

**MINUTES OF THE BOARD OF ADJUSTMENT
SEPTEMBER 18, 2002**

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

ABSENT: Ms. Brooks, 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 applicant, the minor subdivision and variance application of **BJM Construction, 99 Willowdale Avenue** has been postponed until the October 16, 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.

Secretary Sammet announced that at the request of the applicants, the site plan and variance application of **Michael & Tina Gulich, 4 Rockledge Road** has been postponed until the November 20, 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. Susswein, the **Minutes of the August 21, 2002** regular meeting were adopted as modified, Ms. Costello and Mr. Gallardo abstaining.

On motion by Mr. Chapman, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **John and Ann Socha, 67 Dryden Road** was adopted, Ms. Costello and Mr. Gallardo abstaining:

WHEREAS, John & Ann Socha, owners of property at **67 Dryden Road**, 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 150 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Norman B. Gee, dated September 4, 1990 and floor plans and elevations prepared by the applicants, dated March 3, 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 August 21, 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 has a lot width of approximately 50 feet and contains a 2½-story single-family dwelling and a detached garage at the rear of the property.
2. The existing dwelling on the property has a non-conforming westerly side yard setback of approximately 2.70 feet at the northwesterly corner of the dwelling.
3. The applicants' proposal is to construct a one-story addition 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.
4. The proposed addition will be aligned with the existing westerly wall of the dwelling.
5. Based upon the board's particular knowledge of local conditions, the proposed addition is not inconsistent 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 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 John & Ann Socha is hereby approved 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.

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. Chapman, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Stephen & Janet Singer, 293 North Mountain Avenue** was adopted, Ms. Costello and Mr. Gallardo abstaining:

WHEREAS, Stephen & Janet Singer, owners of property at **293 North 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 a southerly 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 2 in Block 1707 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by EKA Associates, P.A., dated July 22, 1993 and floor plans and elevations with no preparer or date indicated, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on August 21, 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 has a lot width of approximately 50 feet and contains a 2½-story single-family dwelling with a one-story section at the southerly side of the dwelling.

2. The existing single-story section of the dwelling has a nonconforming southerly side yard setback of approximately 5.22 feet at the southwesterly corner and approximately 4.63 feet at the southeasterly corner.

3. The applicants' proposal is to construct a second-story addition over the existing one-story section at the southerly side of the dwelling, which conforms to the height and rear yard setback requirements but does not meet the side yard setback requirement.

4. The proposed addition will be aligned with the existing southerly wall of the single-story section of the dwelling.

5. Based upon the Board's particular knowledge of local conditions, the proposed addition is not inconsistent 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 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 Stephen & Janet Singer is hereby approved 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.

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 the continuation of the site plan and variance application of **John & Deborah Silverman, 16 Montclair Avenue**. Grant Gille, Esq., appeared as attorney for the applicants. Mr. Gille stated that since the May 15, 2002 hearing on the application, the property has changed ownership to the current applicants and confirmed that no new notice was required as a result of this change. Mr. Gille summarized the application and described the revisions to the plan since it was last before the Board. He stated that the residential density and number of parking spaces have been reduced from the previous proposal and that the new project architect is Dennis Mylan of Mylan Architecture in Verona.

Marked into evidence were:

- A-7 Photo-board of property, prepared by Roger DeNiscia, P.P.
- A-8 Revised set of plans on 3 pages including a site plan, floor plans, and elevations, prepared by Mylan Architecture, revised to July 17, 2002

Mr. Gille called Dennis Mylan, Architect, who was sworn and stated his qualifications as an architect. Mr. Mylan described the existing conditions on the property and stated that it borders on the Public Zone and the General Business and Light Manufacturing Zone. He described the existing 1½-story single-family dwelling and the 3-story commercial structure on the property. He stated that the existing single-family home on the property is the smallest residential structure on that block of Montclair Avenue and that the 3-story commercial structure contains approximately 4000 square feet of floor area. He stated that the commercial structure had been used as a plumbing storage warehouse was probably built in the 1880s or 1890s and that it is the largest structure on the block. He also stated that the 3-story structure is surrounded by asphalt paving on 3 sides.

Mr. Mylan stated that the office located within the single-family dwelling would be removed as part of the application. He stated that the concrete patio at the rear of the existing single-family would be demolished to accommodate some of the proposed parking for the site. He also stated that the existing single-family residence on the site would remain as a single-family dwelling. He continued by stating that the 3-story warehouse building would be converted to accommodate 2 dwelling units with parking for 2 vehicles within the first floor of the structure. Mr. Mylan described the proposed floor plans. He stated that an exterior entrance porch addition would be constructed onto the side of the 3-story building and that the brick exterior of structure would be restored. He also stated that new windows and 2 roof skylights would be installed onto the building.

Mr. Mylan stated that a total of 6 parking spaces are proposed for the site. He stated that 4 of these spaces are to be located in the area of the demolished porch at the rear of the single-family dwelling and that the 2 remaining spaces would be located in the first level of the 3-story structure. He also stated that the existing 14-foot wide driveway would remain and that a 36-foot aisle width is provided for the 4 surface parking spaces. Mr. Mylan continued by stating that approximately 3000 square feet of impervious surface on the site and would be replaced with landscaped areas. He further stated that the new roof leaders would be connected to the existing underground stormwater sewer and that no increase in stormwater runoff would occur as a result of the proposal. He stated that the parking provided on the site meets all of the requirements of the Montclair Ordinance and the New Jersey Residential Site Improvement Standards and that the existing fence on the site would be repaired. Mr.

Mylan described the proposed exterior lighting and trash enclosure for the site and stated that the central air-conditioning units would be located at the rear of the 3-story building and would be screened by shrubs.

The Board questioned Mr. Mylan.

Mr. Mylan stated that the existing 3-story structure on the property is too large to contain only a single dwelling unit.

Chair Harrison called for questions from the public. None were offered.

Mr. Gille called Roger DeNiscia, Professional Planner, who was sworn and stated his qualifications as a Licensed Professional Planner. Mr. DeNiscia stated that he had reviewed the previously submitted proposal for the site as well as the current proposal and that he has visited the site. He described the requested variances.

Marked into evidence was:

A-10 Enlarged Sanborn map of the subject property and vicinity with the existing residential density indicated in color code

Mr. DeNiscia described the size of the subject property and the existing structures on the property. He stated that the 3-story structure was originally used as a furniture storage warehouse and that it has been used as a plumbing equipment warehouse since 1969 when a variance was granted for such use. He also stated that an office associated with the commercial storage facility exists in the single-family dwelling and was also permitted by the variance granted in 1969. He stated that the existing development on the site is not typical development in the R-2 Zone and that the applicants' proposal would provide the smaller housing units that are currently needed in Montclair. Mr. DeNiscia continued by stating that the elimination of the commercial use on the subject property and increasing the landscaped areas of the property while providing a needed housing type in Montclair represents a substantial improvement in site conditions.

Mr. DeNiscia stated that the existing warehouse use on the property is not compatible with the residential zone and that the proposed use is in keeping with the existing uses in the neighborhood. He stated that the applicants' proposal represents a positive land use change for the site and that the application furthers the purpose of land use planning by replacing a non-residential use with a residential use within a residential zone. He further stated that the proposed density of 3 residential units for the site is compatible with the immediate area due to the existence of multifamily dwellings and that the proposal would not impair the purpose or intent of the Montclair Zoning Ordinance or Master Plan.

The Board questioned Mr. DeNiscia.

Chair Harrison called for questions from the public for Mr. DeNiscia. None were offered.

Mr. Gille called Len Factor, resident of 74 Montclair Avenue, who was sworn. Mr. Factor stated that he would be the General Contractor for the proposed conversion and site work if it were to be approved. He described the conversion of the 3-story warehouse to 2 residential units and stated that the structure is unique and valuable and should not be demolished. He further stated that the size of the structure is too large to house only a single dwelling unit and that it could potentially hold more people as a single-family than it could as a two-family dwelling.

Board Attorney Sullivan asked Mr. Factor if he was included on the deed to the property as a grantor or co-owner.

Mr. Factor responded that he is not on the deed to the property as a grantor or co-owner.

The Board questioned Mr. Factor.

Mr. Factor stated that the units on the property would be condominium units and not rentals.

Chair Harrison called for questions from the public for Mr. Factor. None were offered.

Chair Harrison called for public comment. None was offered.

Mr. Gille summarized the application.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, it was resolved to approve the site plan and variance application, subject to the following conditions:

1. As stipulated by the applicants, the office use in the basement of the single-family dwelling is abandoned.
2. A maximum of three dwelling units shall be permitted on the property.
3. The driveway apron shall be replaced.
4. Any and all air-conditioning units installed on the property shall conform to the zoning ordinance.

Chair Harrison called the site plan and variance application of **Michael Walsh, 829 Bloomfield Avenue**. Calvin Trevenen, Esq., appeared as attorney for the applicant. Mr. Trevenen described the application and stated that the subject property contains a two-family dwelling and is located in the R-3 Garden Group Zone, which permits the conversion to more dwelling units as a conditional use. He stated that the application meets all but one of the conditions set forth in the Zoning Ordinance and that the number of parking spaces provided on the site meets the Ordinance requirements. Mr. Trevenen stated that the rear yard of the subject property has been fully paved for over 25 years and that no additional paving of the parking area is proposed.

Mr. Trevenen called Michael Walsh, applicant and owner of the subject property, who was sworn. Mr. Walsh stated that he has been the owner of the subject property since 1973 and that he has resided there since 1975. He further stated that he has resided on the first floor of the dwelling for the past 12 years. He continued by stating that the rear yard of the property was completely paved when he purchased the property.

Mr. Walsh stated that he would like to convert the existing two-family dwelling into a three-family dwelling because he is set to retire from working and he would need the additional income in order to pay the property taxes and maintain the property. He stated that the 2 existing units within the dwelling would be enlarged by removing the center stairway and constructing an addition at the side of the structure to accommodate the stairway. He also stated that he and the existing tenant would most likely remain as occupants within the converted building.

The Board questioned Mr. Walsh.

Chair Harrison called for questions from the public for Mr. Walsh. None were offered.

Mr. Trevenen called David Shih, Professional Engineer, who was sworn and stated his qualifications as a Civil and Structural Engineer. Mr. Shih stated that the submitted plans for the site were prepared under his supervision. He described the floor plans, elevations, and the window locations. Mr. Shih continued by addressing the conditions set forth in the Ordinance for the conversion of a two-family dwelling to more dwelling units. He stated that the proposed conversion does not meet the requirements of condition number 4, which requires a building ground coverage of not less than 1,250 square feet and a lot size of not less than 15,000 square feet within 150 feet of the street line. He continued by stating that the proposed ground coverage of the building would be 1,216 square feet and that the subject lot measures approximately 6,559 square feet. Mr. Shih stated that the remaining conditions would be met by the application.

Mr. Shih stated that the proposed setbacks and size of the converted building with the proposed additions is consistent with the existing multifamily dwellings in the vicinity. He also stated that the proposed rear addition is aligned with northerly exterior

wall of the existing building. Mr. Shih stated that the existing one-story section at the side of the dwelling would be removed to accommodate a cantilevered addition that would contain the new interior stairway. He continued by describing the parking area, driveway, and aisle widths. Mr. Shih also described the modifications to the roof at the rear of the dwelling to accommodate the proposed dwelling unit on the third floor and addressed the proposed height of the structure.

Mr. Shih addressed the comments of the Board Engineer on the application.

Marked into evidence was:

- A-1 Drainage Calculations, prepared by American Structural Engineering Associates, LLC, undated, certified by David Shih, PE
- A-2 Set of plans on 3 pages including a site plan, floor plans, and elevations, prepared by ASE Associates, LLC, dated February 19, 2002

Mr. Shih stated that the impervious surface on the site would not be increased and that no increase in stormwater runoff would be created as a result of the application. He further stated that a drywell is not needed for the site. He continued by stating that the proposed parking spaces could be striped if necessary.

The Board questioned Mr. Shih.

Mr. Trevenen asked that the application be adjourned at this time and be continued at the regular November meeting of the Board. He also consented to an extension of time for the Board to act on the application.

Chair Harrison announced that the application would be continued at the November 20, 2002 regular meeting of the Board and that no further notice would be given.

On motion by Mr. Fleischer, seconded by Mr. Chapman an extension of time was granted for the variance approval of the application of **Finesia Walker, 145 Walnut Street** to November 30, 2002.

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