

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
NOVEMBER 10, 1999**

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Tobin, Ms. O'Connell, Mr. Fleischer, Ms. Freundlich, Mr. Williams; also, Michael Sullivan, Esq., Michael Zichelli, Assistant Secretary, and Tehuti Barrett, Assistant Secretary

ABSENT: Mr. Church and Mr. Spivey.

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 Meeting Act.

On motion by Mr. Chapman seconded by Mr. Williams, the **Minutes of the October 20, 1999** regular meeting were adopted.

On motion by Mr. Chapman, seconded by Ms. Freundlich, the following **Memorializing Resolution of Ralph Silas, 84 Mission Street** was adopted:

WHEREAS, Ralph Silas, as owner, did make application to the Board of Adjustment of the Township of Montclair for site plan approval to extend the driveway and the parking area in the rear of the property at 84 Mission Street and designated as Lot 3 in Block 4107 on the Township tax map and located in the R-2 Two Family; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d* to expand the parking area in connection with the nonconforming four family use contrary to Montclair Code Section 224-42.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to create parking stalls with a setback of 3 feet rather than 4 feet as required by Montclair Code Section 224-94.

WHEREAS, the applicant submitted a property survey prepared by William Held Associates, Inc. dated August 4, 1997; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on October 20, 1999 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 contains a legal nonconforming 4 family house in a congested neighborhood where parking is a problem. The proposal to extend the driveway and construct a parking area in the rear of the property for 4 parking spaces

constitutes appropriate municipal action consistent with the purposes of the Municipal Land Use Law and will result in a benefit to the neighborhood.

2. The proposed 3 foot parking area setback represents a minimal deviation from the ordinance, which, is appropriate given the physical constraints of the property and with the addition of plantings along the northerly property line will result in no adverse impact to the adjacent properties.

3. Approval of this application will provide needed on-site parking which will not adversely impact the character of the existing neighborhood and is not inconsistent with 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 Ralph Silas for site plan and variances is hereby approved subject to the following conditions:

1. The applicant shall provide a drainage plan to be approved by the Board Engineer and shall comply with items 1, 3 and 5 contained in the Board Engineer's June 8, 1999 report.

2. The applicant shall provide adequate plantings along the northerly property line to form an effective screen of the property area to be approved by the Planning Department.

3. Any lighting to be installed in the parking area shall be shielded so as to minimize impact on adjacent properties.

4. The applicant shall receive the written approval from the Planning Department prior to any paving on site.

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. Chapman, seconded by Mr. Fleischer, the following **Memorializing Resolution of Nancy Knoerzer, 540 Highland Avenue** was adopted:

WHEREAS, Nancy Knoerzer, owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a 2-1/2 foot northerly side yard setback where a greater setback is required pursuant to Montclair Code Section 224-40(C)1 in connection with the construction of an addition on property designated as Lot 18 in Block 901 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted blue print drawings of a site plan, elevation plans, and partial floor plans drawn by Sionas Architecture, dated May 21, 1999.

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment

held on October 20, 1999 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 approximate dimensions of 53 feet by 175 feet, is situated on the westerly side of Highland Avenue and contains a single-family dwelling.
2. The applicant's proposal is to construct an addition onto the side of the dwelling to accommodate a foyer and a passenger elevator for access to and from the first floor of the dwelling and the basement/garage below. The proposed side yard setback is 2-1/2 feet as measured from the closest portion of the addition to the northerly side lot line.
3. The steep topography of the lot imposes exceptional difficulties for the applicant when attempting to traverse the stairs from the garage.
4. The 5'-2" by 13'-8 1/2" addition will be in keeping with the existing architectural style of the dwelling.
5. There will be enough space in the elevator to accommodate a wheelchair.

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 FURTHER RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Nancy Knoerzer is hereby approved, subject to the following condition:

1. The newly constructed roof overhang shall not extend out further than the overhang of the existing roof.

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 on the application of **Over the Rainbow Nursery, Inc, 32 Pleasant Avenue**. Grant Gille, Esq. appeared on behalf of the applicant. Mr. Gille stated that the applicant seeks to carry the hearing of the application to the next regular meeting in December. He also stated that the applicant consents to any necessary extensions of time. Chair Harrison announced that the application will be carried to the December 8, 1999 meeting.

Chair Harrison called for the application of **United Way of North Essex, 60 South Fullerton Avenue**. Renee Cohen, member of the United Way, was sworn. Ms. Cohen stated that the United Way proposes to erect a freestanding sign in front of their building. She stated variances are requested in that the sign will exceed the 8 square feet area maximum and will be setback less than the required minimum 5 feet from the front property line. She described the sign and its placement on the site. After some discussion, Chair Harrison offered the applicant the option to continue the hearing until the Board's next hearing so that more information can be presented to justify the request for a variance. The applicant stated that it will continue the hearing at the next regular meeting in December. Chair Harrison announced that the application will be continued at the December 8, 1999 meeting and that no further notice will be given.

Chair Harrison called for the application of **Care Management 2000, 258 Park Street**. Grant Gille, Esq. appeared on behalf of the applicant. Mr. Gille stated that the applicant is seeking a use variance to use a commercial building for adult day care. A variance is requested in that the use is not a listed permitted use.

Mr. Dennis Mylan, architect and professional planner, was sworn. Mr. Mylan described the surrounding community and the site. Marked for identification were the following:

- A-1 Site Plan, prepared by Mylan Architectural Group, revision dated September 24, 1999
- A-2 Floor Plans, prepared by Mylan Architectural Group, dated September 24, 1999
- A-3 Photograph of the rear of the building

Mr. Mylan described the proposed use and the operations on the site compared to the existing uses. He described the floor plan, the parking and the site plan. He then reviewed the variances requested. He stated that the proposed use of adult day care serves a community need and that the use will generate less traffic than retail uses. He also stated that child day care is permitted by State statute in this zone and that the proposed use is similar to a child day care facility.

Suzan and Robert Stiengo, owners and operators, were sworn. They described the hours of operation, the number of attendees, the on site staff, and the number of vans dropping off and picking up clients.

The meeting was open to public questions and comments.

Ms. Diane Moore of 268 Park Street stated her concerns about the application. She stated that the amount of traffic and trash generated could not be appropriately handled at that site.

Ms. Virginia Zohn of 266 Park Street stated her objection to the application and stated that the use is not appropriate for the site.

Mr. Gille summarized the application.

On motion by Ms. O'Connell, seconded by Ms. Freundlich, the application was denied, Mr. Chapman voting to approve.

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