

**MINUTES OF THE BOARD OF ADJUSTMENT
OCTOBER 11, 2000**

PRESENT: Chair Harrison, Vice Chair Church, Mr. Fleischer, Ms. Freundlich, Mr. Williams; also, Michael Sullivan, Esq., Karen Kadus, Secretary and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Chapman, Mr. Gallardo, Ms. Rock-Bailey

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 Meeting Act.

Secretary Kadus announced that the site plan and variance application of **Montclair Community Church, 143 Watchung Avenue** has been adjourned to the November 8, 2000 regular meeting of the Board of Adjustment at the request of the applicant and that no further notice is required.

Secretary Kadus announced that the variance application of **Steven Lauda and Ralph Latoracca, Murray Street** has been adjourned to the November 8, 2000 regular meeting of the Board of Adjustment at the request of the applicant and that no further notice is required.

Secretary Kadus announced that the variance application of **Petia Morozov, 532 Highland Avenue** has been adjourned to the November 8, 2000 regular meeting of the Board of Adjustment at the request of the applicant and that no further notice is required.

Chair Harrison announced the variance application of **Metricom, 56 Walnut Street**. Jason Sweet, Esq. appeared as attorney for the applicant. Mr. Sullivan stated that Metricom would need all 5 board members present to vote affirmatively for the application to be approved and asked Mr. Sweet if he has willing to proceed. Mr. Sweet stated that his client does wish to proceed and continued by describing the application. Mr. Sweet stated that 8 sled-mounted antennas are proposed for the rooftop and 8 face-mounted antennas are proposed on the penthouse.

Marked into evidence was:

A-1 through A-10 Exhibit Packet

Mr. Sweet stated that Metricom provides high speed data and internet access to its customers.

Mr. Sweet called Stanley Moreyno, Radio Frequency Engineer, Wireless Facilities, he was sworn. Mr. Moreyno stated that the proposed location would fill a gap in Metricom's network coverage and that to locate the proposed antennas elsewhere would create new holes in the network. Mr. Moreyno continued by stating that the height

proposed is the best for the site and that screening the antennas would create signal interference. Mr. Moreyno likened the air terminals on top of the antennas to lightning rods. Mr. Moreyno stated that the proposed site would be an unmanned facility, monitored by a computer off-site.

The Board questioned Mr. Moreyno.

Mr. Moreyno stated that due to obstructions on the roof, sled-mounted antennas must be close to the façade wall and that those antennas are not mounted on the parapet because tenants would be able to look out of their windows and see the antennas.

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

Mr. Sweet called Mr. Mark Parette, Architect, Parette, Somjen & Associates, he was sworn. Mr. Parette stated that the subject property meets all bulk requirements in the zoning district. Mr. Parette continued by stating that the air terminals would not be visible from the street, that the sled-mounted antennas would be set back 3 feet from the parapet and that the antennas would be 6 feet tall. Mr. Parette stated that if the antennas were mounted on the parapet, the bottom of those antennas would be near the windows of the apartments. Mr. Parette described the equipment room as an unmanned location that would be in the building and that the equipment would create no light or noise.

The Board questioned Mr. Parette.

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

Mr. Sweet called Ms. Susan Gruel, Professional Planner, Heyer, Gruel and Associated, she was sworn.

Marked into evidence was:

A-10 Aerial photograph on board.

A-11 Photographs on board.

Ms. Gruel described the positive criteria of the application including that the visual impacts of the proposed antennas would be minimal as the top of the structure is not easily seen, that the antennas are not easily seen from a distance, that Metricom has an FCC license and that there is a need for the type of service proposed. Ms. Gruel stated that the negative criteria of the application related to an increase in height and minimal visual impact.

The Board questioned Ms. Gruel.

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

Mr. Sweet stated that the applicant is willing to reduce the number of antennas to 8 and that this proposal would not reduce the coverage area but would reduce capacity.

Mr. Parette stated that if the antennas were mounted on the parapet they would extend 12 inches out from the parapet wall.

The meeting was opened to public questions and comments. None were made.

Chair Harrison stated that the applicant has 3 options to consider including that the Board of Adjustment can proceed to vote on the application this evening, that the applicant can revise their plans to comply with the ordinance and go before the Planning Board, or that the applicant can revise their plans and re-submit them to the Board of Adjustment.

Mr. Sweet requested a continuance so that the applicant could revise their plans.

Chair Harrison stated that the application would continue to be heard at the October 18, 2000 special meeting of the Board of Adjustment and no further notice would be given.

On motion by Vice Chair Church, seconded by Mr. Fleischer, the **Minutes of the September 13, 2000** special meeting were adopted, Chair Harrison abstaining.

On motion by Ms. Freundlich, seconded by Mr. Fleischer, the **Minutes of the September 20, 2000** regular meeting were adopted as modified, Mr. Williams abstaining.

On motion by Vice Chair Church, seconded by Mr. Fleischer, the following Resolution Memorializing the approval of the variance application of **The Church of the Immaculate Conception, North Fullerton Avenue**, was adopted as modified, Mr. Williams abstaining:

WHEREAS, the Church of the Immaculate Conception, as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval to construct a 23 space parking lot on property designated as Lot 3 in Block 2310 on the Township tax map and located in the OR-3 Garden Apartment and Office Building Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(1)* in that a parking lot is not a permitted principal use in the Zone contrary to Montclair Code Section 347-59.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit a 6 foot high solid fence which is prohibited pursuant to Montclair Code Section 347-27D.

WHEREAS, the applicant submitted a site plan prepared by Herbert J. Githens, Architect and Planner dated March 16, 2000; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 20, 2000 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The application contemplates converting an existing playground to a 23 space parking lot with ingress and egress via Cottage Place.
2. The applicant argued approval of the parking lot would promote the general welfare by providing needed off street parking. The applicant failed to prove the additional parking was needed and that existing parking was fully utilized. The most persuasive evidence was the testimony of Dr. Richard Grady, 42 North Fullerton Avenue and the parking log marked as Exhibit 0-1 which indicated existing parking was sufficient for the various church uses during weekdays.
3. The applicant failed to prove "special reasons" or that any purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2* would be advanced by approval of this application.
4. In addition to the church and school uses of the applicant, the neighborhood contains residential uses. In particular, the adjacent property to the south contains a single family home and the adjacent property to the north includes an apartment. The proposed parking lot would result in significant noise and other disturbances which would substantially interfere with the existing residential uses.
5. Approval of a private parking lot where the need has not been clearly established and which adversely impacts existing residential uses would substantially impair the intent and purpose of the zone plan and zoning ordinance.
6. The applicant failed to offer adequate justification for the proposed 6 foot high solid fence which would create a secluded area not visible from the street contrary to the safety and general welfare of the neighborhood.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant failed to prove the requisite special reasons for the granting of this application

and failed to prove 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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 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 not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove 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)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of the Church of the Immaculate Conception, for site plan approval to construct a 23 space parking lot and variances 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. Fleischer, seconded by Ms. Freundlich, the following Resolution Memorializing the approval of the variance application of **Jay Koven, 315 Park Street**, was adopted, Mr. Williams abstaining:

WHEREAS, **Jay Koven**, owner of property at **315 Park Street**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *NJSA40:55D-70d(1)* to allow an accessory structure on a lot which does not contain a principal use pursuant to **Montclair Code Section 347-41** in connection with the construction of a gazebo on property designated as Lot 30.01 in Block 2505 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Benjamin and Wizorek, Inc., Professional Engineers and Land Surveyors, dated June 28, 1996 and gazebo specifications from the Vixen Hill Manufacturing Company; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 20, 2000 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 approximately 25,977 square feet in size and does not contain any principal or accessory structures.
2. The applicants' proposal is to construct a gazebo on the property to complement an extensive garden.
3. The applicant also owns adjacent property at 319 Park Street. Although 315 and 319 Park Street are individual lots, they function as one property, and the applicant cannot combine the properties due to estate purposes.
4. The proposed gazebo will be octagonal in shape with a height of 15 feet, will be painted to match the existing house and would not be easily visible from the street.
5. The proposed location of the gazebo on the property is such that it would not need to be moved to construct a single-family dwelling on the property.

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the use variance, 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; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Jay Koven 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.

On motion by Mr. Fleischer, seconded by Vice Chair Church, the following Resolution Memorializing the approval of the variance application of **Leonard Factor, 74 Montclair Avenue**, was adopted, Mr. Williams abstaining:

WHEREAS, **Leonard Factor**, owner of property at **74 Montclair 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 front yard setback less than that required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of an addition and a wrap-around porch on property designated as Lot 26 in Block 4401 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by James M. Helb, PE, LS, PP, dated April 22, 2000 and a site plan and elevations prepared by John Thomas Collins, Architect, dated July 2000; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 20, 2000 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:

6. The subject property is approximately 12,944 square feet in size and contains a three and one half story single-family dwelling.
7. The applicants' proposal is to construct an addition onto the Columbus Avenue frontage of the dwelling to accommodate a kitchen and also to construct a wrap-around porch in the Columbus and Montclair Avenue front yards.
8. The proposed front yard setback along Columbus Avenue is 20.1 feet as measured from both the closest portion of both the addition and porch and the front yard setback along Montclair Avenue is 31.31 feet as measured from the closest portion of the porch.
9. The one-story addition is parallel to the existing rear wall of the dwelling and all height, side and rear setback requirements are met.
10. The applicant is restoring the interior and exterior of the house to its original condition, which includes the reconstruction of the wrap-around porch. The addition and wrap-around porch would not reduce the distance between the dwelling and adjacent properties at 75 Columbus Avenue and 78 Montclair Avenue.

6. The second story porch is purely an architectural feature and is not functional.

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 RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Leonard Factor 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.

On motion by Ms. Freundlich, seconded by Mr. Fleischer, the following Resolution Memorializing the approval of the variance application of **Joseph Quinones, 428 Grove Street**, was adopted, Mr. Williams abstaining:

WHEREAS, **Joseph Quinones**, owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to allow a front yard setback which is less than that required by Montclair Code Section 347-45B(2) in connection with the proposed construction of a deck onto his house on property designated as Lot 27 in Block 3504 on the Township Tax Map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Shepard and Shepard, Inc., Land Surveyors, depicting the location of the new construction, and Deck and Driveway Details prepared by Don M. Parnes, Architect, dated June 15, 2000; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 20, 2000, 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 a corner lot at the intersection of Grove Street and Wildwood Avenue and contains a single-family dwelling which has a deficient front yard setback of approximately 15 feet along the Wildwood Avenue frontage.
2. The new 24 foot wide deck will be constructed onto the rear of the dwelling and will follow the existing southerly and northerly side walls of the dwelling. The stairs to the yard will be located on the southerly portion of the deck.
3. The Board of Adjustment granted a front yard setback variance for an addition on the rear of the dwelling on March 15, 2000. A deck was not planned at that time.
4. All side and rear yard setbacks are in compliance.

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 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 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 Joseph Quinones for a variance pursuant to N.J.S.A. 40:55D-70c to construct a deck on his principal dwelling is hereby approved, subject to the following conditions:

1. The applicant shall adhere to all conditions set forth in the April 5, 2000 Board of Adjustment resolution.
2. The sides of the deck shall not extend beyond the sides of the rear addition.

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

The meeting was adjourned at 11:20p.m.