

**MINUTES OF THE BOARD OF ADJUSTMENT
NOVEMBER 13, 2002**

PRESENT: Chair Harrison, Ms. Brooks, Mr. Chapman, Ms. Costello, Vice Chair Fleischer, Mr. Gallardo, Mr. Haizel, Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Planning Technician

ABSENT: Ms. Rock-Bailey

Secretary Sammet called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the **Minutes of the September 18, 2002** regular meeting were adopted as modified, Ms. Brooks and Mr. Haizel abstaining.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the site plan and variance application of **John and Deborah Silverman, 16 Montclair Avenue** was adopted as modified, Ms. Brooks and Mr. Haizel abstaining:

WHEREAS, John and Deborah Silverman, as owners, did make application to the Board of Adjustment of the Township of Montclair to convert an existing nonconforming three-story commercial storage building into a two-family residential dwelling and retain an existing single-family dwelling in a separate building on property designated as Lot 13 in Block 3307 on the Township Tax Map and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicants sought site plan approval and relief as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d* to permit a total of three dwelling units, which exceeds the maximum permitted residential density in the R-2 Two Family Residential Zone pursuant to Montclair Code Section 347-47; and
2. A variance pursuant to *N.J.S.A. 40:55D-70d* to allow two principal buildings on the lot where a maximum of one is permitted pursuant to Montclair Code Section 347-20; and
3. An exception to permit two parking stalls with a width of 8 feet where a minimum of 9 feet is required pursuant to Montclair Code Section 281-9B; and

4. An exception to allow a 14 foot wide driveway where a minimum of 18 feet is required pursuant to Code Section 281-9I.

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by the Mylan Architectural Group dated June 25, 2002, revised through July 27, 2002 as well as a survey prepared by Richard J. Hingos, Inc. dated February 28, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 18, 2002 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 with notice; and

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

1. The subject property contains a three-story brick building in the rear of the property which was erected around 1890. The building was utilized for warehouse and storage purposes up until 1969 when the Board of Adjustment granted a variance to permit a plumbing, heating, sales and service business.

2. The existing 1-1/2 story structure in the front of the property is utilized as a single-family home and the basement has been utilized as an office since around 1922. The Board of Adjustment permitted the continued use of the basement office in connection with plumbing and heating business on May 7, 1969.

3. The application contemplates converting the nonconforming three-story commercial building into a two-family residential dwelling with each unit containing approximately 1300 square feet of living space. The front building will continue to be used as a residence and the applicant has agreed to abandon the basement office use.

4. Approval of this application will eliminate the nonresidential character of the property and result in a use which is more harmonious with the character of the existing neighborhood.

5. The Board determined that the applicant proved "special reasons" as it provides sufficient space in an appropriate location for smaller scale housing units and promotes a desirable visual environment consistent with the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2g,i*.

6. The driveway and parking stall widths are appropriate based upon structures lawfully existing on the site and are functionally adequate for the proposed use.

7. Based upon the Board's particular knowledge of local conditions, the conversion of the nonconforming commercial use to residential is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

8. The Board determined approval of this application is not inconsistent with the intent and purpose of the master plan and zoning ordinance which seeks to eliminate commercial uses in residential zones.

WHEREAS, the Board, based on the foregoing 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that the requested exceptions are reasonable and within the general purpose and intent of the ordinance and literal enforcement of the ordinance is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of John and Deborah Silverman, for site plan approval, variance and exceptions is hereby approved subject to the following conditions:

1. As stipulated by the applicants, the office use in the basement of the single-family dwelling is abandoned.
2. A maximum of three dwelling units shall be permitted on the property.
3. The driveway apron shall be replaced.
4. Any and all air-conditioning units installed on the property shall conform to the zoning ordinance.

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

On motion by Mr. Chapman, seconded by Mr. Fleischer, an extension was granted on the variance application approval of **Mr. & Mrs. Scott Troeller, 96 Prospect Avenue** until the date of the July 2003 regular meeting of the Board.

On motion by Mr. Chapman, seconded by Mr. Haizel, an extension was granted on the site plan and variance application approval of **Two Countries Construction, Inc., 18-20 Willard Place** until May 31, 2003.

Chair Harrison addressed the request for a special meeting made by Stephen M. Aspero, Esq., on behalf of Union Court Partners, LLC, and stated that the Board could consider scheduling a special meeting after an application is submitted.

Chair Harrison called the variance application of **John Ceraso, 21 Macopin Avenue**. John Ceraso, owner and applicant was sworn. Mr. Ceraso stated that the existing open-air porch located on the roof of the one-story section of his home is difficult to maintain and unusable during inclement weather. He stated that proposed enclosure for the open-air porch would provide weather protection and all season use and that the enclosure would not extend beyond the existing footprint of the dwelling.

The Board questioned Mr. Ceraso.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Mr. Gallardo, it was resolved to approve the variance application.

Chair Harrison called the variance application of **John and Maria Block, 20 Skytop Terrace**. John and Maria Block, owners and applicants, and Peter Wilcox, Architect, were sworn. Mr. Wilcox described the proposed one-story addition and deck.

Ms. Block stated that their family has outgrown the existing home and that the proposed family room and deck would provide the additional living space and recreational space needed.

Marked into evidence was:

A-1 Site plan prepared by Downtown Group, Architects, dated July 19, 2002, with additional formation, on a board

Mr. Wilcox stated that the subject property is located at the end of a cul-de-sac, is irregularly shaped and shallow in depth. He stated that the proposed addition and deck would not have a negative effect on Bonsal Preserve located at the rear of the subject property. He further stated that the proposed location for the addition and outdoor deck provide for the most functional arrangement of rooms in the dwelling and provide the least visually obtrusive alternative for adjoining properties.

Marked into evidence was:

A-2 Map of 20 Skytop Terrace and adjoining dwellings on a board

Mr. Wilcox stated that the backyards of the adjoining properties are not aligned with the applicants' backyard due to the arrangement of the lots on the cul-de-sac. He further stated that the proposed location of the addition and deck has significantly less impact than conforming locations.

The Board questioned Mr. Wilcox and the applicants.

Mr. Wilcox stated that the existing locations of first floor windows and a rear porch prevent the proposed addition and deck from being constructed in a conforming location. He further stated that the proposed location for the addition and deck meet the purpose and intent of the Zoning ordinance.

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

Chair Harrison called for public comment. None was offered.

Mr. Block stated that the proposed addition and deck would not disturb the public enjoyment of the Bonsal Preserve.

The Board discussed the application.

On motion by Mr. Susswein, seconded by Mr. Fleischer, it was resolved to deny the rear yard setback request for the proposed outdoor deck, and approve the rear yard setback request for the proposed one-story addition, subject to the following conditions:

1. The proposed one-story addition shall not encroach into the required 25-foot rear yard setback requirement at the northeasterly corner of the proposed addition, and shall not project further than 3 feet and 7 inches into the required rear yard setback for the remainder of the addition.
2. The proposed outdoor deck shall be constructed within the required setbacks.

Chair Harrison called the variance application of **Sharon DiDonato, 521 Upper Mountain Avenue**. Sharon and Ugo DiDonato were sworn. Ms. DiDonato stated that their existing home is a one-story structure and the smallest sized dwelling in the neighborhood. She also stated that their family has outgrown the home and that they need additional living space. She continued by describing the proposed second level addition and stated that the addition would contain 3 bedrooms and 1 bathroom. She further stated that there would be no change to the existing footprint of the home.

Mr. DiDonato stated that the average front yard setback of the adjacent dwellings is approximately 31 feet and that the proposed front porch addition meets the required front yard setback. He also stated that the side yard setback of the new second level and front porch addition would be in keeping with the existing side yard setbacks on the northerly and southerly sides of the dwelling.

The Board questioned the applicants.

Mr. DiDonato stated that the proposed front porch would not encroach further into the side yard than the existing dwelling. He also stated that the proposed first floor of the dwelling would contain a kitchen, bathroom, expanded living room, and a personal home office.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Haizel, it was resolved to approve the variance application, subject to the following condition:

1. The proposed second level addition and front porch shall not be built closer to the northerly and southerly property lines than the existing dwelling.

Chair Harrison called the variance application of **Joe Spruill, 177 Orange Road**. Joe Spruill, owner and applicant, and Susan Chandler, Architect, were sworn. Ms. Chandler described the proposed addition and outdoor deck. She stated that a small rear porch would be enclosed to accommodate an expanded kitchen.

Marked into evidence was:

A-1 Photograph of the rear of the Spruill residence

Ms. Chandler stated that the proposed addition would follow the lines of the existing dwelling and that the stairs of the rear porch would be removed. She continued by describing the proposed rear deck and stated that the deck meets the side yard setback requirement. She further stated that a rear yard setback of 15 feet is proposed for the outdoor deck and that the deck was designed to be as minimally intrusive to the rear yard setback requirement as possible.

Mr. Spruill stated that his property is an oddly shaped lot and the location of the dwelling on the property does not allow for the side yard and rear yard setback requirements to be met. He stated that the existing rear porch on the dwelling is not functional due to its small size and that the proposed deck would cover an area of the

yard where grass does not grow due to heavy shade. He continued by stating that an adjacent dwelling on the property that adjoins his rear property line is located a great distance from the proposed deck.

The Board questioned the applicant and Ms. Chandler.

Mr. Spruill stated that no existing trees would be removed to accommodate the proposed addition or deck. He also stated that the southerly side yard would not be a suitable location for the deck due to the visibility of the side yard from Orange Road and the existing interior configuration of the home.

Chair Harrison called for questions and comment from the public.

Andrzej Kuhl, 106 South Fullerton Avenue, was sworn and asked if the existing fenced in dog run would remain in its present location. He also asked if the existing Japanese Maple Tree would be affected by the proposed deck.

The Board questioned the applicant.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Mr. Fleischer it was resolved to approve the variance application, subject to the following conditions:

1. The exterior walls of the addition shall follow the exterior walls of the the existing dwelling.
2. The outdoor deck shall be built no closer than 15 feet to the rear property line.

Chair Harrison called the variance application of **Philip C. Haws, 44 Saint Lukes Place**. Philip Haws, owner and applicant was sworn. Mr. Haws stated that his property is a two-family dwelling and has no off-street parking. He stated that street parking on Saint Lukes Place and the vicinity is worsening due to the staffs of local schools parking on the street during the week. He also stated that he currently has 1 street parking permit for his vehicle and rents 2 spaces at a property down the street for his wife and tenant. He continued by stating that the lack of off-street parking for his property is a hardship and that the proposed driveway and parking area would add convenience and safety for his family and tenant.

Mr. Haws described the proposed driveway and parking area and the variances requested. He stated that he has developed an alternate plan in which the 3 proposed parking spaces are positioned parallel with the side property lines and that this configuration would meet the 6-foot separation requirement of parking areas from principal buildings in the R-3 Zone.

Marked into evidence was:

A-1 Alternate parking plan, titled Plan 2, prepared the applicant

Mr. Haws stated that the proposed driveway is partially located on the adjoining property of 46 Saint Lukes Place, and that he and the owner of the adjoining property owner at 46 Saint Lukes Place have entered into an easement agreement allowing for common use of the driveway. He continued by stating that the proposed common driveway would be 8 feet 6 inches in width, asphalt paved, and curbed. He further stated that he conducted his own field research on existing driveway widths within Montclair.

Marked into evidence were:

A-2 Photo-board of 12 existing driveways on North Mountain Avenue, prepared by the applicant

A-3 Photo-board of 15 existing driveways on Montclair Avenue, prepared by the applicant

A-4 Photo-board of 15 existing driveways on Park Street, prepared by the applicant

A-5 Photo-board of 15 existing driveways on Inwood Avenue, prepared by the applicant

A-6 Photo-board of 11 existing driveways on Bellevue Avenue, prepared by the applicant

A-7 Photo-board of 12 existing driveways on Grove Street, prepared by the applicant

A-8 Photo-board of 17 existing driveways on Fernwood Avenue, prepared by the applicant

Mr. Haws stated that he took width measurements of the driveways shown on the exhibits and that a large majority of the driveways measured less than the 8 foot 6 inch width of the proposed common driveway. He further stated that the proposed width of the common driveway would be functional and attractive.

Marked into evidence was:

A-9 Chart of typical automobile widths, prepared by the applicant

Mr. Haws stated he had also researched the width of common vehicle types and stated that the proposed driveway could accommodate virtually every type of sedan, minivan, and sport-utility vehicle.

The Board questioned Mr. Haws.

Mr. Haws stated that he is proposing 3 vehicle spaces on his property. He also stated that the owner of the property at 46 Saint Lukes Place would make a separate application to the Board for a parking area on that property that may include up to 5 additional vehicle spaces accessible through the proposed common driveway.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, it was resolved to approve the variance application, subject to the following conditions:

1. The cross-easement between the applicant and the owner of 46 Saint Lukes Place shall be approved by the Board Attorney and recorded in the Essex County Register's Office.
2. The 3 proposed parking spaces shall be positioned perpendicular to the side property lines, as indicated on the original plan and set back a minimum distance of 6 feet from the principal dwelling on the applicant's property.
3. The westernmost parking space shall be reduced from 15 feet to 12 feet in width.
4. Any future application by the adjoining property at 46 Saint Lukes Place for a parking area shall include a composite site plan that includes the parking area of 44 Saint Lukes Place.

Chair Harrison called the variance application of **James and Joan Griffin, 530 Grove Street**. Jim Griffin, owner and applicant, and Edmundo Lopez, Architect, were sworn. Mr. Griffin described his property and the proposed second-story addition to his home. He stated that the proposed addition would accommodate a master bathroom and walk-in closet and would be constructed directly over an existing open porch. He stated that the existing dwelling is a 3-bedroom home with 1 bathroom and that a second bathroom is needed for his family. He also stated that an existing third floor dormer would be extended in width.

Marked into evidence were:

- A-1 Rendering of the dwelling with the proposed addition, on a board, prepared by Edmundo Lopez, Architect
- A-2 Site plan on a board, prepared by Edmundo Lopez, Architect, dated August 12, 2002

Mr. Griffin stated that a 27-foot front yard setback is proposed for the second-story addition and that a 32-foot front yard setback is required. He continued by describing alternative locations for the addition and stated that the proposed location is the most suitable location.

The Board questioned Mr. Griffin.

Marked into evidence was:

- A-3 Photograph of the subject dwelling

Mr. Lopez stated that the walls of the proposed addition would be aligned with the existing colonnade of the first level porch. He also stated that a new overhang or roof apron is proposed for the first level porch that would extend 2 feet further from the dwelling than the existing apron.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Haizel, it was resolved to approve the variance application, subject to the following condition:

1. The Haddon Place front yard setback of the wall of the second-story addition shall not be less than 27 feet and the Haddon Place front yard setback of the overhang or roof apron shall not be less than 25 feet.

Chair Harrison called the variance application of **Thomas F. McLoughlin, 47 College Avenue**. Thomas McLoughlin, owner and applicant, and Edmundo Lopez, Architect, were sworn. Mr. McLoughlin stated that his home is a small Cape Cod with no formal dining area and that his family has outgrown the home and needs additional living space. He continued by describing the proposed one-story family room addition to the dwelling and the variances requested.

Marked into evidence were:

- A-1 Rendering of the dwelling with the proposed addition, on a board, prepared by Edmundo Lopez, Architect
- A-2 Site plan on a board, prepared by Edmundo Lopez, Architect, dated August 12, 2002

He stated that the proposed family room addition would be constructed at the rear of the dwelling and would contain a dining area attached to the existing kitchen. He stated that the rear of his property abuts a 6-vehicle parking area associated with Montclair State University. He also stated that the adjoining property owner of 45 College Avenue has submitted a letter of support for the application.

Marked into evidence were:

- A-3 Photograph of the backyard of 47 College Avenue and abutting parking Area
- A-4 Photograph of the northerly side yard of the subject property
- A-5 Photograph of the front yard of the subject property

The Board questioned the applicant and Mr. Lopez.

Mr. Lopez stated that the proposed addition was designed so that it would accommodate a family room and dining area and provide a secondary entrance from the property. He also stated that the door width for the proposed side entry could be reduced to 2 feet 6 inches to reduce the encroachment of the addition into the northerly side yard.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Mr. Haizel, it was resolved to approve the variance application, subject to the following condition:

1. The proposed addition, excluding the exterior stairway and landing, shall not be built closer than 9 feet 6 inches from the northerly side property line.

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