

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
SEPTEMBER 16, 1998**

PRESENT: Chair Harrison, Mr. Church, Ms. O'Connell, Mr. Fleischer, Ms. Freundlich, Mr. Tobin, and Mr. Williams; also, Michael Sullivan, Esq., Secretary Karen Kadus and Mr. Zichelli, Assistant Secretary.

ABSENT: Vice Chair Chapman.

Ms. Kadus 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.

Ms. Kadus announced that at the applicants' request, the application of **Seamus and Mary Ann Gilson, 159 Inwood Avenue** has been carried to the October 21, 1998 regular Board meeting.

Chair Harrison called for the continuation of the application of **The Essex Guest House of Montclair, Inc., 271 Claremont Avenue**. Celeste Miller, Esq. appeared as attorney for the applicant. She described the applicant's proposal to increase the capacity of the existing rooming facility.

Mr. Dennis Mylan, architect and planner, was sworn. Mr. Mylan described the surrounding land uses and zones. Marked for identification was the following:

A-2 Plans, prepared by Mylan Architecture,
dated August 27, 1998

Mr. Mylan reviewed the floor plans and described the existing use and the square footage requirements under New Jersey Rooming and Boarding House regulations. He stated that no physical changes will be made to the building, the applicant only seeks to increase the occupancy load of some of the rooms. Mr. Mylan stated that there would be minimal impact on the neighborhood and that few of the residents own vehicles.

Mr. Peter Kronos, owner, who was previously sworn, described other rooming and boarding houses in Montclair. He then reviewed the overall operations of the facility.

Ms. Miller summarized the application.

After some discussion, on motion by Mr. Fleischer, seconded by Mr. Tobin, the application was unanimously approved subject to the following conditions:

1. The use is limited to no more than 27 residents in the facility (not including the staff bedroom).

2. As stipulated at the public hearing, the property owner shall provide for off site parking for any vehicles utilized in connection with the site in excess of the four existing parking spaces.

Chair Harrison called for the application of **Kenneth and Ronald Alter, 10 North Willow Street**. Jerry Friedland, Esq. appeared as attorney for the applicant. He stated that the applicant owns and operates the Deron School, a special needs school on Grove Street and that the applicant proposes to use this site for the storage of supplies, buses, and living accommodations for a school staff member. Currently the site is used as a plumbing supply storage area and residence. Marked for identification was the following:

A-1 Contract of Sale

Mr. Roger DeNiscia, planner, was sworn. Mr. DeNiscia described the existing use of the site. Marked for identification was the following:

A-2 Photo board of site (returned to the applicant)

A-3 Lighting & Parking Schematic

Mr. DeNiscia described the use of the site, the proposed materials to be stored on the site, and how the buses would be oriented in the parking area.

Mr. Kenneth Alter, owner, was sworn. Mr. Alter described the improvements that he proposes to make on the property. Marked for identification was the following:

A-4 Tank Fill Permit

He stated that the school will still use the apartment and that two mini-buses and one utility truck will be stored on the site.

Mr. Friedland summarized the application.

After some discussion, on motion by Mr. Fleischer, seconded by Mr. Church, the application was unanimously approved subject to the following conditions:

1. Storage on the first floor is limited to nonvolatile educational and school supplies.

2. No more than three vehicles in connection with the first floor storage use (not exceeding 25 feet in length) shall be permitted. Beginning 90 days after initial use of the first floor, the aforementioned three vehicles shall not exceed three egresses per vehicle per day.

3. No more than two vehicles in connection with the second floor residential use shall be permitted.

4. All vehicles exiting the site shall not be permitted to back out but must exit forward.
5. All outstanding taxes shall be paid in full.
6. The proposed improvements to the site outlined in the contract of sale (Exhibit A-1) shall be completed.

On motion by Mr. Fleischer, seconded by Mr. Church, the **Minutes of the August 19, 1998** meeting were adopted.

On motion by Mr. Fleischer, seconded by Mr. Tobin, the following **Memorializing Resolution of Irene Robb 60 North Willow Street**, was unanimously adopted.

WHEREAS, Irene Robb, owner of property at 60 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 the construction of a front yard parking area pursuant to Montclair Code Section 224-47 in that off-street parking areas shall not be located between the main building and the curb of the street on which the building fronts and Montclair Code Section 224-94 in that the parking area will be set back less than 4 feet from the property lines, on property designated as Lot 31 in Block 3203 on the Township Tax Maps and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Casey and Keller, Civil Engineers and Surveyors, dated August 30, 1977; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on June 17 and August 19, 1998 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 dimensions of approximately 34 feet by 180 feet and contains a 2 1/2 story two family frame dwelling having side yard setbacks of approximately 3 feet and 5 feet.
2. The applicant proposed to create a front yard parking area for one or two cars. She argued that she could not gain access to her rear yard due to the placement of her dwelling close to the side lot lines and that the only available yard area on which to park cars is in the front of the dwelling.

3. The applicant also argued that her adjacent neighbors are unwilling to enter into an easement agreement to allow her to travel over a portion of their land to gain access to her rear yard.

4. Although the applicant took measurements of her front yard, they did not match those on the property survey, suggesting that a car could not park in the front yard without either extending onto neighboring land or into the public sidewalk. A standard car parking space is 9 feet by 19 feet according to the Montclair Zoning Ordinance. A depth of 15.79 feet, as the applicant's survey indicates, is inadequate space in which to park a car.

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 application.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant had not met the proofs required to support the granting of a variance from Montclair Code Section 224-47 and Montclair Code Section 224-94; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Irene Robb is hereby denied.

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. Tobin, seconded by Mr. Fleischer, the following **Memorializing Resolution of Nicolas Masone, 113 Grove Street**, was adopted, Mr. Church, Ms. O'Connell, and Mr. Williams abstaining:

WHEREAS, Nicholas Masone, as owner, did make application to the Board of Adjustment of the Township of Montclair for variances and site plan approval in connection with the construction of additions to an existing automotive repair and rental building on property designated as Lot 10 in Block 4205 on the Township tax map and located in the NC Neighborhood Commercial Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(2)* to allow expansion of preexisting nonconforming uses contrary to Montclair Code Section 224-82.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow impervious surface coverage of 98.2% where a maximum of 80% is permitted pursuant to Montclair Code Section 224-84.1.

3. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow a southwesterly rear yard setback of 16.5 feet were a minimum of 20 feet is required pursuant to Montclair Code Section 224-85C(3).

4. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow 17 parking stalls where a minimum of 20 is required pursuant to Montclair Code Section 224-91.

5. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow parking in the front yard contrary to Montclair Code Section 224-86 to allow a 24 square foot wall mounted sign for Enterprise Rent-a-Car facing Grove Street contrary to condition 2 of the Board's September 18, 1996 resolution.

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Sionas Architecture, P.C. dated November 22, 1997 and bearing a final revision date of July 21, 1998; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on July 15 and August 19, 1998, 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; and

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

1. The subject property is located on the southeast corner of the intersection of Grove Street and Walnut Street and is occupied by the automobile repair shop (Pit Stop Express Lube) and an automobile rental office (Enterprise Rent-a-Car). The applicant proposes to expand the existing one story building by adding two additional garage bays (total building area of 3,629 square feet where 1,350 square feet is existing plus a 279 square foot addition).

2. The site is unique consisting of a large corner lot particularly suited for the two uses which compliment each other. Rental cars are generally off the property during the day when repair vehicles are on site. Repair vehicles are generally off site at night when rental vehicles are on the property.

3. The new addition and renovations improve the appearance of the existing building which had previously been a gasoline service station which promotes a desirable visual environment consistent to *N.J.S.A. 40:55D-2i*.

4. Vehicular circulation on site shall be directed one way along the southeast and north side of the building which results in improved circulation and constitutes appropriate municipal action which promotes public safety pursuant to *N.J.S.A. 40:55D-2a*.

5. Approval of the application will allow a more efficient and appropriate operation of the existing complementary businesses and provides sufficient space in an appropriate location for the commercial uses which meet the needs of the public consistent with *N.J.S.A. 40:55D-2g*.

6. The existing improved surface coverage is 100% and shall be reduced to 98.2% by providing a landscaped area which represents an aesthetic benefit.

7. The application is not inconsistent with the Master Plan which recognizes limited expansion of existing commercial uses where appropriate pursuant to strict site plan review standards.

8. The application contemplates 13 parking stalls where a minimum of 20 is required pursuant to the ordinance. Based upon the testimony presented, the 17 parking stalls adequately meet the needs of the two businesses.

9. The proposed southwesterly rear yard setback of 16.5 feet provides adequate light, air and open space.

10. With respect to the request for variances related to impervious surface coverage, rear yard setback, number of parking spaces and front yard parking, the property is subject to exceptional physical features due to the structures lawfully existing on the site which result in a hardship upon the applicant.

11. The subject property is surrounded to the south and east sides by a car wash and the neighborhood is dominated by retail and food service businesses. The proposed application will not adversely impact the neighborhood and is not inconsistent with the intent and purpose of the zone plan or zoning ordinance.

12. The applicant, however, failed to prove the purposes of the Municipal Land Use Law would be advanced by allowing a 24 square foot wall mounted Enterprise Rent-a-Car sign in addition to the pole mounted sign approved by variance on September 18, 1996. As a condition of the aforementioned variance, the existing Enterprise Rent-a-Car wall mounted sign was required to be removed. The applicant would be allowed to construct an Enterprise Rent-a-Car wall mounted sign not to exceed two square feet which would be of sufficient size to alert customers on site as to the entrance door. The proposed sign, however, would adversely impact aesthetics and would result in visual clutter.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved the requisite special reasons for the granting of the use variance pursuant to *N.J.S.A. 40:55D-70d(2)* 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;

WHEREAS, the Board, based on the foregoing findings concluded that with respect to the request for variances related to impervious surface coverage, rear yard setback, number of parking spaces and front yard parking, the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 *N.J.S.A. 40:55D-70c(1)*; and

WHEREAS, the Board, based on the aforementioned findings, concluded that with respect to the request for variances related to impervious surface coverage, rear yard setback, number of parking spaces and front yard parking, the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause 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)*;

WHEREAS, the Board, based on the aforementioned findings, concluded that with respect to the request for a 24 square foot Enterprise Rent-a-Car wall mounted sign, the applicant would be allowed a wall mounted sign not to exceed two square feet as the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship pursuant to *N.J.S.A. 40:55D-70c(1)* or that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement or that the benefits of the deviation would substantially outweigh any detriments 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 *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 Nicholas Masone for a use variance and bulk variances related to impervious surface coverage, rear yard setback, number of parking spaces, front yard parking and a two square foot wall mounted sign facing Grove Street for Enterprise Rent-a-Car is hereby approved subject to the following conditions:

1. The plans shall be revised to add an additional four spaces in the front yard along Grove Street to provide a minimum number of 17 parking spaces on site.
2. Wall mounted signs facing Walnut Street shall be prohibited.
3. The applicant shall construct a wood fence along the southeasterly side of the property to shield the adjacent property from headlights, the height and type of fence shall be approved by the Planning Department.
4. The dumpster shall be relocated to the southwesterly side of the property in a location to be approved by the Planning Department.
5. The applicant shall comply with items 4, 5, 6 and 7 of the Board Engineer's Report dated July 2, 1998. The applicant shall meet with the Board Engineer to resolve paragraphs 2 and 3 to his satisfaction.
6. The applicant shall obtain County Planning Board approval.

7. The applicant shall comply with any conditions imposed by the governing body with respect to plantings along the northeasterly side of the property located within the right of way.

8. The Enterprise Rent-a-Car wall mounted sign facing Grove Street shall not exceed two feet by two feet in size.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the applicant's request for a wall mounted sign in excess of two square feet is hereby denied.

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. Church, seconded by Mr. Fleischer, the following **Memorializing Resolution of Mr. & Mrs. Glen Mierendorf, 176 South Mountain Avenue**, was unanimously adopted:

WHEREAS, Mr. and Mrs. Glen Mierendorf, owners of property at 176 South Mountain Avenue, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for the construction of a one-story garage addition to their single-family house pursuant to Montclair Code Section 224-28 in that the addition will have a side yard setback less than the required minimum distance of twelve feet, on property designated as Lot 19 in Block 104 on the Township Tax Maps and located in the R-O Mountainside Zone; and

WHEREAS, the applicant submitted a property survey dated May 26, 1998, and site drawings and plans prepared by Way & Associates, Architects, dated July 20, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 19, 1998 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 having approximate dimensions of 152 feet by 349 feet and contains a 2 1/2 story frame dwelling.

2. The proposal involves the construction of a 3 car attached garage on the northerly side of the dwelling, having approximate dimensions of 20 feet by 35 feet.

3. The applicants argued that due to the steepness of the site, it is not feasible to locate the garage addition, or a detached garage, anywhere else. Several design alternatives were presented to the Board, involving extensive excavation and retaining wall construction. Some alternatives blocked views from the house.

4. The applicants demonstrated that the proposed garage addition was a considerable distance from structures on adjacent lots, and that it would be partially hidden by landscaping.

5. The proposed location of the addition is the most appropriate given the location of the house on the lot and the topography of the lot which results in peculiar and exceptional practical difficulties and undue hardship upon the applicants.

6. The proposed addition will provide adequate light, air and open space and represents an aesthetic benefit to the property consistent with the purposes of the Municipal Land Use Law.

7. The proposed deviation is minimal and will not result in any adverse impact on area properties and based upon the foregoing, is not inconsistent with the intent and purpose of the zone plan and ordinance.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicants have met the proofs required to support the granting of the variance from Montclair Code Section 224-28; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Mr. and Mrs. Glen Mierendorf is hereby approved, subject to the condition that landscaping be maintained as proposed to the Board.

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 Church, seconded by Fleischer the following **Memorializing Resolution of Erik Kollist 198 Grove Street** was adopted, Ms. O'Connell abstaining:

WHEREAS, Eric Kollist, owner of property at 198 Grove 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 the construction of an addition onto his single-family house pursuant to Montclair Code Section 224-40B(2) in that the addition will have a front yard setback from Columbus Avenue less than twenty-five feet and Montclair Code Section 224-40D in that the proposed rear yard setback is less than twenty-five feet, on property designated as Lot 21 in Block 4403 on the Township Tax Maps and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Gerald G. Capasso, dated July 2, 1992 and elevations prepared by the applicant; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 19, 1998 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 at the intersection of Grove Street and Columbus Avenue has dimensions of approximately 60 feet by 124 feet and consists of a single-family dwelling.
2. In November 1993, the applicant received variances for the construction of a single-story garage addition onto the rear of his house. The new proposal involves the construction of a room over that addition.
3. The applicant represented to the Board that he needs room for his growing family and also an area where guests can be accommodated. He noted that the architectural style of the addition will be in keeping with that of the house.
4. The setbacks of the second story addition will follow those of the first story garage, extending no closer to Columbus Avenue or the rear and side property lines than the existing garage addition.
5. The proposed location of the addition is the most appropriate given the nature and location of the existing house on the property which results in peculiar and exceptional practical difficulties and undue hardship upon the applicant.
6. The proposed addition will provide adequate light, air and open space and represents an aesthetic benefit to the property consistent with the purposes of the Municipal Land Use Law.
7. The proposed deviations are minimal and will not result in any adverse impact on area properties and based upon the foregoing, is not inconsistent with the intent and purpose of the zone plan and ordinance.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant has met the proofs required to support the granting of the variances from Montclair Code Section 224-40B(2) and 40D; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Eric Kollist is hereby approved, subject to the condition that the second story additions maintain the same setbacks as the first story garage.

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.

The meeting was adjourned at 11:10 p.m.