

MINUTES OF THE BOARD OF ADJUSTMENT
March 16, 2005

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

ABSENT: Mr. Flood

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 February 16, 2005** regular meeting were adopted as modified, Ms. Cockey, Ms. English, and Mr. Haizel abstaining.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Deborah C. Barnes and William Diggs, 57 Llewellyn Road** was adopted, Ms. Cockey, Ms. English, and Mr. Haizel abstaining:

WHEREAS, Deborah C. Barnes and William Diggs, owners of property at **57 Llewellyn Road**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow for a rear yard setback less than that required pursuant to **Montclair Code Section 347-39A(1)** in connection with the construction of an addition on to an existing single-family dwelling on property designated as Lot 10 in Block 2003 on the Township Tax Map and located in the R-0(a) One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Richard J. Hingos, Inc., dated April 2, 2004, a site plan prepared on a copy of the property survey with no date or preparer indicated, and floor plans and elevations, prepared by A.B.A. Home Remodelers Co., undated; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 16, 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 is a corner lot located at the intersection of Llewellyn Road and Harrison Avenue, and contains a 2½-story single-family dwelling and a detached garage. The property has 160.97 feet of frontage on Harrison Avenue and 170.33 feet of frontage on Llewellyn Road.

2. Due to the shorter length of the frontage along Harrison Avenue, the rear yard of the subject property is located on the easterly side of the dwelling. The existing dwelling has a nonconforming rear yard setback of 12.28 feet, measured to the northeasterly corner of the dwelling, and 20.44 feet as measured to the southeasterly corner of the dwelling.

3. The applicants' proposal is to construct a one-story addition on to the dwelling, which would be aligned with the easterly wall of the existing dwelling. The proposed addition conforms to the height and side yard setback requirements but does not meet the rear yard setback requirement of 30 feet.

4. The proposed addition would not encroach further into the nonconforming rear yard than the existing dwelling, and due to the angled position of the dwelling, the rear yard setback of the addition would be greater than that of the existing dwelling.

5. Based upon the Board's particular knowledge of local conditions, the proposed addition 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 variance 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 variance 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 Deborah C. Barnes and William Diggs is hereby approved.

NOW, THEREFORE, BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the applicants, 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 **Dirk and Yvonne Hettrich, 25 Stanford Place** was adopted, Ms. Cockey, Ms. English, and Mr. Haizel abstaining:

WHEREAS, Dirk and Yvonne Hettrich, owners of property at **25 Stanford Place**, did make application to the Board of Adjustment of the Township of Montclair for

variances pursuant to NJSA40:55D-70c to allow for a front yard setback less than that required pursuant to **Montclair Code Section 347-45B(1)** and side yard setbacks less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of several additions onto the dwelling on property designated as Lot 6 in Block 4406 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey and a site plan, floor plans, and elevations prepared by David Varnish Architects, dated January 18, 2005, with the site plan revised to January 24, 2005 that depicts the new construction; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 16, 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 is an interior lot measuring 50 feet in width and 8,235 square feet in area and contains a 2½-story, single-family dwelling with a detached garage.

2. The applicants' propose to construct a new roofed front porch, a 2-story addition onto the westerly side of the dwelling, part of which would be located over an existing one-story section of the home, and a 2-story addition and 1-story addition onto the rear of the dwelling.

3. The required front yard setback for the subject property is approximately 34.7 feet, due to the average front yard setback of the nearest 4 dwellings on Stanford Place, 2 on either side of the subject property. The existing dwelling on the property has a conforming front yard setback of 34.8 feet, as measured to the existing roofed front entrance stoop. The existing dwelling has nonconforming side yard setbacks of 9.6 feet in the westerly side yard and 3.6 feet in the easterly side yard, where a minimum of 10 feet and 6 feet are required, respectively.

4. The addition proposed on the westerly side of the dwelling meets the front yard setback requirement, but does not meet the westerly side yard setback requirement of 10 feet. The proposed roofed front porch does not meet the front yard setback requirement of 34.7 feet or the easterly side yard setback requirement of 6 feet. The additions proposed at the rear of the dwelling meet all setback requirements.

5. The addition proposed on the westerly side of the dwelling would be aligned with the westerly wall of the existing dwelling, would be set back 9.5 feet at its closest point to the westerly side property line, and is a minor deviation from the 10-foot setback requirement in the westerly side yard.

6. The front yard setback for the proposed roofed front porch is 27.5 feet, which represents a new encroachment of approximately 7.2 feet into the required front yard setback, and is a significant deviation from the 34.7-foot front yard setback requirement. Also, no justification was presented to allow the proposed roofed front porch to be set back 5.1 feet from the easterly side property line, where a minimum of 6 feet is required.

WHEREAS, the Board, based upon the foregoing findings, concluded that, with respect to the variance requested for the westerly side yard setback of less than 10 feet, the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance 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 N.J.S.A.40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that, with respect to the variance requested for the westerly side yard setback of less than 10 feet, 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 variance 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 N.J.S.A.40:55D-70C(2); and

WHEREAS, the Board, based on the foregoing findings concluded that, with respect to the variances requested for the front yard setback and easterly side yard setback less than required, the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove that the variance 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

WHEREAS, the Board, based on the aforementioned findings, concluded that, with respect to the variance requested for the front yard setback and easterly side yard setback less than required, the applicants did not prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variance 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 *N.J.S.A. 40:55D-70C(2)*;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Dirk and Yvonne Hettrich, for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to allow a front yard setback and an easterly side yard setback less than required is hereby denied; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Dirk and Yvonne Hettrich for a variance pursuant to *N.J.S.A. 40:55D-70C(1)* and (2) to permit a westerly side yard setback less than required is hereby 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.

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 **586 Park Street, LLC, 586 Park Street**. Mr. Sullivan explained the type of application that is being presented by the applicant. Calvin O. Trevenen, Esq., appeared as attorney for the applicant and described the application. He stated that a variance is required because the subject property does not front on a public street

Marked into evidence were:

- A-1 Plot Plan of proposed dwelling depicted on a "Historical Development Map" of the properties that share the common driveway from Park Street, prepared by Way & Associates, undated
- A-2 Four (4) Photographs of the existing dwellings that share the common driveway and a rendering of the proposed dwelling, prepared by Way & Associates, dated March 16, 2005
- A-3 Rendering of the proposed dwelling, prepared by Way & Associates, dated March 16, 2005 and a rendering of the proposed dwelling and the existing dwelling on the adjoining lot to the west, undated, both on a board

Mr. Whipple joined the meeting.

Mr. Trevenen called Roger DeNiscia, who was sworn and stated his qualifications as a New Jersey Licensed Professional Planner. Mr. DeNiscia described the application and stated that there are no physical constraints on the property. He described the existing dwelling on the lot and stated that it is approximately 56 years old and contains approximately 1,600 square feet in floor area not including the attached garage. He stated that the existing dwelling could be considered an obtrusive element aesthetically in comparison with the existing dwellings on the private driveway and that the proposed dwelling would be more in keeping with the design and scale of these existing dwellings. He stated that the existing 16-foot wide paved private driveway serves the 4 existing homes and has been in existence since approximately 1928 and is adequate for emergency vehicle access since a typical travel lane on a roadway is approximately 11 feet wide. Mr. DeNiscia described the setbacks of the proposed dwelling and stated

that the placement of the dwelling on the lot would also be in keeping with the placement of the other existing homes on the private driveway.

Mr. Trevenen called John Way, who was sworn and stated his qualifications as a New Jersey Licensed Architect. Mr. Way stated that the existing dwelling on the subject property does not fit in with the remarkable design of the other existing homes on the private driveway and that the design of the proposed dwelling would be far more in keeping with the scale and design of these existing homes. He also stated that the placement of the proposed dwelling on the lot is in keeping with that of the existing homes on the private driveway.

Marked into evidence were:

- A-4 Plot Plan of proposed dwelling depicted on a "Historical Development Map" of the properties that share the common driveway from Park Street, and copies the plot plan, prepared by Way & Associates, undated, and the property survey, on a board
- A-5 Rear (north) and westerly side elevation drawings, on a board, prepared by Way & Associates, dated February 16, 2005
- A-6 Front (south) and easterly side elevation drawings, on a board, prepared by Way & Associates, dated February 16, 2005
- A-7 First and Second Floor Plans, on a board, prepared by Way & Associates, dated February 16, 2005

Mr. Way described the elevation views of the dwelling and the proposed floor plans. He stated that no fences are proposed and that central air-conditioning units would be placed at the rear of the dwelling.

The Board questioned the witnesses.

Chair Harrison called for questions from the public.

Ron Naspo, 13 Patton Place, asked if vehicles are allowed to park on the main driveway serving these properties and how that would affect emergency vehicle access. Mr. Way stated that resident parking is provided within the two-car garage and that guest parking would be on the driveway leading to the home which has considerable length.

Mr. Trevenen recalled Mr. DeNiscia, who was still under oath. Mr. DeNiscia stated that the application meets the criteria for approval. He stated that the proposed construction of a new dwelling that is more in keeping with the scale and design of the existing dwellings on the private driveway fulfills specific purposes of planning enunciated in the Municipal Land Use Law. He also stated that the application satisfies

the positive and negative criteria and that granting the variance would not have negative effect on the Master Plan, zoning ordinance, or the public good.

The Board questioned Mr. DeNiscia. Mr. DeNiscia stated that if the New Jersey Residential Site Improvement Standards are applied to this application, the private driveway could be allowed to be 18 feet wide. He also stated that space on the driveway for parking would not be required. Mr. Trevenen stated that the private driveway is commonly owned by the owners of the other properties fronting on the private driveway.

Mr. Trevenen called William Staehle, 181 Fernwood Avenue, who was sworn. Mr. Staehle stated that he is a partner in 586 Park Street, LLC, owner of the subject property. He stated that the owners of the properties on the private driveway jointly maintain the driveway and that any new paving or improvements to the private driveway would also be done jointly by the same property owners. Mr. Trevenen called Frank Haimbach, owner of 580 Park Street, who was sworn. He stated that he sometimes leaves his vehicle on the private driveway for a few minutes at a time and that emergency vehicles have accessed the site before, as well as postal and delivery trucks. Mr. Staehle stated that there are 3 vacant lots fronting on the private driveway, one of which is owned by Mr. Haimbach, another which is jointly owned by the home owners on the private driveway, and another lot which is not developable due to environmental constraints. Mr. Haimbach stated that the Township used to do garbage removal at the properties on the private driveway and that a private contractor has been used in recent years.

The Board questioned Mr. DeNiscia. Mr. DeNiscia stated that he has not consulted with the Township Fire Department concerning the existing private driveway, although his opinion is that the driveway would be acceptable. Assistant Secretary Charreun stated that a copy of the Board Memorandum on the proposed dwelling was sent to the Fire Department and that they have not issued any comments yet. Mr. Trevenen stated that he is not aware of any easements concerning the private driveway.

Chair Harrison called for comments from the public. None was offered. Mr. Trevenen gave his closing remarks.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Ms. English, the variance application was approved, subject to the following conditions:

1. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.
2. The applicant shall consult with the Township Fire Department and shall comply with any requirements deemed necessary in order to provide adequate access to the subject property for fire fighting equipment along the length of the paved driveway extending from Park Street to the subject property.

Chair Harrison called for a short recess.

Chair Harrison called the site plan and variance application of **The Salvation Army, 13 Trinity Place**. Grant Gille, Esq. appeared as attorney for the applicant and described the application. Mr. Gille stated that no expansion or change in use is proposed as a result of the proposed new facility.

Mr. Gille called Jack Higgins, who was sworn and stated his qualifications as a New Jersey Licensed Architect.

Marked into evidence were:

- A-1 Engineering plans on 7 sheets, prepared by Bertin Engineering Associates, Inc., dated March 1, 2005, and architectural plans on 4 sheets, prepared by Jack F. Higgins, Architect, Inc., dated March 1, 2005
- A-2 Sheet A-4, Elevations, in color on a board, prepared by Jack F. Higgins, Architect, Inc., dated March 1, 2005
- A-3 Sheet A-1, Lower Level Floor Plan, in color on a board, prepared by Jack F. Higgins, Architect, Inc., dated March 1, 2005
- A-4 Sheet A-2, Main Level Floor Plan, in color on a board, prepared by Jack F. Higgins, Architect, Inc., dated March 1, 2005
- A-5 Sheet A-3, Upper Level Floor Plan, in color on a board, prepared by Jack F. Higgins, Architect, Inc., dated March 1, 2005
- A-6 Site Plan, in color on a board, prepared by Bertin Engineering Associates, Inc., dated March 1, 2005

Mr. Higgins described the site and the existing facility. He stated that the applicant has been at the subject property since the mid-1960s and that several renovations and additions have been undertaken on the existing building over the course of those years. He also stated that the existing building on the site contains a total of approximately 17,200 square feet in floor area, distributed over two floor levels, and that the existing chapel seats approximately 150 people. He further stated that the applicant has outgrown the existing building and that it is no longer suitable for the Sunday services or the social programs conducted on the site. He continued by describing the existing on-site parking and stated that the existing site has a total of approximately 45 on-site parking spaces including the unorganized gravel parking lot on the south side of the lot.

Mr. Higgins described the proposed building and stated that the design was oriented towards providing the proper space needed for worship services, band activities, various cultural resource and community outreach programs. He also stated that the design of the building and site incorporated underground parking in order to

maximize off-street parking while minimizing the visual impact of the parking. He further stated that a total of 3 barrier-free parking spaces are proposed, which are in compliance with NJRSIS standards. He continued by describing the floor plans and stated that a total of 28,608 square feet of floor area is proposed among the first level and upper level. He also stated that the chapel has been designed to contain 280 seats, including 23 seats for the band.

Mr. Higgins described the proposed elevations and stated that the walls and roof have been designed in order to break up the massing of the building and to reduce the scale of the proposed building. He stated that the height of the building measures 32 feet, measured as required by the zoning ordinance and that the steeple would rise to a height of 48 feet at its highest point. He continued by describing the proposed location of the central air-conditioning units and stated that they would be located on the roof and shielded from public view due to the roof design.

Marked into evidence was:

A-7 Roof Sketch Plan, undated, prepared by Jack F. Higgins, Architect

Mr. Higgins stated that the proposed building complies with the height and setback requirements. He continued by describing the proposed signage. He stated that a freestanding sign is proposed in the Trinity Place front yard and that a wall-mounted sign is proposed at the main entrance on Trinity Place and at the entrance on the northerly side of the building. He also stated that the signage has been designed to comply with the zoning ordinance. He continued by stating that since the existing building would be demolished, the applicant would have to find temporary quarters within Montclair for about 18 months. He further stated that the existing parking area on the site would act as the construction staging area.

The Board questioned Mr. Higgins. Mr. Higgins stated that the westerly side yard setback of the proposed building adjoins the parking area of a multifamily site on the adjoining property to the west. He stated that 4 parking spaces are located within the front yard. He also stated that the plans will provide the information necessary to comply with the Board Engineer's letter regarding concerns over the size of roof leaders.

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

Mr. Gille called Capt. Alastair Bate, Administrator of The Salvation Army in Montclair, who was sworn. He stated that The Salvation Army has been in Montclair since 1891 and that they have been located at the subject property since 1965. He stated that the existing building is no longer suitable for worship services or their social service programs and that the proposed building would suit their needs. He also stated that, although their worship community is comprised of 180 members, their regular attendance at Sunday services is between 120 and 140 people. He further stated that the 120 to 140 people attending the Sunday service between 9:30 a.m. and 11 a.m. is the peak level of activity on the site at any one time and that no other worship service or

social service program occurs on site during the time of this peak level activity. He also described the Sunday School program that follows the Sunday service and stated that this program has a total attendance of between 60 and 80 students. He continued by describing the various adult group programs and activities that occur during the week and stated that each of these programs would see no more than 20 or 30 people at a time. He also described the child and youth programs and activities during the week and stated that these programs typically see an attendance of between 30 to 40 children.

Capt. Bate described the social service programs operated from the subject property and stated that 1 social worker on the site sees 8 to 10 appointments per day. He stated that these programs provide utility, rental, food, and clothing assistance Monday through Friday during the day. He also described the highlighted assistance programs like the Thanksgiving feeding program, which sees about 100 people and the Christmas toy program which sees about 200 people. He further stated that a feeding program regular takes place from Monday to Wednesday in the afternoon, which is continued at St. Luke's Church for the remainder of the week and described the addiction and substance abuse referral service that takes place on the site. He continued by describing The Salvation Army's role in emergency services and summer camp program that takes place on the site. He also stated that the clothing drop-off bins have been discontinued on the site and that they provide a pick-up service instead. He further stated that clothing drop-off bins would not be included on the proposed site. Capt. Bate stated that the new building would allow for visitors to the site for social service programs to remain within the building rather than having to wait outside for any period of time. He stated that the office hours are from 8:30 a.m. to 4:00 p.m. on Monday through Friday. He also stated that there are 9 employees and that 6 cars from these employees are parked in the parking lot on a regular basis. He continued by stating that the underground parking garage would only be open for Sunday services and the other less frequent large events.

The Board questioned Capt. Bate. Mr. Bate stated that the chapel has been designed to seat 280 people due to calculations by church planners that anticipate growth and have determined that a chapel size of 50-80 percent more than the number of attendees allows for growth without having too many unused seats. He also stated that Salvation Army congregations rarely exceed 200 members anywhere and that the maximum service attendance anticipated for the future of this congregation would be approximately 180 people. He also stated that the 280 seat chapel is useful for musical events where the attendance may rise to 250 seats, which occurs about 3 times a year.

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

Chair Harrison announced that the application would be continued at a special meeting to be held on March 30, 2005 and that no further notice would be given. Mr. Gille granted the Board an extension of time through March 30, 2005.

On motion by Ms. English, seconded by Ms. Cockey, the meeting was adjourned.