

**MINUTES OF THE BOARD OF ADJUSTMENT
MARCH 7, 2002**

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

ABSENT: Ms. Brooks

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 continuation of 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 objecting to the site plan and variance application.

Marked into evidence was:

- A-20 Site Plan Sheets on boards: SP-1 through SP-3, dated October 25, 2002 and SP-4, dated September 14, 2002, prepared by Sionas Architecture, P.C.
- A-21 Letter from W. Thomas Watkinson, Zoning Board Engineer, dated January 7, 2002
- A-22 Letter from W. Thomas Watkinson, Zoning Board Engineer, dated March 4, 2002
- A-23 Letter from Michael Petry, P.E., of RCC Design, Inc. dated March 7, 2002

Mr. Owen called Harold K. Maltz, Professional Engineer, who was sworn. Mr. Maltz stated his qualifications as a traffic engineer and transportation consultant. Mr. Maltz stated that he had performed observations of the existing traffic flow and on-street parking conditions on the Church property and Cooper Avenue in the vicinity of the Church. He also stated that he has reviewed the plans for the proposed parking areas on the Church properties. Mr. Maltz described the existing conditions of parking and traffic flow on the Church property and Cooper Avenue. He stated that the peak times of traffic associated with the activities of the Church occur on Sunday mornings during worship services and on weekdays during A.M. drop-off and P.M. pick-up times of

the nursery school students. Mr. Maltz stated that he had performed a total of four traffic and parking surveys during these periods.

Mr. Maltz described the traffic and parking survey he conducted on Sunday, January 13, 2002 from 9:30 to 10:30 a.m. to observe conditions during the arrival of people attending the Sunday service. He stated that he observed a total of 76 vehicles access Cooper Avenue and that traffic flow, which was limited to one-way traffic, was free flowing with no congestion occurring. He further stated that the parking capacity of the area on Cooper Avenue between Northview Avenue and Park Street is 75 vehicles and that this area of Cooper Avenue was fully parked by 10:15 a.m.. Mr. Maltz continued by stating that the overflow parking associated with the Sunday morning service was located on Park Street and Northview Avenue.

Mr. Maltz described the traffic and parking survey he conducted on Monday, January 14, 2002 from 8:30 to 9:30 a.m. to observe conditions during the weekday morning drop-off of nursery school students. He stated that 4 vehicles were parked on Cooper Avenue at the start of the survey and that there was very little two-way traffic flow on the street. He continued by stating that he observed an increase in traffic due to the arrival of vehicles dropping students off at the nursery school. He stated that he observed a total of 217 vehicles during this survey period and that he had observed some localized congestion at westerly end of the street as a result of the parking and un-parking maneuvers of vehicles arriving and departing. Mr. Maltz also stated that by 9:30 a.m., there was no more vehicular activity on the street and that 35 vehicles were parked on Cooper Avenue between Northview Avenue and Park Street. He further stated that approximately 30 of the 35 parked vehicles were due to Church and nursery school staff, which corresponds closely with the Church's requirement for staff parking. Mr. Maltz continued by stating that the results of the second Monday morning survey conducted on January 28, 2002 from 8:30 to 9:30 a.m. were virtually identical to the results obtained from this Monday morning survey.

Mr. Maltz described the traffic and parking survey he conducted on Wednesday, February 27, 2002 from 12:30 to 1:30 p.m. to observe conditions during the afternoon pick-up of nursery school students. He stated that during the peak pick-up period parents arrive and either park on the street or utilize the loop drive as a queuing lane where they wait to pick-up the children. Mr. Maltz stated that the traffic and parking pattern observed in the pick-up peak period results in a unidirectional traffic flow. He also stated that two-way traffic flow observed during this survey period was a total of 191 cars including counting the vehicles entering the loop driveway both when they first arrived on Copper Avenue and when they exited the loop driveway back on to Cooper Avenue. He continued by stating that at the start of this survey there were 30 vehicles parked on Cooper Avenue and that during the afternoon peak period there was an increase to 47 parked vehicles on the street and 18 vehicles in the loop drive. He further stated that student pick-up had ceased by 1:30 p.m. and 25 vehicles remained parked on Cooper Avenue.

Mr. Maltz stated that he endorses the removal of on-street parking to be replaced by the on-site parking areas. He stated that he had reviewed various traffic engineering textbooks and that these textbooks revealed that curbside parking increases accident potential, increases congestion, and reduces capacity on a roadway. Mr. Maltz continued by describing how curbside parking presents safety problems in relation to traffic flow. He stated that the traffic engineering texts clearly indicate that there are negative aspects with relation to curbside parking and that curbside parking should be minimized to the degree practical. He further stated that the applicants' plans are clearly in keeping with the recommendations of the traffic engineering texts.

Marked into evidence was:

A-24 Copies of relevant sections from the texts "*Transportation Planning Handbook*" by the Institute of Transportation Engineers dated 1992 and "*Parking*" by Robert A. Weant and Herbert S. Levinson of the ENO Foundation

Mr. Maltz stated that based on his observations of the existing conditions and the proposed plans, the on-site parking is a better alternative than on-street parking. He further stated that the proposed parking areas are not high in vehicle turnover and meet the intent of the zoning ordinance.

Ms. Costello joined the meeting.

Mr. Maltz stated that he recommends the paved alternative for the proposed parking areas because it provides a more efficient layout and better maintenance. He also stated that the driveway located at 169 Cooper Avenue should be widened to at least 18 feet to meet the ordinance requirement for a two-way driveway.

Marked into evidence was:

A-25 Resume of Mr. Maltz

The Board questioned Mr. Maltz.

Mr. Maltz stated that he did not do an investigation of the history of vehicular accidents on Cooper Avenue. He also stated that the maximum number of vehicles in the loop drive at any one time was 4 vehicles. He continued by stating that the queuing lane of vehicles on this loop drive never reached Cooper Avenue and maintained at least a 100-foot distance from Cooper Avenue. Mr. Maltz further stated that the existing street width of Cooper Avenue acts a constraint on two-way traffic flow and that permit parking on the street would not alleviate the safety problems caused by on-street parking.

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

Jan Hoffman, 193 Cooper Avenue, asked if the traffic and parking survey of Cooper Avenue had included an evening study, and if more cars were observed heading towards Park Street or Valley Road, and if vehicles related to the Women's Club were observed on a Sunday morning, and what would prevent additional on-street parking from occurring if on-site parking was created, and would the Church restrict indiscriminate parking on their proposed parking areas.

John Conti, 362 Park Street, asked if additional on-site parking would be recommended in the case of nursery school expansion.

Thomas Haver, an abutter of one of the church properties, asked if the proposed parking areas would increase flooding.

Al Weller, 187 Cooper Avenue, asked if the slower traffic caused by the on-street parking on Cooper Avenue presently decreases the incidence of traffic accidents.

Barbara Gregory, 179 Cooper Avenue, asked if on-street parking for one side of Cooper Avenue would make sense, and if the Pastor and Assistant Pastor of the Church presently have on-site parking.

Kate McGuire, 182 Cooper Avenue, asked what the exact time of the A.M. peak traffic congestion was.

Gary Smith, 20 Wellesley Road, asked how many non-parking areas there are on Cooper Avenue, and what else could be done to improve traffic safety on Cooper Avenue, and if one-way traffic would improve the traffic safety on Cooper Avenue.

Robert Rich, 15 Carolin Road, asked if the Church properties presently have barrier-free parking available, and did the traffic and parking study consider all of the Church's ancillary uses.

The Board questioned Mr. Maltz.

Chair Harrison called for a short recess.

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

Marked into evidence was:

A-26 Resume of Peter Steck

Mr. Steck described the application, the existing conditions of the Church properties, the past and present uses of the Church properties, the applicants' proposal,

and the land uses surrounding the Church properties. He also described the past and present parking conditions on the Church properties.

Marked into evidence was:

A-27 Photo-board of properties surrounding the Church properties, prepared by Mr. Steck, dated February 5, 2002

A-28 Sanborn Map of Cooper Avenue and vicinity with a zoning overlay

Mr. Steck described the screening and shielding of the proposed parking areas from the public view. He stated that the neighborhood surrounding the Church properties is predominantly a single-family neighborhood, however that an athletic field and some multifamily buildings immediately adjoin the Church property at 169 Cooper Avenue. He further stated that the immediate neighborhood of the Church accommodates some of the traffic associated with a nearby commercial zone and that because Montclair is an older suburban community with very little vacant land available, different land uses share land in close proximity. He continued by stating that he had reviewed the last Master Plan of Montclair, completed in 1986 and amended in 1987, and the last Master Plan Re-examination Report, dated December 13, 1999.

Marked into evidence was:

A-29 Township of Montclair Master Plan Re-examination Report, December 13, 1999

Mr. Steck stated that the Re-examination Report of December 13, 1999 indicated an increase in school-aged children in Montclair and that early childhood education is an increasing priority in Montclair. He also stated that the Re-examination Report notes that religious institutions play a large role in providing community services in Montclair and that space within the existing churches in Montclair were housing a variety of ancillary uses. Mr. Steck cited the Shim vs. Washington Township case in which it was found that a nursery school is an accessory use to a church and that Re-examination Report states that the Planning Board does not seek to curtail these accessory uses so long as the accessory use does not worsen parking deficiencies. He further stated that the Re-examination Report recommends that the on-site parking ordinance should be revised to require parking for ancillary uses on religious properties.

Mr. Steck stated that the Church properties are located in the R-1 Zone, which does not permit churches and that an ordinance change in 1979 rendered churches as a non-conforming use in the R-1 zone. He stated that churches are presently permitted as conditional uses in most other residential zones. Mr. Steck stated that the off-street parking requirement for the Church would be 62 parking spaces according to the current ordinance and that his interpretation of this requirement is that it does not intend to have all of the church parking on the church property. He continued by stating that the parking required by the ordinance is intended to

accommodate all of the parking for ancillary uses and some of the Sunday activity. He further stated that a concern over the growth of non-standard religious groups utilizing single-family residences for religious purposes and interrupting the residential character of the R-1 Zone caused the prohibition of churches in the R-1 Zone in 1979.

Mr. Steck stated that the applicant needs a D-2 variance to expand a non-conforming use for both of the Church properties, and a C variance for the proposed gravel surface of the parking areas. He stated that that paved parking areas would better serve the Church properties and provide more order and better maintenance. He continued by stating that a D-1 variance would be required by the applicant if the proposed parking for the Church building is considered a new use and that the applicant requires a waiver from the two-way driveway width requirement.

Mr. Steck stated that the church use has been found by the Courts to be an inherently beneficial use and that due to this finding, the applicants have already met the positive criteria and that the site does not have to be shown to be particularly well suited for the use. He stated that most nursery schools in Montclair happen to be located in churches due to the existence of large church buildings and scarce availability of vacant land to develop stand-alone nursery schools. He stated that the Church has had a nursery school since 1968 and that the nursery school is beneficial to the community. He stated that within the Municipal Land Use Law a finding of fact has indicated that there is a significant need for childcare. He stated that the Church is not a new use and that the Church as a pre-existing, non-conforming use is allowed to change to meet the needs of the community. He cited case law which indicates that the expansion of a use is allowed when it is necessary to modify, modernize, and intensify within the confines of its building to serve the demands of the public.

Mr. Steck stated that the proposed parking areas are shielded and screened from public view and properly placed on the Church properties. He stated that the proposed parking areas are an effort by the Church to accommodate automobile usage that has become a larger part of modern life. He also stated that the on-street parking permit system does not provide a vested right for parking and that the Master Plan Re-examination of 1999 calls for on-site parking for accessory uses to a church. He continued by stating that the Zoning Ordinance requires on-site parking, and that the Board of Adjustment often requires on-site parking for churches as well. Mr. Steck stated that in past decisions of the Board of Adjustment regarding church applications, the following principles have been established: a church is an inherently beneficial use, the outside activities associated with the church advance public purposes, it is advantageous to provide off-street parking and meet the off-street parking requirements to the greatest extent possible, churches generally do not have many negative effects on abutting residential properties, 400 to 700 feet is too far of a walking distance for church activities, and parking should not be located in a front yard.

Mr. Steck stated that locating parking on-site is an advancement of public safety and that the First Amendment of the United States Constitution allows religious institution to adapt to modern automobile usage and that the Fifth Amendment provides

protection of property rights and that non-conforming uses must be allowed to adapt to modern times. He stated that the D-variance request is for the expansion of a non-conforming use, however that the use is an inherently beneficial use. Mr. Steck cited the Sica case that sets forth the review criteria for this type of application, which includes: the magnitude of the benefits, the adverse impacts, reasonable conditions for the Board to impose, and can the negative criteria be balanced. Mr. Steck stated that his findings in the review of this application are that the positive criteria clearly satisfied by the parent use and that the introduction of on-site parking satisfies the requirements of various entities. He continued by stating that the paved surface is the better option for an institutional use. He further stated that the negative criteria has been satisfied due to the fact that the Church is an existing facility and that the expansion is related to an accessory component, and that the application brings the property more in conformity with the zoning ordinance, and proposed parking areas conform to the zoning ordinance. Mr. Steck stated that the baseline of judging the negative criteria is the measuring of the negative impacts by what can be done by right. He stated that the statutory criteria of this application are met by the Sica case law, the paved surface should be used rather than gravel, and that the driveway width for 169 Cooper should be increased in width to meet site plan requirements.

Marked into evidence was:

A-30 Board of Adjustment Resolutions reviewed by Mr. Steck

The Board questioned Mr. Steck.

Mr. Jemas cross-examined Mr. Steck.

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

Robert Rich, 15 Carolin Road, asked if the only existing barrier-free entrance to the church building is located on the easterly side of the building and how far is that entrance from the proposed barrier-free parking stalls.

Bruce Bingham, 136 Summit Avenue, asked what municipality was the subject of the Shim case referenced by Mr. Steck in his testimony, and was the nursery school enrollment within the Shim case limited to the Church members or residents of the municipality, and were the hours of the nursery school limited within the Shim case, and how can the nursery school use be beneficial when the nursery school use is greater than the church use and 30 percent of the enrollment at the school is from out of town.

Elaine Conti, 362 Park Street, asked how many people per vehicle are expected when people come to the Church properties.

Don Clark, 175 Cooper Avenue, asked how the negative impacts of the proposed application are weighed according to the Municipal Land Use Law of New

Jersey, and if the fact that 169 Cooper Avenue borders on an R-3 Zone is any basis for the granting of a variance, and if the noise impacts associated with the closing of car doors can be considered a substantial impact, and if the proposed parking areas would have an visual impact on the residential character of the neighborhood, and how will the parking areas would be monitored.

Marked into evidence was:

OCL-1 Letter from Ruth Taylor to Don Clark

Barbara Gregory, 179 Cooper, asked Mr. Steck what his thoughts would be on living next to a commuter parking lot.

Mr. Owen stated that he had a letter brief delivered to the Board.

Marked into evidence was:

A-31 February 22, 2002 letter brief from David Owen

Chair Harrison announced that the application would be continued on April 24, 2002 and that no further notice be given.

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