

MINUTES OF THE BOARD OF ADJUSTMENT
January 16, 2008

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, Mr. Haizel, Ms. Holloway, Mr. Rubenstein, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Franco, Secretary

Assistant Secretary Charreun 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.

Election of Officers

On motion by Mr. Fleischer, seconded by Ms. Cockey, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining.

On motion by Ms. English, seconded by Ms. Cockey, Mr. Fleischer was re-elected as Vice Chair, Mr. Fleischer abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, Mr. Franco was elected as Secretary and Mr. Charreun was re-elected as Assistant Secretary.

Appointment of Professional Staff

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution re-appointing Mr. Sullivan as Board Attorney at the indicated rate for the 2008 year was adopted:

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-71b, provides that the Board may employ legal counsel, experts and staff as it may deem necessary, not exceeding, the amount appropriated by the governing body for its use; and

WHEREAS, the Board has determined it has the need to retain an attorney to provide legal services including, but not limited to advice and consultation, attendance at meetings, preparation of documents and representation of the Board in suits and other proceedings and other services as may be required from time to time; and

WHEREAS, the appointment of the attorney may be made without public bidding as an exception to the bidding requirements of the Local Public Contracts Law, as provided in N.J.S.A. 40A:11-5(1)(a)(i) as a professional service because legal services are rendered by persons authorized by law to practice their recognized profession, whose practice is registered by law and because such services are of a qualitative nature which will not reasonably permit the drawing of specifications or the receipt of competitive bid.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that it does hereby appoint Michael D. Sullivan, Esq. as Board Attorney to serve from January 1, 2008 to December 31, 2008 or until a successor is appointed; and

BE IT FURTHER RESOLVED that the officers of the Board of Adjustment are hereby authorized and directed to sign an Agreement in connection with such services, which agreement shall be on file with the Township Clerk; and

BE IT FURTHER RESOLVED that the Secretary of the Board is hereby directed to cause to be printed once, in an official newspaper of the municipality, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and the contract are on file and available for public inspection in the office of the Township Clerk.

On motion by Mr. Fleischer, seconded by Ms. Cockey, the flowing Resolution re-appointing Mr. Watkinson as Board Engineer at the indicated rate for the 2008 year was adopted:

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-71b, provides that the Board may employ legal counsel, experts and staff as it may deem necessary, not exceeding, the amount appropriated by the governing body for its use; and

WHEREAS, the Board has determined it has the need to retain an engineer to provide engineering services including, but not limited to advice and consultation, attendance at meetings, preparation of reports and other services as may be required from time to time; and

WHEREAS, the appointment of the engineer may be made without public bidding as an exception to the bidding requirements of the Local Public Contracts Law, as provided in N.J.S.A. 40A:11-5(1)(a)(i) as a professional service because engineering services are rendered by persons authorized by law to practice their recognized profession, whose practice is registered by law and because such services are of a qualitative nature which will not reasonably permit the drawing of specifications or the receipt of competitive bid.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that it does hereby appoint W. Thomas Watkinson as Board Engineer to serve from January 1, 2008 to December 31, 2008 or until a successor is appointed; and

BE IT FURTHER RESOLVED that the officers of the Board of Adjustment are hereby authorized and directed to sign an Agreement in connection with such services, which agreement shall be on file with the Township Clerk; and

BE IT FURTHER RESOLVED that the Secretary of the Board is hereby directed to cause to be printed once, in an official newspaper of the municipality, a brief notice

stating the nature, duration, service and amount of the contract, and that the resolution and the contract are on file and available for public inspection in the office of the Township Clerk.

On motion by Mr. Fleischer, seconded by Mr. Haizel, the **Minutes of the May 16, 2007** regular meeting were adopted, Ms. Holloway and Mr. Whipple abstaining. On motion by Mr. Whipple, seconded by Ms. Cockey, the **Minutes of the June 6, 2007** special meeting were adopted, Chair Harrison, Ms. English, Mr. Haizel, and Mr. Susswein abstaining. On motion by Mr. Whipple, seconded by Mr. Haizel, the **Minutes of the June 20, 2007** regular meeting were adopted as modified, Mr. Fleischer, Ms. Cockey, and Ms. English abstaining.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the application of **Wendell & Ellen Maddrey, 19 Cornell Way** was adopted as modified, Mr. Haizel abstaining:

WHEREAS, Wendell and Ellen Maddrey, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a roofed front entry stoop onto their dwelling on property designated as Lot 17 in Block 4704 on the Tax Map of the Township of Montclair and located in the R-0(a) One-Family Residential Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-39B(2)(a)** to permit a front yard setback less than the average front yard setback of the 4 nearest principal structures, 2 on either side of the subject property; and

WHEREAS, the applicants submitted a property survey dated March 20, 1991, and a plot plan, floor plan, and elevations, prepared by Sionas Architecture PC, dated August 16, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 12, 2007, 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 is an interior lot located in the R-0(a) One-Family Zone and contains a 2-story single-family dwelling with an attached garage. The subject property measures 100 feet in width along its curved frontage and contains 16,234 square feet in lot area.

2. The applicants propose to demolish the existing unroofed front stoop and steps and construct a new roofed front stoop and steps. The existing unroofed entry stoop measures 8'-1 $\frac{3}{4}$ " wide by 5' deep. The proposed roofed stoop is also 5' deep, but

is wider measuring 10'-5" wide. A wood framed roof supported by columns is proposed over the new stoop.

3. The required front setback in the R-0(a) Zone north of Bloomfield Avenue is 35 feet, unless the average of nearby dwellings is greater. The average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property, is 40'-7", which is the required front yard setback for the subject property.

4. The existing dwelling has a conforming front yard setback of 40'-8" at its closest point, measured to the front wall of the dwelling excluding the unroofed front stoop, which is located 35'-11" from the front property line. The proposed roofed front stoop would also be set back 35'-11" from the front property line and a variance is requested.

5. The Board determined that the variance requested for the front yard setback of proposed roofed front entry stoop could be granted since a minimal intrusion into the required setback is proposed and most of the dwellings in the neighborhood have some type covered front entrance; and

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested 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(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants did prove 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 Wendell and Ellen Maddrey is approved; and

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. Whipple, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the application of **Gary Demry, 34 Fulton Street** was adopted, Mr. Haizel abstaining:

WHEREAS, Gary Demry, owner of property at 34 Fulton Street, did make application to the Board of Adjustment of the Township of Montclair for variances

pursuant to NJSA40:55D-70c to allow a driveway width less than required pursuant to Montclair Code Section 347-102C and a driveway setback less than required pursuant to Montclair Code Section 347-104, in connection with a proposed driveway and parking area on property designated as Lot 21 in Block 3112 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted a plot plan prepared on a copy of the property survey dated March 15, 2003 that depicts the proposed driveway and parking area; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 12, 2007 at which time it was established that notice was properly published and the property owners within 200 feet of the properties 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 is located in the R-2 Two-Family Zone and contains a 2-story two-family dwelling with no existing driveway or off-street parking area. The subject property measures 50 feet in width and contains 4,945 square feet in lot area.

2. A new driveway is proposed on the southerly side of the dwelling that would lead to a parking area large enough for 2 vehicles in the rear yard. The dwelling has a southerly side yard setback measuring 9.6 feet at its front corner and 9.1 feet at its rear corner.

3. The proposed driveway would be set back 6 inches from the southerly side property line and a width varying from 9.1 feet to 8.6 feet as it passes through the southerly side yard of the dwelling, both of which require variances. The proposed driveway setback and width would otherwise conform to the zoning requirements at all other areas of the property.

4. Based on the location of the dwelling on the lot, the requested variances for a deficient driveway width and driveway setback are justified, and the proposed driveway width would allow for viable and effective ingress and egress of vehicles accessing the parking area. The changes proposed to the property, subject to certain modifications imposed by the Board, represent an aesthetic and functional improvement.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variances requested 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 applicant 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 variances 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 application of Gary Demry is hereby approved subject to the following conditions:

1. The southerly side and rear setbacks of the parking area shall be landscaped with shrubs.
2. Landscaping and/or fencing shall be provided along the right side of the driveway in the front yard in order to deter the informal front yard parking that has existed on the property.

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. Whipple, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the application of **John P. Samaroo, 61 Montague Place** was adopted, Mr. Haizel abstaining:

WHEREAS, John P. Samaroo, owner of property at 61 Montague Place, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c, in connection with the proposed construction of a driveway, to allow a driveway width less than that required pursuant to Montclair Code Section 347-102C, a driveway setback less than required pursuant to Montclair Code Section 347-104, and to permit front yard parking contrary to Montclair Code Section 347-52, and

WHEREAS, the proposed driveway is to be partially located on the adjoining property to the east at 57 Montague Place, and the properties involved in the application are designated as Lots 27 and 28 in Block 2301 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant submitted property surveys for 61 Montague Place and 57 Montague Place, a plot plan depicting the proposed driveway and parking area, a copy of the easement relating to the proposed driveway, dated September 10, 1946, and a signed consent to the application from the owner of 57 Montague Place; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 12, 2007 at which time it was established that notice was

properly published and the property owners within 200 feet of the properties in question had been properly served notice; and

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

1. The properties are located in the R-2 Two-Family Zone. The applicant's property at 61 Montague Place contains a 2½-story, two-family dwelling with no existing driveway or off-street parking area and measures 35 feet in width and 4,550 square feet in lot area.

2. A paved driveway is proposed between the dwellings that would provide access to a proposed parking area the rear of the applicant's property at 61 Montague Place. The easement submitted with the application indicates that 61 Montague Place is entitled to use 1.5 feet of the land on 57 Montague Place for a driveway.

3. The easterly side yard of the subject property, where the driveway is proposed, measures 5.81 feet wide. That width combined with the 1.5 feet described in the easement indicates that the proposed driveway would measure a minimum of 7.31 feet wide as it passes between the dwellings.

4. Although width of the proposed driveway is very narrow, it would allow for ingress and egress of smaller vehicles accessing the proposed parking area and is similar to many other existing driveways in the neighborhood. The applicant also described the problems associated with any potential driveway on the westerly side of his dwelling, which would require easements he has not been able to secure.

5. The driveway easement allows the applicant to use 1.5 feet of 57 Montague Place for the proposed driveway, therefore strict application of the ordinance requiring a setback of 1-foot for the driveway under the circumstances would be impractical.

6. The Board offered suggestions to the applicant, which included maintaining the privet hedge that exists along the easterly side line in the front yard of 57 Montague Place, and consulting with owner of 57 Montague Place on whether a bollard should be used in order to protect the front porch from potential damage.

7. No justification for the variance requested for front yard parking was provided, particularly considering the fact that a rear yard parking area is proposed as part of the application.

WHEREAS, the Board, with respect to the variance requested for front yard parking, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not 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, with respect to the variance requested for front yard parking, concluded that the applicant did not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, did not prove that the benefits of the deviation would substantially outweigh any detriment, and did not 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 NJSA 40:55D-70c(2); and

WHEREAS, the Board, with respect to the variances requested for driveway width and setback, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variances requested 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, with respect to the variances requested for driveway width and setback, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, proved that the benefits of the deviation would substantially outweigh any detriment, and proved that the variances 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 variance requested for front yard parking is hereby denied; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the variances requested for driveway width and setback are hereby approved, subject to the following condition:

1. The side and rear setbacks of the parking area shall be landscaped with shrubs.

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 application of **Bellclaire II, LLC, 18 Bell Street**. was adjourned to the February 20, 2008 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the variance application of **Catherine & Luis Diaz, 392 Highland Avenue**. The applicants were sworn and described the application. The property is an interior lot and contains a single-family dwelling with an attached garage

that is located at the southerly side of the dwelling. An addition is proposed to the second floor on the southerly side of the dwelling that would be located directly over the existing section of the dwelling that contains the garage at the basement level and first floor space above the garage. At this area of the dwelling only, which can be seen on the southerly elevation, the grade level is such that the garage/basement is fully exposed. Due to this condition, the first floor is more than 6 feet above grade at this area, making the garage/basement a story above grade, the first floor level the second story, and the proposed second floor addition a third story, which requires a variance.

Marked into evidence were:

- A-1 Photograph of the dwelling on the subject property
- A-2 Photograph of the dwelling on the subject property

The Board questioned the applicants. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The proposed addition is below the maximum permitted height and is lower in height the existing dwelling. The area of the attached garage as viewed from the southerly elevation is the only area of the dwelling where 2½ stories would be exceeded, which is due to existing grade levels around the dwelling and is a common circumstance in various forms for properties in the neighborhood. The addition conforms to all other zoning requirements. On motion by Mr. Fleischer, seconded by Ms. English the application was approved.

Chair Harrison called the variance application of **John Caraccioli & Jeffrey Appel, 136 Upper Mountain Avenue**. The applicants and Jonathan Perlstein, Architect, were sworn. Mr. Perlstein described the application. The subject property is a corner lot located at the intersection of Upper Mountain Avenue and Edgewood Road, and contains a single-family dwelling and a two-car detached garage accessed by a driveway from Edgewood Road. The existing detached garage in the rear yard would be removed, as well as pavement near the existing garage. A new detached two-car garage is proposed to be located in the southerly front yard between the dwelling and Edgewood Road and will be accessed from the existing driveway off Edgewood Road that would be modified. The proposed two-car garage would be set back 48 feet from the front property line on Edgewood Road; the dwelling is set back 72 feet 7 inches from the front property line on Edgewood Road.

Marked into evidence was:

- A-1 Photographs of the subject property

Mr. Caraccioli and Mr. Appel also described the application. The applicants stated that although the property is large, it has a relatively small usable rear yard area due to the location of the existing garage and driveway, the topography of the rear yard, and the large front setbacks of the dwelling. The proposed location of the detached garage would open up the rear yard and make it more usable for family recreation, and the garage would be constructed into the sloping terrain, reducing its visual impact. The

overall impervious coverage of the property would be decreased. The Board questioned the applicants. Chair Harrison called for questions and comments from the public. Sandra Michaels, 21 Edgewood Road, Christine Larson, 1 Edgewood Terrace, Laura Weiner, 117 Highland Avenue, and Cynthia Aitken, 137 Upper Mountain Avenue, were sworn and stated their support for the application. The Board discussed the application. A majority of the Board determined that a conforming location for the detached garage would still provide the property with a comparable increase in the usable flat area in the rear yard and would not require a variance. A motion by Mr. Whipple, seconded by Mr. Susswein, to approve the application did not pass, and the application was denied.

Chair Harrison called the variance application of **Valerie Spain, 16 Howe Avenue**. The applicant and Mark Bess, Architect, were sworn. Mr. Bess described the application. The property is an interior lot and contains a 2½ -story single-family dwelling with parking in the rear yard. The garage depicted on the survey no longer exists. The property measures 75 feet in frontage width and contains 7,514 square feet in lot area. The average front yard setback of the 3 nearest dwellings, 2 to the west and 1 to the east of the subject property is approximately 24.6 feet; therefore the required front yard setback requirement for the subject property is 25 feet. The property at the corner of Harrison Avenue and Howe Avenue is in a different zone, and is not included. The existing dwelling has a nonconforming front yard setback of 13.13 feet to the front porch. The proposed porch addition would also be set back 13.13 feet from the front property line, and the one story foyer addition would be set back 20.05 feet from the front property line. The larger 2-story addition meets the front yard setback and all other zoning requirements.

The Board questioned the applicant and Mr. Bess. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The proposed front porch addition is aligned with the existing front porch, and the proposed front setback is in keeping with the majority of homes on the street. The larger 2-story addition fully conforms to the zoning requirements and the project would not have a negative impact on the neighborhood. On motion by Mr. Fleischer, seconded by Ms. Cockey the application was approved.

Chair Harrison called the variance application of **Southwest Corner, LLC, 39 Club Road**. Mr. Susswein recused himself. Joe and Andrea Sgroi were sworn and stated that they are the only members of the corporation that owns the subject property. Gerald Novak, Architect, was also sworn and described the application. The subject property is an irregularly shaped interior lot located in the R-0(a) One-Family Zone. The curved lot frontage of the subject property measures 80 feet in width and the property contains 14,700 square feet in lot area. The lot widens as it goes toward the rear yard. The subject property contains a one-story single-family dwelling with an attached garage at the westerly side of the dwelling. A second floor addition is proposed over most areas of the first floor of the dwelling. The applicant indicated that the exterior walls of the first floor would remain and that the interior walls would be completely removed, as the first floor would undergo a complete redesign. The height of the dwelling would conform at 31 feet. The existing attached garage would be demolished

and rebuilt on the same footprint, although at a taller height than it presently exists and with a second floor. The roof over the proposed attached garage would be 22 feet in height. The proposed garage second floor is not connected to the proposed second floor of the dwelling.

The curved lot frontage measures 80 feet, which allows the width of the principal structure on the property to be 52 feet in width. The width of the existing dwelling including the attached garage is 83.5 feet, which is an existing nonconformity. The width of the new construction, which includes the proposed second floor of the dwelling and the proposed second floor of the attached garage, would match the 83.5 foot width of the existing dwelling, and a variance is requested. The width of the addition over the dwelling itself, not including the garage, measures 63 feet wide. The rear property line consists of 2 line segments, and the westerly portion of the rear line angles sharply towards the dwelling. The required rear yard setback for the subject property is 45.6 feet, which is equal to 30% of the lot depth. The attached garage has a non-conforming rear yard setback of 32 measured to the rear left corner of the garage. The second floor addition to the attached garage requires a variance to add height in the area of the nonconforming rear setback. The second floor addition to the dwelling complies with the rear setback requirement. Mr. Sgroi also described the application from his perspective.

Marked into evidence were:

- A-1 Photograph of the dwelling on the subject property
- A-2 Photograph of the dwelling on the subject property

The Board questioned the applicants and Mr. Novak. Chair Harrison called for questions and comments from the public. Kevin Smith, 26 Cornell Way, was sworn and stated his opposition to the application. He also stated his concerns over another dwelling being constructed at 53 Club Road

Marked into evidence were:

- O-1 Photograph of a dwelling being constructed at 53 Club Road
- O-2 Photograph of the subject property
- O-3 Photograph of the subject property

The Board questioned Mr. Smith. He stated that he had not yet reviewed the plans submitted for the subject property. Anthony Astarita, 23 Cornell Way, Robert Lalli, 56 Yantacaw Brook Road, Diane Gorman, 34 Club Road, and Fran Legman, 15 Club Road, were sworn and also stated their opposition to the application. The Board discussed the application. The Board determined that the requested variance for principal structure width could only be approved without the additional height proposed to the attached garage, which is not necessary. The width of the second floor addition over the dwelling itself measures 63 feet in width, which is reasonable considering the width of the lot at the front setback of the dwelling, which measures approximately 105 feet. By not allowing the additional height proposed for the attached garage, the rear

yard setback variance is no longer required. On motion by Mr. Fleischer, seconded by Mr. Haizel the application was approved, subject to the following conditions:

1. Within 30 days of this approval, the applicant shall provide to the Planning Department, a calculation of the height of the existing attached garage pursuant to the zoning ordinance. The reconstructed attached garage shall not exceed the height of the existing attached garage.

2. Any retaining walls constructed on the property shall conform the requirements of the zoning ordinance.

3. Any outdoor central air conditioning shall conform the requirements of the zoning ordinance.

Chair Harrison called the application of **Saint Cassian's School, 190 Lorraine Avenue**. Cal Trevenen, Esq. appeared as attorney for the applicant and described the application. He called Paul Sionas, who was sworn and stated his qualifications as a Professional Planner and Landscape Architect.

Marked into evidence were:

- A-1 Property survey with the existing parking layout depicted, prepared by Paul Sionas
- A-2 Photograph of the southerly elevation
- A-3 Photograph of the existing sunroom addition

Mr. Sionas described the application. The subject property is a T-shaped lot containing 77,420 square feet in area and has frontage on three streets, namely, Lorraine Avenue, Norwood Avenue and Bellevue Avenue. The northerly portion of the property is located in the R-1 One Family Zone and contains a three story school building and parking area and the southerly portion of the property is located in the N-C Neighborhood Commercial Zone and contains a two story church building adjacent to the Bellevue Avenue frontage. The application contemplates construction of a one story 31 foot 8 inch by 18 foot 10 inch sunroom type addition to the southwest corner of the existing school building to be used as a "flexible" science classroom. It will not be utilized as a laboratory or additional homeroom. The height of the addition measures 20 feet 2 inches to the highest point where the sloping roof of the addition joins the building façade. The plans indicate the proposed addition has an occupancy maximum of 20 persons. Section 347-12A(1) requires that the aggregate site area of the school, in addition to the area of the site covered by buildings, shall not be less than 250 square feet per student. The existing lot area is 75,292 square feet and there are 182 students. No increase in students is proposed in connection with this application. The aggregate site area of the school equals 413 square feet per student which complies with the aforementioned requirement as would any increase in students limited by condition 1 below. Section 347-12A(2) requires the total area of building space used for classrooms, exclusive of auditorium, gymnasium or similar areas for assembly purposes, shall have an average of not less than 28 square feet per student. The existing classroom space (including the art room) has a total area of 8,456 square feet.

The additional "flexible" science classroom adds 596 square feet for total classroom space of 9,052 square feet. The aggregate classroom space divided by 182 pupils yields 49.7 square feet per student which complies with the aforementioned requirement as would any increase in students limited by condition 1 below.

The lot area is 1.728 acres where a minimum of 1.75 acres is required. Additionally, the street frontages of 100 feet, 203.08 feet and 275 feet on Bellevue Avenue, Norwood Avenue and Lorraine Avenue respectively fail to comply with the 300 foot minimum required by Section 347-12A(3). These conditions are preexisting nonconforming conditions which are not impacted by the minimal addition proposed in this application. Section 347-12A(4) requires the lot to have street frontage on a street having a paved width of at least 35 feet. Two of the three frontages, namely, Lorraine Avenue with 32 feet and Norwood Avenue with 26 feet, are preexisting nonconforming conditions which are not impacted by the minimal addition proposed in this application. Section 347-12A(5) limits the height of principal structures to 35 feet and 2-1/2 stories. The proposed one story addition with a height of 20.5 feet complies with this requirement. The existing school building which is 38 feet and three stores is a preexisting nonconforming condition which is not exacerbated by this application. Section 347-12A(6) requires driveways which open on a street to provide a minimum 200 feet distance from an intersection. The Bellevue Avenue driveway is located 108 feet from the intersection of Norwood Avenue, the Norwood Avenue driveway is located 148 feet from the intersection with Lorraine Avenue and the Lorraine Avenue driveway is located 240 feet from the intersection of Norwood Avenue. The driveway locations are preexisting nonconforming conditions which are not impacted by the minimal addition proposed in this application.

The proposed sunroom addition provides a westerly rear yard setback of 86.69 feet where a minimum of 100 feet is required. The proposed location of the addition is appropriate based upon the existing development of the site and provides adequate light, air and open space consistent with the purposes of the Municipal Land Use Law. Section 347-12A(8) requires all outdoor play areas to be set back a minimum of 50 feet from any street or property line. One existing playground for young children is located at the northeast corner of the property, while older children utilize the paved parking area along the westerly side of the property. The location of the outdoor play areas are preexisting nonconforming conditions which are not exacerbated by this application. Section 347-12A(9) provides on-site parking shall be provided at the rate of one space for every full time or full time equivalent staff member or employee, and one space for every four students eligible to drive. Visitor parking shall be provided at the rate of two spaces per elementary and intermediate classroom. There are currently 20 faculty/staff members at the school and 4 staff at the church for a total of 24 yielding a parking requirement of 24 spaces. Visitor parking is required at the rate of two stalls per classroom. There are eleven existing classrooms plus one new classroom resulting in a parking requirement of 24 stalls. The aggregate parking requirement on site is 48 spaces and there are currently 57 spaces on site which is compliant. Section 347-12A(10) limits maximum impervious surface coverage to 70 percent. The proposed addition is to be located over an existing paved area. Consequently, no new impervious coverage will be added as part of this proposal.

Section 347-12A(11) limits principal and accessory building coverage to 25 percent of lot area. The existing principal and accessory building coverage is 22.8 percent and the addition results in coverage of 23.5 percent which is compliant. Section 347-12A(12) requires parking areas and driveways to be set back at least 15 feet from the property line with the intervening areas landscaped to provide an effective visual screen at the time of planting. The parking area fronting Norwood Avenue is set back approximately 29 feet which is compliant. The parking area at Lorraine Avenue has a 0 setback and the driveway adjoining the church has a setback of approximately 8 feet from the easterly property line. The aforementioned driveway locations are preexisting nonconforming conditions which are not impacted by the minimal addition proposed in this application. Approval of this application will result in little or no change in the way the site is currently functioning. The courts have recognized that schools are the type of use inherently promoting the public good. Additionally, despite the deviations from the conditional use standards, the site continues to be appropriate for the conditional use. The application is consistent with the character of the neighborhood and will not adversely impact the public good.

The Board questioned Mr. Sionas. Father John Judge, of St. Cassian's School, was also sworn and answered certain questions about the site, including play areas and parking issues. Chair Harrison called for questions and comments from the public. Derek Cox, 197 Lorraine Avenue, was sworn. He stated that certain areas of the property that abut the sidewalk area on Lorraine Avenue should be modified to change hardscape and fencing to a landscaped area. The Board questioned Mr. Cox. Mr. Sionas discussed the changes that could be made that would achieve what was described by Mr. Cox. The Board discussed the application. The Board determined that a traffic report, landscaping plan, subject to condition 3 below, parking plan and on-site play area study are not required. A report dated December 15, 2007 from W. Thomas Watkinson, Board Engineer, confirmed the application will not result in any changes to stormwater runoff conditions or create any adverse impact due to stormwater runoff. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. Maximum enrollment shall be limited to no more than 215 students.
2. The proposed new exterior air conditioning condenser unit shall be screened with a chain link fence with vertical slats and relocated to the south of the new addition in compliance with applicable setbacks.
3. The applicant shall submit a landscape plan providing a landscaped strip in the northerly portion of the parking area between the sidewalk and the existing parking stalls subject to the review and approval of the Planning Department. The plan contemplates relocation of the existing fence to the southerly side of the new landscaped area and may required restriping of parking stalls.

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