show house will be staffed and managed by members of the Junior League and, if required by the Montclair Police Department, by one or more off-duty policemen; and that no professional designers or landscapers associated with the initial redecorating of the show house would be present to represent their businesses.

5. During the time of public viewing, an entrance fee will be charged and a café to be located on the property will serve light food and drinks as a convenience to viewers, and that furnishings, initially made a part of the show house, will be available for sale.

6. The proceeds from the show house which are derived from the entrance fee and a percentage of the sale of furnishings and all other exhibited items are intended to be used primarily for charitable purposes.

7. The Junior League of Montclair-Newark has operated as a non-profit organization since 1921 and since 1936 has maintained tax exempt status as a charitable organization. Since its inception in 1921, the Junior League has contributed much time and effort to the Montclair community.

8. No off-street parking will be permitted on the subject premises during the show house operation, but on street parking is available.

9. The show house hours of operation do not coincide with periods of peak traffic flow; and the Junior League expressed its willingness to hire off-duty police if the need should arise.

WHEREAS, the Board, based on the aforementioned findings, concluded that 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;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair that the application of the Junior League of Montclair Newark for a variance pursuant to *N.J.S.A. 40:55D-70d* is hereby approved subject to the following conditions:

1. The applicant shall adhere to the Montclair Police Department's

recommendations in regards to parking and public safety.

2. The applicant shall adhere to the Montclair Fire Department's recommendations in regards to fire and public safety.

3. All necessary fire and building permits shall be obtained by the applicant at the applicant's expense.

4. Any tent erected on the property shall only be in place between April 27, 2003 and June 10, 2003. The placement of any temporary tent structure shall conform to all applicable setback requirements specified in the Township Zoning Ordinance.

5. The applicant may install one identification sign on the site for the duration of the use of the tent and which shall not exceed 12 square feet in area.

6. There shall be no on-site parking during the hours of operation of the showhouse.

7. The applicant shall provide a 30-yard dumpster on the property for the period of March 31, 2003, through April 30, 2003, and a 10-yard dumpster on the property for the period of May 1, 2003, through June 8, 2003, and such dumpsters shall be emptied twice a week as indicated by the testimony provided.

8. The applicant shall adhere to the following schedule of operation for public events:

May 6, 2003 through June 1, 2003, the showhouse shall be open to the public from 10 a.m. to 4 p.m. on Tuesday, Wednesday, Friday and Saturday; 10 a.m. to 8 p.m. on Thursday; and on Sundays from 12:00 p.m. to 4:00 p.m., and be closed to the public on Mondays except for Memorial Day from 10 a.m. to 4 p.m.; and

9. The applicant shall adhere to the following special events schedule functions that may take place at the subject property:

"Bare Beginnings Party" on Friday, February 28, 2003 between the hours of 7:00 p.m. and midnight

"Bare Beginnings Party (Sustainers)" on Saturday, March 1, 2003 between the hours of 7:00 p.m. and midnight

"Press Party" on Thursday, May 1, 2003 between the hours of 1:00 p.m. and 4:00 p.m.

"Donor Cocktail Party" on Friday, May 2, 2003 between 6:00 p.m. and

9:00 p.m.

“Patron’s Party” on Saturday, May 3, 2003 between 6:00 p.m. and midnight

“Mother’s Day Tea” on Sunday, May 11, 2003 between 2:00 p.m. and 5:00 p.m.

“Garden Lecture/Workshop” on Monday, May 12, 2003 between 11:00 a.m. and 2:00 p.m.

“Wine and Cheese Party” on Thursday, May 15, 2003 between 6:00 p.m. and 8:00 p.m.

“Chamber Music Concert” on Saturday, May 17, 2003 between 7:00 p.m. and 11:00 p.m.

“Men’s Outing” on Sunday, May 18, 2003 between 10:00 a.m. and 4:00 p.m.

“Lecture/Auction” on Monday, May 19, 2003 between 11:00 a.m. and 2:00 p.m.

“Wine Tasting” on Thursday, May 22, 2003 between 7:00 p.m. and 11:00 p.m.

“Lecture” on Sunday, May 25, 2003 between 2:00 p.m. and 4:00 p.m.

“Tea” on Tuesday, May 27, 2003 between 2:00 p.m. and 4:00 p.m.

“Wine & Cheese” on Thursday, May 29, 2003 between 6:00 p.m. and 9:00 p.m.

“Auction” on Saturday, June 7, 2003 between 6:00 p.m. and midnight.

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. Chapman, the following Resolution memorializing the approval of the variance application of **Wintworth H. Lewis, Jr., 48 North Willow Street** was adopted, Chair Harrison and Ms. Brooks abstaining:

WHEREAS, Wintworth H. Lewis, Jr., owner of property at **48 North**

Willow 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 parking in a front yard pursuant to **Montclair Code Section 347-52** to permit a parking area in the front yard on property designated as Lot 22 in Block 3204 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Theodore R. Freund, dated June 8, 1965, with the location of the proposed parking area sketched by the applicant; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 17, 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, measures approximately 35 feet in width and contains a 2-½ story two-family dwelling.
2. The plans indicate that the property does not presently contain a driveway or any off-street parking.
3. The applicant's proposal is to construct a paved parking area in the front yard of the property for one vehicle.
4. The narrow width of the lot and configuration of the two-family dwelling on the lot prevents the applicant from constructing a driveway and parking area in a conforming location.
5. The proposed parking space conforms to the setback and dimension requirements of the Township Zoning Ordinance.
6. The existing public parking lots are located at inconvenient distances from the applicant's property, and existing on-street parking regulations in the vicinity of the applicant's property restrict on-street overnight parking.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance for front yard parking 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 N.J.S.A. 40:55D-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 for front yard parking 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 NJSA 40:55D-70c(2); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Wintworth J. Lewis, Jr. for a variance pursuant to N.J.S.A. 40:55D-70c to construct a front yard parking area is hereby approved subject to the following condition:

1. The proposed parking space shall be reduced to the standard size of 9 feet wide by 19 feet long and be located so that an area of grass is preserved on each side of the parking space.

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. Fleischer, the following Resolution memorializing the approval of the variance application of **William Snipes & Margaret Means, 218 Upper Mountain Avenue** was adopted as modified, Ms. Brooks abstaining:

WHEREAS, William Snipes and Margaret Means, as owners, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for more off-street parking on their property than permitted pursuant to **Montclair Code Section 347-31B** and **Montclair Code Section 347-101** in connection with the construction of a detached 3-car garage, and to allow a front yard setback less than required pursuant to **Montclair Code Section 347-34B** in connection with the construction of an accessory greenhouse on property designated as Lot 11 in Block 504 on the Township tax map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicants submitted a property survey prepared by Robert J. Wesp, PLS, dated November 29, 1994, and a site plan prepared by Mark A. Palus, PE, PP, dated April 15, 2002, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on July 17, 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 applicants have withdrawn the request for the front yard setback variance for the proposed greenhouse.
2. The subject property measures approximately 128,682 square feet in area and contains a 3-story principal dwelling and an unoccupied 2-story carriage house at the rear of the property containing 3 parking stalls on the first floor, 1 of which is smaller in size.
3. The applicants' proposal includes the construction of a detached garage in closer proximity to the principal residence that would contain 3 additional parking stalls.
4. Due to the steep grade of the property and excessive distance from the principal dwelling, the existing parking stalls within the carriage house do not provide practical, convenient, and safe on-site parking for the principal residence.
5. The proposed detached 3-vehicle garage is located in closer proximity to the principal dwelling and would provide practical, convenient, and safe on-site-parking for the residents of the principal dwelling.
6. The proposed 3-vehicle garage would be constructed partially into the hillside, significantly reducing any visual impact that the new garage may have on adjacent 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 within variance application of William Snipes and Margaret Means is hereby approved subject to the following conditions:

1. The existing carriage house shall be limited to 2 vehicle parking spaces.

2. The applicant shall obtain approval from the Board Engineer for Steep Slope construction.

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

Chair Harrison called the variance application of **John & Ann Socha, 67 Dryden Road**. Ann Socha was sworn. Ms. Socha described the proposed addition to the rear of the dwelling. She stated that the first floor of the existing dwelling does not contain any closet space, and that the one-story addition would be an extension of the living room and would contain closet storage space. Ms. Socha stated that the proposed addition would be partially constructed within the recessed area on the first level which exists under the second level overhang at the northwesterly corner of the dwelling. She also stated that the existing fence on the westerly side property line would be removed and that as much landscaping as possible would be retained in the westerly side yard in the area of the addition.

The Board questioned Ms. Socha.

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. Chapman, it was resolved to approve the variance application, subject to the following conditions:

1. The addition and deck shall be aligned with the westerly side wall of the existing dwelling.

2. The roof overhang of the proposed addition shall not extend further than 6 inches past the westerly wall of the proposed addition.

Chair Harrison called the variance application of **Stephen & Janet Singer, 293 North Mountain Avenue**. Stephen and Janet Singer were sworn. Mr. Singer described the proposed addition. He stated that the proposed addition would contain a master bathroom and closet space. Mr. Singer stated that the proposed second story addition would be constructed over an existing single-story section of the dwelling and would be aligned with the existing walls of the first level. He also stated that if the second-story addition were setback to conform to the side yard setback requirements, 15 percent of the floor area of the addition would be lost.

The Board questioned the applicants.

Ms. Singer stated that the existing tree in the vicinity of the proposed addition may have to be trimmed to accommodate the addition.

Marked into evidence was:

A-1 Photograph of the dwelling at 293 North Mountain Avenue

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 Mr. Fleischer, it was resolved to approve the variance request, subject to the following conditions:

1. The addition shall be built no closer to the southerly side property line than the existing dwelling.
2. Any trimming of tree limbs and branches that may be required for the construction of the addition shall be performed by a certified tree expert.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey the meeting was adjourned.