

**MINUTES OF THE BOARD OF ADJUSTMENT
JANUARY 15, 2003**

PRESENT: Chair Harrison, Mr. Chapman, Ms. Costello, Vice Chair Fleischer, Mr. Gallardo, Mr. Haizel, Ms. Rock-Bailey; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Susswein

Secretary Sammet 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 Mr. Gallardo, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining.

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, Mr. Fleischer was re-elected as Vice Chair, Mr. Fleischer abstaining.

On motion by Chair Harrison, seconded by Mr. Chapman, Mr. Sammet was re-elected as Secretary.

On motion by Chair Harrison, seconded by Mr. Chapman, Mr. Charreun was elected as Assistant Secretary.

Appointment of Professional Staff

On motion by Mr. Chapman, seconded by Mr. Haizel, Mr. Sullivan was re-appointed as Board Attorney at the indicated rate for the 2003 year.

On motion by Mr. Chapman, seconded by Mr. Fleischer, Mr. Watkinson was re-appointed as Board Engineer at the indicated rate for the 2003 year.

Secretary Sammet announced that at the request of the applicant, the site plan and variance application of **Montclair Radiological Associates, P.A., 114-116 Park Street** has been postponed until the February 19, 2003 regular meeting of the Board of Adjustment, that the Board has been granted an extension of time for which to act on the application, and that no further notice would be given.

Secretary Sammet announced that at the request of the applicant, the minor subdivision and variance application of **BJM Construction, 99 Willowdale Avenue** has been postponed until the February 19, 2003 regular meeting of the Board of Adjustment,

that the Board has been granted an extension of time for which to act on the application, and that no further notice would be given.

Secretary Sammet announced that at the request of the applicant, the variance application of **Calvary Chapel of Montclair, 7 North Willow Street** has been postponed until the February 19, 2003 regular meeting of the Board of Adjustment, that the Board has been granted an extension of time for which to act on the application, and that no further notice would be given.

On motion by Mr. Fleischer, seconded by Mr. Chapman, the **Minutes of the November 13, 2002** special meeting were adopted, Ms. Rock-Bailey abstaining.

On motion by Mr. Chapman, seconded by Mr. Gallardo, the **Minutes of the December 11, 2002** regular meeting were adopted as modified, Mr. Haizel abstaining.

On motion by Mr. Gallardo, seconded by Mr. Chapman, the following Resolution memorializing the approval of the variance application of **Homes of Montclair Ecumenical Corp., 16 Miller Street** was adopted:

WHEREAS, Homes of Montclair Ecumenical Corp., as owner, did make application to the Board of Adjustment of the Township of Montclair to subdivide the subject property into two lots designated as Lot 5 and Lot 7 in Block 3112 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant sought relief as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d* to permit Lot 7 to be utilized as a parking area which is not a permitted principal use pursuant to Montclair Code Section 347-47;

2. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit lot frontage of 51.84 feet and 26 feet on Lots 5 and 7 respectively, where a minimum of 60 feet is required pursuant to Montclair Code Section 347-50A;

3. A variance pursuant to *N.J.S.A. 40:55D-70c* to allow the two parking spaces proposed on Lot 5 to be located less than the four foot setback from the subdivision line as required by Montclair Code Section 347-104; and

WHEREAS, the applicant submitted a minor subdivision plan prepared by Richard J. Hingos, Inc. dated September 18, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on November 20, 2002, at which time it was established that notice of this application had been properly published and that property owners within 200 feet of the subject property had been served with notice; and

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

1. The subject property consists of approximately 10,183 square feet and contains a two-story one family dwelling as well as a gravel parking area for five vehicles. The subdivision contemplates Lot 5 to contain the existing dwelling with frontage of 51.84 feet. Lot 7 will contain the parking area for five vehicles with frontage of 26 feet.

2. The applicant is a community based nonprofit housing corporation which seeks to provide affordable and safe housing for low and moderate income families in Montclair. The applicant is seeking to lease the parking spaces on Lot 7 to address the overwhelming demand for off-street parking in the neighborhood. The revenues created from the leasing of the parking spaces will assist the applicant in affordable housing programs in Montclair.

3. The Board determined that the applicant proved "special reasons" as the plan constitutes appropriate municipal action which advances the general welfare and provides needed off-street parking for the neighborhood consistent with the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2a,g*.

4. The proposed lot widths are not inconsistent with existing lot widths in the immediate neighborhood.

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

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship 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 *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 Homes of Montclair Ecumenical

Corp., for subdivision and variance approval is hereby approved subject to the following conditions:

1. The proposed driveway at the northerly side of the existing dwelling shall not be constructed and the existing driveway shall be utilized in common by the five vehicle parking area and the property containing the existing dwelling.

2. The two off-street parking spaces required by the existing single-family dwelling on Lot 5 shall be constructed with conforming dimensions and may be located less than the required four feet from the subdivision line if required.

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

On motion by Mr. Chapman, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the variance application of **Efthymios and Athanasia Daniskas, 49 Erwin Park Road** was adopted, Mr. Haizel abstaining:

WHEREAS, Efthymios and Athanasia Daniskas, owners of property at **49 Erwin Park Road**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of an addition on property designated as Lot 1 in Block 2405 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted floor plans and elevations, prepared by F. A. Berwind, Architect, revised to November 20, 2002, and a site plan on the survey of the subject property, no preparer indicated, revised to November 20, 2002, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 11, 2002 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 a corner lot at the intersection of Erwin Park Road and Holland Terrace and contains a 2½-story single-family dwelling.

2. The existing dwelling on the property has a non-conforming front yard setback of approximately 16.34 feet in the Holland Terrace front yard.

3. The applicants' proposal is to construct an addition at the rear of the dwelling, which consists of a one-story portion and a two-story portion.

4. The proposed addition is aligned with the existing front wall of the dwelling along Holland Terrace and no further encroachment into the Holland Terrace front yard is proposed. The addition meets all other height and setback requirements.

5. Based upon the board's particular knowledge of local conditions, the proposed addition is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

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 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 NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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 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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Efthymios and Athanasia Daniskas is hereby approved.

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.

On motion by Mr. Gallardo, seconded by Mr. Chapman, the following Resolution memorializing the approval of the variance application of **Mr. and Mrs. Umberto Vechiarelli, 5 Garfield Place** was adopted as modified, Mr. Haizel abstaining:

WHEREAS, **Mr. and Mrs. Umberto Vechiarelli**, owners of property at **5 Garfield Place**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a westerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of an addition on property designated as Lot 86 in Block 803 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by William Di Marzo & Son, Assoc., Inc., dated November 17, 1995, a site plan on the property

survey, floor plans, and elevations, no preparer or date indicated, that depicts the new construction, and supplemental architectural drawings, prepared by Way & Associates, Architects, dated December 10, 2002; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 11, 2002 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The subject property measures approximately 5,050 square feet and contains a 2½-story single-family dwelling and a detached garage in the rear yard.
2. The existing dwelling on the property has a non-conforming westerly side yard setback of approximately 3.88 feet measured from the northwesterly corner of the dwelling.
3. The applicants' proposal is to construct a 2-story addition at the rear of the dwelling, which conforms to the height and rear yard setback requirements but does not meet the side yard setback requirement of 6 feet in the westerly side yard.
4. The proposed addition will be aligned with the existing westerly wall of the dwelling.
5. Based upon the board's particular knowledge of local conditions, the proposed addition is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

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 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 NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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 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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within variance application of Mr. and Mrs. Umberto Vechiarelli is hereby approved.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicants, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

On motion by Mr. Gallardo, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Martin Healy and Jane Wallace, 213 Inwood Avenue** was adopted, Mr. Haizel abstaining:

WHEREAS, Martin Healy and Jane Wallace, owners of property at **213 Inwood Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40: 55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(1)** in connection with the construction of a roofed entry porch on property designated as Lot 7 in Block 1807 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Arthur Mead P.E., L.S., dated April 25, 1987 and porch plans and elevations, no preparer or date indicated, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 11, 2002 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 measuring approximately 11,250 square feet and contains a 2½-story single-family dwelling and a detached garage in the rear yard.
2. The existing dwelling on the property has a nonconforming front yard setback of approximately 36 feet measured to the existing roofed front porch due to the greater average front yard setback of approximately 39.64 feet of the adjacent properties on each side of the subject property.
3. The applicants' proposal is to construct an extension to the existing roofed entry porch that would extend an additional 9 feet towards the easterly side property line, which would be aligned with the existing roofed front porch and have a front yard setback of approximately 36 feet.

4. The proposed extension to the roofed front porch would not encroach further than the existing roofed porch and meets all other height and setback requirements.

5. The applicants demonstrated that a porch of similar dimensions previously existed on their property.

6. Based upon the board's particular knowledge of local conditions, the proposed extension to the roofed front porch is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

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 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 NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicants 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 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 NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variance application of Martin Healy and Jane Wallace is hereby approved, subject to the following condition:

1. The extension to the existing roofed porch shall not be constructed closer to Inwood Avenue than the existing porch.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicants, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

On motion by Mr. Fleischer, seconded by Mr. Chapman, the following Resolution memorializing the approval of the site plan and variance application of **Michael and Tina Gulich, 4 Rockledge Road** was adopted, Mr. Haizel abstaining:

WHEREAS, Michael and Tina Gulich, as owners, did make application to the Board of Adjustment of the Township of Montclair to convert a two-family dwelling into a three-family dwelling and install an exterior fire escape onto the dwelling on property designated as Lot 5 in Block 402 on the Township Tax Map and located in the R-4 Three Story Apartment Zone; and

WHEREAS, the applicants sought site plan approval and variances as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(3)* to permit a lot size of 7,181 square feet where a minimum of 15, 000 square feet is required pursuant to Montclair Code Section 347-67B(4); and

2. A variance pursuant to *N.J.S.A. 40:55D-70d(3)* to permit an exterior fire escape which is not completely enclosed within the building walls contrary to Montclair Code Section 347-67B(5); and

3. A variance pursuant to *N.J.S.A. 40:55D-70d(3)* for failure to provide access to all dwelling units through a common entrance as required by Montclair Code Section 347-67B(7); and

4. A variance pursuant to *N.J.S.A. 40:55D-70c* to permit the fire escape to be set back less than one foot from the easterly side property line contrary to Montclair Code Section 347-21D; and

WHEREAS, the applicants submitted a site plan and floor plans prepared by Michael Gulich, Architect dated December 9, 2002, a fire escape plan and elevations prepared by Roy Dedeic & Associates, Inc. dated July 8, 2002 as well as a property survey prepared by A. Byrd Company dated April 14, 1999; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 11, 2002 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 currently utilized as a two-family with a boarder occupying the third floor. The application contemplates interior renovations, window modifications and installation of an exterior fire escape in connection with the conversion to a three-family use.

2. Although the existing lot is undersized, the proposed site is particularly suited for the conversion since it can accommodate the requisite parking and with the exception of the fire escape, no significant exterior changes are required.

3. The Ordinance requires a fire escape leading to the second or any higher floor to be completely enclosed within the building walls. Although the proposed fire escape does not comply, its location is the most appropriate based upon existing improvements, will be barely visible from the street, and subject to condition number 1 below, will have a minimal adverse visual impact on the adjacent properties.

4. The Board determined that the applicants proved "special reasons" as the application provides sufficient space in an appropriate location for the housing units and promotes the general welfare consistent with the purposes of the Municipal Land Use Law contained in *N.J.S.A. 40:55D-2a,g*.

6. The Ordinance requires all dwelling units within a converted building be provided with a common entrance situated in the wall of the building facing the street on which the lot has frontage. Although the access to the first floor unit is nonconforming, the side porch access provided is not readily apparent and does not result in an adverse visual impact.

7. Based upon the Board's particular knowledge of local conditions, the proposed conversion is not inconsistent with the character of the neighborhood and will not adversely impact the public good and is not inconsistent with the intent and purpose of the master plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan and zoning ordinance; and

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship 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 *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 Michael and Tina Gulich, for site plan approval and variances is hereby approved subject to the following condition:

1. The exterior fire escape shall be enclosed with a rust free, perforated metal screen not more than 50% solid on the northerly face, the color of which shall be coordinated with the color of the building.

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

Secretary Sammet announced the withdrawal of the site plan and variance application of **Michael Walsh, 829 Bloomfield Avenue**, at the request of the applicant.

Chair Harrison called the site plan and variance application of **Emanuel's Hope Baptist Church, 18-20 Washington Street and 21 Fulton Street**. Calvin Trevenen, Esq., appeared as attorney for the applicant and described the application. He stated that the subject properties are located in the R-2 Zone and that the existing use is a permitted conditional use within the R-2 Zone. He described the conditions set forth in the zoning ordinance for church uses in the R-2 Zone and stated that the applicant does not meet all of the conditions. He further stated that the intent of the applicant is to merge the subject properties in order to meet the property size requirements for churches in the R-2 zone. He continued by describing the 1994 case of Coventry Square vs. Westwood and stated that because the existing Church is a permitted conditional use, the focus of the application should be on the site and not the use. Mr. Trevenen stated that the applicant conducted a meeting with the neighbors within 200 feet of the subject properties and that it was determined that the traffic flow through the proposed parking area should be reversed so that the entrance is on Fulton Street and the exit on Washington Street.

Mr. Trevenen called Reverend Sterling Brooks, who was sworn. Rev. Brooks stated that the congregation has been in Montclair since 1984 and that he has been a pastor in the Church since that time. He stated that the Church purchased the property at 21 Fulton Street in November of 2000.

Marked into evidence were:

- A-1 Certificate of Incorporation of the Emanuel's Hope Baptist Church, dated July 13, 1981
- A-2 Certificate of Amendment of Emanuel's Hope Unified Freewill Baptist Church, Inc., dated January 31, 1985
- A-3 Deed of ownership for property located at 21 Fulton Street, dated November 28, 2000

Rev. Brooks stated that 21 Fulton Street was purchased to assist the Church in expansion plans. He stated that the current congregation has approximately 80 to 100 adult members and that Sunday services accommodate approximately 140 to 150 people. He also stated that 6 Sunday school classes are conducted at the Church before Sunday service and that a Sunday night service is conducted from 6 p.m. to 9 p.m.. He stated that on Mondays and Tuesdays there usually no activities conducted on the site and that on Wednesday, Thursday, and Friday evenings, activities and functions

are conducted until approximately 9 p.m.. He continued by describing the activities and functions conducted by and within the Church and stated that all of these are ancillary uses customarily associated with a church.

Rev. Brooks stated that the Sunday service produces approximately 20 to 25 parishioner vehicles that currently park on the street. He also stated that the Church utilizes two 15-passenger vans and that the vans park in the existing driveway adjacent to the Church building. He stated that the existing congregation contains approximately 2 disabled individuals and that the intent of the proposed parking area is to accommodate the existing congregation and that no expansion in attendance in Church services or programs is planned. Rev. Brooks stated the proposed improvements to the subject properties would improve the safety and security of the site, which would also benefit the community.

Rev. Brooks stated that the dwelling at 21 Fulton Street is currently vacant that it would not be used as a parsonage for Church pastors or as a rental unit. He stated that the intended use of the dwelling would be to provide temporary housing for Church missionaries from abroad when they visit the United States, as well as to provide administrative office space for the missionary outreach program of the Church.

The Board questioned Reverend Brooks.

Rev. Brooks stated that although the proposed missionary quarters would be unoccupied at times, the missionary outreach office proposed for 21 Fulton Street would be visited by Church staff daily. He further stated that no parking spaces on the property would be rented and that any on-site loading or unloading related to the Church and its programs is accomplished by using vans instead of trucks.

Chair Harrison called for questions from the public. None were offered.

Mr. Trevenen called Paul Sionas, Architect, who was sworn and described the existing conditions on the site and the proposed improvements.

Marked into evidence were

- A-4 Sheet SP-1 on a board, Site Plan with color, prepared by Sionas Architecture, dated March 5, 2002
- A-5 Sheet A-1 on a board, Floor Plans, prepared by Sionas Architecture, dated March 5, 2002
- A-6 Sheet A-2 on a board, Elevations with color, prepared by Sionas Architecture, dated March 5, 2002
- A-7 Sheet A-3 on a board, Cross Sections, prepared by Sionas Architecture, dated March 5, 2002

Mr. Sionas described the exterior modifications to the Church building and stated that the existing siding on the Church building would be removed and that a new stucco exterior would be applied. He stated that the exterior and interior of 21 Fulton Street would remain in its existing condition. He further stated that the proposed addition to the Church building meets all of the height and setback requirements.

Mr. Sionas stated that the main entrance at the front of the Church would be relocated to the center of the front wall. He stated that glass panels and a glass cupola would be added to the structure to allow additional natural light into the building. He described the proposed barrier-free ramp and stated that a barrier-free lift is provided inside the Church building. Mr. Sionas described the proposed floor plans and stated that the Church would contain fixed bench seating. He also stated that the basement would be expanded and finished to contain 2 new barrier-free restrooms, an expanded kitchen, and a new fellowship hall.

Mr. Sionas described the proposed parking area and stated that it would accommodate 18 vehicles. He stated that the site plan has been revised to indicate a new one-way traffic flow, in which the entrance to the parking area is on Fulton Street and the exit is on Washington Street. He stated that the revised traffic flow provides improved queuing of vehicles from the street to the parking area. He also stated that the revised traffic flow is the better option because Fulton Street is restricted to one way traffic on Sundays from 10 a.m. to 12 p.m. and vehicle arrivals to the site are staggered, while vehicle departures from the site would be more uniform.

Marked into evidence was:

A-8 Sheet SP-2 on a board, Site Details, prepared by Sionas Architecture, dated March 5, 2002

Mr. Sionas described the proposed fencing, landscaping, and lighting. He stated that the 3-foot 4½-inch tall bollard light fixtures proposed for the site are screened by stockade fencing and that the wall-mounted light fixtures over the barrier-free ramp and front entrance face downward and would not shine onto adjacent properties. He also stated that the trash enclosure and central air conditioning units would be located on the concrete island located at the southwesterly corner of the Church building addition.

Mr. Sionas stated that 18 parking spaces, including 1 barrier-free stall, are proposed for the site. Mr. Sionas stated that 232.5 linear feet of bench seating is proposed inside the Church. He stated that 14.5 parking spaces are required as per the zoning ordinance requirements of 1 seat for every 16 linear feet of bench seating and that 19 parking spaces are required as per the conditional use requirements of 1 space for every 8 seats. He stated that the compact spaces on the site would be marked or signed as required. He also stated that the proposed fencing and landscaping adequately screen the parking area and do not affect the sight distance of vehicle drivers.

The Board questioned Mr. Sionas.

Mr. Sionas stated that 21 Fulton Street would remain residential in appearance. He also stated that directional arrows would be painted on the pavement to guide vehicle flow through the parking area.

Chair Harrison called for questions from the public.

Rebecca Manning, 25 Fulton Street, was sworn and stated that she was concerned about the proposed fencing and parking area. She stated that the fencing proposed along the Fulton Street frontage should be relocated from the front property line to align with the dwelling at 21 Fulton Street.

The Board questioned Mr. Sionas.

Mr. Sionas stated that the fencing along the Fulton Street frontage could be relocated to align with the front of the dwelling at 21 Fulton Street.

Chair Harrison called for questions from the public. None were offered.

Mr. Trevenen called Michael Petry, Professional Planner, who was sworn.

Marked into evidence was:

A-9 Photo-board of the site and area, prepared by Michael Petry, P.P. of RCC Design, Inc., undated

Mr. Petry stated that he had inspected the site and the plans submitted. He described the conditional use requirements for churches in the R-2 zone. He stated that the property has contained a church since the 1950s and that there is no existing on-site parking. He further stated that the existing on-street parking produced by Church visitors represents a significant detriment to the area and that the proposed off-street parking eliminates the negative impacts associated with on-street parking. Mr. Petry stated that by joining the properties in question, the applicant would meet the 10,000 square foot property size requirement for the expansion of a church use in the R-2 zone. He also stated that the pavement width on Fulton Street does not meet the conditional use requirement of 30 feet, although the pavement width requirement is met on Washington Street and the ordinance specifically requires "a" street, or a single street with a pavement width of 30 feet. He stated that the proposed 18-vehicle parking area meets the off-street parking requirements of Montclair Code Section 347-101, which requires 1 parking space for every 16 linear feet of bench seating in the Church.

Mr. Petry stated that the proposal does not represent a significant detriment to the public good, the Master Plan, and zoning ordinance. He further stated that the application could be granted because it is an inherently beneficial use and that the

application meets the negative criteria and brings the property and use closer to the requirements of the ordinance.

Mr. Sullivan questioned Mr. Petry.

Mr. Petry stated that the application does not meet the parking requirements as set forth in the conditional use requirements for churches in the R-2 zone, which requires 1 parking space for every 8 seats in the Church.

The Board questioned Mr. Petry.

Chair Harrison called for questions from the public.

Rebecca Manning, 25 Fulton Street, asked how the proposed off-street parking would reduce traffic flow on the street.

Chair Harrison called for public comment.

Rebecca Manning, 25 Fulton Street, who was still under oath, stated that she is in favor of improving the subject properties. She also stated that the street is currently overburdened with parking and traffic.

Dorothy Brown, 46 Elmwood Avenue, was sworn and asked what the recommended decibel levels are in residential neighborhoods.

Wesley Coote, 42 Maple Avenue, was sworn and stated his support for the application.

Judith Johnson, address not given, was sworn and stated her support for the application.

Marion Brooks, 46 Birch Street, Jersey City, was sworn and stated her support for the application.

Georgina Brooks, 16 Stiles Street, Elizabeth, was sworn and stated her support for the application.

Chair Harrison stated that no other congregation members should testify since Mr. Trevenen is their counsel and represents the entire congregation.

Chair Harrison called for public comment from any individual whom is not a congregation member. None was offered.

Mr. Trevenen gave his closing remarks.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, it was resolved to approve the site plan and variance application, subject to the following conditions:

1. The applicant shall record a perimeter deed combining Lots 14 and 8 in Block 3110.
2. The plans shall be revised to reflect the entrance to the one-way drive shall be on Fulton Street with the exit on Washington Street and the signs change accordingly.
3. The applicant shall obtain Soil Conservation District approval.
4. The applicant shall satisfy conditions 1 through 5 contained in the Board of Adjustment Engineer's review dated September 4, 2002.
5. The height of the proposed fence shall conform to the ordinance. The gate on the Washington Street side shall be no closer to the street than the rear of the existing church building and the gate on the Fulton Street side shall be no closer to the street than the front wall of the building.
6. The use of the former single-family residence at 21 Fulton Street shall be limited to mission and administrative purposes of the church and shall not be leased.

The Board took a short recess.

Chair Harrison called the variance application of **Steven D. Plofker and Bobbi Brown Plofker, 16 Erwin Park Road**. David Owen, Esq., appeared as attorney for the applicants.

Mr. Chapman stepped down for this application.

Mr. Owen described the application and stated that the subject property is a unique property containing 3 front yards, no rear yard, and that the only side yard a narrow strip of land adjacent to the northerly side of the dwelling. He also stated that the subject property consists of 2 tax lots and that the applicant would merge the properties as part of the proposal in order to keep the accessory structures and proposed swimming pool on the same lot.

Mr. Owen called Peter Steck, Professional Planner, who was sworn.

Marked into evidence was:

- A-1 Rendering of the site plan, titled Plate I, prepared by Peter G. Steck, P.P., dated January 14, 2003.

A-2 Reduced site plan with the front yard areas emphasized, titled Plate II, prepared by Peter G. Steck, P.P., dated January 14, 2003.

Mr. Steck stated that the subject property is very large and contains 3 front yards and that the placement of the dwelling very near to the northeasterly corner of the property leaves a small side yard at the northerly side of the dwelling. He stated that the proposed pool cabana is an addition to the existing carriage house on the property and that the proposed swimming pool is located at a low elevation area on the site, which provides the most privacy and screening from adjoining properties.

Mr. Steck stated that the property is located in a residential area and that the proposed pool is a common accessory use in the area. He stated that although the property has 3 street frontages, the easterly frontage is the main frontage orientation. He described the variances requested and stated that the intent of the ordinances that restrict the placement of accessory structures and swimming pools in front yards is that they not be placed in the main frontage orientation of a property with more than one frontage.

Marked into evidence was:

A-3 Photograph taken by Peter G. Steck, P.P., dated January 14, 2003

A-4 Photograph taken by Peter G. Steck, P.P., dated January 14, 2003

A-5 Photograph taken by Peter G. Steck, P.P., dated January 14, 2003

A-6 Photograph taken by Peter G. Steck, P.P., dated January 14, 2003

A-7 Photograph taken by Peter G. Steck, P.P., dated January 14, 2003

Mr. Steck stated that the size and extensive frontage of the property and the placement of the existing dwelling renders the most of the property a front yard, and that strict application of the ordinances from which variances are requested places excessive and undue hardship on the applicant. He also stated that the requested variances could be granted without a substantial detriment to the Master Plan, Zone Plan or public good because the swimming pool would be set back a substantial distance from all property lines, is located at a low elevation area on the site, and is adequately screened from view in every direction by existing landscaping, walls, and the existing structures on the property.

The Board questioned Mr. Steck.

Chair Harrison called for questions and comments from the public.

Gary Trider, 17 Erwin Park Road, was sworn and stated that the proposed swimming pool and cabana would not be visible from his property, however, that the proposed improvements would exacerbate flooding problems in the immediate vicinity.

Mr. Steck stated that the applicant would comply with all of the comments and recommendations of the Board Engineer's letter dated November 11, 2002. He also stated that, based on the Board Engineer's letter, stormwater drainage is not a significant concern.

Marked into evidence was:

A-8 Board Engineer's letter, dated November 11, 2002

Chair Harrison called for questions from the public.

Jim Dwyer, 10 Erwin Park Road, was sworn and stated that he is concerned about additional flooding, noise, visual impact, and traffic flow produced by the applicants' proposal.

The Board questioned Mr. Dwyer.

The Board questioned the applicants.

Steven Plofker, applicant, was sworn. Mr. Plofker described the alternative locations for the swimming pool and compared those locations to the proposed location. He stated that the proposed location is the most suitable and provides the highest amount of privacy for his family and would be less visible to the neighboring properties. He also stated that he would agree to a noise restriction if such a restriction were necessary.

Chair Harrison called for questions from the public.

Madeline Houston, 14 Erwin Park Road, was sworn and stated that the best location for the proposed swimming pool would be directly behind the house. She also stated concern over the potential for the proposed improvements to exacerbate local flooding.

Vern Houston, 14 Erwin Park Road, was sworn and stated that he is a Professor of Engineering at a local University. He described the existing drainage problems in the immediate area and stated that the applicants' proposal consists of a large increase in impervious coverage, which would only worsen the flooding problem. He also stated that the best location for the proposed swimming pool would be directly behind the house. He stated that he has calculated the potential stormwater runoff that the applicants' property would produce if constructed as proposed.

Mr. Plofker, who was still under oath, stated that he would agree to provide additional drainage inlets if required.

The Board questioned Mr. Houston.

Mr. Houston stated that he is not a licensed Professional Engineer.

Jennifer Dwyer, 10 Erwin Park Road, was sworn and stated concern over the visual and noise impact that the swimming pool would produce. She stated that the swimming pool should be located directly behind the dwelling and as far from the street as possible.

Mr. Sullivan stated that the calculations of Mr. Houston could not be accepted as expert testimony because he is not a Professional Engineer licensed in the State of New Jersey.

Mr. Owen called Paul Sionas, Architect and Landscape Architect, who was sworn. Mr. Sionas described the proposed locations for the swimming pool and cabana and described the alternative locations. He described the proposed cabana and stated that it would mostly consist of a patio area under a roof supported by columns. He described the existing landscaping and stated that the proposed pool and cabana are adequately screened. He also stated that the proposed location of the swimming pool and cabana are at a lower elevation area of the site, which would provide more privacy for the applicants and less visibility of the pool from the neighbors' properties and the street.

The Board questioned Mr. Sionas.

Chair Harrison called for public comment.

Madeline Houston, who was still under oath, stated that the proposed cabana is too close to the creek that runs through the property and that the proposal consists of too great an increase in impervious coverage.

Mr. Owen gave his closing remarks.

The Board discussed the application.

On motion by Ms. Costello, seconded by Ms. Rock-Bailey, it was resolved to approve the application, Chair Harrison and Vice Chair Fleischer voting in the negative, subject to the following conditions:

1. The applicant shall record a perimeter deed merging Lots 10 and 11 in Block 2404.

2. The use of the cabana shall be limited as such and shall not be incorporated into the carriage house.

3. The proposed slate patio shall be constructed with ungrouted joints to maximize storm water absorption as recommended by the Board's Engineer in a report dated November 11, 2002.

4. The applicants shall obtain any and all DEP approvals required in connection with this application.

Chair Harrison called the site plan and variance application of **Keith Ballentine, 395 Claremont Avenue**. Grant Gille, Esq., appeared as attorney for the applicant and Paul Jemas, Esq., appeared as attorney for interested parties who are objecting to the site plan and variance application.

Chair Harrison announced that the site plan and variance application of **Keith Ballentine, 395 Claremont Avenue** would be continued at the March 19, 2003 regular meeting of the Board and that no further notice would be given.

The Board discussed pending legislation regarding the expansion of nonconforming uses and noted its opposition to the current bill.

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