

**MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT
JULY 15, 1998**

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

ABSENT: Mr. Tobin.

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 June 17, 1998** meeting were adopted, Mr. Chapman abstaining.

On motion by Mr. Church, seconded by Mr. Fleischer, the following **Memorializing Resolution of DeCamp Bus Lines, 100 Greenwood Avenue** was adopted, Chair Harrison abstaining:

WHEREAS, DeCamp Bus Lines, Inc., did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70d* to utilize the existing parking lot for parking of 14 buses during the day on weekends and holidays contrary to Montclair Code Section 224-100 on property designated as Lot 15 in Block 3209 on the Township tax map and located in the C-2 Zone; and

WHEREAS, the applicant submitted a site plan prepared by J. Arthur Johnsen, R.A. dated February 7, 1997; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on June 18, July 16, and November 12, 1997 and February 18, March 18 and 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. By resolution adopted April 15, 1981, the Board of Adjustment granted a variance pursuant to *N.J.S.A. 40:55D-70d* to construct a parking lot for employee parking of 42 vehicles during the daytime and for parking 14 buses during the evening.

2. By resolution adopted on December 11, 1996, the Board denied the applicant's request for a determination pursuant to *N.J.S.A. 40:55D-70b* that bus parking is permitted during the daytime on weekends in accordance with the 1981 variance approval.

3. The applicant testified that to comply with the Board of Adjustment's December 11, 1996 resolution, the applicant must move the 14 buses parked in the lot

out every Saturday morning prior to 8:00 a.m. and then back into the lot Saturday evening at 6:00 p.m. This process would be repeated on Sunday and on holidays as well. Over the course of a normal weekend this would result in 56 bus movements without serving any purpose.

4. Approval of the variance constitutes appropriate municipal action in a manner which promotes the public health, safety and general welfare by eliminating unnecessary bus movements which results in less pollution, traffic and noise to the neighborhood.

5. A number of objectors expressed concerns about bus idling and noise pollution caused by the DeCamp operation. The Board is cognizant that the applicant's operations impact the neighborhood. It is the Board's determination, however, that the problems identified by the objectors would not be aggravated by granting the variance but rather would be minimized.

6. The modest relief requested by this variance application will not substantially impair the intent and purpose of the zoning ordinance or the master plan as the suitability for bus parking on the property was established by variance in 1981.

7. The Board further finds that the conditions incorporated into the resolution will ensure that the use of the bus parking lot on weekends and holidays provides sufficient safeguards in the neighborhood.

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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of DeCamp Bus Lines, Inc. is hereby approved subject to the following conditions:

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.

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. Church, seconded by Mr. Williams, the following **Memorializing Resolution of Barry Pote, 72 Greenwood Avenue**, Chair Harrison, Mr. Chapman and Mr. Fleischer abstaining:

WHEREAS, Barry Pote, as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70d* to utilize an existing vacant building for storage contrary to Montclair Code Section 224-42 on property designated as Lot 26 in Block 3208 and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant submitted a survey prepared by Alfred J. Clark dated August 23, 1995 as well as a floor plan prepared by the applicant; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 17, 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 existing one story building occupies the entire 28 foot by 45 foot property.
2. The building was constructed around 1910 and was previously utilized as a store and then a house of worship but has remained vacant for over ten years and is in substantial disrepair.
3. The property has never been utilized for residential use and is not suitable for such a use.
4. The property is particularly suited for the proposed storage use with limited activity on the site.
5. The applicant's plan to renovate the property will result in an aesthetic benefit to the community with little or no negative impact on the neighborhood.
6. The applicant's proposal represents appropriate use of this unique dilapidated building which will have little or no impact on the neighborhood and is not inconsistent with the intent and purpose of the master plan.

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant 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;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair that the application of Barry Pote for a variance pursuant to *N.J.S.A. 40:55D-70d* is hereby approved subject to the following conditions:

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. to 8:00 p.m., Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday.

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. Freundlich, the following **Memorializing Resolution of Maria Stella Amador, 139 Valley Road** was adopted, Mr. Chapman abstaining:

WHEREAS, Maria Stella Amador, owner of property at 139 Valley Road, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *NJSA40:55D-70c* to allow for the construction of a front yard parking area pursuant to Montclair Code Section 224-47 in that off street parking areas shall not be located between the main building and the curb of the street on which the building fronts and Montclair Code Section 224-94 in that the parking area will be set back less than 4 feet from the front and northerly side property line, on property designated as Lot 46 in Block 1509 on the Township Tax Maps and located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by William Held Associates, Inc., Land Surveyors, dated August 21, 1998, with the proposed parking area drawn by the applicant; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 17, 1997 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 30 feet by 125 feet and contains a 2 1/2 story two-family house.
2. The applicant argued that she could not gain access to the rear yard due to the placement of her dwelling 6 feet from the southerly side property line and 1 foot from the northerly side property line.
3. The applicant has not adequately demonstrated her effort to find alternative off-street parking including obtaining access to the rear of her property from adjoining lots or leasing of off site spaces.
4. Due to the configuration of the proposed parking area, vehicles would be forced to back onto Valley Road, a heavily traveled street, and would present a danger to the community and drivers.
5. The location of the proposed parking area represents an unreasonable visual intrusion into the front yard reducing open space and would result in the detriment to the adjacent property owners which is inconsistent with the intent and purpose of the zoning ordinance.
6. The applicant 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 upon the aforementioned findings, concluded that the applicant had not met the proofs required to support the granting of a variance from Montclair Code Section 224-47 and Montclair Code Section 224-94; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Maria Stella Amador is hereby denied.

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. Church, the following **Memorializing Resolution of Marek and Maria Tylek, 321 Highland Avenue**, Chair Harrison, Mr. Chapman and Ms. O'Connell abstaining:

WHEREAS, Marek & Maria Tylek, owners of property at 321 Highland Avenue, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow an 18.9 foot front yard setback where a greater setback is required pursuant to Montclair Code Section 244-40B(1) in connection with construction of additions and renovation on property designated as Lot 3 in Block 705 the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicants submitted floor plans, elevations and a site plan prepared by the applicants, and a property survey prepared by James M. Helb, PE, LS, PP , dated April 10, 1990; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on June 17, 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 applicants' proposal is to construct a multi-story addition onto the southerly side of their single family home containing bathrooms and bedrooms.
2. The proposed southerly addition meets the height, side and rear yard setback requirements, but does not meet the minimum required front yard setback of twenty-five feet. The Board determined that the proposed patio on the rear of the house and the library on the northerly side do not require variances.
3. The property is a trapezoid and has a slope, thus making it difficult to conform to all of the setback requirements if the addition were pushed back on the site.
4. The adjacent properties have an average setback of 19 feet, and the variance is for an addition with an 18.9 foot front yard setback which will be generally in line with the surrounding structures.
5. The design of the new addition will enhance the architectural features of the facade of the house thereby providing a public benefit.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did 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 the 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 prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved 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 NJSA 40:55D-70c(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Marek & Maria Tylek is hereby approved subject to the following condition:

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.

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.

Chair Harrison stated that the application of **Irene Robb, 60 North Willow Street** will be continued at the next regular meeting on August 19, 1998 at the applicant's request.

Chair Harrison called for the application of the **Essex Guest House of Montclair, Inc., 271 Claremont Avenue**. Celeste Miller, Esq. appeared as attorney for the applicant. Ms. Miller stated that the applicant currently operates a boarding house for senior citizens and seeks to increase the number of occupants in the house by converting three private rooms on the second floor into semi-private rooms. This use is not permitted in this zone and a use variance is required for the expansion of a nonconforming use.

Marked for identification was the following:

A-1 Class B Boarding House License

Mr. Peter Kronos, Vice President of Essex Guest House of Montclair Inc., was sworn. He stated that the house currently has 24 residents and that 20 rooms are private and 2 rooms are semi-private. He reviewed the number of residents who own cars, the number of staff, and the parking on site. He stated that 22 residents are veterans. He then described the internal operations of the facility and the floor layouts.

The meeting was open to public comment.

Mr. Michael Shulman, of 99 Valley Road, stated his support for the application.

Ms. Barbara Nagle, of 272 Claremont Avenue, stated her support for the application.

The applicant indicated that he would like to return to the Board with more complete information for review as to floor layouts, room sizes and parking space design. Chair Harrison stated that the hearing of the application will be continued at the next regular meeting on August 19, 1998.

Chair Harrison called for the application of **Nicolas Masone, 139 Grove Street**. Carl Woodward, Esq. appeared as attorney for the applicant. He stated that the applicant is seeking a use variance to expand the existing nonconforming auto rental and repair building.

Marked for identification was the following:

- A-1 Site plan, prepared by Sionas Architecture, dated March 10, 1998
- A-2 Floor plan, prepared by Sionas Architecture, dated March 10, 1998
- A-3 Elevations, prepared by Sionas Architecture, dated February 13, 1998

Mr. Michael Masone, operator, was sworn. Mr. Masone described the proposed expansion of the auto maintenance and auto rental agency. He described the surrounding businesses. He then described the nature of his business, the number of employees, the traffic circulation on the site, the signs and parking design.

Mr. Robert Dever, Enterprise Representative, was sworn. He described the nature of their car rental business, the number of employees, the hours of operation, and the number of cars kept on the site. New signs were proposed in addition to the existing pole sign.

Members of the Board asked Mr. Dever to describe the need for additional office space, the wall sign and the parking.

Mr. Rich Jarzembowski, architect, was sworn.

Marked for identification was the following:

- A-4 6 photographs of the site

Mr. Jarzembowski described the expansion plan for the building, the site circulation, and the impervious surface coverage. He stated that the number of driveway entrances would be reduced to three.

Members of the Board asked Mr. Jarzembowski to review the interior floor plan, drainage and on-site parking. To address the concerns of the Board, the applicant agreed to return with details on proposed signage and turning radius behind the building.

Chair Harrison stated that the hearing of the application will be continued at the next regular meeting on August 19, 1998.

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