

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT**  
**June 16, 1999**

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

ABSENT: Vice Chair Chapman, Ms. Freundlich

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. Church seconded by Mr. Tobin, the **Minutes of the May 19, 1999** regular meeting were adopted, Mr. Spivey abstaining.

On motion by Mr. Fleischer, seconded by Mr. Church, the following **Memorializing Resolution of Lisa and Michael Kirwan 7 Clinton Avenue**, was adopted, Mr. Spivey abstaining:

WHEREAS, Lisa and Michael Kirwan, owners of property at 7 Clinton Avenue, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to attach the garage to the house thereby requiring the expansion to comply with the setbacks for a principal dwelling in the R-1 zone pursuant to **Montclair Code Section 224-40C** in that the expansion will have a side yard setback of less than six feet and from **Montclair Code Section 224-40D** in that the expansion will have a rear yard setback of less than twenty-five feet, on property designated as Lot 18 in Block 1303 on the Township Tax Maps and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicants submitted a site plan, partial floor plans, and an elevation drawing, prepared by Sally Ross, Designer, and a property survey prepared by Richard J. Hingos, Inc., Land Surveyor, dated September 28, 1995; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on May 19, 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 notice; and

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

1. The subject property has dimensions of approximately 82 feet by 114 feet and consists of a 2 story single-family frame dwelling and a 2 car frame garage.
2. A proposed access-way will attach the existing garage to the house.

3. The architectural style of the expansion will be in keeping with that of the existing garage.
4. The intended use of the pool is strictly for therapeutic purposes for the applicants' daughter.
5. The corners of the new expansion will be approximately 5'-9" from the side and 4' from the rear.
6. The applicant will plant 10 feet to 20 feet high trees to provide screening.
7. The pool will have dimensions of 12 feet long by 8 feet wide by 4 feet deep. The pump for the pool will not need to be kept operating all day and no water will flow from the pool.
8. The proposed deviation is minimal and will not result in any adverse impact on area properties and based upon the foregoing, is not inconsistent with the intent and purpose of the zone plan and ordinance.

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant has met the proofs required to support the granting of variances from **Montclair Code Section 224-40C** and from **Montclair Code Section 224-40D**; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Lisa and Michael Kirwan is hereby approved, subject to the following condition:

Exterior lighting may not be installed around the pool house.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

On motion by Mr. Fleischer, seconded by Mr. Tobin, the following **Memorializing Resolution of Richard and John DiGeronimo 420 Bloomfield Avenue**, was adopted, Mr. Spivey abstaining:

WHEREAS, Richard and John DiGeronimo, as owners, did make application to the Board of Adjustment of the Township of Montclair for site plan approval to construct two additional stories to accommodate four residential apartments over the existing single story retail space on property located at 420 Bloomfield Avenue and designated as Lot 8 in Block 3106 on the Township tax map and located in the C-1 Zone; and

WHEREAS, the applicants requested the following relief:

1. A variance pursuant to N.J.S.A. 40:55D-70d(5) to allow four dwelling units where a maximum of 2.76 is permitted pursuant to Montclair Code Section

224-76B(5).

2. A variance pursuant to N.J.S.A. 40:55D-70c to allow lot width of 34 feet and lot area of 3,258 square feet where a minimum of 60 feet in width and 10,000 square feet in area is required by Montclair Code Section 224-76A(2).
3. A variance pursuant to N.J.S.A. 40:55D-70c to allow a rear yard setback of 0 feet where a minimum of 10 feet is required pursuant to Montclair Code Section 224-76B(4).

WHEREAS, the applicants submitted plans prepared by Sionas Architecture, P.C. bearing a final revision date of May 7, 1999; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 19, 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 application contemplates the addition of second and third floors to accommodate four residential apartment units each consisting of two bedrooms over the existing one story building containing retail space.
2. The proposed site is particularly suited for the addition of four residential apartments on the site which is framed on three sides by public property.
3. The application advances the purposes of the Municipal Land Use Law in that it constitutes appropriate use of the land and provides sufficient space in an appropriate location and promotes a desirable visual environment in accordance with N.J.S.A. 40:55D-2a,g,i.
4. The variances related to lot width, lot area and rear yard setback are appropriate given the structure lawfully existing on the site which constitutes a hardship on the applicants.
5. The application is consistent with the intent and purpose of the Master Plan and Zoning Ordinance which encourages renovation in the business district and residential use above the first floor in appropriate situations such as this.
6. The proposed density is not inconsistent with the existing land use pattern in the immediate area and thus will have little or no adverse impact on the neighborhood.

WHEREAS, the Board, based on the aforementioned 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;

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 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 Richard and John DiGeronimo for site plan and variances is hereby approved subject to the following conditions:

1. The applicants shall connect or direct the proposed new roof leaders to the existing drainage inlet in accordance with the recommendation of the Board's engineer dated May 18, 1999.
2. The proposed replacement tree shall be approved by the Township arborist.
3. The applicants shall obtain approval from the Township for use of Township property for landscaping purposes.
4. The applicants shall provide a minimum of six permits for municipal parking spaces for use by the residential tenants of the building.

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

At the applicant's request, the application of Ralph Silas was granted an extension to be heard in the July 21 meeting.

Chair Harrison called for the application of **Thomas O'Brien 2 Belvidere Place**. Mr. O'Brien, as owner, was sworn. Mr. O'Brien stated that since moving into his house he has made several renovations to the house and property in efforts to improve the appearance.

The following items were marked for identification:

A-1 & A-2     Photos of the house (returned to applicant)

Mr. O'Brien explained that there is not an adequate setback distance in the side yard for installation of the units. He affirmed that the proposed placement would be the best location for the units to operate most efficiently. He also stated that the units would be equally as visible if placed in the permitted rear yard area as they would be if installed in the proposed location.

The following items were marked for identification:

- A-3 Blue prints drawn by A. Ondar Design (returned to applicant)
- A-4 Brochure specifications from Rheem Air Conditioning

Mr. O'Brien continued, stating that he will be removing the rear staircase and plans to build a deck in the rear yard area as part of his ongoing efforts to make improvements to the house.

Following discussion, on motion by Mr. Fleischer, seconded by Mr. Tobin, the Board unanimously voted to approve the application, subject to the following condition:

1. The applicant shall plant evergreen shrubbery along the rear and side property lines, with a minimum height equal to the height of the condensers.

Chair Harrison called for the application of **Constance Gill, 80 Grove Street**. Ms. Gill gave a general explanation of the work she proposes to do on her property. She stated that she does not want to install the air conditioning units by the rear porch because most of the pedestrian traffic passes by there to enter and exit the house. She does not want to install the units close to the house under the roofline because the water runoff from the roof would drop onto the units. She would install a fence with a lattice top to screen the units from view.

The following items were marked for identification:

- A-1 Site plan and elevation drawings of house in color
- A-2 Photo board of pictures of the property

She continued, stating that evergreens will be planted on the neighbor's property along the line in the area designated for parking use. She would like to make the parking space numbers 4 and 5, eight feet wide as opposed to the nine feet minimum requirement because there is limited room between the chestnut tree and the property line. Parking space number 3 would comply in width and could be set back enough to be in compliance. She wants to use gravel for the driveway in lieu of paving to keep consistent with the Victorian style of the house. Ms. Gill stated that she is seeking approval to construct an eight foot wide driveway for the portion forward of the house because there is not enough space to make it wider.

After some discussion, on motion by Mr. Fleischer, seconded by

Mr. Church, the Board unanimously voted to deny the variance regarding the setback encroachment for the parking spaces and the air conditioning condensers.

The Board unanimously voted to approve the variances regarding the construction of an eight-foot wide gravel driveway subject to the following conditions:

1. No more than four parking spaces may be constructed, all of which shall conform to the ordinance.
2. A four-foot buffer shall be maintained between property line and the newly created parking spaces.
3. The first ten feet of driveway beyond the sidewalk must be constructed of a solid material such as asphalt or gravel in concrete matrix.

Chairman Harrison called for the application of **Greg Seymore-Cullins, 122 Watchung Avenue.** Mr. Seymour was sworn. Mr. Seymour presented himself as the Vice President of Operations at Seymour-Cullins and gave an overall description of the type of service that Seymour-Cullins provides. He described the general layout of the lot as containing a 4990 s.f. one-story masonry structure with a 41-space parking lot that is shared with the neighboring video store and a front setback of approximately 143 feet. The anticipated hours of operation will be from 7a.m. to 9 p.m. every day of the week. He stated that using the height of the existing sign from the previous occupants was not considered because of the limited visibility of the sign due to the building's setback.

Mr. Hugh Boyd, Architect, was sworn.

The following items were marked for identification:

A-1 Photos marked A through E of the site and adjacent properties

Mr. Boyd stated that there is a total of approximately 85 square feet of signage proposed. There are 6 lights that would shine down onto the awning and two lights that would shine upwards onto the roof sign. The proposed roof sign is a 6' wide by 5'-9" high red tomato.

The following items were marked for identification:

A-2 Color rendering of proposed pylon sign

A-3 Photo of example of object sign

A-4 Photos of the existing signage on adjacent properties

Mr. Seymore stated that he would be willing to incorporate the tomato into the design for the awning as opposed to having it as roof sign.

Chair Harrison opened the floor for questions from anyone in the audience with interest in the application. The applicant responded to questions from

local residents and merchants with concerns about some of the proposed signage. The floor was then opened for anyone in the audience who wanted to give testimony. The Board heard the testimony of several witnesses from the audience with varying concerns.

The applicant agreed to eliminate the roof sign and was willing to lower the height of the freestanding sign.

After some discussion, on motion by Mr. Church, seconded by Ms. O'Connell, the Board unanimously voted to deny the variances for a roof sign and for a free standing sign, and approve the variance for the awning sign, subject to the following conditions:

1. The lettering for the awning sign shall not exceed the proposed size and shall not extend beyond the designated signage area.
2. The existing freestanding sign must be removed and a new free standing is not permitted.

On motion by Mr. Fleischer, seconded by Ms. O'Connell, the meeting was adjourned.