

**MINUTES OF THE BOARD OF ADJUSTMENT
AUGUST 16, 2000**

PRESENT: Chair Harrison, Vice Chair Church, Mr. Chapman, Ms. Freundlich, Mr. Gallardo, Ms. Rock-Bailey; also, Michael Sullivan, Esq., Karen Kadus, Secretary and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Fleischer and Mr. Williams

Ms. 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 Meeting Act.

On motion by Mr. Chapman, seconded by Vice Chair Church, the **Minutes of the July 19, 2000** regular meeting were adopted, Mr. Gallardo abstaining.

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, the **Minutes of the August 2, 2000** special meeting were adopted.

Chair Harrison joined the meeting.

On motion by Mr. Chapman, seconded by Vice Chair Church, the following Resolution Memorializing the approval of the variance application of **AT&T Wireless Service**, was adopted as modified, Mr. Gallardo abstaining:

WHEREAS, AT&T Wireless Services, did make application to the Board of Adjustment of the Township of Montclair to install nine panel antennae and a 12 foot by 28 foot unmanned equipment room on top of the existing senior citizen apartment building located at 56 Walnut Street and designated as Lot 4 in Block 4308 on the Township tax map and located in the R-4, Three-Story Apartment Zone; and

WHEREAS, the applicant requested a variance from *N.J.S.A. 40:55D-70d(3)* for failure to comply with all of the conditional use standards contained in Montclair Code Section 224-15.1C(b)(3); and

WHEREAS, the applicant submitted a site plan, roof plan and building elevations prepared by French and Parrello Associates, P.A., dated March 28, 2000 and bearing a final revision date of April 4, 2000; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 19, 2000, at which time it was established that notice was properly published and the property owners within 200 feet of the subject property in question had been properly served; and

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

1. At the public hearing the application was amended to provide the proposed panel antennae would be mounted to either the building or the penthouse and would not exceed the height of the structure to which it is affixed.
2. Installation of the antennae will provide improved wireless communication service to the applicant's subscribers as per the applicant's FCC License which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare.
3. The proposed site is particularly suitable as it allows for installation of the antennae on an existing structure without exceeding the height of said structure.
4. The proposed antennae and equipment shelter shall comply with all applicable state and federal regulations governing radiation transmission levels.
5. The application does not involve any vibrations, smoke, dust, odors, heat or glare and involves minimal noise and thus, will not cause substantial detriment to the public good and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.
6. The application complies with all of the conditional use standards contained in Montclair Codes Section 224-15.1C(b)(3) except that the equipment room is not entirely screened from public view contrary to §(8). The Board finds that only the upper portion of the equipment room will be visible from the street and by requiring the equipment room facade to match the facade of the penthouse will represent a minimal visual intrusion which will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

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 AT&T Wireless Services, for a variance pursuant to *N.J.S.A. 40:55D-70d(3)* is hereby approved subject to the following conditions:

1. The antennae shall be affixed to either the parapet or the penthouse but would not exceed the height of the structure to which it is affixed.

2. The antennae shall be painted to match the color of the structure to which it is affixed.

3. The equipment room shall match the color and material of the existing brick facade of the penthouse.

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 Vice Chair Church, the following Resolution Memorializing the denial of the variance application of **Cullins, Inc., 122 Watchung Avenue** was adopted, Mr. Gallardo abstaining:

WHEREAS, Cullins, Inc., as owner, did make application to the Board of Adjustment of the Township of Montclair for permission to install a freestanding sign on property located at 122 Watchung Avenue and designated as Lot 20 in Block 2506 on the Township tax map and located in the N-C Neighborhood Commercial Zone; and

WHEREAS, the applicant requested variances pursuant to *N.J.S.A. 40:55D-70c* as follows:

1. To allow a freestanding sign which is prohibited by Montclair Code Section 224-99.1H.

2. To allow sign height of 6 feet where a maximum of 12 feet is permitted and to allow sign area of 17.8 square feet where a maximum of 8 square feet is permitted pursuant to Montclair Code Section 224-99.1H(4).

WHEREAS, the applicant submitted a site plan and freestanding sign details prepared by Sionas Architecture, P.C. dated April 28, 2000; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 19, 2000, 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 July 21, 1999, the Board denied an application to install a freestanding sign on the property which also included a request for variances to exceed the maximum height and area restrictions mandated by the zoning ordinance.

2. The prior adjudication on the merits involved the same cause of action and the same parties or their privies.

3. The Board recognized that the prior application differed from the pending application in that the first sign was internally illuminated, required a setback variance and was larger in height and area as it included a depiction of a tomato on top of the sign. The Board determined these differences were not substantial and did not address the reasons the Board denied the prior application.

4. The applicant did not claim any change in the conditions surrounding the property had occurred since the prior determination.

WHEREAS, the Board, based on the aforementioned findings, concluded that the application was 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 Cullins, Inc. for variances to permit a freestanding sign is barred by the doctrine of *res judicata* and 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.

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following Resolution Memorializing the approval of the variance application of **Robert E. Pines, Jr., 223 Harrison Avenue** was adopted, Vice Chair Church, Mr. Fleischer and Mr. Gallardo abstaining:

WHEREAS, Robert E. Pines, Jr., did make application to the Board of Adjustment of the Township of Montclair to construct a canopy over an existing gas pump island and replace an existing nonconforming pylon business sign at Pines Auto Service located at 223 Harrison Avenue and designated as Lots 1 and 2 in Block 1911 on the Township tax map and located in the R-1 One Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(2)* to expand a preexisting nonconforming service station contrary to Montclair Code Section 224-100.

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit the canopy to be located in the front yard contrary to Montclair Code Section 224-41E.

3. A variance pursuant to *N.J.S.A. 40:55D-70c* to replace an existing pylon sign with a new pylon sign which is prohibited by Montclair Code Section 224-98L(7).

WHEREAS, the applicant initially applied for variances to allow signs on the canopy which were subsequently withdrawn at the public hearing;

WHEREAS, the applicant submitted site plan, lighting plan and details prepared by Bertin Engineering Associates, Inc. March 9, 2000 and canopy plans prepared by TFC Canopy dated December 21, 1999; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 19, 2000, 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's proposal to construct a 24 foot wide by 28 foot long and 17 foot high canopy over the existing gas pump island advances the general welfare as it provides shelter from the elements as part of the upgrade and modernization of the property.

2. The testimony established that 8 of 12 of the existing service stations within the Township have canopies which are appropriate at such sites.

3. The subject property has had a pylon sign for over 30 years and the applicant's proposal to replace it with a new pylon sign measuring 20 feet 10 inches in height and total square footage of 55.2 square feet represents a reduction in size and facilitates identification of the site consistent with the purposes of the Municipal Land Use Law.

4. Approval of this application will not increase the intensity of the preexisting nonconforming use and will not adversely impact area properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

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; and

WHEREAS, the Board, based on the aforementioned findings, concluded 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 Robert E. Pines, Jr. for variances to expand a preexisting nonconforming use, permit a canopy in the front yard and replace an existing pylon sign is hereby approved subject to the following conditions:

1. The color of the canopy shall be changed to a light color to be approved by the Planning Department.
2. All lighting associated with the canopy shall be turned off no later than 9:00 p.m. or closing, whichever occurs first.
3. Signs shall not be permitted on the canopy.

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

Chair Harrison announced the variance application of **Jill Smolowe and Joseph Treen, 2 Ferncliff Terrace**. Ms. Jill Smolowe and Mr. Joseph Treen, applicants and owners, were sworn. Mr. Treen stated that the proposed central air conditioning unit's dimensions are 35 inches deep by 39 inches wide by 43 inches high. Mr. Treen continued by stating that the central air conditioning unit would be shielded by shrubs and a line of trees that exists along Cleveland Road. Mr. Treen stated that if the unit were to be placed in a conforming location in the easterly yard of the property, it would be close to a deck on their neighbors' property and act as a disturbance.

The Board questioned the applicants.

Marked into evidence was:

- A-1 Photograph of Cleveland Road Frontage.
- A-2 Photograph of proposed central air conditioning unit location.
- A-3 Photograph of proposed central air conditioning unit location.
- A-4 Photograph of proposed central air conditioning unit location.
- A-5 Photograph of the property from Cleveland Road
- A-6 Photograph of the front of the house and portion of the easterly side neighbor's property.

The meeting was opened to public questions and comments. None were made.

The Board discussed the application.

On motion by Ms. Freundlich, seconded by Mr. Chapman, Chair Harrison voting in the negative, it was resolved to approve the variance subject to the following condition:

1. The applicant shall plant a shrub immediately in front of the central air conditioning unit to screen the unit from public view.

Chair Harrison announced the variance application of **Andrew Dingle, 113 Essex Avenue**. Mr. Andrew Dingle, applicant and owner, was sworn. Mr. Dingle described his property and stated that it exists in a high traffic area with school children and school buses frequently passing by the property. Mr. Dingle stated that litter is often left on his property and that his property is often vandalized. Mr. Dingle stated that he also owns an Akita, which is a dog capable of jumping a four and one half foot high fence, a height which the ordinance would allow in the Frederick Street front yard of his property.

The Board questioned the applicant.

Mr. Dingle stated that the proposed fence would not impair visibility at the corner of Frederick Street and Essex Avenue.

The meeting was opened to public questions and comments. None were made.

The Board discussed the application.

On motion by Vice Chair Church, seconded by Mr. Chapman, it was resolved to deny the variance request.

Chair Harrison announced the variance application of **Ms. Barbara Grieco, 75 Columbus Avenue**.

Mr. Chapman excused himself from the hearing due to a conflict of interest.

Ms. Barbara Grieco, applicant and owner, was sworn. Ms. Grieco stated that her home was constructed in 1887 which was a time where no consideration was given to the construction of driveways. Mr. Grieco continued by describing where she had parked in the past including Woodman Field and in a neighbor's driveway. Ms. Grieco stated that when new neighbors arrived, she learned that she would need to find parking elsewhere as the new neighbors needed all of the existing driveway space. Ms. Grieco then stated that she attempted to find parking from other neighbors, but a convenient space could not be located.

Marked into evidence was:

A-1 Photograph of a 300 year old oak tree in the backyard.

The Board questioned the applicant.

The meeting was opened to public questions and comments.

Ms. Melanie Factor of 74 Montclair Avenue stated that she was the new owner of the property where Ms. Grieco used to park and is in full support of the application.

Mr. David Newkirk of 77 Columbus Avenue stated that he has no convenient space for Ms. Grieco to park and is in full support of the application.

The Board discussed the application.

On motion by Ms. Freundlich, seconded by Vice Chair Church it was resolved to approve the variance request.

Mr. Chapman returned to the Board.

Chair Harrison announced the variance application of **Grand Auto Service, 694 Bloomfield Avenue**. Mr. David Conrad, Esq. appeared as attorney for the applicant. Mr. Conrad described the application and proposed canopy.

Mr. Conrad called Mr. David John Rozema, Architect, he was sworn. Mr. Rozema stated that the proposed canopy would be located 14 feet off of the ground with a 2 foot depth of the canopy itself for a total height of 16 feet. Mr. Rozema continued by stating that no lighting proposed for the canopy would shine off site and that the visibility of motorists on Bloomfield Avenue would not be impaired by the structure.

The Board questioned Mr. Rozema.

Chair Harrison opened the meeting to questions from the public for Mr. Rozema. None were offered.

Mr. Conrad called Mr. Louis Alfano, owner and operator, he was sworn. Mr. Alfano stated that he wants the canopy for protection from the elements for his employees and customers at the gas pump island. Mr. Alfano continued by stating that the canopy is relatively small in size and will not impact traffic or visibility on Bloomfield Avenue. Mr. Alfano also stated that no signs are proposed for the canopy.

The Board questioned Mr. Alfano.

Chair Harrison opened the meeting to questions from the public for Mr. Alfano. None were offered.

The meeting was opened to public questions and comments.

The Board discussed the application.

On motion by Vice Chair Church, seconded by Mr. Chapman, it was resolved to approve the variance subject to the following conditions:

1. The canopy shall be located at least 8 feet from Bloomfield Avenue and at least 18 feet from Orange Road.

2. Signs shall not be permitted on the canopy.

Chair Harrison announced the variance application of **Elelake Jefferson, 46 Lexington Avenue/88 Maple Avenue**. Mr. Elelake Jefferson, applicant and owner, was sworn. Mr. Jefferson stated that he received approval from the Board of Adjustment in 1993 to subdivide his property, however, he was unable to file the subdivision deed within the 190 day time frame required. Mr. Jefferson stated that his proposal has not changed and is identical to the application approved in 1993.

Chair Harrison opened the meeting to questions from the public for Mr. Jefferson. None were offered.

The meeting was opened to public questions and comments.

The Board discussed the application.

On motion by Mr. Chapman, seconded by Vice Chair Church, it was resolved to approve the subdivision and variance application.

The Board took a short recess.

Secretary Kadus announced that defective notice was given for the **Steven Lauda and Ralph Latoracca, Murray Street** application. Chair Harrison stated that the application would be heard at the September 20, 2000 regular meeting of the Board of Adjustment and that the applicant must re-notice.

On motion by Vice Chair Church, seconded by Mr. Chapman, the Board unanimously voted to go into closed session.

Upon reconvening in open session, Chair Harrison stated that Michael Sullivan was authorized by the Board to accept service of a complaint against it for the approval of the **Over the Rainbow Nursery, 32 Pleasant Avenue** by two neighboring property owners of and defend the Board in the litigation.

The meeting was adjourned at 9:32 p.m.