

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
NOVEMBER 4, 1998**

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Church, Mr. Fleischer, Ms. Freundlich, Mr. Tobin, and Mr. Williams; also, Alan Trembulak, Esq., Mr. Barrett, Jr., Engineer, and Mr. Zichelli, Assistant Secretary.

ABSENT: Ms. O'Connell and Secretary Karen Kadus

Mr. Zichelli 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.

On motion by Mr. Fleischer, seconded by Ms. Freundlich, the **Minutes of the September 16, 1998** regular meeting were adopted, Mr. Chapman abstaining.

Mr. Zichelli stated that the adoption of the **Minutes of the October 21, 1998** meeting will be carried to the next regular meeting.

On motion by Mr. Fleischer, seconded by Mr. Church, the following **Memorializing Resolution of Seamus Gilson, 159 Inwood Avenue**, was adopted, Chair Harrison, Mr. Chapman and Mr. Williams abstaining.

WHEREAS, Seamus & Mary Ann Gilson, owners of property at 159 Inwood Avenue, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to legalize the placement of a ground-mounted air conditioning unit in their Inwood Terrace front yard pursuant to Montclair Code Section 224-41 in that the air conditioning unit, an accessory structure, is not permitted in the front yard, on property designated as Lot 14 in Block 2708 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 James W. Halsey, LS, dated June 23, 1996 with the location of the air conditioning unit drawn in; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on October 21, 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 a corner lot located at the intersection of Inwood Avenue and Inwood Terrace having approximate dimensions of 75 feet by 136 feet containing a single-family home.

2. The applicants' contractor placed the air conditioning unit, without a building permit, in the Inwood Terrace front yard, in violation of the Township's zoning ordinance provision prohibiting accessory structures between the main building and the street(s) on which the building fronts.

3. The air conditioning unit is mounted on the ground and is surrounded by shrubbery planted by the applicant to shield the unit from view. The height of the unit is 27 inches.

4. The applicants argued that there are no feasible alternate locations which are more appropriate, given that the southerly yard is also a front yard, the easterly side yard is narrow and the rear yard is occupied by driveway and an enclosed screened porch. Alternate locations would also be closer to neighboring residences than the Inwood Terrace location. The preferred location is closer to the boiler room.

5. The proposed location of the unit is the most appropriate given the location of the house on the corner lot and the distance of the unit from adjoining residences, and the benefits of the deviation would substantially outweigh any detriments.

6. The proposed deviation 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 224-41; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Seamus and Mary Ann Gilson 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 Tobin, the following **Memorializing Resolution of Church of The Immaculate Conception/Immaculate Conception Cemetery 712 Grove Street** adopted, Mr. Williams abstaining:

WHEREAS, Church of The Immaculate Conception/Immaculate Conception Cemetery, as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval and variance pursuant to *N.J.S.A. 40:55D-70d(2)* in connection with the construction of an office on property located at the corner of Grove Street and Mt. Hebron Road and designated as Lot 3 in Block 2806 on the Township tax map and located in the R-1 One Family Zone; and

WHEREAS, the applicant submitted a site plan, floor plan and elevations prepared by Sionas Architecture, P.C. bearing a final revision date of September 15, 1998; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 21, 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 consists of 20.2 acres in Montclair (and 12.96 acres in Clifton) and has been utilized as a church-related cemetery for more than 100 years which is a preexisting nonconforming use in the R-1 Zone.

2. Currently a small basement portion of the existing single family home occupied by the cemetery manager is utilized as an office. The existing office is approximately 180 square feet and is inadequate to receive people, store records and meet the cemetery's needs. The proposed new office is a one story structure, 21 feet 10 inch by 31 feet 10 inch consisting of 695 square feet which will include a reception area, private office, storeroom, file closet and washroom.

3. The application advances the purposes of the Municipal Land Use Law in that it constitutes appropriate municipal action in a manner which will promote the public health, safety, morals and general welfare and provide sufficient space in an appropriate location for a variety of uses. *N.J.S.A. 40:55D-2a.g.*

4. The limited expansion of use contemplated by this application will not result in any adverse impact to the neighborhood. The proposed office will be constructed of brick in order to match the brick in the manager's home and will be screened from Grove Street and will include improvements to the existing parking area and various fence repairs.

5. The limited expansion contemplated by this application is not in any way detrimental to the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing 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 within application of Church of The Immaculate Conception/Immaculate Conception Cemetery for variance and site plan approval to construct a one story 695 square foot office is hereby approved subject to the following condition:

1. The relocated arborvitae shall be replaced if any plantings die within two years.

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

Mr. Williams joined the meeting.

On motion by Mr. Church, seconded by Chair Harrison, the following **Memorializing Resolution of Anthony and Maria J. Vella, 110 Park Street**, was adopted, Mr. Fleischer, Ms. Freundlich, Mr. Tobin, and Mr. Williams abstaining:

WHEREAS, Anthony and Maria J. Vella, as owners, did make application to the Board of Adjustment of the Township of Montclair for site plan approval and variances to convert a two-family dwelling to a three-family dwelling and create an accessory parking area in the rear on property designated as Lot 8 in Block 2305 on the Township tax map and located in the R-3 Three Story Apartment Zone; and

WHEREAS, the applicants requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(3)* to allow conversion from a two-family dwelling to a three-family dwelling on a lot that contains 6,142 square feet where a minimum of 15,000 square feet is required as a conditional use standard pursuant to Montclair Code Section 224-49B(4).

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow three parking spaces where a minimum of five are required pursuant to Montclair Code Section 224-91.

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by the Mylan Architectural Group dated September 24, 1998 and a property survey prepared by Richard J. Hingos, Inc., Land Surveyors, dated July 23, 1998; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 21, 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 applicants argued that the conversion to a three-family use constitutes effective use of land at an appropriate density and will result in a substantial upgrade of the property. The Board, however, finds the proposal to establish a three-family use on a 6,142 square foot lot where a minimum of 15,000 is required as a conditional use standard represents a substantial overutilization of the property contrary to the purposes of the Municipal Land Use Law. The Board also finds the applicants' plan to

upgrade the property is commendable but may be effectuated without the aforementioned increase in density.

2. No public benefit would result nor does any hardship related to the physical characteristics of the land warrant relaxation of the parking requirements in this instance. Insufficient on site parking would force cars to park off site in an already congested neighborhood which would have a substantial negative impact on the public good. The failure to provide adequate parking further illustrates the overutilization of land proposed by this application.

3. Approval of this application would increase noise, traffic and activity on a substantially undersized lot in an already congested area which would result in a substantial adverse impact on the neighborhood.

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

WHEREAS, the Board, based on the aforementioned findings, concluded that with respect to the parking variance, the applicants 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 with respect to the parking variance, the applicants 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 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 the requirements of *N.J.S.A. 40:55D-70c(2)*; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair that the application of Anthony and Maria J. Vella for variances and site plan approval to allow conversion from a two-family dwelling to a three-family dwelling and to allow three parking spaces where a minimum of five are required is hereby denied.

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 application of **Barry Pote, 73 Greenwood Avenue**. Board Attorney Sullivan stated to Mr. Pote that only six Board members are currently present and that his application requires five affirmative votes. Chair Harrison

offered Mr. Pote the opportunity to wait for a seventh member to join the meeting, hear the application with only six members, or to carry the application to another meeting. Mr. Pote stated that he will proceed with only six members present.

Mr. Pote was sworn. He reviewed his application to modify one of the conditions of the use variance he previously received for the use of a building as a storage facility. He stated that he proposes to construct a pedestrian door as well as an overhead door for use at his storage facility. He stated that the additional pedestrian door will increase the safety at the building and be less noisy than the continuous use of an overhead door. He also stated that a door built into an overhead door, typically seen in gas stations, does not allow for the passage of hand trucks.

The Board asked Mr. Pote to clarify the need for two doors and the need for an overhead door.

After some discussion, a motion by Mr. Tobin, seconded by Mr. Freundlich, to permit the addition of a 36" pedestrian door was denied. Chair Harrison, Ms. Freundlich and Mr. Tobin voted to approve the application and Mr. Church, Mr. Fleischer and Mr. Williams voting in the negative.

A brief recess was taken.

Mr. Chapman joined the meeting.

Chair Harrison called for the application of **Montclair Childhood Development Center**. Mr. James Hall, Esq. appeared as attorney for the applicant. Mr. Hall stated that the applicant is seeking a use variance in order to subdivide a nonconforming child care center from the current St. Vincent's hospital site on which it is located. He also stated that the applicant seeks to add a small addition onto the existing child care building.

Ms. Audrey Fletcher, Director of Headstart, was sworn. Ms. Fletcher described the program which currently operates in the existing building. She stated that the childhood development programs are a benefit to the community and the use is compatible with the surrounding neighborhood. She stated that the Headstart Program is seeking the subdivide in order to have full control of the property. She then reviewed the number of staff people, students and cars on the site.

Ms. Colleen Fleming, of St. Joseph's Hospital, owner of St. Vincent's Nursing Home, stated that the hospital is in full support of the application to subdivide the child care building lot. She then described how the two would share the parking lot.

Mr. Michael J. Rohal, engineer, was sworn. Mr. Rohal described the proposed subdivision line, the parking configuration and the access to the site. He reviewed the cross easements proposed and the pick up and drop off areas.

Mr. Rohal then reviewed the variances requested. He stated that a buffer strip between the two parking lots is not necessary, the creation of front yard parking is

not detrimental, and that the proposal will not have a negative impact on the surrounding neighborhood.

Members of the Board asked the applicant to clarify access onto the site, the number of cars on the site, and how St. Vincent's will still comply with the conditions required for a nursing home under the zoning ordinance. The Board also asked for clarification as to the usage of the off site parking.

Mr. Hall stated that the applicant will address the Board's comments and questions when they return at the next regular meeting.

Chair Harrison stated that the hearing of the application will be continued at the December 9, 1998 regular meeting of the Board of Adjustment.

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