

MINUTES OF THE BOARD OF ADJUSTMENT
March 7, 2001

PRESENT: Chair Harrison, Vice Chair Fleischer, Ms. Costello, Mr. Gallardo, Mr. Haizel, Mr. Susswein; also, Michael Sullivan, Esq., and Donald Sammet, Assistant Secretary.

ABSENT: Mr. Chapman, Ms. Rock-Bailey and Karen Kadus, Secretary

Mr. 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.

On motion by Vice Chair Fleischer, seconded by Mr. Gallardo, the **Minutes of the February 14, 2001** regular meeting were adopted as modified.

On motion by Vice Chair Fleischer, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the variance application of **Montclair Community Church, 143 Watchung Avenue,** was adopted as modified:

WHEREAS, Montclair Community Church, did make application to the Board of Adjustment of the Township of Montclair to construct an addition to the church and create a new accessory parking area on property designated as Lot 7 in Block 3409 on the Township tax map and located in the R-1 One Family Residential 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(2)* to expand a preexisting nonconforming use contrary to Montclair Code Section 347-112.
2. A variance pursuant to *N.J.S.A. 40:55D-70c* to provide 14 off-street parking spaces where a minimum of 44 parking spaces are required pursuant to Montclair Code Section 347-101.

WHEREAS, the applicant submitted a site plan prepared by the Mylan Architectural Group, Sheet CP-1, "Cover Page, Key Map, Site and Building Zone Table"; SP-1 "Site Plan"; SP-2 "Site Details"; SP-3 "Soil Erosion, Sed. Cont. & Drainage"; L-1 "Lighting & Landscape Plans"; A-1 "Basement Floor Plan"; A-2 "First & Second Floor Plans"; A-3 "Elevations"; A-4 "Elevations", all bearing a final revision date of September 29, 2000; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on November 8, 2000; January 17 and February 14, 2001, 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 35,509 square feet and has been utilized as a house of worship for almost a century. The original church building was constructed around 1905 and a community building around 1916. The original church building was destroyed by fire in 1974 at which time religious worship was shifted to the community building and has continued to this date.

2. Montclair Community Church has utilized the property since 1991 for religious services, weekly programs, committee meetings, bible study, guest speakers and occasionally weddings, funerals, concerts and dinners. The applicant stipulated no outside group has or will utilize the property.

3. The proposed use 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), *aff'd*, 189 N.J. Super. 404 (App. Div. 1983), *rev. d. 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 addition as proposed, however, would create a tremendously large structure which is visually inconsistent with the scale and spacing of the neighborhood, and incompatible with the historic character of the neighborhood which includes an historic district and a property listed on the National and State Register of Historic Places. The Board recognized that a relocation and proper redesign of the addition taking into account the character of the neighborhood could be accomplished without substantial detriment to the neighborhood.

5. The applicant sought a variance to construct a 14 space off-street parking area where a minimum of 44 parking spaces are required for the proposed 348 seats (1 per 8 seats required). The proposed layout and number of parking spaces included substantial paving with little benefit which would cause substantial visual detriment to the neighborhood. The Board suggested a redesign of the parking area could be accomplished which would provide for handicapped access without the aforementioned detriment. The applicant agreed to defer consideration of the parking area as part of a subsequent site plan review.

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the use variance, the applicant proved the requisite special reasons for the granting of this application and proved 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 provided the conditions below are adhered to;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Montclair Community Church, for a use variance is hereby approved subject to the following conditions:

1. As stipulated by the applicant, no outside group shall be allowed to use the property.
2. As part of a redesigned site plan, the addition shall be compatible with the scale and character of the neighborhood.
3. Any connection between the existing building and the addition shall be a one story relatively narrow connector.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair that consideration of the off-street parking area and site plan review shall be deferred and shall require new public notice pursuant to *N.J.S.A. 40:55D-12*.

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

Assistant Secretary Sammet announced the postponement of the variance application of **Omnipoint Communications, 5 Roosevelt Place** to the March 21, 2001 regular meeting of the Board and that no further notice would be given.

Chair Harrison announced the variance application of **Barry Pote, 72 Greenwood Avenue**. Vice Chair Fleischer recused himself. Mr. Sullivan stated that only 5 board members were present to vote on the application. Mr. Pote agreed to present his case and have a decision made at a subsequent meeting when 7 board members were eligible to vote.

Barry Pote, applicant and owner, was sworn. Mr. Pote stated that he would like to install a pedestrian door on the front of the structure.

Marked into evidence was:

A-1 Set of 4 photographs taken on March 7, 2001.

Mr. Pote described existing, similar land uses in the neighborhood that have both garage doors and a pedestrian door.

Marked into evidence was:

A-2 Photograph of new house 3 door down from 72 Greenwood Avenue

A-3 Architect's rendering of 72 Greenwood Avenue

A-4 Photographs of 72 Greenwood Avenue on one sheet.

Mr. Pote stated that the door proposed is similar to the one on the new house and the architect's rendering. Mr. Pote continued by stating that he uses the building for surplus parts storage and that a pedestrian door is important for the ease of movement of stock in and out of the building. He also stated that the opening of a garage door is noisy and would be a nuisance to the neighbors.

The Board questioned Mr. Pote.

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

Barbara Lennon of 128 Claremont Avenue was sworn. Ms. Lennon stated her support for the application. Ms. Lennon also stated that the pedestrian door would be a visual improvement and is compatible with existing neighborhood character.

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

Mr. Pote stated that he purchased the property believing that it was commercially zoned.

Marked into evidence was:

A-5 Property Tax record for 72 Greenwood Avenue

Chair Harrison called for public comment. None was offered.

Mr. Pote asked that the Board postpone voting on the application to the March 21, 2001 regular meeting, where 7 eligible members of the Board would be present. Mr. Pote agreed that if 7 eligible members were not present on March 21, 2001 that he was willing to postpone the vote to the April 11, 2001 regular meeting of the Board. Mr. Pote also granted an extension of time for the Board to act on the application.

Vice Chair Fleischer rejoined the meeting.

Chair Harrison called for the continuation of the variance application of **Petia Morozov, 532 Highland Avenue**. Grant Gille, Esq. appeared as attorney for the applicant. Calvin Trevenen, Esq. appeared as attorney for certain objectors.

Mr. Gille summarized the application and testimony given to date.

Mr. Gille called Daniel O'Shaughnessy, Real Estate Title Expert, he was sworn. Mr. O'Shaughnessy stated that he performed title searches for the subject property and the property immediately to the south of the subject property.

Marked into evidence was:

A-15 Title search report for Block 901, Lot 16

A-16 Title search report for Block 901, Lot 15

Mr. O'Shaughnessy described the history of the property including a subdivision in 1926. He also stated that between February of 1953 and December of 1966, Block 901, Lots 15 and 16 were in common ownership. He also stated that those lots did not merge because deed descriptions showed two separate owners.

Marked into evidence was:

A-17 Land Development Timeline on Board

A-18 Copy of deed between Conrad Karras and Viola Karras, dated February 16, 1953

Mr. O'Shaughnessy stated that the Township never merged the properties when one was sold in 1966. He continued by stating that the Township could have challenged the sale of the non-conforming lot but it did not do so. He also stated that the lots have not been in common ownership since 1966.

Marked into evidence was:

A-19 Property record cards for Block 901, Lot 15 and Block 901, Lot 18

The Board questioned Mr. O'Shaughnessy.

Mr. Trevenen cross-examined Mr. O'Shaughnessy.

Chair Harrison called for questions from the public for Mr. O'Shaughnessy. None were offered.

Mr. Gille conducted a re-direct.

The Board took a short recess.

Mr. Gille called William Morrissey, Professional Engineer and contract purchaser, he was sworn. Mr. Morrissey stated that if the Board approves the variance request, he intends to build a single-family dwelling on the site. He also stated that no variances would be requested for the construction. Mr. Morrissey continued by describing a conceptual house plan prepared by his architect.

Marked into evidence was:

A-20 Conceptual house plan on 3 sheets.

Mr. Morrissey described the floor plans of the proposed dwelling. He stated that the dwelling would be approximately 3,000 square feet in size and could be described as a traditional colonial in style. He also stated that the style proposed is compatible with the neighborhood. Mr. Morrissey stated that a contractor has not been chosen, but his son will primarily construct the dwelling.

Mr. Morrissey stated that he is an experienced project engineer. He further stated that he could comply with all conditions put forth by Tom Watkinson, Board Engineer, as well as, comply with all requirements with the steep slope ordinance.

Mr. Morrissey stated that the lot is not difficult to mechanically excavate and that there is nothing at the site from a zoning or engineering perspective that would prevent development there.

The Board questioned Mr. Morrissey.

Mr. Trevenen cross-examined Mr. Morrissey.

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

Mr. Trevenen called Steven Schoenwiesner, 530 Highland Avenue, he was sworn. Mr. Schoenwiesner described his lot and the location of his dwelling on the lot.

Marked into evidence was:

- O-1 Property Survey of Block 901, Lot 15, prepared by Pronesti Surveying, Inc., dated September 18, 1998
- O-2 Property record card for Block 901, Lot 15

Mr. Schoenwiesner described the architectural style of his dwelling and the layout of each floor. Mr. Schoenwiesner stated that the first floor of his dwelling has a footprint of 1,808 square feet and the basement is approximately 1,472 square feet in size.

Marked into evidence was:

O-3 Sanborn map

Mr. Schoenwiesner stated that he does not want to see the subject property developed since natural runoff would be diverted onto his property, he considers the proposed dwelling to be too close to his property and potential blasting

could cause damage to his single-family dwelling.

The Board questioned Mr. Schoenwiesner.

Mr. Gille cross-examined Mr. Schoenwiesner.

Mr. Trevenen called Nancy Knoerzer, owner, 540 Highland Avenue, she was sworn.

Marked into evidence was:

O-4 Property record card for Block 901, Lot 18

Ms. Knoerzer stated that her home was built in 1927. She continued by describing the architectural style of her dwelling and the layout of each floor. Ms. Knoerzer also stated that the footprint of her single-family dwelling is approximately 1600 square feet.

Ms. Knoerzer stated that a home never existed on the subject property. She continued by stating that Conrad Karras built the stone wall which exists on part of the subject property, as well as the berm between the subject property and her property.

Marked into evidence was:

O-5 Series of 7 photographs of Block 901, Lot 16

Ms. Knoerzer stated that she is concerned that if the subject property was developed a drainage problem would be created.

The Board questioned Ms. Knoerzer.

Mr. Gille cross-examined Ms. Knoerzer.

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

Chair Harrison announced that due to the late hour the application of **Mark and Maria Tylek, 321 Highland Avenue** would be carried to a March 21, 2001 regular meeting of the Board and that no further notice would be given. Mark Tylek, applicant, consented to an extension of time.

Mr. Gille called Peter Meyer, Professional Engineer, PPE, he was sworn.

Marked into evidence was:

O-6 Standards for Lot Widths map dated November 1957

O-7 Set of property record cards on 5 sheets.

Mr. Meyer described the subject property and compared it to other properties in the neighborhood. Mr. Meyer stated that there are a number of constraints to be overcome to develop the property. He described the conceptual plans for a single-family dwelling on the subject property and stated that construction of any driveway would require a substantial amount of excavation. He also stated that since no test borings have been done on site to determine the depth of bedrock, it is unclear if blasting must be done.

Mr. Meyer continued by describing the post-construction impacts of development of the subject property including that high retaining walls would be required, raising the issue of safety and that any driveway would have to exceed the 10% maximum grade as permitted by ordinance. Mr. Meyer also stated that the applicants have created their own hardship.

The Board questioned Mr. Meyer.

Mr. Gille cross-examined Mr. Meyer.

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

Chair Harrison called for public comment.

Mr. William Lutz, 523 Highland Avenue, was sworn. Mr. Lutz stated that he is concerned about the size of the proposed single-family dwelling and its potential impact on existing neighborhood character. He also stated his concerns that drainage has not been adequately studied.

Mr. Trevenen presented his closing arguments.

Mr. Gille gave his closing arguments.

Mr. Sullivan summarized relevant case law for the Board to consider during their discussions.

The Board discussed the application.

On motion by Vice Chair Fleischer, seconded by Mr. Gallardo, it was unanimously resolved to deny the variance request.

On motion by Mr. Gallardo, seconded by Vice Chair Fleischer, the meeting was adjourned at 12:52 a.m.