

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**November 10, 2004**

PRESENT: Chair Harrison, Ms. Cockey, Mr. Flood, Mr. Haizel, and Mr. Susswein; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Ms. English, Vice Chair Fleischer, Ms. Rock-Bailey, and Mr. Mellon, Secretary

Assistant Secretary Charreun 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 Mr. Haizel, the **Minutes of the October 20, 2004** regular meeting were adopted, as modified, Mr. Flood abstaining.

On motion by Mr. Fleischer, seconded by Mr. Haizel, the following Resolution memorializing the approval of the variance application of **Frank T. Shane, 201 Bellevue Avenue** was adopted, Mr. Flood abstaining:

WHEREAS, Frank T. Shane, as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant N.J.S.A. 40:55D-70d to utilize the first floor of a planned three story building as a bank which does not comply with Montclair Code Section 347-90D which requires that buildings containing a bank use must also contain equivalent floor area of retail, personal service uses, medical offices or restaurants in the N-C Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by the Mylan Architectural Group dated December 23, 2003 revised through May 25, 2004; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on August 18, and October 20, 2004, at which time it was established that notice of this application had been properly published and that property owners within 200 feet of the subject property had been served with notice; and

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

1. By resolution adopted April 12, 2004, the Planning Board granted site plan approval to demolish the preexisting nonconforming gasoline service station on the site and construct a three story mixed use building. The approval contemplated retail use on the first floor and a total of three dwelling units on the second and third floors.

2. In lieu of the proposed retail use, the applicant now seeks approval to utilize the 1,960 square feet of first floor area for a proposed community savings bank with approximately five employees and a total of ten dedicated parking spaces.

3. The proposed bank will not have a drive up/drive through window and with its limited size will function substantially similar to a retail or personal service use. Consequently, the proposed use is consistent with the intent and purpose of the Ordinance which seeks to maintain the viability of the business district by promoting pedestrian traffic.

4. Approval of the proposed use constitutes appropriate municipal action consistent with the general welfare and provides sufficient space in an appropriate location for a use which meets the needs of the community consistent with the purposes of the Municipal Land Use Law.

5. Based upon the nature of the proposed use and its physical limitations, the proposed site is particularly suitable for the proposed use and will connect the end of the business district with the central portion of the business district.

6. Based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact area properties and is not inconsistent with 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 Frank T. Shane to permit a bank use is hereby approved subject to the following conditions:

1. The bank use shall be limited to the first floor.
2. No drive-up/drive-through window shall be permitted.
3. The applicant shall comply with the conditions proposed in the Planning Board resolution of April 12, 2004 as follows:
  - a. As stipulated by the applicant, one of the proposed trash enclosures shall be deleted. Additionally, parking space number one shall be eliminated and the remaining trash enclosure shall be relocated to that area.
  - b. The proposed arborvitae along the northerly property line shall be increased in size from eighteen inches to thirty-six inches.
  - c. The applicant shall comply with the recommendations contained in the memorandum dated March 2, 2004 from W. Thomas Watkinson, III, Planning Board Engineer.

d. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

e. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with the review of this matter.

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. Haizel, the following Resolution memorializing the approval of the variance application of **Alipio Wenceslau, 35 New Street** was adopted, Mr. Flood abstaining:

**WHEREAS**, **Alipio Wenceslau**, owner of property at **35 New Street**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to *N.J.S.A. 40:55D-70c* for lot frontage width and lot area less than that required pursuant to **Montclair Code Section 347-50A**, and a front yard setback less than that required pursuant to **Montclair Code Section 347-51**, in connection with the proposed construction of a two-family dwelling on property designated as Lot 67 in Block 3111 on the Township Tax Map and located in the R-2 Two-Family Zone; and

**WHEREAS**, the applicant submitted a property survey, prepared by George J. Anderson, LLC, dated June 10, 2004, a site plan, floor plans, and elevations prepared by Atelier Asfour, Architects/Planners, dated July 19, 2004; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on October 20, 2004 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 subject property measures 50 feet in width, contains approximately 5,000 square feet, and is presently vacant; the previously existing dwelling on the lot shown on the property survey has been demolished.

2. The applicant proposes to construct a two-family dwelling with an attached garage and a new driveway and parking area.

3. The existing lot size is consistent with or greater than many of the lot sizes in the neighborhood and the adjoining properties are presently developed.

4. The average front yard setback of the 4 nearest principal structures on New Street, 2 on either side of the subject property, is approximately 7.25 feet. The

Board finds that the proposed front yard setback of 10 feet, as measured to the main front wall of the proposed dwelling, and 7 feet, as measured to the balconies located on the front wall, will be in keeping with the existing setbacks of the 4 nearest dwellings, is consistent with the historic streetscape of this neighborhood, and provides for a larger rear yard and off-street parking in a conforming location. Furthermore, a structure that met the front yard setback requirement would detract from the overall appearance of the street.

5. The off-street parking requirements are met, and with the exception of the front yard setback, all other height and setback requirements are met.

**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 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 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 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 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 Alipio Wenceslau is hereby approved, subject to the following conditions:

1. Any fencing on the property shall conform to the zoning ordinance.
2. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
3. The plans shall be revised to demonstrate that the height of the proposed dwelling complies with the maximum building height regulations as specified in the zoning ordinance.
4. The location of any outdoor central air-conditioning units shall comply with the setback requirements of the zoning ordinance.
5. All exterior lighting fixtures shall be of low light intensity and be shielded from adjoining properties.
6. A row of evergreen plantings shall be planted within the setback of the paved driveway/parking area at the rear of the proposed dwelling, and shall be aligned with the rear corners of the dwelling, so as to form a landscaped screen around the 3

exposed sides of the driveway/parking area. The aforementioned plantings shall be no less than 3 feet in height at the time of planting, shall be planted at 4-foot centers, and shall reach an ultimate height of at least 5 feet.

7. All outstanding property taxes shall be paid prior to the issuance of building permits.

**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.

Assistant Secretary Charreun announced that the application of **John and Rose Kardashian, 750 Valley Road** has been postponed at the request of the applicants until the December 15, 2004 regular meeting of the Board, that the applicants have granted the Board an extension of time for which to act on the application through December 15, 2004, and that no further notice would be given.

Chair Harrison called the variance application of **Richard Hershberger and Jennifer Mutter, 2 Franklin Avenue**. Richard Hershberger was sworn and described the proposed addition. He stated that the proposed two-story addition would be aligned with the walls of the existing dwelling and would not encroach closer to either side property line than the existing dwelling. He also stated that the existing dwelling is too small to accommodate his family and that the proposed addition would provide the additional space needed. He further stated that the proposed addition is in keeping with the neighborhood and meets the southerly side yard and rear yard setbacks.

Ms. Cockey joined the meeting.

The Board questioned Mr. Hershberger. Mr. Hershberger stated that the driveway of the neighboring property on the northerly side abuts the side yard where 2.99 feet is proposed. He also stated that the existing fence along the northerly property line is taller than 4½ feet in the area where the addition is proposed.

Mr. Sullivan stated that the Board may grant a variance for the portion of the existing fence that would exceed the height limit as a result of the proposed addition or that the Board may require that the fence be either removed or altered to conform as a condition of approval for the proposed addition. Mr. Hershberger stated that he has considered removing that portion of the fence so that the northerly side yard would be easier to maintain.

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

The Board discussed the application. On motion by Mr. Susswein, seconded by Mr. Flood, the variance application was approved, Ms. Cockey abstaining, subject to the following condition:

1. The portion of the existing fence along the northerly property line that is located forward of the northerly rear corner of the proposed addition shall either be removed or altered to be lower in height and conform to the zoning ordinance.

Chair Harrison called the variance application of **Kevin Fried, 19 Dodd Street**. Kevin Fried was sworn and described the proposed second floor addition. He stated that the existing dwelling has front yard setback of approximately 24.5 feet and that the average front yard setback of the 4 nearest principal structures on Dodd Street, 2 on either side of the subject property, is approximately 22.44 feet. He also stated that the proposed second floor addition would be aligned with the existing front wall of the dwelling and would not extend closer to Dodd Street than the existing dwelling. He continued by stating that the proposed addition meets all other setback requirements and that the proposed addition would provide much needed space on the second floor for his growing family. He further stated that having the proposed addition set back an additional 6 inches to conform would make construction very difficult and costly.

The Board questioned Mr. Fried.

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

The Board discussed the application. On motion by Mr. Haizel, seconded by Ms. Cockey, the variance application was approved.

Chair Harrison called the variance application of **Theo Breitenstein, 58 Stonebridge Road**. Theo Breitenstein, owner, and Francis Klein, Architect were sworn. Mr. Breitenstein described the proposed roofed front entry porch. He stated that there is no roofed front entry porch currently and that the proposed roofed front entry porch would provide weather protection at the front entrance. He also stated that the design of the proposed roofed front entry porch is in keeping with the neighborhood and would upgrade the appearance of the home.

Mr. Klein described the proposed roofed entry porch.

Marked in to evidence were:

- A-1 Revised Sheet A-1.10 Site Plan and Location Map and Setback Calculations, prepared by Francis C. Klein and Associates, Architects, revised to November 4, 2004
- A-2 Enlarged portion of Sheet A-2.2, First Floor Plan, depicting the dimensions of the proposed roofed front entry porch.
- A-3 Photograph of the existing dwelling located on the subject property

Mr. Klein described the clarifications to the Site Plan, Location Map and Setback Calculations depicted on Exhibit A-1. He described the dimensions of the proposed

roofed front entry porch depicted on Exhibit A-2 and stated that it has been designed to be as narrow as possible so as to have the least impact on the required front yard setback while remaining as a functional entry porch. He stated that the existing dwelling has a front yard setback of 49.68 feet and that a front yard setback of 44.68 feet is proposed. He also stated that the average front yard setback of the 4 nearest principal structures on Stonebridge Road, 2 on either side of the subject property, is 51.23 feet, and that the applicant is proposing a 6½-foot encroachment into the required front yard. He continued by stating that the dwelling located at 36 Stonebridge Road has a front yard setback of 63.09 feet, which is more than the other dwellings in the area, and skews the average front yard setback. He stated that if the front yard setback of 36 Stonebridge Road is not included in the front yard average, the front yard average is then 47.28 feet, and the applicant's proposal would then encroach 2.6 feet into the average front yard.

The Board questioned the applicant and Mr. Klein.

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

The Board discussed the application and it was determined that a variance could be granted with certain revisions to the plan. On motion by Mr. Susswein, seconded by Mr. Haizel, the variance application was approved, subject to the following condition:

1. The proposed roofed front entry porch shall not exceed 24 feet in width, shall be centered over the existing front doorway, and shall project no more than 5 feet from the existing front wall of the dwelling.

Chair Harrison called the variance application of **48 Plymouth Street, LLC, 48 Plymouth Street**. David Owen, Esq., appeared as attorney for the applicant and described the application. He stated that the subject property is located in the R-1 Zone and has never contained a conforming use. He stated that in 1927 a building was constructed to house a dental practice and that a variance was granted in 1961 to utilize the subject property as a medical research facility, which has been there since. He stated that the applicant is proposing a conforming use with on-site parking and continued by describing the variances requested.

Mr. Owen called Martin Dassa, Architect and Professional Planner who was sworn. Mr. Dassa described the existing conditions on the subject property and the immediate neighborhood.

Marked into evidence were:

- A-1 Sheet SP-2, Existing Conditions Plan, on a board, prepared by Dassa Haines, Architects, dated September 22, 2004
- A-2 Photo-board, containing 3 photographs of Dutch Colonial homes in the vicinity of the subject property, and hand-drawn sketches depicting alternative design options, prepared by Dassa Haines Architects

A-3 Portions of the Sanborn Map and Montclair Tax Map depicting the subject property, on a board

A-4 Photoboard

Mr. Dassa stated that the existing structure would be remodeled into a Dutch Colonial style dwelling and that the existing fire escape would be removed. He stated that the proposed attached garage would face the Plymouth Road frontage and that the existing stone façade facing Orange Road would be preserved. He described the size and shape of the property and stated that the required setbacks do not allow for new construction without variances.

Marked into evidence were:

A-5 Sheet Z1, Site Plan, Building Elevations, & Zoning Information, with color added, on a board, prepared by Dassa Haines, Architects, dated September 21, 2004

A-6 Sheet Z2, First & Second Floor Plans, with notations, on a board, dated September 21, 2004

A-7 Enlarged Site Plan, on board, prepared by Dassa Haines, Architects

A-8 Scale Model of the proposed dwelling, created by Dassa Haines, Architects

Mr. Dassa stated that the design of the proposed dwelling is sensitive to the streetscape and preserves backyard space for the property. He stated that the proposed dwelling would measure 26.5 feet in height and that the footprint of the dwelling would measure 1,210 square feet. He described the proposed floor plans and continued by describing the extent of demolition of the existing structure.

The Board questioned Mr. Dassa.

Mr. Dassa stated that the proposed additions would not encroach closer to either Plymouth Road or Orange Road than the existing structure and described the attic of the proposed dwelling. He stated that the proposed driveway leading to the attached two-car garage is not intended for use as a parking area and continued by describing the alternatives considered for the location of the attached garage. He described the existing plantings located along the easterly property line and stated that many would have to be removed and replaced with new plantings. He also stated that the fencing depicted on the plans would be revised to conform to the ordinance.

Chair Harrison called for questions from the public.

Ray Jacobson, 44 Plymouth Street, asked if the stormwater drainage of the property has been reviewed. Mr. Dassa stated that the roof leaders would either be piped out to the curb or into a detention system and that no stormwater runoff would flow onto adjoining properties.

Irene Hunt, 89 Orange Road, inquired about the expected duration of construction. Mr. Dassa stated that the hope is to have the proposed dwelling ready for occupancy within 6 to 9 months.

Chair Harrison called for and public comment. None was offered.

The Board discussed the application. On motion by Mr. Susswein, seconded by Ms. Cockey, the variance application was approved subject to the following conditions:

1. The metal fire escape on the existing structure shall be removed.
2. All fences on the subject property shall conform to the requirements of the zoning ordinance.
3. A row of evergreen plantings shall be planted between the proposed driveway and attached garage and the easterly property line. The aforementioned plantings shall be no less than 3 feet in height at the time of planting, shall be planted at 4-foot centers, and shall reach an ultimate height of at least 5 feet at maturity.

Chair Harrison called for a short recess.

Chair Harrison called the variance application of **Janet and Patrick Hines, 19 Argyle Road**. Patrick Hines, owner, and Kevin Johns, Architect were sworn. Mr. Hines stated that the proposed additions are needed to accommodate his growing family. He stated that the irregular shape of his lot makes an expansion of the dwelling difficult to accomplish without variances. He continued by describing the interior accommodations provided by the proposed building additions.

Mr. Johns described the proposed additions and setbacks.

Marked in to evidence were:

- A-1 Two (2) photographs of the subject property on one sheet
- A-2 Site Plan with additional information, on a board, prepared by Lineworks Architecture and Design, LLC, revised to November 10, 2004.

Mr. Johns stated that the subject property abuts Brookdale Park along the rear property line. He described the proposed additions to the dwelling and stated that a 3-foot encroachment is proposed in the front yard setback and that a rear yard setback variance is also requested. He stated that the front yard encroachment is only 6 inches if the largest front yard setback of the 4 utilized in the average calculation is excluded.

He further stated that the side yard setback requirements are met and that keeping the side yards as open as possible, particularly the northerly side yard, preserves more of the views of Brookdale Park for neighbors on Argyle Road. He continued by stating that the requested rear yard variance would not have a negative impact because it abuts Brookdale Park.

The Board questioned the applicant and Mr. Johns.

Mr. Johns stated that the existing brick patio at the rear of the dwelling would remain. Mr. Johns stated that due to many existing features of the first floor, the attached garage must be moved forward in order to accommodate the interior modifications that are required for the proposed improvements. He also stated that the requested front yard setback variance would not have a negative impact on the neighbors because the subject property is located at the end of a cul-de-sac. Mr. Hines stated that he has reviewed the plans with his neighbors and that there have been no objections.

Chair Harrison called for questions and comments from the public.

Richard Rodin, 11 Argyle Road, was sworn and stated his support for the project.

David Staubach, 12 Argyle Road, was sworn. Mr. Staubach stated he owns the adjoining property on the southerly side and stated his support for the project. He stated that he had reviewed the plans and that his property would be the most affected by the proposal and that he does not consider the impact significant in any way. He also stated that the applicants' proposal would only serve as a benefit to the neighborhood.

The Board discussed the application and questioned Mr. Johns. Mr. Johns stated that the applicant has been investigating the best possible design solution for the subject property for approximately 4 years and that at least 6 different versions of the plans have been generated through that time. He also stated that in his opinion, it is aesthetically better to add bulk to the dwelling uniformly rather than adding bulk in one area of the dwelling, such as the northerly side yard. He further stated that the rear yard setback of the adjacent neighbor is 6 to 7 feet less than the proposed rear setback for the subject property, and that many homes on other streets which also abut Brookdale Park are located closer to the Park than the subject property. He continued by stating that the floor plan would not work if the proposed additions had to be constructed on the northerly side of the dwelling and that massing the dwelling on the northerly side would create a more imposing structure on street.

On motion by Mr. Susswein, seconded by Mr. Flood, the variance application was approved, subject to the following condition:

1. The front entrance and portico shall conform to the requirements of the ordinance.

Mr. Sullivan stated that Alan Trembulak, Esq., is seeking authorization to represent the Board in pending litigation regarding the previously approved site plan and variance application of **Montclair Homes, LLC, 8 South Mountain Avenue**. He also stated that if any discussion on the matter is to take place, other than a motion to authorize Mr. Trembulak to represent the Board, the Board would go into a closed session. No discussion on the matter ensued. On motion by Mr. Haizel, seconded by Mr. Susswein, Alan Trembulak, Esq. was authorized to represent the Board in the matter.

On motion by Ms. Cockey, seconded by Mr. Haizel, the meeting was adjourned.