

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
DECEMBER 8, 1999**

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

ABSENT: Mr. Tobin.

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. Church, the **2000 Schedule** of regular meetings was unanimously adopted.

On motion by Mr. Chapman, seconded by Ms. Freundlich, the **Minutes of the November 10, 1999** regular meeting were adopted, Mr. Church and Mr. Spivey abstaining.

On motion by Mr. Chapman, seconded by Ms. Freundlich, the following **Memorializing Resolution of Care Management 2000, 258 Park Street** was adopted, Mr. Chapman, Mr. Church and Mr. Spivey abstaining:

WHEREAS, Care Management 2000, as owner, did make application to the Board of Adjustment of the Township of Montclair pursuant to N.J.S.A. 40:55D-70d to allow the first floor of the rear building to be utilized for adult day care contrary to Montclair Code Section 224-82 on property located at 258 Park Street and designated as Lot 19 in Block 2503 on the Township tax map and located in the NC Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted a site plan and floor plans prepared by the Mylan Architectural Group bearing a final revision date of September 24, 1999; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 10, 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 two buildings and is approximately 50 feet wide by 250 feet deep and has frontage on Park Street and abuts the New Jersey Transit Railroad in the rear. No change is contemplated to the two apartment units contained in the front building on the property or the second floor office use in the rear building. The application proposes converting the first floor of the rear building for adult day care use. Initially, the use would occupy the current real estate office and vacant

space exclusive of the dance studio. Following the termination of the dance studio tenancy at the end of September, 2001, the adult day care center would expand to include the dance studio space.

2. The applicant argued the proposed use is "inherently beneficial" but could not cite any case specifically making such a finding. The Board recognizes that the proposed use has certain similarities to child day care centers which have been found by the New Jersey Supreme Court to be inherently beneficial. The Board does find the proposed use promotes the general welfare and is consistent with the purposes of the Municipal Land Use Law.

3. Due to the narrowness of the lot and existing improvements, the site is severely constrained. The applicant failed to present sufficient testimony with respect to anticipated number of adults, drop off parameters, number of staff, garbage disposal, truck deliveries and traffic to prove the site could operate safely without conflict with other uses on the property, particularly the dance studio.

4. The site plan shows four parking spaces encroaching on the adjacent property to the south. The applicant did not produce any written document authorizing the encroachment. Moreover, it was not clear to the Board that the spaces could simply be relocated and provide sufficient space for safe on site vehicular circulation.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant 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; and

WHEREAS, The Board, based upon the aforementioned findings, concluded that in the event the use is found to be inherently beneficial, pursuant to New Jersey Supreme Court Case of *Sica v. Board of Adjustment of Tp. Of Wall*, 127 N.J. 152 (1992), the Board is unable to reduce the detrimental effect of the application by imposing conditions and on balance, the grant of the variance would cause substantial detriment to the public good; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair that the within application of Care Management 2000 to allow the first floor of the rear building to be utilized for adult day care is hereby denied.

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. Zichelli announced the **Withdrawal of Application of United Way of North Essex of 60 South Fullerton Avenue**. He stated that the applicant has elected to construct a conforming sign.

Chair Harrison called for the application of **Homes of Montclair Ecumenical Corp., 68 Elmwood Avenue**. Mr. Williams stepped down for the hearing of the application. David Conrad, Esq. appeared on behalf of the applicant. Ms. Beverly Riddick, Executive Director of HomeCorp, was sworn. She described the affordable housing program her organization operates. She stated that HomeCorp seeks to renovate the property at 68 Elmwood and convert it to a two family house. This is a permitted use in this zone, however the HomeCorp cannot provide four parking spaces on the site. A parking deficiency variance is requested. She stated that most of the people involved in her program utilize public transportation and that having only three on site parking spaces will be adequate.

Catherine Cumerford, architect, was sworn. Ms. Cumerford described the lot and the house. She stated that it is not possible to create four parking spaces on the site due to the location of the house on the property. She also stated that granting of a variance for only three parking spaces will not impair the zone plan.

After some discussion, on motion by Mr. Church, seconded by Mr. Fleischer, the application was unanimously approved subject to the following conditions:

1. The applicant install solid fencing material around the parking area to shield the adjoining property owners from the headlights of the vehicles.
2. Any lighting to be installed in the parking area shall be shielded so as to minimize impact on adjacent properties.
3. The applicant shall receive the written approval from the Planning Department prior to any paving on site.

Mr. Williams rejoined the Board.

Chair Harrison called for the application of **Ellen Silver & Edward Eisenberg, 128 Summit Avenue**. Ellen Silver, owner, and William Godsall, architect, were sworn. Ms. Silver described her proposal to erect a two-story addition onto the house. She stated that the house is not parallel to the property lines and that the proposed addition will require a sideyard setback variance.

Mr. Godsall described the floor plans of the proposed addition. He stated that the addition will be similar in character to the existing house. He described the house's position on the lot and reviewed the interior configuration. He stated that due to the interior configuration the house and the siting of the house on the lot, it is difficult to create an addition that complies with the ordinance.

After some discussion, on motion by Mr. Fleischer, seconded by Mr. Chapman, the Board unanimously approved the application subject to the following condition:

1. The addition shall be built no closer to the side property line than the existing structure.

Chair Harrison called on the application of **Over the Rainbow Nursery, Inc, 32 Pleasant Avenue**. Grant Gille, Esq. appeared on behalf of the applicant. Nancy Lottinville, Esq. appeared on behalf of several objectors. Ms. Lottinville stated her concerns about the completeness of the application. Mr. Gille stated that the applicant seeks to carry the hearing of the application to the next regular meeting in December. Chair Harrison stated that the objectors' attorney should provided the applicant with a list of any concerns about missing items in the application at least two weeks prior to the next hearing. Chair Harrison announced that the application will be carried to the January 19, 2000 meeting.

Mr. Zichelli stated that there are a large number of applications awaiting a hearing and that the Board's time to act on these applications are nearly at its limit. He requested that the Board consider a holding an additional meeting in January. The Board unanimously agreed to hold an additional meeting on January 26, 2000. Mr. Zichelli stated that this date will be added onto the regular schedule of meetings for 2000.

On motion by Mr. Fleischer, seconded by Mr. Williams, the Board unanimously voted to go into closed session.

Upon reconvening in open session, Chair Harrison announced that the Board will consider the application of **Michael Stein, 175 Eagle Rock Way** at the next regular meeting. He stated that this is an application that the Board previously denied. and will reconsider the application as part of a potential settlement.

On motion by Mr. Church, seconded by Mr. Fleischer, the meeting was adjourned. The applicant appealed the denial. The Board will consider an amended application as a potential way to resolve the litigation.