

**MINUTES OF THE BOARD OF ADJUSTMENT
FEBRUARY 19, 2003**

PRESENT: Chair Harrison, Ms. Cockey, Ms. Costello, Mr. Flood, Mr. Haizel, Ms. Rock-Bailey; also, Mr. Sullivan, Esq., Mr. Sammet, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Vice Chair Fleischer, Mr. Gallardo, and 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.

Chair Harrison welcomed new Board members, Sharon Cockey and Larry Flood and thanked former Board member Robert Chapman for his years of service on the Board.

On motion by Ms. Costello, seconded by Ms. Rock-Bailey, the **Minutes of the January 15, 2003** regular meeting were adopted as modified, Ms. Cockey and Mr. Flood abstaining.

On motion by Mr. Haizel, seconded by Ms. Costello, the following Resolution memorializing the approval of the site plan and variance application of **Emanuel's Hope Baptist Church, 18-20 Washington Street and 21 Fulton Street** was adopted as modified, Ms. Cockey and Mr. Flood abstaining:

WHEREAS, Emanuel's Hope Baptist Church, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct a one-story addition to the existing church building located at 18-20 Washington Street, utilize the existing single-family residence located at 21 Fulton Street for church use and create a new paved driveway and parking area 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 site plan approval and variances as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(3)* to permit a parking area for 18 vehicles where a minimum of 20 vehicles is required pursuant to Montclair Code Section 347-48B(3);

2. An exception to allow six compact stalls less than 9 feet by 19 feet pursuant to Montclair Code Section 281-9C; and

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Sionas Architecture, P.C. dated March 5, 2002 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 15, 2003 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. The application contemplates the construction of a one-story addition to the rear of the existing 1-1/2 story church building located at 18-20 Washington Street and designated as Lot 14. The existing single-family residence located at 21 Fulton Street and designated as Lot 8 shall be utilized by the church for mission and administrative purposes.

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 does not contain a driveway or off street parking at the present time. The applicant's proposal will provide a parking area consisting of 18 spaces, including 11 standard parking stalls, 6 compact stalls and 1 barrier-free stall. Although the 6 compact stalls are less than the required dimensions of 9 feet wide by 19 feet long, 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.

5. As stipulated, the two tax lots shall be merged by perimeter deed. As a result, all of the conditional use standards applicable to churches are satisfied with the exception of Section 347-48B(3) which requires at least 1 parking space for every 8 seats which results in a requirement of 20 spaces. The applicant's proposal of 18 spaces is appropriate given the property's shape and configuration and structures lawfully existing thereon. Additionally, the accessory parking area represents a sub-

stantial improvement to the neighborhood and its use in connection with the inherently beneficial religious use advances the purposes of the Municipal Land Use Law.

6. 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 site plan, variance and exception is hereby approved 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.

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. Haizel, seconded by Ms. Rock-Bailey, the following Resolution memorializing the approval of the variance application of **Steven D. Plofker and Bobbi Brown Plofker** was adopted, Chair Harrison, Ms. Cockey and Mr. Flood abstaining:

WHEREAS, Steven D. and Bobbi Brown Plofker, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a

swimming pool and cabana on property designated as Lots 10 and 11 in Block 2404 on the Township tax map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicants sought variances pursuant to *N.J.S.A. 40:55D-70c(1)* as follows:

1. To permit the swimming pool in the front yard contrary to Montclair Code Section 347-22D;

2. To permit the distance between the face of the pool and the street line to be less than the existing distance between the street line and the front wall of any structure contrary to Montclair Code Section 305-6B;

3. To permit the swimming pool and cabana to be located between the main building and the curb of the street on which the building fronts contrary to Montclair Code Section 347-46C.

WHEREAS, the applicants submitted a site plan, floor plan and elevations prepared by Sionas Architecture, P.C. dated October 17, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 15, 2003, 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 contains a 2-1/2 story single-family residence, carriage house with garage and other site improvements located on the 1.47 acre tract. The application contemplates constructing a new cabana to be attached to the existing carriage house, installation of a slate patio area and kidney-shaped pool.

2. The subject property is unique in that it is substantially oversized and contains road frontage along three sides of the property. As a result, with the exception of a small area of property immediately adjacent to the east of the dwelling, the entire property is considered a front yard.

3. The proposed location of the pool is appropriate as it will be placed in an area of low elevation, screened by existing mature landscaping and the carriage house to the east.

4. The pool and cabana are to be located a minimum of 58 feet from the curb of Erwin Park Road thereby minimizing any negative impact on the neighborhood.

5. Based upon the board's particular knowledge of local conditions, approval of this 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 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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Steven D. and Bobbi Brown Plofker, for variances is hereby approved 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.

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 that at the request of the applicant, the minor subdivision and variance application of **BJM Construction, 99 Willowdale Avenue** has been postponed until the April 23, 2003 regular meeting of the Board of Adjustment and that the Board has been granted an extension of time for which to act on the application.

Mr. Sullivan stated that excessive time had elapsed since the initial public notice of the minor subdivision and variance application of **BJM Construction, 99 Willowdale Avenue**, and that a new public notice should be completed by the applicant prior to the hearing date.

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 March 12, 2003 special 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.

Chair Harrison called the variance application of **Mark Haefeli, 129 Llewellyn Road**. John Collins, Architect, was sworn. Mr. Collins stated that he had prepared the plans for the application and that he would present the application to the Board on behalf of the applicant. Mr. Collins stated that the applicant's home is lacking the space required for a growing family and that a two-story addition is proposed at the rear of the dwelling. He also stated that an outdoor deck would be constructed at the rear of the dwelling. He continued by describing the floor plans and stated that the addition would contain a family room and half-bath on the first floor and 2 bedrooms, a study, and 1 bathroom on the second floor.

Mr. Collins stated that the existing easterly side yard setback of the dwelling is 7.1 feet and that the proposed addition and outdoor deck would be aligned with the existing dwelling and not be constructed closer to the easterly property line.

The Board questioned Mr. Collins.

Mr. Collins stated that the proposed outdoor deck would be as wide as the addition. He also stated that the addition and deck would be set back 18.9 feet away from the westerly side property line and the outdoor deck would be set back approximately 55 feet from the rear property line.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Mr. Haizel, seconded by Ms. Costello, it was resolved to approve the variance application.

Chair Harrison called the variance application of **Deb Chromow and Robert Cooper, 5 Nassau Road**. Deb Chromow and Robert Cooper were sworn.

Marked into evidence was:

A-1 Photographs of the subject property

Mr. Cooper described the proposed third floor addition and stated that the existing roof of the dwelling is scheduled to be replaced. He stated that the proposed addition would contain a bedroom and bathroom and that the additional space created by the addition would accommodate the needs of his family. He continued by stating that the property is a through lot and that the required setback in the Mount Hebron Road front yard is 7 feet greater than what is proposed.

Ms. Chromow stated that the third floor addition would be built within the existing footprint of the dwelling and would not project closer to any property line than the existing dwelling.

The Board questioned the applicants.

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

Chair Harrison called for public comment. None was offered.

The Board discussed the application.

On motion by Ms. Rock-Bailey, seconded by Mr. Haizel, it was resolved to approve the variance application.

Chair Harrison called the variance application of **Calvary Chapel of Montclair, 7 North Willow Street**. David Owen, Esq., appeared as attorney for the applicant and described the application.

Mr. Owen called George Hillman, pastor at Calvary Chapel of Montclair, who was sworn. Mr. Hillman described the congregation and the activities of the Church. He stated that the Church was founded approximately 10 years ago and that he has been a pastor at the Church since December of 1999. He continued by stating that the Church has had to meet in various locations in Montclair through the years due to cost restraints and scheduling conflicts. He stated that the Church has been seeking a permanent location and that the first floor space at the subject property is a suitable location that accommodates the Church very well as a rental tenant.

Mr. Hillman described the typical hours of the Church's activities and services. He stated that, on Sundays, Sunday School is conducted from 9 a.m. to 10 a.m. and that the Sunday service is conducted from 10 a.m. to approximately 12:15 p.m.. He further stated that a maximum of approximately 30 children attend the Sunday School and that approximately 60 to 65 people attend the Sunday service. He also stated that a fellowship function is conducted occasionally after the Sunday service and that a Bible Study class is conducted on Wednesday evenings from 8:30 p.m. to 9:30 p.m. or 10 p.m. and that approximately 10 to 15 people attend. He stated that a men's breakfast is held once a month and that many of the Church's activities take place off-site. He continued by stating that the administrative functions associated with the Church are carried out during the week.

Mr. Hillman stated that the Church does not offer community uses, day-care, or pre-kindergarten and that a condition of approval regarding a restriction on these ancillary uses would be acceptable to the Church. He also stated that the Church only provides childcare during the Sunday service. He further stated that the ancillary uses and activities of the Church are not anticipated to undergo any significant growth. He continued by stating that seating for 224 people is proposed in the sanctuary and that

the space available for seating makes the subject building more likely to be a permanent location for the Church.

The Board questioned Mr. Hillman.

Mr. Hillman stated that the retail space fronting on Lackawanna Plaza would be leased separately by the owner of the property and is not associated with the Church.

Mr. Owen stated that 3 parking spaces in the existing on-site parking lot would be reserved for the pastor of the Church and the employees of the Church.

Mr. Owen called Derek Cox, Architect, who was sworn. Mr. Cox stated his qualifications as a Registered Architect and a Certified Landscape Architect. Mr. Cox described the subject property and stated that the lot has frontages on both North Willow Street and Lackawanna Plaza. He stated that the building on the property contains two floor levels and that the current owner has renovated the façade of the building.

Marked into evidence was:

A-1 Sheet SP-1 on a board, Site Plan with color, prepared by Sionas Architecture

Mr. Cox described the floor plan for the first floor of the building and stated that 1,000 square feet of floor area on the first floor is for the retail use. He also stated that the main entrance to the Church is on the Lackawanna Plaza frontage.

Marked into evidence was:

A-2 Sheet A-1 on a board, Floor Plans with color, prepared by Sionas Architecture

Mr. Cox stated that the only windows for the first floor of the building are located in the Lackawanna Plaza frontage and in the fellowship hall of the Church. He also stated that the boiler room located on the first floor of the building would be converted into a stairway that would lead up to the parking area on the property, which is at grade level. He continued by stating that an existing dropped curb in front of the building on Lackawanna Plaza would be kept and utilized for barrier-free access from the street. He further stated that the Church would use a valet service for a greater barrier-free need. He concluded his comments by stating that the first floor of the building is well suited for the proposed use and that the design is also well suited for the space.

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

Mr. Owen called Gary Dean, Professional Engineer, who was sworn and stated his qualifications as a Civil and Traffic Engineer. Mr. Dean stated that he had conducted

a study of the potential traffic and parking impacts associated with the proposed use. He described the existing parking area and stated that it contains 24 on-site parking spaces. He continued by stating that the off-street parking requirements for churches in the ordinance is 1 space for every 8 seats, and that although on-site parking is not required for the proposed use in the C-1 zone, the applicant is deficient by 4 parking spaces.

Mr. Dean described the traffic and parking study that was conducted. He stated that a study was conducted during Sunday service hours, on a Sunday from 10:30 a.m. to 12:00 p.m. on North Willow Street and Lackawanna Plaza. He stated that during this study the metered parking spaces on North Willow Street were filled and that within the Lackawanna Plaza triangle, 10 of the 40 metered parking spaces were filled. He also stated that a municipal parking lot containing 65 metered parking spaces is a half block away from the subject property. He continued by describing the traffic and parking study conducted on a Wednesday evening, and stated that employees working in the professional offices at the subject property leave the site at the end of the work day and clear at least a dozen of the parking spaces in the on-site parking area. Mr. Dean concluded his comments by stating that the existing traffic controls in the vicinity of the subject property are adequate and that the peak hours of the Church do not coincide with the peak hours of the existing uses in the area.

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

Mr. Owen called Michael Petry, Professional Planner, who was sworn and stated his qualifications as a Professional Planner.

Marked into evidence were

- A-3 Area Map, with zoning information, prepared by RCC Design, Inc.
- A-4 Photo-board of the subject property and vicinity, prepared by RCC Design, Inc.
- A-5 Photo-board of the subject property and vicinity, prepared by RCC Design, Inc.

Mr. Petry stated that the applicant has been in Montclair for some time and is seeking a permanent location. He stated that the subject property is attractive as a permanent location because the building has been completely renovated and the property contains an on-site parking area. Mr. Petry stated that the main activity of the Church is the Sunday morning service.

Mr. Petry described the existing land uses in the vicinity and stated that 2 other churches are located nearby. He stated that churches and other houses of worship are not listed as prohibited uses in the C-1 Zone. He further stated that the C-1 Zone permits nonprofit institutional uses and that churches could be considered subgroup

within that use classification. He also stated that the C-1 Zone permits various types of gathering centers, such as theatres.

He also stated that the Lackawanna Plaza frontage would be used for retail use and that the Church is an off-peak parking user. He also stated that the first floor space of the subject property is less desirable for the common uses in the C-1 Zone because it is very deep and virtually windowless. He further stated that other types of permitted uses in the C-1 Zone would need more parking and have a greater impact and that the physical constraints of the building do not affect the proposed use as it would for a common use in the C-1 Zone.

Mr. Petry stated that all of the bulk requirements are being met and that the application satisfies the positive criteria because the proposed use is an inherently beneficial use that promotes the general welfare. He also stated that the focus of the most recent Master Plan Re-examination Report, in regard to houses of worship, is the impact on residential zones, off-street parking, and the growth ancillary uses. He stated that the ancillary uses associated with the Church are very limited in scope and scale and that there are no adjoining residential properties. He further stated that any vehicle parking that could not be contained within the on-site parking lot would be able to utilize the available street parking in the immediate area of the Church, and would not adversely affect the residential properties that are located in the general vicinity.

The Board questioned Mr. Petry.

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

Chair Harrison called for public comment. None was offered.

Mr. Owen gave his closing remarks.

The Board discussed the application.

On motion by Mr. Haizel, seconded by Ms. Costello, it was resolved to approve the variance application, subject to the following conditions:

1. Weekday day care use of the facility shall be prohibited except for and while member parents are attending church activities.
2. Regular weekday use of the facility by groups not affiliated with the applicant shall be prohibited.

Chair Harrison announced the **Discussion of Annual Report**. The Board discussed the 2002 Draft Annual Report and minor edits were made. Chair Harrison stated that the discussion of the 2002 Draft Annual Report would be continued at the March 19, 2003 regular meeting of the Board.

On motion by Mr. Haizel, seconded by Ms. Rock-Bailey the meeting was adjourned.