

MINUTES OF THE BOARD OF ADJUSTMENT
April 15, 2009

PRESENT: Chair Harrison, Mr. Burr, Ms. Cockey, Ms. English, Vice Chair Fleischer, Ms. Holloway, Mr. Kenney, 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.

On motion by Mr. Whipple, seconded by Mr. Susswein, the **Minutes of the February 18, 2009** regular meeting were adopted as modified. On motion by Mr. Fleischer, seconded by Mr. Whipple, the **Minutes of the March 18, 2009** regular meeting were adopted as modified.

On motion by Mr. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **First Evangelical Lutheran Church, 153 Park Street** was adopted, Chair Harrison abstaining:

WHEREAS, First Evangelical Lutheran Church, did make application to the Board of Adjustment of the Township of Montclair for a minor subdivision and variance pursuant to N.J.S.A. 40:55D-70d(2) to convey a portion of Lot 25 in Block 2408 to Lot 25.01 in Block 2408 as designated on the Township Tax Map, which results in a reduction of the lot size of a nonconforming use contrary to Montclair Code Section 347-112 on property located in the R-1 One Family Zone; and

WHEREAS, the applicant submitted a minor subdivision plan prepared by Richard J. Hingos Inc. dated April 28, 2008; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on March 18, 2009, at which time it was established that notice was properly published and that the 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. Lot 25 in Block 2408 is an interior lot containing approximately 44,407 square feet in area and is improved with a one story masonry church building and associated parking. Lot 25.01 in Block 2408 contains approximately 13,753 square feet in area and is improved with a two and one-half story single family dwelling. Immediately to the rear of Lot 25.01 is an area consisting of 5,853 square feet which is part of Lot 25. The minor subdivision seeks to annex the 5,853 square foot portion of Lot 25 to Lot 25.01.

2. The testimony established the church property has 35 parking spaces and with the exception of Christmas services and occasional weddings and funerals adequately accommodates the parking demand in connection with the church use. The testimony further established that the 5,853 square foot portion of the property which is the subject of the subdivision has never been used by the church for parking or any other purpose.

3. Approval of the application advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a); provides adequate light, air and open space (-2c); and provides sufficient space in an appropriate location for the existing uses (-2i).

4. Based upon the Board's particular knowledge of local conditions, approval of this application will have no adverse impact on area properties as the two properties will function without any measurable change. Consequently, the Board finds there will be no substantial detriment to the public good in approving the subdivision application.

5. Approval of the subdivision application eliminates an area for future parking by the church and thus restricts expansion of the church use which is consistent with the intent and purpose of the Zoning Ordinance and Master Plan.

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 First Evangelical Lutheran Church, for a minor subdivision and variance to permit reduction in lot size of a nonconforming use 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.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Carol & Joe Apprendi, 32 Erwin Park Road** was adopted, as modified:

WHEREAS, Carol and Joe Apprendi, as owners, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA 40:55D-70c to a front yard setback less than required pursuant to **Montclair Code Section 347-45B(1)** and a principal structure width greater than permitted pursuant to **Montclair Code Section 347-45C(4)** in connection with a one-story addition onto the southerly side of their single-family dwelling on property designated as Lot 7 in Block 2404 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a plot plan, front setback detail, elevations, and a partial first floor plan prepared by Heritage Home Design Corp.; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 18, 2009 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 is an interior lot located in the R-1 One-Family Zone and contains a single-family dwelling with a detached garage in the rear yard. The property measures 75 feet in lot frontage width and 11,250 square feet in lot area.

2. The front property line is curved. The existing dwelling has a minimum front setback of 49.60 at its closest point and 63.75 at its furthest point, which is near the proposed addition. The average front yard setback of the 4 nearest principal structures, 2 on either side, of the subject dwelling, is 86.98 feet. This calculation includes a through lot on an adjoining property that is oriented towards Central Avenue instead of Erwin Park Road. A minimum front yard setback in keeping with the average front yard setback of 86.98 feet is required and a lesser front yard setback of 63.75 feet is proposed, and a variance is requested.

3. The width of the dwelling is not permitted to exceed 65 percent of the lot frontage width. The existing dwelling has a nonconforming width of 49.75 feet (66.3 percent of the lot frontage width), where a maximum of 48.75 feet (65 percent of the lot frontage width) is permitted. The proposed addition measures 3.5 feet in width which increases the width of the dwelling to 53.25 feet (71 percent of the lot frontage width), and a variance is requested.

4. The Board determined that the requested variances could be granted. The dwelling located on the through lot on the adjoining property to the south is located approximately 180.5 feet from the front property line which is not a characteristic front setback on Erwin Park Road and skews the front setback requirement for the subject property. If not for the unusually large setback of the adjoining through lot, the proposed addition would be in keeping with the front setback of properties on Erwin Park Road. The proposed addition conforms to the side yard setback requirement and the 3.5 feet of additional width to the first floor on the southerly side of the dwelling will not negatively impact the neighborhood being that the addition is one-story and is partially screened by existing shrubbery.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 the zoning ordinance pursuant to NJSA40:55D-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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of **Carol and Joe Apprendi** is hereby approved, subject to the following condition:

1. The proposed addition shall be limited to one-story.

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.

The application of **Joseph & Holly Christovao, 22 Macopin Avenue** was adjourned to the May 20, 2009 regular meeting of the Board, at the applicants' request. No further notice would be given. The Board was granted an extension of time on the application. The application of **Wallwood Gardens, Inc, 400 Orange Road** was adjourned to the June 17, 2009 regular meeting of the Board, at the applicant's request, subject to the condition that the applicant complete public notice for the June 17, 2009 date. The Board was granted an extension of time on the application. Ruth Wallestad and Geraldine Woods, owners of the subject property were present and provided the Board with a status of their efforts to move forward with the site plan review portion of the application which remains pending.

Chair Harrison called the variance application of **Steve Marshall, 200 Claremont Avenue**. The applicant, Steve Marshall and his brother, Hubert Marshall, were sworn. Alan Feld, Architect, was also sworn and provided his qualifications. Hubert Marshall generally described the plans to convert the rooming house to a mixed-use building containing a realtor's office on the first and second floors, and a one-bedroom apartment on the third floor. A new canopy covered stairway is proposed on the rear of the building and a new paved parking lot for 8 vehicles is proposed in the rear yard. Mr. Feld described the plan and the property further. The subject property is a corner lot at the intersection of Claremont Avenue and North Fullerton Avenue located in OR-3 Garden Apartment and Office Building Zone. The property contains a residential building with no on-site parking. The property measures 7,817 square feet in area; the frontage width measures 72 feet on Claremont Avenue and 113 feet on North Fullerton Avenue. A variance is requested in that residential use mixed with business and professional offices is permitted as a conditional use in the OR-3 Zone, and the applicant does not meet all of the conditions.

The applicant is proposing to remove a fire escape on the southern façade and replace it with a canopy covered stairway that provides access to all 3 floors. The

proposal also calls for 4 of the proposed parking spaces to be located within the required front yard setback of North Fullerton Avenue. The first and second floors of the building would be converted from residential use to office use. The office area on the first and second floor would contain a total 2,529 square feet of floor area, excluding the new stairway. A one-bedroom dwelling unit containing 903 square feet of floor area is proposed on the third floor. A new stairway is proposed on the rear wall of the building which replaces an existing fire escape. The proposed stairway is covered with a fabric canopy and will provide a landing at a doorway at each of the 3 floors. Professional offices require 1 space per 250 square feet of gross floor area. The off-street parking requirement for the proposed office use, which measures 2,529 square feet in floor area, is 10.1 or 11 parking spaces; 8 on-site parking spaces are proposed.

The Board questioned the witnesses on the parking area, the proposed exterior stairway, and the site plan that has been presented. No questions and comments were offered from the public. The Board discussed the application, during which the applicant offered to bifurcate the application by having the Board vote of the requested conditional use variance only, and leave the site plan approval and other variances to consider at a future date with a revised plan to address certain concerns. On motion, by Mr. Whipple, seconded by Ms. English, the conditional use variance was approved, subject to site plan review, and requirements that the proposed stairway to access the third floor dwelling unit be enclosed, and that a minimum of 7 on-site parking spaces be provided. Chair Harrison and Mr. Fleischer voted against the motion. The application was carried to the May 20, 2009 meeting, no further notice was required. The Board was granted an extension of time.

Chair Harrison called the application of **Don & Sue Clark, 175 Cooper Avenue**. Don Clark was sworn and described the application for variances to remove the roof of the existing detached garage and construct a new roof on the garage at a taller height. He stated that the proposed height and exterior improvements would provide a design that complements the architectural design of his dwelling. The added height would provide for typical residential storage that he needs in his yard. He also stated that the added height of the garage would help to block the view into his property from a larger multiple-unit dwelling that was constructed on a property in a different zone within the last few years bordering his rear property line. The Board questioned Mr. Clark. No questions were offered from the public.

Peter Steck, Professional Planner, was sworn and described the application. The property is an interior lot located in the R-1 One-Family Zone, measuring 70 feet in frontage width and 15,770 square feet in area, and contains a single-family dwelling and a detached garage in the northeasterly corner of the rear yard. The existing detached garage has a conforming height of 15 feet. The applicants propose to remove the roof of the existing detached garage and construct a new roof on the garage at a taller height. The ridgeline would also be reoriented from a front gable to a side gable. A height of 19 feet is proposed to the ridgeline of the new roof. An ornamental cupola is also proposed on the roof, and two dormers are proposed on the front of the roof. A pull-down stairway is proposed to access the second level of the garage and the façade of the garage would also be renovated. A variance is requested in that a maximum height of 15 feet is permitted for accessory structures and a greater height of 19 feet is proposed. The

existing garage has a nonconforming side yard setback of 0.95 feet and 1.5 feet from the easterly side property line, as measured to the easterly corners of the garage. As a result of the proposed reorientation of the ridgeline from a front gable to a side gable, the side walls of the garage are made taller under the new roof, which along with the proposed added height, increases the height of the accessory building at the nonconforming easterly side yard setback. A variance is requested in that a minimum side yard setback of 6 feet is required from the easterly side property line and a lesser side yard setback 0.95 feet and 1.5 feet is proposed for the new construction. He stated that the benefits of the application outweigh the detriments. The plan provides for improved aesthetics, which is identified in the Master Plan as a key issue in Montclair. There are cultural resource documents as well that identify historic architecture of the dwelling which the proposed garage complements. The added height provides a functional buffer between subject property and the larger dwelling on the adjoining lots to the north that contain multiple dwelling units.

Marked into evidence was:

A-1 Planning Exhibit, prepared by Peter Steck, PP

The Board questioned Mr. Steck. No questions were offered from the public. John Guadagnoli, Architect, was sworn and stated his qualifications. He described the existing garage, the additional height proposed, and the alterations to the exterior. The Board questioned Mr. Guadagnoli. No questions were offered from the public. Chair Harrison called for public comment. Armen Khachaturian, Union Congregational Church, was sworn and stated his objection to the application. He also stated that the applicants' driveway currently encroaches onto the adjoining property owned by the Church. Mr. Clark stated that there is no encroachment to his knowledge.

The Board discussed the application. The Board determined that the requested variances could not be granted. Based on testimony provided, the benefits of the application are limited strictly to the property owners and no public benefit accrues. Any aesthetic benefit could be equally accomplished with a more conforming structure. The applicant failed to prove a hardship or that any of the purposes of the Municipal Land Use Law would be advanced. The application failed to meet the positive criteria necessary for granting the variances. Approval of this application would substantially impair the intent and purpose of the Zoning Ordinance which seeks to limit the size and placement of accessory structures in order to provide adequate light, air and open space. Approval of this application would result in a massive structure virtually on the property line which would cause substantial visual detriment to the adjacent property owner to the east. On motion by Mr. Fleischer, seconded by Mr. Whipple the application was denied.

The Board took a short recess

Chair Harrison was recused and Vice Chair Fleischer called the application of **Omnipoint Communications, Inc., 153 Park Street**. James Pryor, Esq., appeared as attorney for the applicant, and Terry Thornton, Esq., resident of 160 Park Street, and objector to the application was also present. The Board was in receipt of the legal briefs

prepared by both parties. Mr. Sullivan explained that Mr. Pryor and Ms. Thornton would each get an opportunity to address the Board regarding the topic of a potential conflict regarding the subject application and the Township's utilization of Mr. Comi's services as a consultant. Mr. Pryor provided information and requested that Mr. Comi's testimony be disqualified due to a conflict of interest. Ms. Thornton followed with information as to why there is no conflict of interest and no need to disqualify Mr. Comi's testimony. The Board followed with a discussion on the topic. On motion by Mr. Whipple, seconded by Mr. Susswein, the Board denied Mr. Pryor's request to disqualify Mr. Comi's testimony from the record. The application would be resumed at a special meeting on June 10, 2009. The Board was granted an extension of time on the application. No further notice would be given.

Chair Harrison called the application of **The Salvation Army, 13 Trinity Place**. Grant Gille, Esq. appeared as attorney and described the use variance application. Major Alastair Bate, Administrator and Pastor of the Salvation Army in Montclair, was sworn and described the application. The proposal is to utilize a first floor space of their building as a fair trade retail coffee shop. An awning with business identification signage and window signage is also proposed for the coffee shop. The proposed coffee shop is located on the main level of the building and has its own doorway entrance and windows that are located to the right of the main building entrance. The coffee shop includes a serving area with counters and 30 seats for patrons. The originally approved plan for the multi-purpose room depicted a sink and a smaller countertop against the rear wall of the space. The proposed coffee shop would occupy 2.8% of the total floor area of their new building.

Major Bate described the concept of the fair trade establishment and stated the principles of this type of business are related to social justice and fair business practices which is in keeping with the Salvation Army's long standing involvement in outreach programs and providing assistance to the needy. He stated that Montclair was recently recognized as New Jersey's first fair trade community and the proposed fair trade coffee shop would help to provide and promote community awareness on the issues of fair trade practices. The hours of the proposed coffee shop would be from 7 a.m. to 3 p.m. on weekdays only. There would be one knowledgeable full-time person employed to operate the proposed coffee shop, plus additional help from volunteers. The food that would be sold from the coffee shop would be prepared at their facility as part of a food service and food preparation education training program that helps unemployed individuals learn marketable skills in that industry. When the coffee shop closes at 3 p.m., the outside door would be locked, and the room would be utilized for the other programs and meetings that normally would occur at the facility. During the off-hours, the coffee shop area would be more internally focused and would be comparable to a similar use in a hospital. No additional lighting is proposed to serve the proposed coffee shop and there would be no changes to the approved trash and recycling areas or the trash pick-up. The Board questioned Major Bate.

Marked into evidence was:

A-1 Article printed from Montclair Times website, referencing that the Township adopted a resolution on October 21, 2008 recognizing Montclair as New Jersey's first fair trade community

Chair Harrison called for questions from the public. Dora Morozov, 16 Trinity Place, asked about property taxes, the impact on street parking, if there would be outside seating, and if there would be a liquor license. Major Bate stated that there would be no outdoor seating or alcoholic beverages. Nasir Allah Arsheed, 74-76 Church Street, asked if any other Salvation Army facility has had this type of coffee shop. Major Bate stated that there are some Salvation Army properties worldwide with the existing fair trade coffee shops.

Roger DeNiscia, Professional Planner, was sworn and described the application. The applicant is proposing to use an existing multi-purpose room as a limited service coffee shop or café, which requires a use variance. The subject property is a corner lot, with frontage on Trinity Place and on a "dead-end" section of Myrtle Avenue, and measures 43,703 square feet in area. The property is split-zoned, with the majority of the property located in the R-4 Three-Story Apartment Zone, and the northerly side of the property located in the N-C Neighborhood Commercial Zone. The entire building is located in the R-4 Zone, which is a strictly residential zone; the surface parking lot is located in the N-C Zone, which is a commercial, residential, and mixed-use zone. The space proposed for the proposed coffee shop measures 29'-8" by 26'-2" and was as labeled on the originally approved plan as a multi-purpose room. The proposed coffee shop would occupy 2.8% of the total floor area of their new building. The subject property contains a new two-story building to be used for religious services and social service programs. The property contains underground and surface parking accommodating a total of 54 parking spaces. He described the land uses and zoning in the area of the subject property.

Marked into evidence was:

A-2 Cover Sheet prepared by Bertin Engineering Associates, dated March 3, 2009, with color added to an area map to depict land uses.

Mr. DeNiscia stated that existing use of the property is an inherently beneficial use and that the proposed fair trade coffee shop use on the site would promote elements of the applicant's involvement in community outreach and community service programs, which the applicant is particularly noted for. The proposed use would also provide a practical outlet for the dispensing of food products associated with the applicant's food service and food preparation training program and would also promote and provide awareness of fair trade initiatives. The Salvation Army has other well known outlets that operate in a similar way, such as stores that sell clothes or household items and some locations worldwide that include this type of coffee shop at the same location where religious services and social service program are conducted. The proposed use would be an integral part of the overall institutional use, and the impacts are minimal due to the self-imposed hourly restrictions and the scale of the use in context with the overall use. The proposed use helps defray costs of other the social programs and thus represents an inherently beneficial use as part of the overall operation. The impact of

the proposed use is also minimized by the varied land use pattern of the area and because the subject property is located at the fringe of the nearby commercial zones. Part of the site itself is located in the Neighborhood Commercial Zone. The application meets the criteria to grant the variances requested. The proposed use would be an integral element of existing inherently beneficial use, the site and the area are particularly suited for the proposed use, and the application advances purposes of planning.

The Board questioned Mr. DeNiscia extensively. He stated that the Board could further limit the proposal with specific conditions if it was approved. The Board had numerous questions about the limitations that could potentially be imposed on the application.

Marked into evidence was:

A-3 Menu for the proposed coffee shop

Chair Harrison called for questions and comments from the public. Dora Morozov, 16 Trinity Place, was sworn and stated her objection. Nasir Allah Arsheed, 74-76 Church Street, was sworn and stated his objection. The Board had a lengthy discussion. A motion to approve the application, subject to a number of conditions that were being discussed, was made by Mr. Whipple, and was seconded by Ms. Cockey, but it did not pass as it only received 4 affirmative votes, and failed to receive the requisite 5 affirmative votes, and the application was denied.

On motion Mr. Susswein, seconded by Mr. Whipple a request by Mr. Sullivan for authorization to represent the Board regarding the denied application of MetroPCS, 641 Bloomfield Avenue was approved. On motion by Mr. Susswein, seconded by Mr. Whipple the meeting was adjourned.