

MINUTES OF THE MONTCLAIR BOARD OF ADJUSTMENT OCTOBER 15, 1997

PRESENT: Chair Harrison, Mrs. Freundlich, Mr. Church, Mr. Fleischer, Mr. Tobin and Mr. Williams; Mr. Michael Zichelli, Assistant Secretary.

ABSENT: Vice Chair Chapman, Ms. Holden and Ms. O'Connell.

Mr. Zichelli called the roll and announced the 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 Mr. Fleischer, seconded by Mr. Church, the **Minutes of the September 17, 1997** meeting were approved, Ms. Freundlich abstaining.

Chair Harrison	Yes	Mr. Fleischer	Yes	Ms. O'Connell	Absent
Mr. Chapman	Absent	Ms. Freundlich	Abstain	Mr. Tobin	Yes
Mr. Church	Yes	Ms. Holden	Absent	Mr. Williams	Yes

On motion by Mr. Fleischer, seconded by Chair Harrison, the following **Memorializing Resolution of Michael J. Murphy, 130-134 Bloomfield Avenue** was unanimously adopted, Mr. Church, Ms. Freundlich, Mr. Tobin, and Mr. Williams abstaining:

WHEREAS, Michael J. Murphy, did make application to the Board of Adjustment of the Township of Montclair for site plan approval and variances to construct a commercial building and accessory parking area at the corner of Bloomfield Avenue, Mission Street and New Street on property designated as Lot 1 in Block 3111 located in the C-1 Central Business Zone and Lot 2 in Block 3111 located in the R-2 Two Family Residential Zone; and

WHEREAS, the applicant obtained a variance pursuant to *N.J.S.A.* 40:55D-70d to allow a commercial parking area on Lot 2 in Block 3111 located in the R-2 Zone contrary to Montclair Code Section 224-42 which was memorialized by resolution adopted by the Board on September 17, 1997 subject to a number of conditions including site plan approval and a parking limitation of 20 vehicles;

WHEREAS, in addition to site plan approval, the applicant sought relief as follows:

1. A variance pursuant to *N.J.S.A.* 40:55D-70d to allow parking of 24 vehicles on Lot 2 in Block 3111 located in the R-2 Zone contrary to Montclair Code Section 224-42 and the Board's September 17, 1997 resolution.
2. A variance pursuant to *N.J.S.A.* 40:55D-70c to allow a portion of the parking area closer to Mission Street than the facade of the building pursuant to Montclair Code Section 224-76C(1).

3. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow wall mounted signs on the rear building wall which does not face a street contrary to Montclair Code Section 224-99A(2).

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Gregory Comito & Associates, Architects, dated July 30, 1997 and bearing a final revision date of September 3, 1997; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on August 20 and September 17, 1997, at which time it was established that notice was properly published and the property owners within 200 feet of the property in questions had been properly served; and

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

1. With respect to the applicant's request for 24 parking spaces, the Board's use variance approval is for a 4,080 square foot building which requires 1 parking space for 200 square feet or 21 total spaces. The Board finds it is appropriate to authorize 21 spaces which is the minimum required under the Ordinance. The Board, however, finds the applicant failed to prove any special reasons for allowing additional parking spaces on Lot 2 in Block 3111 which is in the R-2 Zone. Additional parking spaces beyond the minimum required pursuant to the zoning ordinance would result in increased traffic and noise and is contrary to the intent and purpose of the zone plan and zoning ordinance which seeks to minimize any adverse impact on residential neighborhoods.

2. The applicant's request to allow a portion of the parking area closer to Mission Street than the facade of the building, results in minimal encroachment and facilitates traffic circulation on the site without any adverse impact on the public good or the intent and purpose of the zone plan and zoning ordinance.

3. With respect to the wall mounted signs on the rear building which do not face a street, the signs will facilitate identification of the site without any adverse visual impact provided the second sign for the unknown tenant does not exceed the square footage or size of letters shown on the sign for the proposed laundromat.

4. In reviewing the site plan portion of the application, the Board found the proposed plan to be inadequate and fails to meet the negative criteria and requires revisions to the plan prior to site plan approval as follows:

A. The proposed building shows a soffit encroaching beyond the existing property line which cannot be approved. If the building is re-designed to eliminate this encroachment, the impact on the parking and buffer areas cannot be determined.

B. The landscaping plan along the southern property line must be upgraded to include a double row of evergreens along the side of the property line including 18 additional evergreens (not arborvitae) at a minimum height of 2 feet with a

growing capability of at least 5 feet in height. Some of the proposed evergreen plantings could be replaced by deciduous trees to provide a variety of plantings.

C. The planting areas around the parking lot should be bermed with ground cover added.

D. The two existing trees proposed to be removed along Bloomfield Avenue shall be maintained and protected during construction.

E. The proposed paved striped area in the westerly portion of the parking lot should be a planted area.

F. The proposed 20 foot high light fixtures should be reduced to 16 feet in height and a detail indicating adequate lighting and no overflow should be provided.

G. Conditions 1 and 3 of the Board Engineer's review letter dated September 9, 1997 should be complied with.

H. The directional arrows in the parking area should be changed eliminating the middle double set of arrows and providing a right turn arrow to depict the circular traffic flow for cars accessing from New Street.

I. Since the proposed refuse area is accessed through two parking spaces, trash pickup must be scheduled in such a manner as access to the dumpster can be obtained but not during night time hours.

WHEREAS, the Board, based on the aforementioned findings, concluded, that with respect to the applicant's request to allow 24 parking spaces, 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 aforementioned findings, concluded, that with respect to the variance requests for wall mounted signs and parking area closer to Mission Street, 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)*;

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant failed to satisfy the negative criteria of the statute with respect to the site plan;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Michael J. Murphy to allow 24

parking spaces on Lot 2 in Block 3111 is hereby denied, however, the applicant is permitted to park 21 vehicles and the Board's September 17, 1997 resolution is modified accordingly; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Michael J. Murphy to allow wall mounted signs and parking area closer to Mission Street is hereby approved subject to the following condition:

1. The size of the letters and maximum square footage of the second sign shall not exceed the size of the laundromat sign.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Michael J. Murphy for 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.

Chair Harrison	Yes	Mr. Fleischer	Yes	Ms. O'Connell	Absent
Mr. Chapman	Absent	Ms. Freundlich	Abstain	Mr. Tobin	Abstain
Mr. Church	Abstain	Ms. Holden	Absent	Mr. Williams	Abstain

On motion by Mr. Tobin, seconded by Mr. Church, the following **Memorializing Resolution of Naomi Grobstein, 48 Fairfield Street** was unanimously adopted, Chair Harrison and Ms. Freundlich abstaining:

WHEREAS, Naomi Grobstein, M.D. did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c and Montclair Code Section 224-9I to expand a medical office into the adjoining retail store without providing the required number of on-site parking spaces on property designated as Lot 25 in Block 3403 on the Township Tax Map and located in the NC Neighborhood Commercial Zone; and

WHEREAS, the applicant submitted an overall building floor plan and a site plan prepared by the Mylan Architectural Group, and a property survey prepared by Farro Brothers, Engineers & Surveyors, dated February 1, 1973; and

WHEREAS, this matter came on for hearing at a regular meeting of the Board of Adjustment on September 17, 1997, at which time it was established that legal notice had been properly published and that property owners within 200 feet of the property had been served with notice; and

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

1. The property is located in the Neighborhood Commercial Zone which permits medical offices.
2. The subject one-story building consists of the applicant's medical office and a space formerly occupied by a retail store, totaling 2,277 square feet in floor area.
3. The applicant's business involves a general medical practice which includes on-site visitation facilities, office and clerical space. The applicant will not be increasing the staff or number of examination rooms.
4. There are three on-site parking spaces to the rear of the building, and there is no possibility of creating additional on-site parking due to the configuration of the building on the lot.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 or zoning ordinance pursuant to N.J.S.A. 40:55-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, also concluded that the purposes of the Municipal Land Use Law would be advanced by a deviation from the parking 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 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 Naomi Grobstein, M.D. for a parking deficiency variance is hereby approved.

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	Abstain	Mr. Fleischer	Yes	Ms. O'Connell	Absent
Mr. Chapman	Absent	Ms. Freundlich	Abstain	Mr. Tobin	Yes
Mr. Church	Yes	Ms. Holden	Yes	Mr. Williams	Abstain

On motion by Mr. Church, seconded by Mr. Fleischer, the following **Memorializing Resolution of Richard Hulbert, 11 Heller Drive** was unanimously adopted, Ms. Freundlich, Mr. Tobin and Mr. Williams abstaining:

WHEREAS, Richard I. Hulbert, Jr., owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to

NJSA40:55D-70c to allow for a side yard setback less than that required pursuant to Montclair Code Section 244-34C for the construction of an addition to the primary structure on property designated as Lot 6 in Block 4705 on the Township Tax Map and located in the R-O(a) One Family Zone; and

WHEREAS, the applicant submitted a survey dated August 4, 1951 and a site plan, floor plan and elevation prepared by John Thomas Collins, architect, dated March 1997; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 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 measures approximately 120 feet by 140 feet and contains a single family house.
2. The applicant's proposal is to construct a one story addition on the easterly side of the house with a 5.72 foot setback where a minimum 18 foot setback is required.
3. The applicant argued that due to the structural configuration and floor plan of the house, it would be difficult to construct the addition to the rear of the property. However, the Board was not convinced that the applicant had adequately explored alternatives with respect to locating the addition to the rear of the property and that the applicant failed to prove a hardship with respect to the physical characteristics of the land.
4. 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.
5. The location of the proposed addition represents a substantial and unreasonable visual intrusion into the side yard setback reducing light, air and open space which would substantially impair the intent and purpose of the zoning ordinance.
6. The applicant failed to prove that a 5.72 feet side yard setback at a depth of approximately 31 feet is not inconsistent with the character of the neighborhood and would not cause substantial detriment to the public good.

WHEREAS, the Board, based on the foregoing findings, concluded that 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-70c(l); and

WHEREAS, the Board, based on the aforementioned findings, concluded that 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 variance application of Richard I. Hulbert Jr. is hereby denied; and

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	Yes	Mr. Fleischer	Yes	Ms. O'Connell	Absent
Mr. Chapman	Absent	Ms. Freundlich	Abstain	Mr. Tobin	Abstain
Mr. Church	Yes	Ms. Holden	Absent	Mr. Williams	Abstain

Mr. Zichelli read a letter prepared by the attorney for **Decamp Bus Line, 100 Greenwood Avenue** stating his inability to appear before the Board. Chair Harrison announced that the application would be carried to the next regular meeting of the Board of Adjustment on November 12, 1997.

Mr. Zichelli read a letter prepared by the attorney for **Omnipoint Communications Inc., 5 Roosevelt Place** stating that due to the presence of only six Board members, they wish to be heard at the next regular meeting. Chair Harrison announced that the application would be carried to the next regular meeting of the Board of Adjustment on November 12, 1997.

On motion by Mr. Fleischer, seconded by Ms. Freundlich, the Board moved to go into **Closed Session**.

Once the Board returned to **Open Session**, Chair Harrison stated that the Board discussed the suit filed by **St. Paul Baptist Church, Lincoln and Elm Streets** challenging the Board's decision to deny their application. On motion by Mr. Church, seconded by Mr. Fleischer, the Board unanimously voted to authorize Attorney Trembulak to defend the Board's decision in court.

Chair Harrison	Yes	Mr. Fleischer	Yes	Ms. O'Connell	Absent
Mr. Chapman	Absent	Ms. Freundlich	Yes	Mr. Tobin	Yes
Mr. Church	Yes	Ms. Holden	Absent	Mr. Williams	Yes

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

