

MINUTES OF THE BOARD OF ADJUSTMENT
April 20, 2005

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

ABSENT: Ms. English, Mr. Flood, and Mr. Whipple

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. Susswein, seconded by Mr. Fleischer, the **Minutes of the March 16, 2005** regular meeting were adopted.

On motion by Mr. Susswein, seconded by Mr. Fleischer, the **Minutes of the March 30, 2005** special meeting were adopted.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **586 Park Street, LLC, 586 Park Street** was adopted:

WHEREAS, 586 Park Street, LLC as owner of property located at **586 Park Street**, did make application to the Board of Adjustment of the Township of Montclair, to construct a single family residence on property designated as Lot 36 in Block 2804 on the Township tax map and located in the R-1 One Family Residential Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to *N.J.S.A. 40:55D-70c* which requires a building lot to front on a public street pursuant to **Montclair Code Section 347-20** and **Montclair Code Section 202-22A(2)**.

2. To direct issuance of a building permit since the lot does not abut a street giving access to the proposed home pursuant to *N.J.S.A. 40:55D-35,36*.

WHEREAS, the applicant submitted a property survey prepared by DMC Associates, Inc., revised to July 17, 2002, and a site plan, floor plans and elevations prepared by Way and Associates, Architects, dated February 16, 2005; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on March 16, 2005 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 measures 100 feet in width, 12,700 square feet in area, does not front on a public street and contains an existing single-family dwelling which was constructed around March 10, 1949. The existing dwelling on the subject property is accessible via a commonly owned 16-foot wide paved private driveway that also serves 3 other existing dwellings which also "front" on the private driveway. The private driveway has existed since around 1928.

2. The applicant proposes to demolish the existing dwelling and construct a new single-family dwelling. No changes in access to the subject property are proposed. The proposed dwelling meets all applicable height, setback, and off-street parking requirements.

3. The proposed single-family dwelling has been designed to be more in keeping with the scale and historic character of the 3 existing homes with which it shares the common private driveway.

4. The subject property has contained a single-family dwelling for almost 60 years. There is no indication of any history of difficulty in providing emergency vehicle access to the subject property via the existing private driveway. However, the Board determined that the Township Fire Department should review the plan and make any recommendations necessary to provide adequate access for fire fighting equipment. Ambulances and other emergency vehicles will have adequate access via the existing 16 foot wide paved driveway from Park Street.

5. To require the subject lot to front on a fully improved street would entail practical difficulty and unnecessary hardship and is not justified in order to provide access to the proposed single family home.

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 requested 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 proved that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment and 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 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 for variance and other relief to permit

construction of a single family home is hereby 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.

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. Susswein, seconded by Ms. Cockey, the following Resolution memorializing the approval of the application of **The Salvation Army, 13 Trinity Place** was adopted, Mr. Fleischer abstaining:

WHEREAS, The Salvation Army, as owner, did make application to the Board of Adjustment of the Township of Montclair for conditional use and site plan approval in connection with the construction of a new building and related site improvements to be utilized for religious and social service programs on property designated as Lot 6 in Block 2204 on the Township Tax Map and located in the R-4 Three Story Apartment Zone and the N-C Neighborhood Commercial Zone; and

WHEREAS, the applicant sought variances as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(3) to allow frontage on Trinity Place with a pavement width of 25.8 feet where a minimum of 30 feet is required pursuant to Montclair Code Section 347-48B(1);
2. A variance pursuant to N.J.S.A. 40:55D-70c to allow a portion of the parking area to be located in the Trinity Place front yard contrary to Montclair Code Section 347-96;
3. A variance pursuant to N.J.S.A. 40:55D-70c to allow the proposed wood stockade fence to exceed the maximum of 4 and one-half feet in height required by Montclair Code Section 347-27A(2).

WHEREAS, the applicant submitted a site plan prepared by Bertin Engineering Associates, Inc. dated December 14, 2004 revised through March 1, 2005 as well as architectural plans prepared by Jack F. Higgins, Architect, Inc. dated December 15, 2004 revised through March 1, 2005; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on March 16 and 30, 2005 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 Salvation Army has been established in the Montclair Community since 1891 in several locations, relocating to the subject property in 1965. The congregation conducts a Sunday morning service from 9:30 a.m. to 11:00 a.m. which the applicant stipulated would be the only use of the building at such time. Religious instruction of children would occur after the Sunday service and the property would also be used for related meetings and children's activities at various times.

2. The applicant proposes to demolish the existing building which the congregation has outgrown and construct a new two story building with underground parking. The lower level parking area would contain 19,157 square feet of area, the main level would contain 19, 243 square feet of floor area and the second level would contain 9, 365 square feet of floor area.

3. The proposed use of the property by the Salvation Army for religious and social service programs 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 minimal deviation from the required paving width for Trinity Place will have little or no impact on the use of the premises and the subject property continues to be an appropriate site for the conditional use notwithstanding the deviation consistent with the holding in *Coventry Square, Inc. v. Westwood Zoning Bd. of Adj.*, 138 N.J. 285 (1994).

5. With the exception of the minimum pavement width of Trinity Place, the Board determined the application meets the remaining standards of the Conditional Use Ordinance contained in Montclair Code Section 347-48B.

6. The applicant sought variances to permit front yard parking and to exceed the maximum height of fence which it conceded it could easily comply with. The Board determined the physical characteristics of the land did not give rise to a hardship which would warrant granting these variances, nor did the request advance any purposes of the Municipal Land Use Law. As a result, the Board determined the applicant failed to provide sufficient proof to meet the requisite statutory criteria for approval of these variances pursuant to N.J.S.A. 40:55D-70c.

7. 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

have a substantial adverse impact on the adjoining residential properties or on the traffic circulation in the area and will not otherwise adversely impact the public good.

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the requested variance pursuant to N.J.S.A. 40:55D-70d(3), 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 the Salvation Army for conditional use, site plan and variance pursuant to N.J.S.A. 40:55D-70d(3) is hereby approved subject to the following conditions:

1. The placement of the building shall be moved forward to provide a 25 foot setback from Trinity Place measured at the southeasterly corner.
2. The proposed wood stockade fence shall be reduced in height to comply with Montclair Code Section 347-27A(2).
3. The surface parking area shall be reconfigured to comply with Montclair Code Section 347-96 so that no parking spaces are closer to Trinity Place than the northeasterly corner of the relocated building.
4. The signs and associated lighting shall conform to Montclair Code Sections 347-108A, B.
5. The applicant shall comply with comments 1, 2, 3, 4, 6 and 7 contained in the memorandum dated March 11, 2005 from W. Thomas Watkinson, III, Board Engineer.
6. During Sunday services, no other significant use of the premises shall occur.
7. The applicant shall plant a mixture of trees, 10 feet apart on center, between the building and the westerly side of the property line.
8. The applicant shall coordinate construction activities with the anticipated construction at nearby sites (e.g., Siena and Crescent Parking Deck) so as to avoid traffic problems arising from a combination of construction activities occurring at one time.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the applicant's requests for variances to permit front yard parking and to exceed the maximum fence height are hereby denied;

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 announced that at the request of the applicants, the application of **Peter and Susan Carr, 89 Highland Avenue** would be postponed until the May 18, 2005 regular meeting of the Board, and that a revised public notice for that application would be prepared.

Chair Harrison called the variance application of **Jack and Elaine Kelly, 17 Chester Road**. David Owen, Esq., appeared as attorney for the applicant and described the application. He called Paul Sionas, who was sworn and stated his qualifications as a New Jersey Licensed Architect and Professional Planner.

Mr. Sionas described the subject property. He stated that an existing 75-foot tall tree on the subject property located at the rear of the existing detached garage is growing up against the rear wall of the garage and is causing considerable structural damage to the garage. He stated that the tree would be removed and that a new detached garage of the same size would be constructed with the same setbacks as the existing garage. He further stated that variances are required for the proposed side yard setback of 1.22 feet and the proposed rear yard setback of 3.13 feet. He continued by stating that in 1989 his firm had designed a conservatory addition at the rear of the dwelling and also prepared a landscape plan for the property and that the rear yard is heavily planted and landscaped. He stated that these features of the property limit the ability of the applicants to move the location of the new garage further from either the side property line or the rear property line and that the location of the proposed garage is in keeping with the location of the existing garage location and is also similar to the location of other garages in the neighborhood. He further stated that the application can be approved based on both the c(1) hardship grounds or the c(2) grounds because the benefits of the application outweigh any detriments. He also stated that the plan is consistent with certain purposes of zoning and that it will not result in any substantial detriment.

The Board questioned Mr. Sionas. Mr. Sionas stated that he was not certain when the existing garage was built. He also stated that the height of the proposed garage would be the same as the height of the existing garage.

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

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

1. The proposed detached garage shall not be constructed any closer to either the easterly side property line or rear property line than the existing detached garage.

Chair Harrison called the variance application of **Beth Stephens and Virginia Graham, 70 Central Avenue**. The applicants were sworn and Ms. Stephens described the application. She stated that the detached one-car garage shown on the property survey was destroyed by a fallen tree last November and that a new detached one-car garage of the same dimensions is proposed in the same area of the lot. She also stated that the previously existing garage had a northerly side yard setback of 1.1 feet and a rear yard setback of 2 feet at its closet point and continued by stating that the proposed garage would have the same rear yard setback, however, that the northerly side yard would be increased to 2 feet. She further stated that the owner of the neighboring property to the north is present to support the application and the property to the rear of the garage is undeveloped. She continued by stating that the height of the previously existing garage was approximately 13.5 feet to its highest point and that the new garage would measure 14 feet to its highest point. She also stated no loft space is proposed within the garage and that the driveway would be slightly modified to correspond with the larger proposed northerly side yard setback. She then asked that the owner of the adjoining property to the north, 72 Central Avenue, be allowed to speak in support of the application.

Simon Tasker, 72 Central Avenue, was sworn, and stated his support for the application.

The Board questioned the applicants and Mr. Tasker. Mr. Tasker stated that there is an existing fence along the property line between the subject property and his property. Ms. Graham stated that she would not anticipate any problems in being able to maintain the 2-foot wide side yard setback adjacent to the proposed garage.

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

1. The northerly side yard setback of the proposed garage shall be no less than 2 feet.
2. The rear yard setback of the proposed garage measured to the northwesterly corner shall be no less than 2 feet and shall increase towards the southwesterly corner of the garage as depicted on the plot plan.

The Board had a brief discussion regarding potential revisions to the zoning ordinance relating to the bulk requirements for structures used as houses of worship, as well as other potential revisions to the zoning ordinance relating to various types of residential uses.

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