

**MINUTES OF THE BOARD OF ADJUSTMENT
FEBRUARY 6, 2002**

PRESENT: Chair Harrison, Mr. Chapman, Ms. Costello, Vice Chair Fleischer, Ms. Brooks, Mr. Gallardo, Mr. Haizel, Mr. Susswein; also, Alan Trembulak, Esq., Mr. Sammet, Secretary, Ms. Kadus, Assistant Secretary, and Mr. Charreun, Planning Technician

ABSENT: Ms. Rock-Bailey

Secretary Sammet called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison called the site plan and variance application of **Union Congregational Church, 169 and 176 Cooper Avenue**. David Owen, Esq., appeared as attorney for the applicant, and Paul Jemas, Esq., appeared as attorney for interested parties who are opposing the site plan and variance request. In response to an issue raised by Mr. Jemas regarding notice procedures, Mr. Owen stated that an alternative plan that has been prepared and submitted as part of the application is not a substantial alteration in the plans and should not require a new public notice.

Mr. Owen gave his opening statement. Mr. Owen stated that an ordinance change in 1979 rendered the existing church a non-conforming use within the R-1 zone. He stated that the application seeks to expand and organize parking areas on the properties and that no new buildings or additions to the existing buildings are proposed. Mr. Owen stated that the applicant is proposing a total of 29 parking spaces on the Church properties, which are intended to accommodate the Church staff, the nursery school staff, and parking for related activities as needed. Mr. Owen stated that the Courts have recognized churches as inherently beneficial uses, and that non-conforming uses have been allowed to modernize when related to minor expansion. He stated that the application is also for a certificate of non-conformity with regard to vested parking rights on the Church property. Mr. Owen described the variances requested by the applicant and the witnesses that would be called to testify.

Mr. Jemas declined to give his opening statement at this time of the hearing.

Mr. Owen called Royal Shepard, Township Historian and Township of Montclair Historic Preservation Commissioner, who was sworn. Mr. Shepard described the history and background of the Church and referenced the materials he utilized in his research.

Marked into evidence was:

- A-1 Sanborn Map of subject properties and surrounding area, with color, no date
- A-2 Photo-copy of the Building Zone Ordinance and Map of the Township of Montclair, as adopted May 19, 1921
- A-3 Township of Montclair Land Use Ordinance of 1977
- A-4 The Comprehensive Revision of the Township of Montclair Zoning Ordinance, prepared by Boorman and Dorram, Inc., January 1979

Mr. Shepard described the uses that have existed on the Church property through its history.

Marked into evidence was:

- A-5 Map of the subject properties and the surrounding area, from the Essex County Atlas of 1901
- A-6 Book describing the centennial history of Union Congregational Church between 1881 and 1981, entitled "Century of a Modern Church", by Chandler B. Grannis, copyright 1983

The Board questioned Mr. Shepard.

Mr. Shepard described the uses that existed on the property during the years of 1978 and 1979.

Mr. Jemas cross-examined Mr. Shepard.

Chair Harrison called for questions from the public for Mr. Shepard.

Maureen Cooney, of 27 Clairidge Court asked if the building at 169 Cooper was used as a residence prior to being used as a parsonage.

Mr. Owen called Herb Yeager, former Minister of Parish Life at Union Congregational Church, who was sworn. Mr. Yeager stated that he was on the Church staff from August of 1974 to August of 1986 and that he lived at the parsonage at 169 Cooper Avenue during that time. Mr. Yeager described the parking that existed on the Church properties during the time he was on the Church staff and stated that he had not known of any complaints regarding this on-site parking. Mr. Yeager described the frequency and duration of the events that occurred on the Church properties during his tenure and the parking that was associated with these events.

Chair Harrison called for questions from the Board.

Mr. Jemas cross-examined Mr. Yeager.

Chair Harrison called for questions from the public for Mr. Yeager.

Bob Brinley, of 167 Cooper Avenue, asked if Mr. Yeager's daughter would ride her tricycle on the driveway at 169 Cooper Avenue when cars were parked there.

Donald Clark, of 175 Cooper Avenue, asked how many classrooms were used by the nursery school in 1986, what were the activities taking place at the Church properties on weeknights in 1975, which groups still met at the Church by 1986, and if there had been any expansion of these uses since 1979.

Barbara Gregory, of 179 Cooper, asked if the Church charges fees to the groups using the Church property.

Mr. Owen called Bill Lutz, former Church staff member, who was sworn. Mr. Lutz stated that he was on the Church staff from 1969 to 1972 and subsequently a congregation member from 1972 to present. Mr. Lutz stated that he lived at what was the Church's third parsonage at 159 Summit Avenue until 1972. Mr. Lutz described the parking on the Church properties prior to 1979. He described frequency and duration regarding the on-site parking and the groups that used the parking. He stated that the activities occurring on the Church property generally ended around 10 p.m. and that both properties would accommodate parking related to these activities with over-flow parking moving to the street. Mr. Lutz stated that he was not aware of any complaints regarding the on-site parking during this time. He further stated that he did not observe any changes in the patterns of on-site parking subsequent to 1979.

Chair Harrison called for questions from the Board.

Mr. Jemas declined to cross-examine Mr. Lutz.

Chair Harrison called for questions from the public.

Barbara Gregory, 179 Cooper Avenue, asked how many cars parked on the 169 Cooper Avenue property and if that number occurred everyday.

Gary Smith, 20 Wellesley Road, asked if the Church had sold the third parsonage on Summit Avenue.

Bob Brinley, 167 Cooper Avenue, asked how many vehicles parked on the 176 Cooper Avenue property between the 1975 fire on the property and 1979.

Kate McGuire, 182 Cooper Avenue, asked if on-site parking would reduce the number of vehicles parking on the street.

Chair Harrison called for a short recess.

Mr. Owen called Stephanie Weiner, Senior Pastor at Union Congregational Church, who was sworn. Ms. Weiner stated that she has been the Senior Pastor of the Church since October of 1993. Ms. Weiner stated that her office and residence are on the Church property at 176 Cooper Avenue. She described the scope of the current Church programs, and stated that these programs are similar to the programs that previously existed at the Church. She stated that the Church makes an effort to meet the needs of the community. She also stated that only non-profit groups are allowed to utilize Church facilities and that some groups provide donations to reimburse the Church for the costs incurred as result of the usage of their facility.

Chair Harrison called for questions from the Board.

Mr. Jemas reserved his cross-examination of Ms. Weiner until she is recalled at a later time in the hearing.

Chair Harrison called for questions from the public.

Karen Turner, 74 Highland Avenue, formerly of 183 Cooper Avenue, asked if the immediate neighborhood is included in the Church's programs and events.

Donald Clark, 175 Cooper Avenue, asked what the nursery school revenue was in 1992.

Barbara Gregory, 179 Cooper Avenue, asked if the Church requires a donation to hold birthday parties on their property.

Gary Smith, 20 Wellesley Road, asked how many people the Church directly employs and if any Church space is rented.

Bob Brinley, 167 Cooper Avenue, asked where the residents of the parsonage at 169 Cooper Avenue park their vehicles and if the Montclair Counseling Center leased Church space in the past.

Mr. Owen called Marty Watson, Director of the Union Congregational Church weekday nursery school, who was sworn. Ms. Watson stated that she has been the director of the nursery school since 1994. She stated that the nursery school was founded in 1968 and is open to the community. She also stated that other houses of worship in Upper Montclair currently provide nursery school services. Ms. Watson stated that the nursery school is located at 176 Cooper Avenue and operates from September to Mid-June, Monday through Friday, and that students are there from 9:00 a.m. to 2:45 p.m. and the staff is there from 8:30 a.m. to 3:30 p.m.. She stated that the ages of the children in the school range from 2.5 to 4 years old and that 180 students are currently enrolled in the nursery school and that the maximum number students at the school at any one time is 110. Ms. Watson also stated that the school has

undergone a gradual growth in last 20 years. She stated that the school enrollment was 95 in 1978, 127 in 1990, 165 in 1996, and 178 in 1997. She further stated that the enrollment has not increased since 1997. Ms. Watson stated that the school currently has 19 staff members including 17 teachers and that the staff grew as the enrollment increased in the past. She stated that the school has increased the square footage it uses since 1979. She further stated that the school has not added an extended day or summer program.

The Board questioned Ms. Watson.

Mr. Jemas cross-examined Ms. Watson.

Chair Harrison called for questions from the public.

John Conti, 362 Park Street, asked if the applicant was aware that the total population of Montclair had decreased by 3000 since 1968, and whether the expansion of the school since 1968 was accommodating out of town students.

Bruce Bingham, 136 Summit Avenue, asked how many of the pre-school staff are also parishioners, and if the nursery school program is the largest in Montclair, and if the Church has considered renting off-site parking space for teacher parking.

Gary Smith, 20 Wellesley Road, asked if parking capacity was a factor in determining the enrollment in the school.

Donald Clark, 175 Cooper Avenue, asked if the Church needed an application for the enlargement in enrollment or increasing the classroom number, and how many teachers were there in 1978, 1990, and 1996, and what Township official had requested the school to expand.

Chair Harrison announced that the application would be continued on February 27, 2002 and that no further notice be given.

Secretary Sammet stated a question had arisen concerning an interpretation of the Board's variance approval of Denis Orloff and Amy Wax-Orloff, owners of property at 349 Park Street, granted by the Board at their November 7, 2001 hearing. Secretary Sammet stated that the applicants' have demolished certain exterior walls of the structure. Mr. Sammet stated that the applicant stated that it had been determined that these walls were unsound and needed to be removed. The applicant stated that the removal of these walls was shown on the submitted plans. Mr. Sammet stated that he had listened the tape of the hearing and that the applicant had represented that the walls would remain. He stated that since the applicant had requested a front yard variance, he concluded that the removal of the walls was a substantial change from the application as presented and required a new action from the Board. Prior to formerly requiring the applicant to submit an amended application, Mr. Sammet inquired if the Board disagreed with his understanding of the situation.

The Board discussed the approved application and did not object to the Planning Department's determination that the applicants would be required to submit a new variance application due to the substantial change in the existing conditions and the approved plans.

On motion by Mr. Chapman, seconded by Mr. Haizel, the meeting was adjourned.