

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
OCTOBER 21, 1998**

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Church, Ms. O'Connell, Mr. Fleischer, Ms. Freundlich, Mr. Tobin, and Mr. Williams; also, Michael Sullivan, Esq., Secretary Karen Kadus and Tehuti Barrett, Jr. Engineer.

ABSENT: Mr. Zichelli, Assistant Secretary

Ms. Kadus called the roll and announced this to be a regular meeting of the Montclair Board of Adjustment for which notice was given in accordance with the Open Public Meetings Act.

The **Minutes of the September 16, 1998** meeting will be adopted at a future Board meeting.

On motion by Mr. Church, seconded by Mr. Fleischer, the following **Memorializing Resolution of Essex Guest House of Montclair, Inc., 271 Claremont Avenue** was adopted, Vice Chair Chapman abstaining:

WHEREAS, Essex Guest House of Montclair, Inc., as owner, did make application to the Board of Adjustment of the Township of Montclair to convert three of the private rooms in the existing boarding house to semi-private rooms on property located at 271 Claremont Avenue and designated at Lot 19 in Block 1508 on the Township tax map and located in the R-2 Two Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(2)* to allow conversion of three private rooms into semi-private rooms increasing the occupancy from 24 persons to 27 persons which constitutes an expansion of a preexisting nonconforming use contrary to Montclair Code Section 224-42.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow less than the required nine parking spaces required by Montclair Code Section 224-91.

WHEREAS, the applicant submitted a site plan and floor plans prepared by the Mylan Architectural Group dated August 27, 1998; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on July 15 and September 16, 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 property has been utilized as a preexisting nonconforming rooming house since at least 1946 with an occupancy of 24 persons (exclusive of the staff bedroom). The property owner possesses a Class B Boarding House License issued by the New Jersey Department of Community Affairs.
2. The application seeks to convert three of the existing private rooms to semi-private rooms increasing the occupancy to 27 persons (exclusive of the staff bedroom) as depicted on the floor plans marked into evidence as Exhibit "A-2".
3. The Boarding house has been primarily used by senior citizens and is consistent with the purpose of the Municipal Land Use Law in that it provides sufficient space in an appropriate location for needed residential use.
4. The application complies with the relevant administrative regulations relating to rooming and boarding houses contained in *N.J.A.C. 5:27-1.1 et. seq.* with regard to space requirements and bathroom facilities
5. The site contains four substandard preexisting nonconforming parking spaces. The occupancy, however, is primarily senior citizens who have rarely owned cars while residing at the site. Additionally, the property owner has agreed to provided for off site parking as outlined below, which warrants granting the requested parking variance.
6. No structural changes are proposed and the increase of three residents will have little or no impact on the neighborhood and is not inconsistent with the intent and purpose of the zoning ordinance.

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Essex Guest House of Montclair, Inc. to convert three private rooms in an existing boarding house to semi-private rooms and parking variance is hereby approved subject to the following condition:

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.

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 Mr. Tobin, the following **Memorializing Resolution of Kenneth and Ronald Alter, 10 North Willow Street** was adopted, Vice Chair Chapman abstaining:

WHEREAS, Kenneth and Ronald Alter, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70d* to utilize the first floor of an existing building to store educational and school supplies in conjunction with the Deron School on property located at 10 North Willow Street and designated as Lot 21 in Block 3205 and located in the C-1 Central Business Zone; and

WHEREAS, the applicants submitted a property survey prepared by Richlan, Lupo & Pronesti, Land Surveyors dated January 31, 1979 as well as a first floor plan received July 1, 1998; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 16, 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 application proposes storage of educational and school supplies on the first floor of the existing building as well as the parking of three vehicles in conjunction with this use.

2. The existing three bedroom residential use on the second floor, including the right to park up to two vehicles in connection with this use remains unchanged by this application.

3. The application advances the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2* in that it constitutes appropriate development of land in a manner which will promote the public health, safety and general welfare (-2a) and provides sufficient space in an appropriate location for the proposed commercial use in order to meet the needs of the community (-2g).

4. The contract of sale entered into evidence as Exhibit A-1 specified proposed improvements to the site including but not limited to repaving the parking area and painting the building which represent an aesthetic improvement to the site.

5. The first floor was previously used in connection with a preexisting nonconforming plumbing supply business and the proposed use is less intense and will not have a substantial adverse impact on the neighborhood and will not substantially impair the intent and purpose of the zoning ordinance and is not inconsistent with the intent and purpose of the master plan.

6. Based upon the structures lawfully existing on the site and the history of the use of the property, the proposed site is particularly suitable for the proposed low intensity storage use on the first floor.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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 Kenneth and Ronald Alter for a variance pursuant to *N.J.S.A. 40:55D-70d* is hereby 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.

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

Chair Harrison called for the hearing on the application of **Seamus and Mary Ann Gilson, 155 Inwood Avenue**. Mr. Seamus Gilson, owner, was sworn, and

described his proposal to retain an air-conditioning unit that was installed in his front yard. He explained that his contractor had recently replaced his heating unit and installed a ground mounted air conditioner in the front yard of his corner lot without first securing a building permit. He described the unit as being 27 inches high, green in color, and surrounded by shrubbery. He stated that it is an energy-efficient unit, very quiet, and hidden from view.

Marked into evidence was:

A-1 Photo board prepared by Mr. Gilson

He explored other options, he said, but no other location worked as well. He explained that his Inwood Avenue yard is also a front yard, his easterly yard space is too narrow, and the rear yard is occupied by the driveway. The proposed location is adjacent to the boiler room in the basement, so it is the ideal location.

Steven Lesniak, 4 Inwood Terrace, expressed his support for the variance, stating that the unit is hidden by shrubbery.

Scott Nadison, 6 Inwood terrace, also stated his support for the application.

The Board discussed the application. On motion by Ms. Freundlich, seconded by Ms. O'Connell, it was resolved to approve the variance, Chair Harrison and Vice Chair Chapman voting in the negative.

Chair Harrison called for the hearing on the application of **Mark Stein, 175 Eagle Rock Way**. Mr. Stein, owner, was sworn, and described his proposal to create a parking area in the front yard. He described his unusually-shaped property and his limited parking options.

Marked into evidence were:

A-1 Enlarged property survey

A-2 Photograph of car parked in driveway

He noted that due to the steep slope of the lot, safety is a primary issue, particularly for elderly relatives. He noted that the curve of the street is dangerous to park on, and parking elsewhere on the lot was not feasible due to the location of his child's play area and the slope of the land.

Marked into evidence was:

A-3 Photograph of site

Charles Reid, 753 Charles Court, Fort Lee, was sworn.

Marked into evidence was:

A-4 Reid Resume

He described the layout of the site and the steep topography. He characterized the site as being unique and distinctive.

The Board had several questions of the applicant and requested more information as to the westerly side of the property. At the applicant's request, it was decided to carry the matter to November 4 at which time the applicant would return with further information.

The Board took a short recess.

Upon reconvening, Chair Harrison called for the hearing on the application of **Immaculate Conception Cemetery, 712 Grove Street**. David Owen, Esq., attorney for the applicant, described the proposal to build a new office for the cemetery for which a use variance was required since the property is a nonconforming use in a residential zone. Marked into evidence were:

Adjustment Chairman	A-1	Letter dated June 8, 1998 to Clifton Board of from David Owen, Esq.
Adjustment	A-2	Letter dated June 30, 1998 to Clifton Board of Chairman, from David Owen, Esq.
	A-3	October 15 letter brief to Board
	A-4	2 photographs of site

Robert Burns, manager of cemetery, was sworn. He stated that he had been the manager for 20 years and resides on the property. The cemetery was established in 1895. The existing office is part of the dwelling is not private and is very small. He desired a larger, more private space in which to conduct business.

Paul Sionas, architect, was sworn.

Marked into evidence were:

A-5	Site Plan, prepared by Sionas Architecture, dated September 15, 1998
A-6	Details, sheet A1, prepared by Sionas Architecture, dated September 15, 1998

Mr. Sionas described the site and the proposal to construct a 695 square foot detached office building near an existing parking area. The 21 by 31 brick office would be one story and would have a negligible impact on the 33 acre site and the abutting residential neighborhood. He described the relocation of existing shrubbery and the parking layout.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Church, it was unanimously resolved to approve the application, subject to the condition that the applicant shall replace the arborvitae if it dies within 2 years of transplanting.

Chair Harrison called for the hearing on the application of **Anthony and Maria J. Vella, 110 Park Street**. Grant Gille, Esq., appeared as attorney for the applicant. He described the proposal to convert a two-family house into a three-family house in a multi-family zone for which a use variance is required. Marked into evidence were:

- A-1 Site Plan, dated September 24, 1998, prepared by The Mylan Architectural Group
- A-2 Locational survey prepared by Capasso & Hingos, Licensed Surveyor dated July 23, 1998
- A-3 Photo board
- A-4 Zoning map excerpt
- A-5 Site Plan, color, on board

Dennis Mylan, architect, was sworn, and he described the existing two-family dwelling and the surrounding neighborhood. The zone is R-3 Garden Group Zone, he explained, which permits a three-family dwelling conversion as a conditional use. Due to noncompliance with all required conditions, a use variance was required. The lot size totals 6,193 square feet, less than the 15,000 square foot minimum requirement.

He described several houses in the neighborhood on lots under 15,000 square feet. He then described the additions proposed to accommodate three dwelling units. Although the site plan ordinance requires a 12 foot one-way driveway, he is seeking permission for a 10 foot width. The air conditioning, lighting and drainage details were described.

Marcus Hackett, 5 James Street, questioned the applicant and stated that parking was difficult in the area.

Anthony Vella, owner, was sworn. He said that he bought the house on July 31, 1998. He described his renovation plans.

Kelly DeFlora, 8 James Street, questioned the witness.

The Board discussed the application. On motion by Ms. O'Connell, seconded by Mr. Church, the application was denied, with Mrs. Freundlich, Messrs. Fleischer and Tobin voting to approve.

The meeting was adjourned at 11:30 p.m.