

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**February 20, 2008**

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

ABSENT: Mr. Haizel, Ms. Holloway, 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.

Chair Harrison stated the minutes and Resolutions would be adopted after the hearing the applications.

The Board had a brief discussion regarding the previously approved application of **Jacques and Lauren Lapeyrolerie, 18 Hitchcock Place**. It was determined that the applicants should submit to the Planning Department photographs of the rear yard as seen from Hilltop Place that would help to determine if an above ground swimming pool would be in keeping with variances granted for an inground swimming pool.

On motion by Mr. Whipple, seconded by Ms. English, the application of **Wallwood Gardens, Inc, 400 Orange Road** was adjourned to the May 21, 2008 regular meeting of the Board, at the applicant's request. The request was approved subject to the condition that new public notice for the application be completed. The Board was granted an extension of time on the application

Chair Harrison called the continuation of the application of **Bellaire II, LLC, 18 Bell Street** which was last heard at the December 12, 2007 meeting. David Owen, Esq. appeared as attorney for the applicant. Tom Brennan, Architect, who was still under oath, described the revised plans. In December 2007, the applicant proposed a two-family dwelling with a setback greater than the adjoining apartment building to the south, a front door facing south, parking spaces in front of garage doors, and side yard setbacks not permitted in the zone. This particular configuration required the variances requested for use, lot area and width, and parking design, as well as additional variances with respect to front yard setback, front yard parking, parking space setback from side property lines, and principal building setback from side property lines. In response to various concerns raised by the Board with respect to such configuration, the applicant returned with a redesigned building and site configuration.

Marked into evidence were:

- A-3 Front and Left Side Elevations
- A-2 Rear and Right Side Elevations
- A-5 Floor Plans

The Board questioned Mr. Brennan. There were no questions from the public.

Chuck Thomas, PE PP, was sworn and stated his qualifications as a Professional Planner. He described the revised plans. The new building and site configuration changed the proposed front yard setback from 20 feet to 6 feet so that the two-family dwelling lines up with the apartment building to the south. It increased the rear yard setback from 10 feet to 19.3 feet. It moved the front door so that it faces Bell Street. It eliminated front yard parking by locating all parking spaces at grade level inside the two-family dwelling. It reduced the side yard setbacks to 0 feet in keeping with the zoning ordinance. It eliminates four variances. The revised building and site configuration constitute a better development plan for the property. In addition, the proposed parking spaces, which are tandem or end-to-end parking spaces under the control of one owner, do not require variance or other relief. The applicant's proposal and the requested variances advance the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-2. In particular, they promote the appropriate use of land and the general welfare (-2a) because the property is particularly suited for the proposed development given the existing and surrounding residential use and the small size of the property; they promote appropriate residential density (-2e); they provide sufficient space for residential use (-2g); and they provide a desirable visual environment (-2i).

With respect to the use variance, there is no substantial detriment to surrounding properties: Residential use is abundant nearby. The project maintains residential use but decreases residential density. The project provides the required on-site parking. In addition, there is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance: Both allow residential use and apartments in the C-1 Zone. Both allow the proposed residential density. Both favor uses that can provide the required on-site parking. With respect to the lot size and lot width variances, the purposes of zoning that favor the use variance also favor the lot size and lot width variances. These variances also promote the free flow of traffic and discourage traffic congestion given that the project provides on-site parking. With respect to the lot size and lot width variances, there is no substantial detriment to surrounding properties: The existing lot width and existing lot size are longstanding conditions accompanied by a three-family dwelling, whereas the project proposes a two-family dwelling. Also, there is no substantial impairment of the zone plan or zoning ordinance: Both allow residential use at the proposed residential density and both favor a use that can meet its on-site parking needs.

With respect to the variance to allow grade level parking below the two-family dwelling, the rationale for disallowing parking below a building is to prevent buildings on "stilts" or columns where parked cars are open to public view below the building and are unattractive. Here, however, the proposed parking spaces are incorporated into the building and cars are fully shielded from public view. This arrangement meets the intent and purpose of the zoning ordinance. It promotes zoning purpose 2(i) because it promotes a desirable visual environment through creative development technique and good civic design and arrangement. It will not cause any substantial detriment to surrounding properties because parked cars are screened from public view. It will not cause any substantial impairment of the intent or purpose of the zone plan or zoning ordinance. The project helps to revitalize this C-1 Zone property, and the zoning

ordinance specifically recognizes the difficulty of providing on-site parking in the C-1 Zone (Section 347-79D).

The Board questioned Mr. Thomas. There were no questions from the public. Mr. Owen summarized the application. The Board discussed the application. On motion by Mr. Whipple, seconded by Mr. Fleischer, was approved subject to the following conditions:

1. Air-conditioning condenser unit(s) shall be located and set back in accordance with the zoning ordinance.
2. The applicant shall install a conforming fence on three sides that encloses the rear yard of the property.
3. The landscaping shall conform to the plan prepared by Omland Engineering Associates, Inc. which depicts a single shade tree on the lot rather than two as shown on the architectural plans prepared by Thomas J. Brennan.
4. Additional landscaping shall be installed along the driveway consistent with the testimony of the applicant's engineer including low shrubs such as boxwoods not higher than 36 inches.

The application of **Francis Guyot, 424-428 & 434-436 Bloomfield Avenue** was called. Lawrence Olive, Esq., appeared as attorney for the applicant. Roger DeNiscia, PP, was sworn and described the application.

Marked into evidence were:

- A-1 Photographs of the subject property
- A-2 Deed dated June 5, 1978

The subject property is an interior lot located on the southerly side of Bloomfield Avenue between South Fullerton Avenue and Seymour Street and is located in the "Center" area of the C-1 Central Business Zone. Although designated as Lots 6 and 7 in Block 3106 on the Tax Map, the lots merged by virtue of a deed dated June 5, 1978 from Seymour Feigelson et al. to Francis Guyot. The northwesterly side of the property is improved with a three-story mixed use building with first floor commercial space and four apartments at 434-436 Bloomfield Avenue. The southeasterly side of the property is improved with a one-story commercial building at 424-428 Bloomfield Avenue. The proposed subdivision line follows the tax map lot lines between the two buildings eventually diverting from the tax map lot line at the rear of the properties following the exterior wall of the one-story building towards the rear of the lot. No new buildings, additions, or other physical changes to the site are proposed as part of the subdivision.

The Board questioned Mr. DeNiscia. No questions and comments were offered from the public. Mr. Olive requested that the application be adjourned to the next regular meeting of the Board in order to have 7 eligible members voting. It was

announced that the application would be continued at the March 19, 2008 regular meeting of the Board. No further notice would be given. The Board was granted an extension of time.

The application of **William Budney, 20 Aubrey Road** was called. Cal Trevenen, Esq. appeared as attorney for the applicant. Paul Sionas Architect and Professional Planner was sworn and described the application.

Marked into evidence were:

- A-1 Photograph of the existing garage exterior
- A-2 Photograph of existing garage interior
- A-3 Photograph of the existing garage exterior
- A-4 Photograph of the existing garage exterior

The subject property is an interior lot located in the R-1 One Family Zone, measuring 60 feet in width and 8,483 square feet in area. The property contains a single-family dwelling and a detached garage in the southwesterly corner of the rear yard, which would be demolished. The applicant proposes to construct an accessory building that would consist of a two-car garage and an attached storage shed, which would be located in the same area of the property as the existing garage but the footprint would be enlarged. The footprint of the existing garage measures approximately 18 feet in width by 18 feet in length. The existing garage has a nonconforming westerly side yard setback of 1.77 feet at its front corner and 2.03 feet at its rear corner; and a nonconforming rear yard setback that measures 5 feet to the main portion of the garage, and 3 feet to a "bump-out" along a section along the rear wall constructed to fit larger vehicles in the garage. The proposed accessory building in total measures 32 feet in width. The garage area is 18 feet deep; the storage area is recessed 4 feet from the front of the garage wall and is 14 feet deep. The proposed accessory building would be constructed along the existing westerly side setbacks of the existing garage, and would follow the existing 5-foot rear setback, and variances are requested. A conforming height of 15 feet is proposed, and the footprint of the proposed structure covers 17.3% of the rear yard, which is under the 25% maximum for accessory building in a rear yard.

The Board questioned Mr. Sionas. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. Considering the fact that the proposed accessory building is significantly wider than the existing garage, the Board determined that the requested variances could only be granted if the plan was modified so that the westerly side yard setback is increased to be no less than 3 feet, and that the overall width of the accessory building be reduced by at least 1.5 feet. On motion by Mr. Fleischer, seconded by Ms. English the application was approved, subject to the following conditions:

1. The westerly side yard setback shall be no less than 3 feet.

2. The overall width of the accessory building shall be reduced by at least 1.5 feet to measure no more than 30.5 feet in width.

3. Roof leaders shall be positioned so that stormwater drainage from the roof of the proposed accessory building shall discharge onto the subject property only.

The application of **R&R Realty, 651 Bloomfield Avenue** was called. Grant Gille, Esq., appeared as attorney for the applicant. Wayne Gusskind, Architect, was sworn and described the application.

Marked into evidence were:

- A-1 plans dated December 14, 2007
- A-2 rendered site plan, on a board
- A-3 rendered elevations, on a board

The subject property is located at the northwest corner of Bloomfield Avenue and Valley Road and located in the "Center Area" of the C-1 Central Business Zone. The property consists of 9,500 square feet of lot area and contains lot widths of 124.34 feet along Bloomfield Avenue and 130.53 feet along Valley Road. The property contains two gas pump islands under a canopy and a single story masonry building used for auto repair. The applicant proposes to convert the building housing the automobile repair business into a 7-11 convenience store, retaining the existing gas station use but eliminating one of the fueling islands, redesigning and creating parking areas and installing new signs.

The Board had numerous questions for Mr. Gusskind regarding the parking design and the signage. Mr. Gille requested that the application be adjourned to the March 19 regular meeting of the Board so that the applicant could consider the Board's concerns on revised plans. Chair Harrison called for questions and comments from members of the public who would not be present on March 19. Marguerite Joralemon, 65 Portland Place was sworn, asked about the proposed business hours, and stated her opposition to a 24-hour business on the site. Elisabeth Blackburn, 59 Portland Place, was sworn and stated her opposition to a 24-hour business on the site. Valerie Brown, 67 Valley Road, was sworn, asked if walk-in customers are expected at the convenience store, and stated her opposition to a 24-hour business on the site. It was announced that the application would be continued at the March 19, 2008 regular meeting of the Board. No further notice would be given. The Board was granted an extension of time.

Chair Harrison called the application of **Craftco, 14 North Willow Street**. The applicant was not present. The statutory time for the Board to act on the application was due to expire on the date of this hearing. On motion by Mr. Fleischer, seconded by Mr. Whipple, the Board dismissed the application for lack of prosecution, without prejudice to a future application.

On motion by Mr. Whipple, seconded by Mr. Susswein, the **Minutes of the July 11, 2007** special meeting were adopted, Chair Harrison, Ms. Cockey, and Ms. English abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the **Minutes of the July 18, 2007** regular meeting were adopted as modified, Ms. Cockey and Mr. Fleischer, abstaining.

On motion by Mr. Fleischer, seconded by Ms. Cockey, the following Resolution memorializing the denial of the application of **John Caraccioli & Jeffrey Appel, 136 Upper Mountain Avenue** was adopted as modified, Mr. Susswein and Mr. Whipple abstaining:

WHEREAS, John Caraccioli and Jeffrey Appel, owners of property at 136 Upper Mountain Avenue, 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 to permit an accessory structure between the dwelling and a the street, which is not permitted pursuant to **Montclair Code Section 347-34B**, on property designated as Lot 1 in Block 504 on the Tax Map of the Township of Montclair and located in the R-0 Mountainside Zone; and

WHEREAS, the applicants submitted a property survey dated April 28, 2005 and architectural plans by Oasis Architecture & Planning, PC, dated October 18, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2008, 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 a corner lot located at the intersection of Upper Mountain Avenue and Edgewood Road, and is located in the R-0 Mountainside Zone, The property measures 56,150 square feet in area and contains a single-family dwelling and a two-car detached garage accessed by a driveway from Edgewood Road.

2. 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.

3. 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, and the overall impervious coverage of the property would be decreased.

4. The Board, however, 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.

WHEREAS, the Board, based on the foregoing findings concluded that the applicants 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 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 not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of *N.J.S.A. 40:55D-70C(2)*;

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of John Caraccioli and Jeffrey Appel is denied; 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. Susswein, the following Resolution memorializing the approval of the application of **Catherine & Luis Diaz, 392 Highland Avenue** was adopted:

WHEREAS, Catherine and Luis Diaz, owners of property at 392 Highland Avenue, 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* to permit more than 2½ stories pursuant to **Montclair Code Section 347-45A(2)**, in connection with a proposed addition to their dwelling on property designated as Lot 24 in Block 703 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated November 1, 2005 and architectural plans prepared by John Thomas Collins dated April 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2008, 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-1 One-Family Zone and contains a single-family dwelling with an attached garage that is located at the southerly side of the dwelling. The subject property measures 85.56 feet in width along its frontage on Highland Avenue and contains 15,721 square feet in lot area.

2. An addition is proposed to the second floor on the southerly side of the dwelling. The addition would be located directly over an existing section of the dwelling that contains an attached garage at the basement level and first floor space above the garage.

3. At this area of the dwelling, the grade level is such that the basement is fully exposed in order to allow access to the garage. Due to this condition, the first floor of the dwelling at this area of the property is more than 6 feet above grade, 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.

4. The proposed addition is below the maximum permitted height and is lower in height than 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.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants 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 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 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); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Catherine and Luis Diaz 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. Susswein, the following Resolution memorializing the approval of the application of **Valerie Spain, 16 Howe Avenue** was adopted:

WHEREAS, Valerie Spain, owner of property at 16 Howe Avenue, 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 to permit a front yard setback less than required pursuant to **Montclair Code Section 347-51**, in connection with a proposed addition to the dwelling on property designated as Lot 8 in Block 1904 on the Tax Map of the Township of Montclair and located in the R-2 Two-Family Zone; and

WHEREAS, the applicants submitted a property survey dated August 24, 1968 and architectural plans prepared by MBA Architects, dated November 15, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2008, 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-2 Two-Family Zone and contains a 2½ -story single-family dwelling with parking in the rear yard. The garage depicted on the survey no longer exists. The subject property measures 75 feet in frontage width and contains 7,514 square feet in lot area.

2. 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, which is the R-1, and is not included.

3. 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. Variances are requested for the front setback described above. The larger 2-story addition meets the front yard setback and all other zoning requirements.

4. 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.

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 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 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); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Valerie Spain 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. Susswein, the following Resolution memorializing the approval of the application of **Saint Cassian's School, 190 Lorraine Avenue** was adopted:

**WHEREAS**, Saint Cassian's School, did make application to the Board of Adjustment of the Township of Montclair for preliminary and final site plan and conditional use approval in connection with an addition to the existing school on property designated as Lot 23 in Block 2602 on the Township Tax Map and located in the R-1 One Family Zone and N-C Neighborhood Commercial Zone; and

**WHEREAS**, the applicant requested relief from N.J.S.A. 40:55D-70d(3) as follows:

1. To allow lot size of 1.728 acres where a minimum of 1.75 acres is required and to allow street frontage of 100 feet on Bellevue Avenue, 203.08 feet on Norwood Avenue and 275 feet on Lorraine Avenue where a minimum of 300 feet is required pursuant to Section 347-12A(3).

2. To allow frontage on Lorraine Avenue and Norwood Avenue with a paved width of less than 35 feet as required by Montclair Code Section 347-12A(4).

3. To allow driveways to open onto a street or road within 200 feet of an intersection of such street or road with another street or road contrary to Section 347-12A(6).

4. To allow a rear yard setback of 86.69 feet measured to the proposed addition where a minimum of 100 feet is required pursuant to Section 347-12A(7).

5. To allow parking areas and driveways to be set back less than the required 15 feet pursuant to Section 347-12A(12).

**WHEREAS**, the applicant submitted architectural plans prepared by S. Joseph Termotto, Architect; Sheets A-1 and A-2 dated June 29, 2007 and a property survey prepared by Richard J. Hingos, Inc. dated October 1, 2007; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2008, 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 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.

2. 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.

3. Section 134-12A(1) requires 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. Approval of this application will result in little or no change in the way the site is currently functioning. Consequently, the Board determined a traffic report, landscaping plan (subject to condition 3 below), parking plan and on-site play area study are not required.

16. 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.

17. The courts have recognized that schools are the type of use inherently promoting the public good. *Children's Inst. v. Verona Tp. Bd.*, 290 N.J. Super 350, 356 (App. Div. 1996). Additionally, despite the deviations from the conditional use standards, the site continues to be appropriate for the conditional use consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

18. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

**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 Saint Cassian's School for preliminary and final site plan, conditional use and variances pursuant to N.J.S.A. 40:55D-70d(3) is hereby 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.

**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 **Southwest Corner, LLC, 39 Club Road** was adopted, Mr. Susswein abstaining:

WHEREAS, Southwest Corner LLC, owner of property at 39 Club Road, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to allow a greater principal building width and a lesser rear yard setback pursuant to **Montclair Code Section 347-39C**, in connection with a proposed addition to the dwelling on property designated as Lot 21 in Block 4704 on the Tax Map of the Township of Montclair and located in the R-0(a) One-Family Zone; and

WHEREAS, the applicant submitted a property survey dated October 31, 2007 and architectural plans prepared by Gerald J. Novak dated December 9, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 16, 2008, 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 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. By not allowing the additional height proposed for the attached garage, the rear yard setback variance is no longer required; and

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 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 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); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Southwest Corner LLC is 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.

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. English the meeting was adjourned.