

MINUTES OF THE BOARD OF ADJUSTMENT
February 16, 2005

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

ABSENT: Ms. Cockey, Ms. English, Mr. Flood and Mr. Haizel

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. Fleischer, seconded by Mr. Susswein, the **Minutes of the January 19, 2005** regular meeting were adopted as modified, Ms. Holloway abstaining.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **John and Rose Kardashian, 750 Valley Road** was adopted, Ms. Holloway abstaining:

WHEREAS, John and Rose Kardashian, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a new detached garage and parking area on property designated as Lot 6 in Block 803 on the Township Tax Map and located in the R-2 Two Family Zone; and

WHEREAS, the applicants requested a variance pursuant to N.J.S.A. 40:55D-70d(2) as the preexisting nonconforming three family dwelling may not be expanded, increased or enlarged pursuant to Montclair Code Section 347-112; and

WHEREAS, the applicants submitted a site plan, floor plans and elevations prepared by Paul J. DeMassi, AIA & Associates dated September, 2004 which was revised and marked as Exhibit A-1 at the December 15, 2004 public hearing; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on December 15, 2004 and January 19, 2005 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 consists of approximately 10,639 square feet and contains a preexisting nonconforming two and one-half story three family dwelling. The application contemplates construction of a new detached garage 28 feet in width and 24 feet in depth with an attached concrete patio that measures 8 feet 6 inches in width and 24 feet in depth and parking area on the property.

2. At the public hearing the plan was revised to realign spaces 4, 5 and 6 and add evergreen plantings along the northerly side of the property adjacent to the garage (Exhibit A-1).

3. Approval of this application will protect vehicles from the elements and promote a desirable visual environment consistent with the purposes of the Municipal Land Use Law.

4. The plan provides for safe vehicular movement and constitutes appropriate development of the site.

5. Based upon the Board's particular knowledge of local conditions, approval of this application will not adversely impact the public good.

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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of John and Rose Kardashian for variance as depicted on Exhibit A-1 is hereby approved subject to the following conditions:

1. The applicants shall comply with comments 1 and 2 in the memorandum dated October 25, 2004 from W. Thomas Watkinson, Montclair Zoning Board Engineer. With respect to comment 3, a partial topographic plan shall be submitted to confirm the drainage is not adversely impacted.

2. No new exterior lighting shall be permitted.

3. As stipulated, the fence in the rear shall be removed or relocated off the subject property.

4. The covered patio shall not be enclosed and shall not be utilized for permanent storage of any equipment or parking of any vehicles.

5. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

6. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with the review of this matter.

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. Susswein, the following Resolution memorializing the approval of the application of **Efrem Meretab and Robin Renn, 53 Glenwood Road** was adopted, Ms. Holloway abstaining:

WHEREAS, Efrem Meretab and Robin Renn, owners of property at **53 Glenwood Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow for a side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of a detached garage on property designated as Lot 4 in Block 1803 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Teunisen Surveying & Planning Co., Inc., dated July 1, 1991, and a site plan and elevations prepared by Sionas Architecture, P.C., dated November 29, 2004, that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on January 19, 2005 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 has a street frontage width of 100 feet and contains approximately 15,738 square feet in area. The property contains a 2½-story dwelling and a detached garage located at the northwesterly corner of the lot that was destroyed by a fallen tree in October of 2004.

2. The footprint of the previously existing detached garage measured 17 feet 10 inches in width by 19 feet 3 inches in depth. The previously existing detached garage also had a westerly side yard setback of 1.32 feet and rear yard setback of 2.45 feet.

3. The applicants' proposal is to construct a new detached garage, measuring 22 feet in width and 19 feet 3 inches in length, in the same area of the property. The additional 4 feet 2 inches of width is proposed on the easterly side of the garage footprint.

4. The proposed detached garage would have a westerly side yard setback of 1.32 feet and rear yard setback of 2.45 feet, which match the westerly side yard setback and rear yard setback of the previously existing detached garage and do not

meet the minimum required side yard and rear yard setback distances of 6 feet. The proposed height and easterly side yard setback are conforming.

5. The existing location of the dwelling on the subject property, as well as the location of mature landscaping in the rear yard, limit the ability of the applicants to provide the required setbacks for the proposed detached garage.

6. The additional 4 feet 2 inches of width of the proposed detached garage is required in order to provide sufficient space for parking within a two-car garage. The impact of the additional encroachment in the rear yard setback caused by the additional width of the detached garage is minor considering the fact that the previously existing detached garage already encroached into the required rear yard setback.

7. Based upon the Board's particular knowledge of local conditions, the proposed detached garage is consistent 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 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 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 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 variance application of Efremer Meretab and Robin Renn 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. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Emanuel's Hope Baptist Church, 18-20 Washington Street** was adopted, Ms. Holloway abstaining:

WHEREAS, Emanuel's Hope Baptist Church, as owner, did make application to the Board of Adjustment of the Township of Montclair for amended site plan approval in connection with the construction of a one story addition to the existing church building

and related site improvements on property designated as Lots 14 and 8 in Block 3110 on the Township Tax Map and located in the R-2 Two Family Zone; and

WHEREAS, the applicant sought variances as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit paved street frontage on Fulton Street of 26 feet where a minimum of 30 feet is required pursuant to Montclair Code Section 347-48B(1);
2. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit a parking area for 16 vehicles where a minimum of 17 is required pursuant to Montclair Code Section 347-48B(3);
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit a front yard setback from Washington Street of 9.24 feet where a minimum of 25 feet is required pursuant to Montclair Code Section 347-51;
4. An exception to allow 2 compact parking stalls less than 9 feet by 19 feet required pursuant to Montclair Code Section 281-9C and 9K; and

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Sionas Architecture, P.C. dated March 5, 2002 revised through November 2, 2004 as well as floor plans and elevations prepared by Barden Church Building Services dated September 13, 2004 and a property survey prepared by Pronesti Surveying, Inc. dated December 18, 2001; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 19, 2005 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. Emanuel's Hope Baptist Church has been established in the Montclair community at its Washington Street location since 1984. The congregation currently conducts religious services from 11:30 a.m. to 1:30 p.m. and 6:00 p.m. to 9:00 p.m. on Sundays and 10:00 a.m. to 4:00 p.m. on Wednesdays. Religious instruction takes place from 10:30 a.m. to 11:30 a.m. on Sundays and 7:30 p.m. to 9:30 p.m. on Wednesdays. The choir utilizes the premises between 7:30 p.m. and 9:30 p.m. on Thursdays and varied activities occur on Fridays including but not limited to youth services.
2. By resolution adopted on February 19, 2003 the Board of Adjustment granted site plan approval and other relief in connection with the construction of a one story addition to the rear of the church building and related site improvements. The within application seeks to amend the approval by enlarging the addition by

approximately 4 feet 9 inches toward Fulton Street, realigning the parking area and related site improvements.

3. The proposed house of worship is “inherently beneficial” thus satisfying the positive criteria under N.J.S.A. 40:55D-70d. *State v. Cameron*, 184 N.J. Super 66 (Law Div. 1982), affirmed, 189 N.J. Super. 404 (App. Div. 1983), reversed on other grounds 100 N.J. 586 (1985); *Kali Bari Temple v. Board of Adj.*, 271 N.J. Super. 241 (App. Div. 1994); *Sugarman v. Township of Teaneck*, 272 N.J. Super. 162 (App. Div. 1994).

4. The subject property continues to be an appropriate site for the conditional use notwithstanding the deviations from the conditions imposed by the ordinance and the variances pursuant to N.J.S.A. 40:55D-70d(3) may be granted consistent with the holding in *Coventry Square, Inc. v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

5. The subject property contains a preexisting nonconforming front yard setback of 9.24 feet from Washington Street. The proposed addition to the church contemplates extending the front and side walls of the first floor up an additional level to accommodate a mezzanine at the front of the building. This requires a front yard setback variance, however, the Board determined the encroachment is de minimis and represents appropriate development of the property.

6. The applicant’s proposal of 16 parking spaces is appropriate given the property’s shape and configuration and structures lawfully existing thereon. Additionally, the accessory parking area represents a substantial improvement to the neighborhood and its use in connection with the inherently beneficial religious use advances the purposes of the Municipal Land Use Law.

7. The parking plan contemplates 2 substandard compact stalls which fail to comply with Montclair Code Sections 281-9C and 9K, however, such spaces can reasonably be reserved for use by small cars and the requested exception is consistent with the general purpose and intent of the ordinance.

8. 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; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Emanuel’s Hope Baptist Church, for

amended site plan, variances and exception is hereby approved subject to the following conditions:

1. The applicant shall comply with conditions 1 through 5 contained in the Board's February 19, 2003 resolution.
2. Condition 6 of the February 19, 2003 resolution shall be modified to allow use of the structure at 21 Fulton Street for a maximum of one dwelling unit to be occupied by at least one person associated with the church provided a Certificate of Occupancy for such use is obtained within 90 days. Said dwelling unit shall not be leased or rented.
3. Landscaping of the parking area shall conform to the ordinance.
4. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
5. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with the review of this matter.

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

Chair Harrison called the variance application of **Deborah C. Barnes and William Diggs, 57 Llewellyn Road**. The applicants were sworn and Mr. Diggs described the proposed one-story addition. He stated that the proposed addition would add approximately 9 feet to the southerly side of the dwelling and would provide space needed for a casual dining area in the kitchen. He stated that his property is a corner lot and that due to the dimensions of the lot, the rear property line is located on the easterly side of the dwelling. He further stated that the existing home is set back 12.28 feet to the northeasterly corner of the dwelling and 20.44 feet to the southeasterly corner of the dwelling, where 30 feet is required.

The Board questioned the applicants. Mr. Diggs stated that the proposed addition would be aligned with the easterly wall of the existing dwelling and that the addition would be set back further from the easterly property line than the dwelling due to the angled position of the home on the lot.

Chair Harrison called for questions and comments from the public.

Julia Murawski, 55 Llewellyn Road, was sworn and asked how granting the requested variance would affect her property if she or a future owner of her property also needed a variance for an addition.

Mr. Diggs stated that the variance is required due to the location of his home on the corner lot. Ms. Barnes stated that they have 4 children and that the existing kitchen does not have enough space for a casual dining area.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Susswein, the variance application was approved.

Mr. Whipple joined the meeting.

Chair Harrison called the variance application of **Dirk and Yvonne Hettrich, 25 Stanford Place**. Dirk Hettrich, owner, and David Varnish, Architect, were sworn. Mr. Varnish described the proposed additions. He stated that a two-story addition is proposed on the westerly side of the dwelling that would not meet the 10-foot side yard setback requirement. He stated that this two-story addition would be aligned with the existing dwelling and would be set back approximately 9.5 feet from the westerly side property line. He also described the proposed additions to the rear of the dwelling and stated that they have been designed to meet all of the setback requirements. He continued by stating that the existing front entrance stoop on the dwelling has a front yard setback of approximately 34.8 feet and that the required front yard setback for the property is approximately 34.7 feet, based on the average front yard setback of the 4 nearest dwellings on Stanford Place, 2 on either side of the subject property. He described the proposed front porch and stated that a front yard setback of 27.5 feet is proposed. He also stated that the proposed front porch would be set back 5.1 feet from the easterly side property line, where a minimum setback of 6 feet is required.

The Board questioned the applicant and Mr. Varnish. Mr. Varnish stated that the proposed front porch would be aligned with the steps of the existing front stoop. Mr. Hettrich stated that the design was based on the enclosed porch of the neighboring property located at 23 Stanford Place. Mr. Hettrich also stated that although the proposed front porch is not a necessity, it is an architectural feature that he and his wife would like on their home.

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

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the variance requested for a front yard setback less than required was denied and the variance requested for a westerly side yard setback less than required was approved, subject to the following condition:

1. All new construction shall comply with the minimum side yard setback requirement of 6 feet in the easterly side yard.

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