

**MINUTES OF THE BOARD OF ADJUSTMENT
JULY 18, 2001**

PRESENT: Chair Harrison, Ms. Brooks, Mr. Chapman, Ms. Costello, Mr. Fleischer, Mr. Haizel, Mr. Susswein; also, Michael Sullivan, Esq., Ms. Kadus, Secretary, Donald Sammet, Assistant Secretary and Nicholas Graviano, Land Use Planner

ABSENT: Mr. Gallardo and Ms. Rock-Bailey

Secretary 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.

Secretary Kadus announced that the application for **Family Service League, 204 Claremont Avenue** would be heard by the Planning Board rather than the Board of Adjustment.

Chair Harrison announced the variance application of **150-152 Forest L.L.C., 150-152 Forest Street**. Kenneth Poller, Esq. appeared as the attorney for the applicant. Mr. Poller described the application. He stated that a salon would be located where a pizzeria previously stood and that an educational tutorial office would be located where a beauty salon was located beforehand.

Mr. Pollack called Paul Sionas, Architect & Professional Planner, and he was sworn.

Marked into evidence were:

A-1 Colored site plans prepared by Sionas Architecture, P.C. dated, 3/30/01

A-2 Photographs on a board

Mr. Sionas described the structure. He stated that there were four apartments and two commercial spaces measuring 600 square feet in area. He stated that the property is rectangular in shape and has a history of commercial use. He described how there are no proposed off-street parking spaces and there never has been off-street parking on site. Mr. Sionas affirmed that the proposed uses are community based and that the educational tutorial use would generate less traffic than a pizzeria.

The Board questioned Mr. Sionas

Mr. Poller called Holly Hunter, Realtor, and she was sworn.

Ms. Hunter stated that the educational tutorial office is a reading enhancement service geared toward middle school and high school students. She also stated that the tutorial office would be open after school and evenings Monday through Friday with hours by appointment on Saturday. She stated that it would not be open on Sunday.

The Board questioned Ms. Hunter.

Ms. Hunter stated that window glass signs are proposed and that they would be in conformance with the zoning ordinance.

Chair Harrison called for questions and comments from the public. None were offered.

The Board discussed the application.

On a motion by Mr. Chapman seconded by Mr. Susswein, it was resolved to approve the request for a variance with conditions:

1. Property taxes shall be paid
2. The salon must follow conditions #2 and #3 set forth in the 1990 Resolution
3. The educational tutorial shall not open before 10:00 a.m.
4. All signage must be in conformance with the zoning ordinance

Chair Harrison called the variance application of **Finesia Walker, 145 Walnut Street**. Finesia Walker, Applicant and Owner, was sworn along with Jeffrey Walker, 145 Walnut Street and Gloria and Vera Bartee of 147 Walnut Street.

Ms. Walker described the application. She stated that there is a lack of parking in the area and that she has unsuccessfully attempted to acquire off-street parking elsewhere. She described how she would like to have a driveway leading to a rear yard parking area that would be screened from the neighboring properties by fencing and landscaping.

Gloria Bartee stated that her property abuts the Walker's property and that she approved of the proposed plans.

The Board questioned the applicants.

Chair Harrison called for comments from the public.

Leonard and Gloria Factor, 143 Walnut Street, came forward and were sworn.

Mr. Factor stated that he felt the Walkers did not have sufficient space to access the rear yard. He stated that the applicant had been parking illegally in the front yard for

14 months. He felt that the paving in the rear of the Walker's home would be detrimental to his property value by creating noise and an aesthetically unpleasing atmosphere.

Marked into evidence were:

O-1 (a&b) Photographs of 145 Walnut Street

The Board discussed the application.

On a motion by Mr. Chapman seconded by Mr. Gallardo, the request for a variance was approved with conditions:

1. Vehicles shall not be parked between the main building and the curb on Walnut Street.
2. The rear yard parking area shall be set back a distance of four feet from property lines starting at a distance twelve feet from the rear wall of the house.
3. The driveway shall be illuminated.

Chair Harrison announced the application for a request for an interpretation of the zoning ordinance for **K. Webster Investment Company L.L.C., 50-52 Fairfield Street**. David Owen, Attorney, appeared for the applicant. Mr. Owen described the application. Mr. Owen described the prior application before the Planning Board that was approved. He stated the real estate office had several retail type services in an interactive atmosphere.

Mr. Owen called Judy Reeves, President and CEO of Burgdorf Realty, and she was sworn.

Ms. Reeves stated that the present office is on 96 Park Street and the office is moving because the lease expired. She described how the functions of the typical real estate office have changed in years past. She also stated that the office sells home warranties, title insurance, and mortgages while also acting as a referral service.

Mr. Fleischer joined the meeting.

Ms. Reeves said that there is a lot a community interaction at the office with many people entering the office without an appointment.

Chair Harrison called for questions and comments from the public.

Mary Louise Fogerty of Burgdorf Realtors came forward and was sworn. She stated that she uses the conference rooms as selling space.

Mr. Owen summarized the application stating that a real estate office operates substantially as a retail use.

The Board discussed the application. The Board discussed that in the C-1 Zone, a real estate establishment is classified an office use and that a real estate office best fits the definition of a professional office.

On a motion by Mr. Chapman, seconded by Mr. Haizel, the Board interpreted a real estate office as being an office, not a retail use, Mr. Fleischer abstaining. Chair Harrison announced that the variance application would be heard at the August 15, 2001 regular meeting of the Board and that no further notice would be given. Mr. Owen consented to an extension of time in which the Board must act.

Chair Harrison called the variance application of **Montclair Community Church, 143 Watchung Avenue**. Grant Gille, appeared as the attorney for the applicant. He described how in a prior application, a use variance was granted to expand a non-conforming use.

Mr. Gille stated that the church's neighbors did not want parking on the site and the proposed plans only have two handicapped parking spaces, while the zoning ordinance requires 44 off-street parking spaces. The applicant has provided more green space, which is consistent with the look of the neighborhood.

Mr. Gille called Dennis Mylan, and he was sworn. Mr. Mylan described his qualifications.

Marked into evidence were:

- A-1 Three dimensional model of the proposed church facility prepared by Paul Bud
- A-2 Site plans and elevations on 10 sheets prepared by Dennis Mylan, dated April 16, 2001
- A-3 Colored Plan SP-1 on a board
- A-4 Plan SP-1 dated September 29, 2001
- A-5 A letter from Board Engineer Tom Watkinson, dated June 12, 2001

Mr. Mylan stated that the two barrier-free parking spaces were not located in the driveway because that would require a wider driveway while inhibiting traffic flow. The proposed driveway is a one-way loop driveway measuring 12 feet in width to allow the drop-off of passengers. Mr. Mylan stated that Essex County requires a 15 feet driveway width, and a waiver from their requirements would be requested.

Mr. Mylan described the connector building between the existing and proposed structure as being 15 feet wide and one-story in height. He stated that the size was chosen to provide room for a functional use of space while providing a break between structures.

Mr. Mylan described how the height of the proposed addition is lower than originally proposed and lower than the height of the structures located on the neighbors' properties. He stated how the impervious coverage was reduced from the prior application. The design of the building was chosen to match the existing church. He also stated that the four pole lights in the front of the church would operate on a timer and will direct light down from the source and would not encroach upon the neighbors' properties.

Mr. Mylan described the ingress and egress signs in the driveway. He also reviewed the recommendations of the Board Engineer, Tom Watkinson.

The Board questioned Mr. Mylan.

Marked into evidence was:

A-6 A Sandborn Map showing the location of the original church

Grant Gille stated that the applicant has tried to meet the Board's recommendations and that the applicant requests time to make modifications.

Chair Harrison announced that the application would be adjourned to the September 19, 2001 regular meeting of the Board. Grant Gille, Esq. consented to an extension of time. No new notice will be given unless new variances are required.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the **Minutes of the June 20, 2001** regular meeting were adopted as modified.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the variance application of **Two Countries 18-20 Willard Place** was adopted as modified, Mr. Haizel and Ms. Costello abstaining:

WHEREAS, Two Countries Construction, Inc., did make application to the Board of Adjustment of the Township of Montclair to reconstruct a 4-family dwelling on property designated at Lot 6 in Block 3211 on the Township tax map and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant sought the following relief:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to permit a 4-family dwelling which is not a permitted use pursuant to Montclair Code Section 347-47.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow a front yard setback of approximately 15 feet where a minimum of 25 feet is required pursuant to Montclair Code Section 347-51.

3. Variances pursuant to *N.J.S.A. 40:55D-70c* to allow side yard setbacks of 5 and 9 feet where a minimum of 6 and 10 feet respectively are required pursuant to Montclair Code Section 347-51.

4. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow three on-site parking spaces which is less than the minimum required pursuant to Montclair Code Section 347-101.

WHEREAS, the applicant submitted a survey prepared by P&L Associates dated November 30, 2000 as well as a front elevation and floor plans prepared by Anthony J. C. Church, Architect dated December 7, 2000; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 20, 2001, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property previously contained a preexisting nonconforming 4-family use. In 1995, after the structure was damaged by fire, the Board of Adjustment granted a variance pursuant to *N.J.S.A. 40:55D-70d* to allow partial reconstruction and minimal enlargement to provide a second access to the second floor apartments which would result in a safer building which the Board recognized would be a public benefit.

2. In 2000, the dwelling was demolished by the property owner and, as a result, any new construction would now require compliance with the standards contained in the R-2 Zone.

3. The applicant failed to offer any "special reasons" in connection with the request for a variance pursuant to *N.J.S.A. 40:55D-70d(1)* and thus failed to meet the requisite proof with respect to the positive criteria.

4. The applicant failed to offer any evidence that the site is particularly suitable for the proposed use or that the proposed use is not inconsistent with the intent and purpose of the Master Plan.

5. The applicant's architect asserted that a number of nonconforming residential uses existed within the area. The testimony was not sufficiently specific to be meaningful and failed to reveal whether the alleged nonconforming uses were illegal, preexisting nonconforming, or created by variance. Moreover, based upon the Board's particular knowledge of local conditions, the proposed intensity of use on this site exceeds that of other residential uses in the immediate area.

6. The Board finds that the proposed bulk variances would be appropriate for a structure which contains a one or two family use permitted in the R-2 Zone. In this regard, the request for front and side yard setbacks as well as number of parking spaces would constitute appropriate municipal action and promote the establishment of appropriate population densities consistent with the purposes of the Municipal Land Use Law.

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 aforementioned findings concluded that, subject to the conditions imposed below, with respect to the front and side yard setbacks and number of parking spaces variances 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 Two Countries Construction, Inc., for variance pursuant to *N.J.S.A. 40:55D-70d(1)* to allow a 4-family use is hereby denied; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Two Countries Construction, Inc. for variances relating to front, rear and side yard and number of parking spaces is hereby approved subject to the following conditions:

1. The use of the property shall conform to the R-2 requirements (which does not require site plan approval).
2. The applicant shall comply with items 2, 3, 4, 5 and 7 contained in the memorandum dated April 1, 2001 from W. Thomas Watkinson, Board of Adjustment Engineer.

3. The front and side yard setbacks shall not encroach beyond the existing foundation.

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, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the variance application of **37 North Fullerton Associates, L.L.C., 37 North Fullerton Avenue** was adopted as modified, Mr. Haizel and Ms. Costello abstaining:

WHEREAS, 37 North Fullerton Associates, L.L.C., did make application to the Board of Adjustment of the Township of Montclair, to subdivide the rear portions of two abutting residential properties designated as Lots 27 and 28 in Block 3201 and to redesign and expand the parking area of an office/medical use onto the rear of the residential lots on property designated as Lot 8 in Block 3201 and located in the OR-3 and R-2 Zones; and

WHEREAS, the applicant sought site plan approval and relief as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(1)* to allow the parking area associated with the office/medical use to be located within the R-2 Zone contrary to Montclair Code Section 347-47.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow 48 parking spaces where a minimum of 91 are required pursuant to Montclair Code Section 347-101.

3. Exceptions for insufficient lot depth (Lots 27 and 28) pursuant to Montclair Code Section 301-27A.

4. An exception to permit a 10.5 five foot driveway width where a minimum of 12 feet is required pursuant to Montclair Code Section 281-9I.

5. An exception to permit 33 of the proposed parking spaces to measure less than 9 feet by 19 feet pursuant to Montclair Code Section 281-9C.

WHEREAS, the applicant submitted a site plan prepared by The Mylan Architectural Group, Sheets SP-1 through SP-4 dated April 3, 2000 revised through April 3, 2001; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 20, 2001 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The applicant's planning witness opined that approval of this application would advance *N.J.S.A. 40:55D-2a*, however, the Board finds no factual basis was offered to prove this application would "promote the public health, safety, morals and general welfare".

2. The applicant's planning witness also argued that approval of this application would advance *N.J.S.A. 40:55D-2g* and *m*. To the contrary, the Board finds the application does not provide sufficient space in an appropriate location for the proposed use and does not constitute efficient use of land but rather results in an over intensification of use on the property.

3. Extending the parking area as proposed represents an unreasonable visual intrusion into the R-2 zone and will result in increased noise and activity associated with that use which will cause substantial detriment to the residential properties in the immediate area.

4. The proposal is contrary to the intent and purpose of the 1986 Master Plan which seeks to confine neighborhood business areas to their present limits and not allow them to expand into abutting residential neighborhoods.

5. Zoning lines have to be drawn somewhere if the zone plan is to have any real purpose and the erosion of border areas through variances is destructive of sound zoning and cannot be allowed except where special circumstances beyond those ordinarily associated with zone borders are shown. *Cerdel Constr. Co., Inc. v. East Hanover Tp.*, 86 N.J. 303 (1981); *Mayer v. Montclair Bd. of Adjustment*, 32 N.J. 130 (1960). The applicant failed to prove any such special circumstances in this case.

6. The applicant failed to prove any purposes of the Municipal Land Use Law would be advanced or that any hardship results warranting granting of the variance for insufficient on site parking which is substantial and further exacerbated by the large number of undersized spaces.

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; and

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the parking variance the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variance 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-70(1)*; and

WHEREAS, the Board, based on the aforementioned findings, concluded that with respect to the parking variance 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 variance 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 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 37 North Fullerton Associates, L.L.C., for subdivision, variances, exceptions and site plan approval 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.

The meeting adjourned at 11:23 p.m.