

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT  
DECEMBER 9, 1998**

PRESENT: Chair Harrison, Vice Chair Chapman, Mr. Church, Mr. Fleischer, Ms. Freundlich, Ms. O'Connell, Mr. Tobin, and Mr. Williams; also, Alan Trembulak, Esq., Secretary Karen Kadus, Mr. Barrett, Junior Engineer, and Mr. Zichelli, Assistant Secretary.

ABSENT: none.

Ms. Kadus 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. Chapman, seconded by Mr. Fleischer, the **Schedule of Meetings for 1999** was unanimously adopted.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the **Minutes of the October 21, 1998** regular meeting were unanimously adopted.

On motion by Mr. Williams, seconded by Mr. Fleischer, the **Minutes of the November 4, 1998** meeting were unanimously adopted.

On motion by Mr. Church, seconded by Mr. Fleischer, the following **Memorializing Resolution of Barry Pote, 72 Greenwood Avenue**, was adopted, Chair Harrison, Mr. Chapman, Ms. Freundlich, Ms. O'Connell, and Mr. Tobin abstaining:

WHEREAS, Barry D. Pote, owner of property designated as Lot 26 in Block 3208 and commonly known as 72 Greenwood Avenue, applied to the Board of Adjustment of the Township of Montclair for a modification to the Resolution adopted on July 15, 1998 which granted a variance pursuant to N.J.S.A. 40:55D-70d to utilize the property as a storage facility; and

WHEREAS, the applicant submitted an undated elevation drawing prepared by J. Arthur Johnsen, Architect, in support of this application; and

WHEREAS, this matter came on for a hearing at a regular hearing of the Board of Adjustment on November 4, 1998 at which time it was established that legal notice had been properly published and that property owners within 200 feet of the subject property had been served with notice of this application; and

WHEREAS, the Board carefully reviewed the testimony presented by the applicant and made the following findings of fact:

1 . The applicant previously applied to the Board for a variance pursuant to N.J.S.A. 40:55D-70d to utilize an existing, vacant building on the property as a storage facility contrary to Montclair Code Section 224-42. After a public hearing on the

application, the Board adopted a Resolution on July 15, 1998 granting the requested variance subject to several conditions, including the following:

The facade above the level of the garage door shall be preserved and maintained. The facade shall be preserved as exists except that one of the openings may be cut to allow an opening to extend to the ground.

2. The applicant did not file an appeal from the Board's July 15, 1998 Resolution, and the time to appeal has since expired.

3. The applicant now seeks to modify the previously-approved plan to install a pedestrian door on the right side of the overhead garage door and has requested that the Board delete or modify the aforementioned condition which requires that the facade be preserved and that only one opening extend to the ground.

4. The physical appearance of the building was a significant consideration in the Board's prior decision granting the use variance, and particularly, in the Board's determination that the granting of the use variance would not have a substantial negative impact on the surrounding neighborhood.

5. In support of the variance application, the applicant previously testified that a single door would be sufficient for the storage facility given the limited use proposed for the building.

6. Installation of the additional door requested by the applicant would be contrary to the applicant's prior testimony regarding the limited use of the building and would cause a substantial change in the physical appearance of the building.

7. The applicant has failed to demonstrate any changed circumstances or other facts to justify reconsideration, modification or deletion of the aforementioned condition.

WHEREAS, based on the aforementioned findings, the Board concluded that the applicant had failed to demonstrate a sufficient legal or factual basis for the Board to amend or modify the July 15, 1998 Resolution.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Montclair that the within application to amend or modify the Board's Resolution, dated July 15, 1998, be and is hereby denied.

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

Mr. Williams joined the meeting.

Chair Harrison called for the continuation of the application of **Michael Stein, 175 Eagle Rock Way**. Mr. Stein reviewed his previous testimony before the Board for the creation of a front yard parking area.

Mr. Steven Pearlman of 103 Undercliff Road was sworn. Mr. Pearlman stated that he lives across the street from Mr. Stein and that he is in support of the application.

Mr. Robert Nelson, engineer, was sworn. Mr. Nelson reviewed the proposal to create a front yard parking area. Marked for identification was the following:

A-5 Minor Site Plan, prepared by Nelson Engineering,  
dated November 2, 1998

Mr. Nelson reviewed the site plan, the landscaping, the existing retaining wall and the topography of the site. He stated that the property is on a sloping curve in the road and that the proposal will improve the safety of the road way. He then reviewed the negative criteria and stated that the proposal will not have a negative impact on the neighborhood.

Mr. David Boesch, landscape architect, was sworn. Mr. Boesch described the existing landscaping on the site. Marked for identification was the following:

A-6 Photo of site

He reviewed the significant vegetation on the site and stated that the proposed front yard parking area will have a minimal visual impact on the surroundings.

Mr. Stein summarized his application.

After some discussion, on motion by Ms. Freundlich, seconded by Mr. Church, the Board voted to deny the application, Chair Harrison, Mr. Fleischer and Mr. Tobin voting to approve.

Chair Harrison called for the application of **Montclair Childhood Development Center, 45 Elm Street**. Mr. Thomas 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 stated that a remote parking area will be part of the application, that new notice has been provided and that the applicant will restart their testimony.

Ms. Audrey Fletcher, Director of Headstart, was sworn. Ms. Fletcher described the program which currently operates in the existing nonconforming child care facility. She stated that the childhood development programs are a benefit to the community and the use is compatible with the surrounding neighborhood. 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. Marked for identification were the following:

- A-1 Letter from Mother Seton Residence, dated November 9, 1998
- A-2 Access Easement

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. Marked for identification was the following:

- A-3 Subdivision Map prepared by Doolittle Surveyors, dated October 13, 1998

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. He then reviewed the number of parking spaces required by code to serve St. Vincent's. He stated that St. Vincent's will have 30 spaces left on their property and 50 spaces available to them across the street. This will meet the parking requirement.

On motion by Mr. Fleischer seconded by Mr. Chapman, the application was unanimously approved subject to the following conditions:

1. The subdivision map shall be modified so that no parking spaces are bifurcated by the proposed subdivision line.
2. The handicapped parking space proposed at the southerly corner of the classroom buildings shall conform to ordinance regulations.
3. The Montclair Child Development Center lot shall provide as least 20 onsite parking spaces.
4. The offsite parking lot across the street at the Mother Seton Residence shall be striped and at least 26 parking spaces shall be available for St. Vincent's use.
5. In the event the use of the St. Vincent lot changes and the subsequent use requires more than 72 parking spaces, or if the new use requires less than 72 parking spaces but the lot across the street is unavailable, and as a result there are an insufficient amount of spaces on the St. Vincent's lot, a variance shall be required.
6. The applicant shall provide a cross access easement (which shall provide ingress and egress be available by frontward movement of buses) for review and

approval by the Board attorney to be filed simultaneously with perfection of the subdivision.

7. The conditions of the resolution shall be attached to and recorded with the deed and all subsequent conveyances.

8. A prospective purchaser of the Saint Vincent lot shall be informed during contract negotiations of the conditions of approval contained in this resolution.

9. The applicant shall obtain County Planning Board approval.

10. The applicant shall provide the details of the trash storage area to be located in the rear parking area for approval by the Board Engineer.

Chair Harrison called for the application of **Diana & Brian Gallagher, 96 Buckingham Road**. Mrs. Gallagher stated that they wish to construct a deck onto the side of their house and request a side yard setback variance. She stated that the kitchen door is seven feet above grade and that a patio would not suit their needs. She then described the side yard area between the property in question and the adjoining house on Grove Street which they also own.

Marked for identification was the following:

A-1 Photos of existing site, taken by the applicant

The Board discussed the application and offered the Gallaghers the opportunity to appear before the Planning Board and seek a subdivision to modify the property line between the property in question and the adjoining property on Grove Street which they own. The applicants stated that they will proceed with an application before the Planning Board. A minor subdivision, involving the movement of the side property line, would allow for the construction of a deck without the requirement for a side yard setback variance.

Chair Harrison stated that the application will be continued before the Board of Adjustment at the regular February 17, 1999 meeting.

Chair Harrison announced that due to the late hour, the application of **Samuel LaForte, 47-49 New Street** will be carried to the January 20, 1999 meeting.

Chair Harrison called for the variance application of **Robert Convertino, 157 Highland Avenue**. Mr. Convertino, owner, was sworn. He described his proposal to construct a 10' by 12' kitchen addition onto the rear of his property. He stated that he is seeking a side yard setback variance. He then stated that the proposed addition will follow the setback of the existing structure which is only six feet away from the side property line. Mr. Convertino reviewed his floor plan showing the difficulty of constructing an addition which meets the setback requirements.

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

1. The addition shall follow the line of the existing house and be built no closer to the side property line than 6 feet.

Chair Harrison announced that **Michael Schulman, 34 Union Street** filed an appeal of the Board of Adjustment denial of his use variance application. Mr. Sullivan stated that he needs the Board's approval to defend the Board in court. On motion by Mr. Fleischer, seconded by Mr. Chapman, the Board unanimously approved Board Attorney Sullivan to represent the Board in court.

The meeting was adjourned.