

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
JUNE 17, 1998**

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

ABSENT: Vice Chair Chapman.

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.

On motion by Ms. Freundlich, seconded by Mr. Fleischer, the **Minutes of the May 6, 1998** meeting were unanimously adopted.

Ms. Kadus announced that the adoption of the **Minutes of the May 20, 1998** meeting would be carried to the next regular meeting on July 15, 1998.

On motion by Mr. Fleischer, seconded by Mr. Church, the following **Memorializing Resolution of Susann and Jim Connors, 22 Parkside** was unanimously adopted:

WHEREAS, Susann and Jim Connors, owners, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow the placement of air conditioning units in the front yard which is prohibited pursuant to Montclair Code Section 244-41E on property designated as Lot 11 in Block 1707 on the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicants submitted a site plan prepared by Sionas Architecture, dated February 11, 1998; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on May 20, 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 notice; and

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

1. The subject property measures approximately 145 feet by 200 feet and contains a single family house and accessory garage. It is a corner lot having frontage on both Parkside and Princeton Place.

2. The applicants' proposal is to install 4 ground mounted air conditioning units adjacent to the house on the easterly side facing Princeton Place, which is a front yard according to the Montclair Zoning Ordinance.

3. The applicants argued that due to the structural configuration of the house, it would be difficult and expensive to place the air conditioning units against the westerly or southerly walls of the dwelling, however, the Board was not convinced that the applicants had adequately explored alternatives with respect to placing the air conditioning units elsewhere on the site.

4. The location of the proposed air conditioning condenser units represents an unreasonable visual intrusion into the easterly front yard and would result in increased noise to the detriment of the adjacent property owners which is inconsistent with the intent and purpose of the zoning ordinance.

5. The applicants failed to cite the purposes of the Municipal Land Use Law which would be advanced or any public benefit which would result in granting the application.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants had not met the proofs required to support the granting of the variance from Montclair Code Section 244-41E; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Susann and Jim Connors is hereby denied; and

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

Chair Harrison announced the postponement of the adoption of the **Memorializing Resolution of DeCamp Bus Lines, Inc., 100 Greenwood Avenue**, to the regular meeting on July 15, 1998.

On motion by Mr. Church, seconded by Mr. Fleischer the following **Memorializing Resolution of Richard Mascera, Sr., 259 Lorraine Avenue** was unanimously adopted:

WHEREAS, Richard U. Mascera, Sr., as owner, did make application to the Board of Adjustment of the Township of Montclair for variances and site plan approval with reference to property designated as Lot 20 in Block 709 on the Township tax map and located in the R-1 One Family Residential 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 dental office established by use variance contrary to Montclair Code Section 224-100.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow one parking space where a minimum of eight parking spaces is required pursuant to Montclair Code Section 224-91

3. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow a 12 foot front yard setback along Lorraine Avenue where a minimum of 25 feet is required pursuant to Montclair Code Section 224-40B(a).

WHEREAS, the applicant submitted a floor plan and elevations prepared by Architectural Design Associates dated May 11, 1998; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 20, 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 received a use variance by resolution of the Board of Adjustment dated June 16, 1976 to utilize the property for one dentist who would not reside on the premises.

2. By resolution adopted July 18, 1985, the Board of Adjustment denied the applicant's request for a variance pursuant to *N.J.S.A. 40:55D-70d* to allow a 450 square foot addition as well as a 15 foot front yard setback where a minimum of 25 feet was required.

3. The current application involves a 400 square foot addition which the applicant conceded was not a significant change from the prior application.

4. The applicant argued that since the prior application the case of *Sica v. Board of Adjustment of Tp. of Wall*, 127 N.J. 152 (1992) had been decided and that the proposed use was "inherently beneficial" warranting rehearing of this matter. The Board acknowledged that hospitals, residential narcotic rehabilitation and treatment centers, head trauma centers, and other similar uses have been held to be "inherently beneficial" however, no case has determined the proposed use is in fact "inherently beneficial". Consequently, the Board concluded that *Sica* case did not warrant rehearing this matter.

5. The applicant argued that changes in the neighborhood since the prior application warranted rehearing the matter. The Board acknowledged the train station building now housed "Lotsa Pasta", however, that is located in the NC Zone which is a permitted use. Other changes, such as an airstripper placed by the municipality are closer to homes located on North Mountain Avenue as opposed to the subject property and thus, are of minimal consequence. A small parking area consisting of approximately 8 spaces along the train tracks has emerged, however, this is of little or no impact with respect to this application. Finally, the applicant pointed to the Montclair

Connection which is a rail connection which has been approved but not yet constructed and thus, its impact cannot be determined.

6. The applicant noted the 1985 resolution indicated objectors were concerned with the possibility that a second dentist could be accommodated in the building. The applicant offered a condition that the premises would not be used at any one time by more than one dentist. The Board, however, determined the original approval was for a single dentist and the condition did not warrant rehearing the application.

7. The Board concluded a material change in circumstances affecting the merits of the application has not occurred and the application itself is not significantly different than the 1985 application. Consequently, it would be inappropriate for the Board of Adjustment to consider the application on the merits and finds the application barred by the doctrine of *res judicata*. Otherwise, there would be no finality to the proceedings and an unfair burden would be placed on the objecting neighbors.

WHEREAS, the Board, based on the foregoing findings, concluded that the application is barred by the doctrine of *res judicata*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Richard U. Mascera, Sr. is barred by the Doctrine of *res judicata* and is dismissed.

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

The Board discussed the request for an **Extension of Time of the Variance Application of Vuk and Polly Bulajic, 60 Prospect Avenue**. New owners have purchased the property and would like to construct the addition for which the previous owners received a variance. However, an extension of time is necessary. On motion by Mr. Fleischer, seconded by Mr. Church, the Board unanimously granted a one year extension of time from the date of the originally adopted memorializing resolution.

Chair Harrison congratulated Board Member Tobin on his appointment as a full member of the Board.

Chair Harrison called for the application of **Maria Stella Amador, 139 Valley Road**. Ms. Amador, owner, was sworn. She described her proposal to create a front yard parking area in front of her two family house. She stated that her tenants arrive at late hours in the evening and have trouble finding a place to park. Marked for identification was the following:

A-1 Photograph of the property

Ms. Amador stated she has not been able to speak with her neighbors about gaining access to the rear of her property. Her tenants have told her it is inconvenient to rent spaces off site.

After some discussion, on motion by Mr. Fleischer, seconded by Mr. Church, the application was unanimously denied.

Board Member Williams joined the meeting.

Chair Harrison called for the application of **Barry Pote, 72 Greenwood Avenue**. Barry Pote, owner, was sworn. Mr. Pote stated that he bought the property several years ago which was a foreclosure. He stated that he would like to use the one story structure for storage of motor cycle parts from his store on Walnut Street. He required a use variance because the property is in the R-2 Two Family Zone. He reviewed the history of the building and his proposal for its use.

The meeting was open to public comment.

Ms. Jacqueline Hill of 128 Claremont Avenue, described the history of the property. She stated that the property was once a store and then a church. She stated her concerns about taxes and her insurance should this variance be granted.

Mr. Robert Testa, owner of property on Greenwood Avenue, stated his concerns about aesthetics.

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

1. No repairs, disassembly or work on items stored shall be permitted.
2. No retail or wholesale activity shall be permitted.
3. Storage shall be limited to vehicles and vehicle parts only.
4. Motors shall not be run inside the building.
5. Sidewalks and curbs shall be replaced as necessary.
6. 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.
7. No storage of gas or similar products shall be permitted.
8. Activity at the site shall be limited only between the hours of 8:00 a.m. and 8:00 p.m., Monday through Friday and 9:00 a.m. and 6:00 p.m. on Saturday.

Ms. O'Connell stepped down for the hearing of the following application.

Chair Harrison called for the application of **Marek and Maria Tylek, 321 Highland Avenue**. Mr. Marek Tylek, owner, and Mr. Paul Sionas, planner and architect were sworn. Marked for identification were the following:

- A-1 Enlarged Sandborn Map
- A-2 Photo board of site
- A-3 Photo board of site

Mr. Sionas described the proposed addition onto the existing house which would require a front yard setback variance. He stated that the adjacent properties have an average setback of nineteen feet. He then reviewed the existing site, stating that it is sloping and trapezoidal in shape. Mr. Sionas stated that the house's structure is questionable and that a second story addition is not feasible.

Mr. Tylek described the proposed addition. He stated that he does not seek to demolish the existing house because he needs a place to live during construction.

On motion by Mr. Tobin, seconded by Mr. Church, the application was approved subject to the following condition, Chair Harrison and Mr. Fleischer voting in the negative:

1. The variance is only applicable to any additions constructed on the existing structure and does not apply to the demolition of the existing structure and construction of a new home.

Ms. O'Connell rejoined the Board.

Chair Harrison called for the application of **Irene Robb, 60 North Willow Street**. Claude Howard Robb and Irene Robb, owners, were sworn. Ms. Robb stated that she is seeking a front yard parking variance. She described her efforts to gain access to the rear of her property from various neighbors. Marked for identification was the following:

- A-1 Hand drawing of proposed parking area, prepared by the applicant

Ms. Robb then described the proposed plantings and location of the parking area. Due to inconsistency in information provided to the Board by Ms. Robb, she was given the opportunity to clarify this information and return to the Board at the next regular meeting in July or to have the Board take action on the information presented. Ms. Robb elected to return to the Board. Chair Harrison announced that the application will be carried to the July 15, 1998 regular meeting.

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