

**MINUTES OF THE BOARD OF ADJUSTMENT
APRIL 24, 2002**

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

ABSENT: Mr. Susswein

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.

On motion by Mr. Chapman, seconded by Ms. Rock-Bailey, the **Minutes of the April 10, 2002** regular meeting were adopted as modified, Vice Chair Fleischer, Ms. Costello, and Mr. Gallardo abstaining.

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.

Mr. Jemas called Arthur Johnsen, Architect, who was sworn. Mr. Johnsen stated his qualifications and described his experience working with church buildings.

Marked into evidence was:

O-5 Resume of J. Arthur Johnsen, Architect, Planner

O-6 List of Church/Religious Commissions by J. Arthur Johnsen

Mr. Johnsen stated that he has physically inspected the Church building and the Vincent building on the applicant's property. He described the interior space of the Church building and the Vincent Building and stated that the empty rooms within these buildings could easily be utilized to accommodate more nursery school students if the proper inspections, certifications, and licenses were sought by the applicant.

Marked into evidence was:

O-7 Nursery School Review, prepared by J. Arthur Johnsen, per field survey dated, March 26, 2002

Mr. Johnsen described the floor layout of the Vincent building. He stated that the potential capacity including the eighth classroom on the third floor of the Vincent Building is between 140 to 150 children at any one time. He also stated that the proposed parking areas would be very difficult to screen from the view of adjacent properties. He continued by stating that the proposed parking areas on both subject properties would be visible from the second and third floor levels of the adjoining homes. He also stated that certain adjacent homes would have a first floor view of the proposed parking areas.

The Board questioned Mr. Johnsen.

Mr. Owen cross-examined Mr. Johnsen.

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

Robert Rich, 15 Carolin Road, asked if the Church building presently has barrier-free parking available, and if public policy encourages barrier-free parking in conjunction with building access, and if 2 barrier-free parking stalls is sufficient for the Church's services, and if barrier-free parking is more essential to the Church building than to the Vincent Building.

John Conti, 362 Park Street, provided 2 photographs taken from his bedroom window and asked Mr. Johnsen if the proposed parking area could be seen from that vantage point.

Marked into evidence was:

A-32 Photograph of rear of dwelling at 362 Park Street

OC-2 Photograph from the second floor bedroom of Elaine Conti,
362 Park Street

OC-3 Photograph from the second floor bedroom of Elaine Conti,
362 Park Street

Elaine Conti, 362 Park Street, asked if the proposed parking area could be seen from her first floor window.

Donald Garver, 128 Cooper Avenue, asked if there is sufficient space on the applicant's property to provide barrier-free parking in an area easily accessible to the barrier-free entrance of the Church building.

Mr. Jemas conducted a redirect of Mr. Johnsen.

Mr. Johnsen stated that the Landscape Plan, submitted by the applicant, indicates that 14 trees are proposed adjacent to the barrier-free stalls. He continued by

stating that no evergreens are proposed for the areas near the property lines abutting the adjoining residences. He further stated that the proposed landscaping does not offer proper screening of the parking areas from the view of adjacent residential dwellings.

Mr. Owen re-cross-examined Mr. Johnsen.

Mr. Jemas called John A. D'Onofrio, Professional Engineer, who was sworn. Mr. D'Onofrio stated his qualifications as a Civil Engineer and a Traffic Engineer. Mr. D'Onofrio stated that he had reviewed the applicant's plans, listened to the tapes of previous testimony, and conducted a traffic study based on the applicant's plans. He stated that he performed an inventory of on-street parking on Cooper Avenue and that he estimates that there are 76 parking spaces on Cooper Avenue between Northview Avenue and Park Street.

Mr. D'Onofrio stated that he conducted a traffic and parking survey on Cooper Avenue during the Church's Sunday service on February 17, 2002 and February 24, 2002. He stated that the parking associated to the Sunday service fills all of the available parking on Cooper Avenue and that the overflow parking is located on Northview Avenue and Park Street. He continued by stating that a peak total of 124 vehicles were parked on Cooper Avenue, Northview Avenue, and Park Street during the Sunday service parking survey.

Mr. D'Onofrio stated that he conducted a traffic and parking survey on Cooper Avenue during a weekday to observe the traffic and parking patterns associated with the nursery school. He stated the parking study/count began at 8:00 a.m. and ended at 9:45 a.m. He stated that at 8:00 a.m., there were 11 vehicles on Cooper Avenue. He continued by stating that at the peak time of 9:00 a.m., 52 vehicles were observed parked on Cooper Avenue. He further stated that at the end of the parking count (9:45 a.m.) 29 vehicles were left on Cooper Avenue and that those vehicles represented the parking of the nursery school and church staff, as well as some residential parking. Mr. D'Onofrio added that between 9:00 a.m. and 9:15 a.m. he observed 39 vehicles access the loop drive to drop off children at the nursery school.

Mr. D'Onofrio stated that the nursery school teachers arrive the earliest and occupy the on-street parking spaces nearest to the Vincent building. He further stated that the parking on Cooper Avenue did not exceed its capacity at any time during the weekday peak periods. He continued by stating that traffic congestion on Cooper Avenue increases during the peak drop-off and pick-up periods of the nursery school.

Mr. D'Onofrio stated that the proposed parking areas would eliminate the need for nursery school teachers to move their vehicles parked on Cooper Avenue every 4 hours. He also stated that proposed parking areas would cause the walking distance to increase for many teachers due to the location of the proposed parking in relation to the Vincent building. He continued by stating that the proposed parking lots would not substantially reduce the number of vehicles parking on Cooper Avenue during

the peak periods of the Sunday service and school days. He further stated that the applicant's proposal would increase the traffic within the loop driveway and that the increased traffic in the loop drive would negatively impact traffic on Cooper Avenue.

Mr. D'Onofrio stated that the applicant's proposed parking plan would be difficult to monitor and control and that policing the parking lots would become the responsibility of the community in the immediate area. He also stated that the proposed parking areas would promote the activities ancillary to the Church. He further stated that the artificial lighting in the parking areas would negatively affect nearby residential properties.

Mr. D'Onofrio stated that the applicant's proposal would not reduce the traffic congestion or decrease the speed of vehicles driving on Cooper Avenue. He also stated that barrier-free parking could be provided on the property without the parking areas as proposed.

Marked into evidence was:

O-8 Traffic Report prepared by John D'Onofrio, D'Onofrio Engineers,
PC

The Board questioned Mr. D'Onofrio.

Mr. D'Onofrio stated that the results of the afternoon portion of the weekday traffic and parking survey were comparable to the observations of the morning survey. He also stated that the weekday study was conducted within a week of the Sunday service traffic and parking survey.

Mr. Owen stated that he had no questions for Mr. D'Onofrio.

Chair Harrison called for questions from the public for Mr. D'Onofrio.

Kate McGuire, asked if the Church's ancillary uses could potentially utilize the driveways for parking.

Robert Rich, 15 Carolin Road, asked Mr. D'Onofrio if he had examined any recently constructed parking lots on the properties of churches and synagogues in order to determine what problems there are and what solutions have been utilized to correct the problems.

Gail Murphy, 3 Belvidere Place, asked if the 52 vehicles parked on Cooper Avenue during the 9:00 a.m. weekday peak period represents a greater hazard to the public safety than the potentially reduced number of vehicles parked on Cooper Avenue as a result of the applicant's proposal.

Chris Turner, 74 Highland Avenue, asked if the barrier-free parking could be accommodated without a parking lot, and if the distance from Park Street to the Church properties is reasonably walkable distance.

Karen Turner, 74 Highland Avenue, asked if safety could be improved by allowing on-street parking on only the south side of Cooper Avenue closest to the Vincent building.

Jane Carr, 159 Summit Avenue, asked Mr. D'Onofrio if he was aware that the nursery school on the corner of Park Street and Gordonhurst Avenue does not have on-site parking and that the staff at that school are required to park on the opposite side of Gordonhurst Avenue in order to allow for the pick-up and drop-off of the students to take place on the side of the street closest to the school building.

Jan Hoffman, 193 Cooper Avenue, asked what signage solutions could be utilized to help with speeding and vehicle movement on Cooper Avenue.

Gary Smith, 20 Wellesley Road, asked how many barrier-free parking stalls would be required within the 62-space parking area that would be required for a newly constructed church.

Chair Harrison called for a short recess.

Mr. Jemas called Peter Stiles, Professional Planner, who was sworn. Mr. Stiles stated his qualifications as a planner and as an expert in land use and zoning matters. Mr. Stiles stated that he had reviewed the site plan and all of the supporting documents, and that he has listened to the audio tape recordings of the second and third hearings of this application and that he was present at the first hearing. He also stated that he had visited the subject properties and has reviewed the Montclair Master Plan of 1986 and the Re-examination report of 1999.

Mr. Stiles stated that the existing neighborhood is clearly a single-family residential neighborhood in character. He stated that the Church building is a distinguishing structure in the neighborhood and that the development pattern over the years within the neighborhood has been consistent with that of the R-1 zone. Mr. Stiles stated that his professional opinion is that the applicant has not demonstrated the burden of proof required for the granting of the use variance. He stated that the applicant has not demonstrated the negative criteria and that physical expansion is not the only modification of a nonconforming use that can be deemed an expansion.

Mr. Stiles stated that the off-street parking proposed by the applicant is not an inherently beneficial use and warrants different consideration than the Church use, which is an inherently beneficial use. He also stated that off-street parking is not necessary to carry out the inherently beneficial use of the Church. Mr. Stiles stated that the only special reasons argument or advancement of public interest demonstrated by the applicant is a shorter walking distance for some people, which does not warrant a

variance. He stated that Montclair is a walkable community and that the on-street parking is sufficient. He further stated that on-street parking slows down traffic on Cooper Avenue and provides a safety buffer for pedestrians between the street and sidewalk. He continued by stating that the same number of vehicles would park on Cooper Avenue if the parking lots are built. He also stated the applicant's proposal has the potential to increase traffic congestion on Cooper Avenue.

Mr. Stiles stated that the proposed parking areas are located at the extreme rear corners of the subject properties and that the adjacent residential properties will be significantly impacted visually and by noise. He further stated that the fencing and landscaping proposed by the applicant will not appreciably reduce the negative impacts produced by the parking areas. He stated that constructing a parking lot on the property at 169 Cooper will permanently change the character of that property from residential to commercial. He further stated that the construction of parking areas would be an expansion and an intensification of the nonconforming use. He continued by stating that subject Church properties are not in a campus environment and that the parsonage at 169 Cooper Avenue is not an accessory use to the main Church property at 176 Cooper Avenue and that the properties should be treated as individual properties.

The Board questioned Mr. Stiles.

Mr. Stiles stated that the barrier-free parking could also be located on the street in proximity to the Church buildings. He also stated that the Church service and the nursery school have isolated peak times of traffic and parking which have a reasonable impact on the streets in the vicinity. He continued by stating that 25-30 vehicles in the proposed lots would have a greater impact than they presently do on the street and that the proposed parking areas do not eliminate parking on Cooper Avenue.

Mr. Owen cross-examined Mr. Stiles.

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

Robert Rich, 15 Carolin Road, asked if Mr. Stiles if was aware that 6 properties on the block of Cooper Avenue are involved with a commercial filming company and if that would constitute commercial usage of residential properties, and asked where curb-side barrier-free parking presently exists in the area of the Church properties.

Don Clark, 175 Cooper Avenue, asked if the proximity of the Church properties to less restrictive zones enters into the planning process and what zoning districts the nearby multi-car parking lots are located in.

Karen Turner, 74 Highland Avenue, asked if the yellow curb in front of the Church property could be used to accommodate barrier-free parking.

Marked into evidence was:

O-9 Letter brief, prepared by Paul G. Jemas, Esq., dated April 24, 2002

Chair Harrison called for public comment from individuals who would not be present at the May 6, 2002 hearing on this matter.

Elaine Conti, 362 Park Street, was sworn. Ms. Conti stated that her home abuts the Church property located at 176 Cooper Avenue. Ms. Conti stated that the proposed plans are not appropriate for residential neighborhood and that she and her family would be significantly impacted by the introduction of the proposed parking area on the Church properties. She stated that she opposes the proposed parking lots on both of the Church properties.

Mr. Owen cross-examined Ms. Conti.

Mr. Owen re-called Peter Steck, Professional Planner, who was still under oath. Mr. Steck stated that the proposed parking areas share the characteristics of the principal use on the properties and shares the same purposes and goals. He further stated that the parking area proposed for 169 Cooper Avenue shares the same inherently beneficial use characteristics as the Church property at 176 Cooper Avenue. Mr. Steck continued by stating that the applicant's proposal is warranted and needed due to the increased usage of automobiles, the increasing elderly population requiring more accessibility, and the increasing number of women in the workforce. He also stated that one of the permitted conditional uses in the R-1 Zone is a public or private school and that a nursery school or day care facility could be instituted by right on the property of such school along with the required parking for such a facility.

Mr. Jemas cross-examined Mr. Steck.

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

Chair Harrison announced that the application would be continued on May 6, 2002 and that no further notice be given.

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