

MINUTES OF THE BOARD OF ADJUSTMENT
March 19, 2003

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

ABSENT: Ms. Rock-Bailey

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.

The Board discussed the insufficient notice regarding the approved variance application of **Calvary Baptist Church, 7 North Willow Street**. Mr. Sullivan stated that the statute governing the notice procedure does not invalidate the proceeding under the circumstances and that the Board may memorialize the resolution at this meeting. Andrew Kessler, Esq., representing objectors to the variance approval, who are within 200 feet of the subject property and were not noticed, stated that the Board should reopen the matter and permit the objectors to present their proofs to the Board. David Owen, Esq., appearing for the applicant, reiterated Mr. Sullivan's comments and stated that the applicant relied on the certified owners list provided to them and that the Board is not obligated to reopen the matter. Mr. Sullivan stated that action was taken on the application at the February 19, 2003 meeting and that the Board is required to adopt a resolution within 45 days of that date. Mr. Sullivan also stated that the failure to adopt a resolution at this hearing would give an interested party the right to proceed in a summary fashion before the Superior Court and compel a resolution to be adopted.

On motion by Mr. Haizel, seconded by Ms. Costello, the **Minutes of the February 19, 2003** regular meeting were adopted, Vice Chair Fleischer, Mr. Gallardo, and Mr. Susswein abstaining.

On motion by Mr. Haizel, seconded by Ms. Costello, the following Resolution memorializing the approval of the variance application of **Mark Haefeli, 129 Llewellyn Road** was adopted, Vice Chair Fleischer, Mr. Gallardo, and Mr. Susswein abstaining:

WHEREAS, Mark Haefeli, owner of property at **129 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 easterly side yard setback less than that required pursuant to **Montclair Code Section 347-33C(1)** in connection with the construction of an addition and an outdoor deck on property designated as Lot 56 in Block 1102 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant submitted a property survey prepared by William J. Darmstatter, dated October 13, 1999 and a site plan, floor plans and elevations prepared by John Thomas Collins, Architect, dated October 2002, 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 19, 2003 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 approximately 57.17 feet and contains a 2½-story single-family dwelling.
2. The existing dwelling has a nonconforming easterly side yard setback of approximately 7.1 feet.
3. The applicant's proposal is to construct a two-story addition and outdoor deck at the rear of the dwelling which conforms to the height and rear yard setback requirements but does not meet the side yard setback requirement of 12 feet in the easterly side yard.
4. The proposed addition will be aligned with the existing easterly wall of the dwelling and conforms to the side yard setback requirement in the westerly side yard.
5. Based upon the board's particular knowledge of local conditions, the proposed addition is not inconsistent 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 applicant 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 applicant 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 Mark Haefeli 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. Haizel, seconded by Ms. Costello, the following Resolution memorializing the approval of the variance application of **Deb Chromow and Robert Cooper, 5 Nassau Road** was adopted, Vice Chair Fleischer, Mr. Gallardo, and Mr. Susswein abstaining:

WHEREAS, Deb Chromow and Robert Cooper, owners of property at **5 Nassau Road**, did make application to the Board of Adjustment of the Township of Montclair for a 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)** in connection with the construction of an third-story addition on property designated as Lot 3 in Block 2804 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Richard J. Hingos Inc., dated July 5, 1999 and a site plan, floor plans, and elevations prepared by Paul Newman, AIA Architect, dated July 8, 2002, 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 19, 2003 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 through lot with frontages on Nassau Road and Mount Hebron Road, measures approximately 6,650 square feet, and contains a single-family dwelling.

2. The applicants' proposal is to construct a third-story addition that will contain a bedroom and bathroom.

3. The proposed construction conforms to the height and side yard setback requirements but does not meet the front yard setback requirement in the Mount Hebron Road front yard.

4. The plans indicate that the proposed third-story addition would not project closer to Mount Hebron Road than the existing dwelling.

5. The existing through lot condition of the property is an unusual condition which places excessive hardship on the applicants.

6. Based upon the board's particular knowledge of local conditions, the proposed addition is not inconsistent 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 Deb Chromow and Robert Cooper 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. Haizel, seconded by Ms. Costello, the following Resolution memorializing the approval of the variance application of **Calvary Chapel of Montclair, 7 North Willow Street** was adopted, Vice Chair Fleischer, Mr. Gallardo, and Mr. Susswein abstaining:

WHEREAS, Calvary Chapel of Montclair did make application to the Board of Adjustment of the Township of Montclair to utilize the first floor of an existing building as a house of worship on property located at 7 North Willow Street and designated as Lots 16 and 17 in Block 3206 on the Township Tax Map and located in the "Community Area" of the C-1 Central Business Zone; and

WHEREAS, the applicant sought a variance pursuant to *N.J.S.A. 40:55D-70d(1)* to allow the proposed use which is not permitted in the zone pursuant to Montclair Code Section 347-80; and

WHEREAS, the applicant submitted a site plan and floor plans prepared by Sionas Architecture, P.C., dated October 10, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 19, 2003 at which time it was established that notice was properly published and that property owners within 200 feet of 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 Lot 16 which contains an existing two story building which has previously been used for manufacturing and automotive purposes. The subject property also includes Lot 17 which contains an existing parking area for 24 vehicles. The proposed house of worship would occupy the lower level (except for approximately 1,000 square feet) and would include a 224 seat sanctuary, fellowship hall, classrooms, meeting rooms and offices.

2. In the immediate vicinity of the property there are many mixed uses including retail, automotive, the Lackawanna Plaza Mall, the YWCA building, and garden apartments.

3. Calvary Chapel of Montclair has been established in the Montclair community at a variety of rented locations over the past 10 years. It has made strong efforts to buy and/or lease property so that it can have better and more permanent space. The congregation currently conducts religious instruction and services on a regular basis on Sundays and has other activities.

4. 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), 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).

5. The C-1 Zone permits a large variety of uses, including nonprofit institutional uses, theaters, amusement centers, health clubs, gyms, and educational establishments. This Zone prohibits nine (9) difference use categories, but it does not prohibit houses of worship in any of these categories. In the C-1 Zone, conversions to different and even more intensive uses are exempt from off-street parking requirements.

6. Houses of worship are permitted in other zones as conditional uses. This application would meet the conditional use standards, as established by the applicant's planner and traffic engineer, with the exception of a slight parking deficiency. The testimony established that the existing 24 space parking area, available on street parking, and the municipal lot in close proximity to the site will provide more than adequate parking for the proposed use. In addition, the applicant's activities are predominantly on Sundays and at night, when it will not compete for parking.

7. Based upon the Board's particular knowledge of local conditions, the application is not inconsistent with the character of the neighborhood, especially because a great many relatively intensive permitted uses could occupy the property as of right, and a number of them could do so with huge parking deficiencies, and so the application will not cause substantial detriment to the public good.

8. The application will not substantially impair the intent and purpose of the zone plan and zoning ordinance because adjacent uses are primarily commercial and the application will not adjoin or adversely affect residential properties, the applicant's activities are limited, and ample parking exists.

WHEREAS, the Board, based on the foregoing findings, concluded that pursuant to the decision of the New Jersey Supreme Court in Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992), the proposed religious use is significant and inherently beneficial and on balance, the grant of the variance would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Calvary Chapel of Montclair for a use variance is hereby approved 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.

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 site plan and variance application of **W. Thomas & Kathleen McDonough, 129 Valley Road**. Mr. Susswein stepped down for this application. Calvin Trevenen, Esq. appeared as attorney for the applicants and described the application. He stated that the proposed law office use is permitted in the N-C Zone with the provision that another specific type of use must be located in the structure and occupy at least the equivalent in gross floor area as the law office.

Marked into evidence was:

A-1 Copy of Montclair Code Section 347-90D

Mr. Trevenen called W. Thomas McDonough, owner of the subject property, who was sworn. Mr. McDonough stated that he is an attorney with an existing law office in Montclair since 1990 and that he is also a resident of Montclair. He stated that he

purchased the subject property approximately 1 year ago with the intent of locating his law practice within the entire building with no other uses and that he is currently occupying one half of the building with the law practice. He also stated that a maximum of 7 employees, including 3 attorneys and 4 staff, are associated with the law office. He further stated that his firm specializes in civil litigation matters, with 65 to 70 percent of his clientele being Montclair residents and continued by describing his personal involvement with the local community.

Mr. McDonough described the improvements made to the property and stated that a barrier-free ramp has been constructed. He also described the parking area and 2-car garage and stated that trash receptacles for the site would be kept inside the garage. He continued by stating that his own office is presently on the second floor of the building and that 2 staff members are on the first floor, however, that less than half of the floor space of the entire building is being utilized for the law office. He described the employee parking and stated that a maximum of 3 visitors or clients at any one time could be on the site. Mr. McDonough continued by describing the hours of operation for the law office and stated that he keeps sporadic weekend hours. He also stated that exterior lighting has been added to the site.

The Board questioned Mr. McDonough.

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

Mr. Trevenen called Peter Meyer, Professional Engineer and Professional Planner, who was sworn and stated his qualifications.

Marked into evidence were:

- A-2 Site Plan with color on a board, prepared by PPE Corp., dated December 11, 2002
- A-3 8-page photo booklet of the site and vicinity, prepared by PPE Corp., dated March 12, 2003

Mr. Meyer described the site and stated that the existing planted area along the side of the building could remain if preferred by the Board. He also stated that an existing solid fence on the easterly and southerly border provides adequate screening of the parking area and described the existing site lighting. He continued by stating that the property is located in the N-C Neighborhood Commercial Zone, and that the purpose of the zone is to provide for the commercial needs of the local residents.

Mr. Meyer described the variance and waivers requested. He stated that the applicants' law office serves local clients and has been providing a public service for over 17 years, particularly in conjunction with the applicants' involvement in local programs. He also stated that the site is particularly well suited for the proposed use and that the site provides adequate parking for proposed use. He further stated that the

existing structure and on-site parking are not suited for any type of retail use and that the proposed use is a good adaptive reuse of the property that is compatible with the neighborhood and would not have a negative effect on adjoining properties. He continued by stating that the application satisfies the positive criteria and that the application could be granted without significant detriment to the Master Plan or Zone Ordinance.

Mr. Meyer stated that the building contains 1750 square feet of floor area, which requires 7 parking spaces for the proposed use, and that a medical office or retail use would require more parking. He described the parking and traffic flow and stated that the site would have low traffic flow due to the nature of the use. He also described the proposed parking space dimensions and setbacks and stated that the proposed aisle widths provide safe and efficient traffic flow.

The Board questioned Mr. Meyer.

Mr. Meyer stated that the existing central air conditioning units are located between the building and the barrier-free ramp on the side of the building.

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

Chair Harrison called for public comment. None was offered.

Mr. Trevenen gave his closing remarks.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the site plan and variance application was unanimously denied.

The Board took a short recess.

Chair Harrison called the minor subdivision and variance application of **Damon Stinson, Jr., 71-73 and 75-77 Forest Street**. Grace Bertone, Esq. appeared as attorney for the applicant and described the application. She stated that although the property is designated as 2 separate lots on the Township of Montclair Tax Map, the lots are considered merged as a matter of law pursuant to the doctrine enunciated in Loechner v. Campoli, 40 N.J. 504(1967) and that the applicant is seeking to subdivide the property into two separate lots.

Ms. Bertone called George Ritter, Professional Planner, who was sworn and stated his qualifications. Mr. Ritter described the application and the variances requested and stated that the existing nonconforming four-family dwellings on the property were approved by the Board of Adjustment in 1980. He described the proposed minor subdivision and stated that the application is seeking to reestablish the side property line between the 2 lots and that the proposed lot widths are consistent

with what previously existed on the site and what presently exists in the neighborhood. He further stated that no changes to the site are proposed and that the application would not have a negative effect on the neighborhood.

Marked into evidence were:

- A-1 Minor Subdivision Plan, prepared by Pronesti Surveying, Inc., dated October 24, 2002, on a board with photos of the existing property. (Exhibit dated March 18, 2003)
- A-2 Neighborhood Analysis, prepared by George Ritter, P.P., dated March 18, 2003

Mr. Ritter stated that, within the area of Forest Street that was studied in the Neighborhood Analysis, 77 percent of the properties do not meet the 60-foot lot width requirement. He also stated that the merger of the lots creates a nonconformity by creating a single lot containing 2 principle structures. He further stated that the side yard setback variance could be granted because the structures are existing and that the application would not have a negative impact on the neighborhood, the Master Plan, or Zoning Ordinance.

The Board questioned Mr. Ritter.

Ms. Bertone stated that the findings within Loechner v. Campoli, 40 N.J. 504(1967) are broad enough to include the applicants' property.

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. Gallardo, seconded by Mr. Susswein, it was resolved to approve the minor subdivision and variance application, subject to the following conditions:

1. A cross-easement for driveway access for the two lots shall be approved by the Board attorney and recorded in the Essex County Register's Office.
2. The applicant shall obtain Essex County Planning Board approval.
3. The applicant shall comply with the conditions of the 1980 approval not inconsistent herewith.

Chair Harrison called the site plan and variance application of **Keith Ballentine, 395 Claremont Avenue**. Mr. Sullivan, Esq. and Mr. Susswein stepped down for this

application and Alan Trembulak, Esq. replaced Mr. Sullivan, Esq.. Grant Gille, Esq., appeared as attorney for the applicant and Paul Jemas, Esq., appeared as attorney for objectors to the application.

Mr. Gille described the application and stated that the property contains a two-family dwelling and a boarder unit. He stated that applicant is seeking site plan approval, a variance from the conditional use standards in the R-3 zone for the conversion of a two-family dwelling to a four-family dwelling, and side yard setback variance for a proposed rear terrace/porch entrance.

Mr. Gille called Martin Dassa, Architect and Professional Planner, who was sworn and stated his qualifications. Mr. Dassa described the application and the characteristics of the property and the neighborhood.

Marked into evidence were:

- A-1 Tax Map of the subject property and vicinity, including Zoning boundaries and building locations, prepared by Dassa Haines, Architects, dated June 21, 2002
- A-2 Exhibit A-1 and the Site Plan on a board
- A-3 3-page set of plans, prepared by Dassa Haines, Architects, dated October 10, 2002
- A-4 (a-v) 22 photographs of the site, taken by the applicant on or around January 14, 2003 and labeled by Martin Dassa, Architect

Mr. Dassa stated that the property is located in the R-3 Garden Group Zone and addressed the conditional use standards in the Zoning Ordinance for the proposed conversion. He stated that the application fails to meet a section of Condition 4, and Condition 7. He stated that the subject lot contains 8,000 square feet within 150 feet of the front property line and a section of Condition 4 requires a lot area of 15,000 square feet within 150 feet of the front property line. He also stated that the entrance to the building does not face the street, as required by Condition 7. He continued by stating that the deviations from the conditional use standards are caused by existing conditions and would not have an adverse effect because the proposed residential density of 4 units is just over half of the permitted residential density of 7.82 dwelling units for the site.

Mr. Dassa described the size and grade of the subject property and stated that the existing two-family dwelling on the site is smaller in size than most buildings in the area and that the grade of the property rises to the west. He stated that the proposed 3½-story addition meets the required setbacks and that the proposed terrace/porch at the rear of the building could be redesigned to meet the side yard setback. He also described the proposed gravel parking area and garage parking and stated that a total

of 9 parking spaces are proposed, 5 of which would be garaged and 4 outdoor parking spaces. He stated that the number of parking spaces proposed meets the requirements of the Montclair Zoning Ordinance and the Residential Site Improvement Standards and that the gravel parking spaces could be marked by using wheel bumpers or stanchions in the ground. He further stated that the existing driveway width of 12 feet 3 inches is adequate for the proposed use. He continued by describing the floor plans for the proposed conversion.

Marked into evidence was:

A-5 Floor Plans, Sheet A-1 on a board, prepared by Dassa Haines, Architects, dated October 10, 2002, with additional notations

Mr. Dassa stated that an existing exterior fire escape would be removed and that all stairways for the structure would be enclosed within the building. He stated that the 3½-story addition would contain the dwelling unit for the owner and that the existing third floor boarder unit would be converted to a dwelling unit by adding a kitchen.

Mr. Dassa stated that the existing retaining wall on the westerly property line screens the view of the outdoor parking area from the west. He also stated that the applicant would consider adding plantings along the westerly property line if the Board made such a recommendation. He described the site lighting and stated that all lighting fixtures would be shielded and that trash receptacles for the site would be kept inside a garage. He further stated that the applicant would comply with all of the comments of the Board Engineer and continued by stating that the proposed conversion would not have a negative impact on the neighborhood.

The Board questioned Mr. Dassa.

Mr. Jemas cross-examined Mr. Dassa.

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

Chair Harrison announced that the application would be continued on April 30, 2003 and that no further notice would be given. Mr. Gille consented to an extension of time for the Board to act on the application.

On motion by Mr. Gallardo, seconded by Mr. Fleischer, an extension of time was granted on the approval of the site plan and variance application of **Montclair Community Church, 143 Watchung Avenue**, until October 15, 2003.

On motion by Mr. Gallardo, seconded by Mr. Fleischer, an extension of time was granted on the approval of the variance application of **Tom King, 146 Midland Avenue**, until April 10, 2004.

Chair Harrison announced the **Discussion of Annual Report** and stated that the discussion of the 2002 Draft Annual Report would be continued at the April 23, 2003 regular meeting of the Board.

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