

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT  
MAY 20, 1998**

PRESENT: Chair Harrison, Vice Chair Chapman, Mmes. O'Connell, Freundlich, Messrs. Tobin, Church, Fleischer, and Williams; also Michael Sullivan, Esq., and Ms. Karen Kadus, Secretary.

ABSENT: Mr. Zichelli, Assistant Secretary

Ms. Kadus 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.

Ms. Kadus announced that the application of **Mr. and Mrs. Crosland, 7 Marion Road**, had been withdrawn by the applicant. Having not received a written withdrawal from the applicants and the applicants not being present, the Board discussed the matter. On motion by Mr. Chapman, seconded by Mr. Church, it was unanimously resolved to dismiss the application without prejudice.

Chair Harrison called for the continuation of the hearing of **DeCamp Bus Lines, Inc., 100 Greenwood Avenue**. The Chair stated that the only remaining portion of the hearing was the summations from Andrez Kuhl and James Andrews, the applicant's attorney.

Mr. Kuhl summarized by stating that the application should be denied. There will be a 43% increase in open-air bus parking with this new proposal, significant changes in bus parking and movements and a significant increase in fumes and noise. He urged the Board to deny the applicant's request.

Mr. Andrews stated that the only request was to utilize the existing bus parking lot on weekends during the daytime. There would be no increase in the number of buses. Because DeCamp must move the buses in and out on weekends, there are many unnecessary bus movements now. The new plan would cut down on the number of bus movements. He reviewed the neighbors' concerns with bus idling, and committed to having more personnel performing the bus warm ups so that the idling would comply with Federal regulations.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Tobin, the application was approved, subject to the following conditions, Chair Harrison voting in the negative:

1. Buses parked on the lot during the day on weekends and holidays shall not be started or moved between the hours of 8:00 a.m. and 6:00 p.m. except in the case of a documented emergency.

2. Buses parked on the lot may be idled only between the hours of 5:00 a.m. to 8:00 a.m. and 6:00 p.m. to 8:00 p.m. Within each of these time periods, all buses parked on the lot must be idled within a single 30 minute time span.

3. The applicant shall comply with all Federal and State regulations with regard to the idling time for each individual bus.

4. The applicant shall comply with all prior conditions imposed by the Board not inconsistent herewith.

Chair Harrison then called for the application of **Jim and Susann Connors, 22 Parkside**. Mr. and Mrs. Connors, owners and applicants, were sworn, as was Paul Sionas, architect and planner.

Mr. Connors explained that they have owned the single-family house for 2 years. It has 5 window air conditioners, and they wish to install central air conditioning. Four units are required to cool the large house. The ideal place for the ground-mounted units is on the Princeton Place front of the house, he said. Because of the easy access to the basement, the east side is the preferable location.

Marked into evidence were:

A-1	Color site plan
A-2	Color Sanborn map excerpt
A-3	Photo board of subject house
A-4	Photo board of other houses
A-5	Landscape master plan prepared by Sionas Architecture, dated 4/10/98

The Connors explained that they were trying to improve the appearance of their property. The location of the units on the easterly side of their house is easiest to screen and is far away from their childrens' play area. If placed on the south side of the house, the units would block light into the basement.

Mr. Sionas explained that the choice of the units was made with noise in mind, in that the Connors selected one of the quieter models. He would shield the units from view with 6 mountain laurels and 1 Swiss stone pine.

Georgia Johnson, 15 Princeton Place, was sworn and objected to the placement of air conditioning units in the front yard because of the noise potential.

Shari Fox, 14 Princeton Place, was sworn and also objected to the variance.

Margaret Hesselbrock, 19 Princeton Place, was sworn. She objected to the variance for similar reasons.

Alan Fox, 14 Princeton Place, was sworn. He questioned the witnesses and objected to the variance.

On motion by Mr. Church, seconded by Mr. Fleischer, the application was denied.

Due to the lateness of the hour, the Chair announced that the application of **Barry Pote, 72 Greenwood Avenue**, would be carried to the June 20 meeting.

The Board took a short recess.

Upon reconvening, Chair Harrison called for the application of **Dr. Richard U. Mascera, 259 Lorraine Avenue**. Gregory Mascera, attorney for the applicant, introduced himself. Chair Harrison raised the issue of res judicata given that this Board heard a similar application to the present one in 1985. He requested that Mr. Mascera put forth his reasons as to why this application is different from the 1985 application.

Mr. Mascera said that the 1985 addition totaled 450 square feet as compared to the current addition which would total 400 square feet. He also said only one dentist would be practicing there at any time. He reviewed the changes to the neighborhood, including Lotsa Pasta Restaurant in the railroad station, the Township's air stripper tower construction in the park and an anticipated increase in trains with the Montclair Connection construction.

He indicated that he has secured 3 parking spaces at the Warner Communications property for use by the dental office. Another reason the application is different, he explained, was that there has been a tremendous change in dental equipment over the last ten years.

Jennifer Haughton, 14 Braemore Road, was sworn. She refuted the applicant's argument that res judicata did not apply, and objected to the hearing proceeding forward.

Elizabeth Hoffman, 5 Braemore Road, was sworn. She believed it to be the same as the 1985 application.

Tim Spitzer, 5 Braemore Road, was sworn, and made similar comments.

Chair Harrison asked Mr. Sullivan to review the principal of res judicata, and the Board members then discussed the issue.

On motion by Mr. Church, seconded by Mr. Tobin, it was unanimously resolved that the principal of res judicata did apply, and the Board was barred from hearing the current application.

On motion by Mr. Fleischer, second by Ms. O'Connell, the **Minutes of the April 15, 1998** meeting were approved.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following **Memorializing Resolution of Michael Shulman, 34 Union Street** was adopted:

WHEREAS, Michael L. Shulman, as owner, did make application to the Board of Adjustment of the Township of Montclair with reference to property designated as Lot

20 in Block 3180 on the Township Tax Map and located in the R-2 Two Family Zone;  
and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d* to allow expansion of a preexisting nonconforming use to allow thirteen residential units consisting of five apartments and eight rooming units contrary to Montclair Code Section 224-42.
2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow seven parking spaces where a minimum of sixteen parking spaces is required pursuant to Montclair Code Section 224-91.

WHEREAS, the applicant submitted a survey prepared by James M. Helb, L.S., dated June 18, 1997 as well as a floor plan prepared by the applicant received January 2, 1998; and

WHEREAS, this matter came on to be heard at a special meeting of the Board of Adjustment held on May 6, 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 applicant testified the Township recognizes the property as a preexisting nonconforming use of nine units consisting of three apartments and six rooming units. The applicant further testified the property is currently utilized for thirteen units consisting of three apartments and ten rooming units. The applicants proposal is to allow a total of thirteen units comprised of five apartments and eight rooming units.
2. With respect to the requested use variance, the applicant failed to prove "special reasons" or that any purpose of the Municipal Land Use Law would be advanced by approving this application.
3. The property is not well suited for expansion of the preexisting nonconforming use as evidenced by the substantial deficiency in the parking requirement.
4. The applicant testified that seven parking spaces exist on the site pursuant to Ordinance. The applicant further indicated that perhaps one or two additional spaces could be added. The applicant, however, failed to offer any testimony to support the request for a variance to allow seven to nine parking spaces where a minimum of sixteen parking spaces is required for the proposed use. No public benefit would result, nor does any hardship related to the physical, characteristics of the land warrant relaxation of the parking requirements. Insufficient on site parking would force cars to park off site in an already severely congested neighborhood which would have a substantial negative impact on the public good.

5. The approval of thirteen units consisting of five apartments and eight rooming units is too intense a use for the property in a fairly densely settled area which would substantially impair the intent and purpose of the zone plan and zoning ordinance which seeks to preserve the integrity of the Two Family Zone.

WHEREAS, the Board, based on the foregoing 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;

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant 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 applicant 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, by the Board of Adjustment of the Township of Montclair that the application of Michael L. Shulman for variances pursuant to *N.J.S.A. 40:55D-70d* and *N.J.S.A. 40:55D-70c* 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.

On motion by Mr. Chapman, second by Mr. Fleischer, the following Memorializing Resolution of **Robert and Elaina Richardi, 170-172 Lincoln Street** was adopted:

WHEREAS, Robert and Elaina Richardi, as owners, did make application to the Board of Adjustment of the Township of Montclair with reference to property designated as Lot I in Block 3002 on the Township Tax Map and located in the R-1 Single Family Zone; and

WHEREAS, the applicants requested the following relief.

1. A variance pursuant to *N.J.S.A. 40:55D-70d* to allow expansion of the four preexisting nonconforming apartments by adding two additional apartments or in the

alternative, to add two additional rooming units on the third floor contrary to Montclair Code Section 224-36.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow six parking spaces which fails to comply with Montclair Code Section 224-91.

WHEREAS, the applicants submitted a property survey prepared by Julio E. Esquivel, L. S., dated April 17, 1983 and floor plans and elevations prepared by the applicants received November 7, 1997; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 6, 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 property is a preexisting nonconforming use consisting of four apartments. Over many years, the third floor has been the subject of illegal uses as well as permitted boarders or roomers who are tenants of the family occupant and whose rent is paid to the family occupant pursuant to Montclair Code Section 224-2.

2. With respect to the requested use variance, the applicants failed to prove "special reasons" or that any purposes of the Municipal Land Use Law would be advanced by granting this application.

3. The property is not well suited for expansion beyond the preexisting nonconforming four apartments as evidenced by the fact that the parking requirement cannot be met with any expansion.

4. The applicants failed to offer any testimony to support the request for a variance to allow six parking spaces where a minimum of nine is required for six apartments and eight is required for four apartments and two rooming units. No public benefit would result, nor does any hardship related to the physical characteristics of the land warrant relaxation of the parking requirements. Insufficient on site parking would force cars to park off site in an already congested neighborhood which would have a substantial negative impact on the public good.

5. To allow the establishment of additional dwelling units above and beyond the four preexisting nonconforming apartments in the R- I One Family Residential Zone would substantially impair the intent and purpose of the zone plan and zoning ordinance which seeks to preserve the integrity of the Single Family Zone.

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;

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. 40:55D70c(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, by the Board of Adjustment of the Township of Montclair that the application of Robert and Elaina Richardi for variances pursuant to *N.J.S.A. 40:55D-70d* and *N.J.S.A. 40:55D-70c* 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.

The meeting was adjourned at 11:15 p.m.