

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
FEBRUARY18, 1998**

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

ABSENT: Ms. Holden, Ms. Freundlich and Secretary Karen Kadus.

Mr. Zichelli called the roll and announced it to be a regular meeting of the Montclair Board of Adjustment for which 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 January 21, 1998** were adopted.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following **Memorializing Resolution of Bobbi and Steven Plofker, 49 Highland Avenue** was adopted, Ms O'Connell and Mr. Church abstaining:

WHEREAS, Bobbi and Steven Plofker, as owners, did make application to the Board of Adjustment of the Township of Montclair to permit a pergola in the front yard of property located at 49 Highland Avenue and designated as Lot 24 in Block 406 on the Township Tax Map and located in the R-O Mountainside ; and

WHEREAS, the applicants sought variances pursuant to *N.J.S.A. 40:55D-70c* as follows:

1. To allow the pergola in the front yard where accessory structures are not permitted pursuant to Montclair Code Section 224-29D;
2. To allow a northeasterly side yard of 11 feet where a minimum of 12 feet is required pursuant to Montclair Code Section 224-29.

WHEREAS, the applicants submitted two drawings prepared by Eric Von Hoffman, Landscapes, Inc. entitled "Plan/Elevation of Arbor" dated Winter, 1995 and "Property of Plofker" dated January 3, 1994; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 21, 1998, 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 pergola is a structure as defined by Montclair Code Section 224-2 and *N.J.S.A. 40:55D-7* and is accessory to the principal residential use.

2. The pergola is 9-1/2 feet high as measured inside at its highest point and runs almost the entire width of the property with a southwesterly side yard setback of 35 feet and a northeasterly side yard setback of 11 feet and is located 21 feet 6 inches from the curb line.

3. The applicants failed to prove any purposes of the Municipal Land Use Law would be advanced by the granting of this application.

4. The applicants failed to prove the variance is warranted based upon the physical characteristics of the land or that the applicants suffered "undue hardship".

5. The size and scale of the pergola is inconsistent with the neighborhood and the community as a whole as evidenced by Mr. Von Hoffman's testimony that he couldn't think of a pergola this large in Montclair.

6. The application would cause substantial detriment to the intent and purpose of the zoning ordinance which prohibits accessory structures in the front yard to preserve light, air and open space.

7. Approval of this application would create a dangerous precedent by allowing accessory structures in the front yard on other similarly situated properties without sufficient justification.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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 zoning ordinance pursuant to *N.J.S.A. 40:55D-70c(1)*; and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variances could be granted without substantial detriment to the public good and would not substantially outweigh any 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 *N.J.S.A. 40:55D-70c(2)*;

NOW, THEREFORE, BE IT RESOLVED, that the application of Bobbi and Steven Plofker to allow a pergola in the front yard and side yard setback variance is hereby denied.

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. Church, seconded by Mr. Tobin, the following **Memorializing Resolution of Montclair Breast Center, 39 South Fullerton Avenue** was adopted, Chair Harrison and Mr. Fleischer abstaining.

WHEREAS, Montclair Breast Center, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70c(2)* to allow a freestanding sign 6.5 feet in height and 16.5 square feet in area which exceeds the maximum of 6 feet in height and 8 square feet in area pursuant to Montclair Code Section 224-99.1H on property located at 39 South Fullerton Avenue and designated as Lot 14 in Block 3106 on the Township tax map and located in the OR-4 Zone; and

WHEREAS, the applicant submitted a sign drawing prepared by Benegraphic received October 27, 1997; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 21, 1998, 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 proposed sign will facilitate identification of the building which is not readily identifiable.
2. The size of the proposed freestanding sign is in proportion to the existing three story office building.
3. The proposed sign is consistent with the purposes of the Municipal Land Use Law as it constitutes appropriate municipal action promoting the general welfare and promotes a desirable visual environment.
4. The proposed sign is not inconsistent with the neighborhood or the community as a whole.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and would not cause 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 *N.J.S.A. 40:55D-70c(2)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Montclair Breast Center for variances for height and area in connection with a freestanding sign is hereby approved subject to the following conditions:

1. All wall mounted and window signs on the property shall be removed.
2. The proposed sign shall not be internally illuminated and if externally illuminated shall conform to the ordinance and such lighting shall be screened.
3. The sign shall be located at least five feet from the property line.
4. The sign shall not exceed 6.5 feet in height and 16.5 square feet.

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 Ms. O'Connell, the following **Memorializing Vincent and Helen LaSelva, 29 Watchung Plaza** was adopted, Chair Harrison, Messrs. Chapman, Tobin and Williams abstaining:

WHEREAS, Vincent and Helen LaSelva, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a second story addition to the property located at 29 Watchung Plaza and designated as Lot 3 in Block 3402 on the Township Tax Map and located in the NC Neighborhood Commercial Zone; and

WHEREAS, the applicants sought relief as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(5)* to allow two dwelling units where only one dwelling unit is allowed pursuant to Montclair Code Section 224-82A.
2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow a 2.96 foot rear yard setback where a minimum of 20 feet is required pursuant to Montclair Code Section 224-85C.
3. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit 0 parking spaces where a minimum of three parking spaces are required for two dwelling units and a total of 12 spaces are required on the site pursuant to Montclair Code Section 224-91.

WHEREAS, the applicants submitted a site plan, floor plan and elevations prepared by Sionas Architecture, P.C. dated October 20, 1997 and bearing a final revision date of October 29, 1997; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 21, 1998, 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. With respect to the use variance requested to allow two dwelling units, the applicants failed to prove "special reasons" or that any purposes of the Municipal Land Use Law would be advanced by granting this application.

2. The proposal to allow two dwelling units with a large living room and kitchen without windows where a maximum of one dwelling unit is allowed is not in the best interest of the Township.

3. Approval of this application would allow increased density contrary to the intent and purpose of the zoning ordinance and master plan which seeks to limit density pursuant to the calculations contained in the ordinance in this zone.

4. A motion to approve the application including the variance pursuant to *N.J.S.A. 40:55D-70d(5)* failed to receive the five affirmative votes required for approval and was thus deemed a denial of the application.

5. The applicants did not wish the Board to consider a vote to approve variances for a rear yard setback and on-site parking in connection with only one dwelling unit.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants 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;

NOW, THEREFORE, BE IT RESOLVED, that the application of Vincent and Helen LaSelva to construct a second story addition in connection with two dwelling units and rear yard and on-site parking variances is hereby denied.

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

Chair Harrison called for the continuation of the application of **DeCamp Bus Line, 100 Greenwood Avenue**. James Andrews, Esq. appeared as attorney for the applicant. Mr. Andrews stated that the applicant seeks a variance to park 14 buses at the Greenwood Avenue parking lot during the days on holidays and weekends. He stated that Arthur Johnsen, architect and planner, will be available for questioning at the next hearing.

Mr. Hawthorne, weekend dispatcher, who was still sworn, was made available for additional questioning by the Board and the public.

Patterson Smith of 23 Prospect Terrace, asked Mr. Hawthorne to review other potential off site parking arrangements and the existing parking conditions available to DeCamp. Mr. Smith than referred to A-1, schematic of garage, and A-2,

sketch of bus layout & movements, and asked Mr. Hawthorne to review angle parking, bus movements and bus idling.

Mr. Tom Kelley of 23 Prospect Terrace, asked Mr. Hawthorne to describe the hours the mechanics work, location of the buses, repair schedule, away trips and the parking configuration.

Members of the Board asked Mr. Hawthorne if it were possible to keep 14 buses which need no scheduled maintenance in the lot in question during weekend and holidays.

Mr. Andrews stated that applicant will bring back Mr. Johnsen, architect and planner to the next hearing. Chair Harrison stated that the hearing will be continued at the March 18, 1998 regular meeting.

Chair Harrison called for the application of **Omnipoint Communications, Inc., 630 Valley Road**. Cerry Brian Flowers, Esq. appeared as attorney for the applicant. He stated that the applicant is seeking a use variance to erect telecommunications equipment on the roof of the existing building.

Mr. Christopher Olsen, radio frequency engineer, was sworn. Mr. Olsen reviewed the operations and functions of Personal Communications Systems (PCS). Marked for identification was the following:

A-1 Coverage Map

Mr. Olsen described the existing telecommunications network and coverage area operated by Omnipoint. Marked for identification was the following:

A-2 Photo board of existing site

Mr. Olsen reviewed the existing antennae on the roof of the structure and described the proposed antennae.

Members of the Board asked Mr. Olsen to review the coverage area and the existing conditions. Marked for identification were the following:

A-3 Photo board of existing & proposed conditions

A-4 Photo board of existing penthouse structure

Members of the Board asked Mr. Olsen to further review the placement of the antennae and equipment box and the noise level.

Mr. Bruno J. Sutter, architect, was sworn. He described the structural integrity of the building and roof and the construction of the antennae.

Members of the Board asked Mr. Sutter to review the placement of the equipment cabinet and antennae.

Mr. Robert Clagila, real-estate and zoning coordinator, was sworn. He stated that there is no available room in the building to place the equipment box.

Mr. James Dowling, planner, was sworn. He reviewed the variances requested, the positive and negative criteria, and the beneficial use. He stated that the use is suitable for the area and will not be a detriment to the visual quality of the community.

Mr. Lou Cornacchia, health expert, was sworn. He stated that the antennae comply with all state and federal safety standards and that they do not present any adverse health impacts.

Mr. Flowers summarized the application.

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

1. The accessory unmanned equipment cabinet shall be relocated to the interior of the building unless one of the following is submitted to the Board: (a) an affidavit of the property owner indicating the interior of the building is not available for such relocation; or (b) an affidavit from the applicant indicating the proposed rental of the relocation substantially exceeds the fair market rental in the area. In the event the unmanned equipment cabinet cannot be relocated to the interior of the building as outlined above, it shall be relocated on the roof top centered against the 6 foot high parapet so as to minimize its visual impact.

2. The antennae to be affixed to the parapet shall be painted to match as closely as possible the exterior of the building. The two roof mounted antennae shall be painted so as to blend in with the skyline.

Chair Harrison	Yes	Mr. Fleischer	Yes	Ms. O'Connell	Yes
Mr. Chapman	Yes	Ms. Freundlich	Absent	Mr. Tobin	Yes
Mr. Church	No	Ms. Holden	Absent	Mr. Williams	Yes

Chair Harrison called for the application of **Penelope Bassett Hackett & Marcus C. Hackett, 5 James Street**. Mr. & Mrs. Hackett, owners, were sworn. Mr. Hackett stated that he and his wife are seeking a side yard setback variance for the construction of an addition onto the rear of their newly purchased home. He described the angled placement of the existing house on the lot and existing side yard setback. Marked for identification were the following:

A-1 Photo board (returned to applicant)

A-2 Article describing kitchen safety

Mr. Hackett stated that the existing house is 3.4 feet setback from the side property line and that the proposed addition will have a 320 side yard setback. He stated that due to the interior configuration of the house it is difficult to construct a kitchen which conforms to the required setbacks.

After some discussion, on motion by Mr. Church, seconded by Mr. Williams, the application was approved subject to the condition that the addition shall follow the line of the existing house and be built no closer to the side property line than 2.7 feet.

Chair Harrison	Yes	Mr. Fleischer	Yes	Ms. O'Connell	Yes
Mr. Chapman	Yes	Ms. Freundlich	Absent	Mr. Tobin	Yes
Mr. Church	Yes	Ms. Holden	Absent	Mr. Williams	Yes

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