

**MINUTES OF THE BOARD OF ADJUSTMENT
JULY 17, 2002**

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

ABSENT: Ms. Brooks

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.

Chair Harrison announced the postponement of the site plan and variance application of **Michael Walsh, 829 Bloomfield Avenue**, to the September 18, 2002 meeting at the request of the applicant and that no further notice would be given. The applicant also consented to an extension of time in which the Board must act on the application.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the following Resolution memorializing the denial of the site plan and variance application of **Union Congregational Church, 169 Cooper Avenue** was adopted as modified, Mr. Haizel abstaining:

WHEREAS, Union Congregational Church (hereinafter "the applicant"), owner of property located at 169 Cooper Avenue and designated as Block 2605 Lot 13 on the Montclair Township Tax Maps, filed an application with the Board of Adjustment of the Township of Montclair for variances and site plan approval to construct a new parking area on the subject property; and

WHEREAS, the applicant also sought the following approval under the Municipal Land Use Law:

1. A variance pursuant to either N.J.S.A. 40:55D-70d(1) or N.J.S.A. 40:55D-70d(2) to permit or expand a nonconforming use contrary to Montclair Code Section 347-112;
2. A variance pursuant to N.J.S.A. 40:55D-70c(2) to permit ten parking spaces whereas a maximum of four spaces is permitted under Montclair Code Section 347-101;
3. A variance pursuant to N.J.S.A. 40:55D-70c(2) to construct a gravel parking area rather than a hard-surface paved parking area as required by Montclair Code Section 347-102A; and

4. A certificate pursuant to N.J.S.A 40:55D-68 confirming that the proposed use may be continued on the property as a pre-existing nonconforming use; and

5. Preliminary and final site plan approval; and

WHEREAS, the applicant submitted site plan drawings SP1, SP2, SP3, and SP4 prepared by Sionas Architecture, P.C. bearing a final revision date of October 25, 2001, site plan drawings SP2A and SP3A prepared by Sionas Architecture, P.C. bearing a final revision date of February 13, 2002, and a drainage report prepared by McCumsey-Petry/RCC Design, Inc. revised to February 13, 2002; and

WHEREAS, the Board of Adjustment conducted public hearings on this application, together with a related application involving property located at 176 Cooper Avenue, at meetings held on February 6, 2002, February 27, 2002, March 7, 2002, April 24, 2002, and May 6, 2002, at which time it was established that notice of the application had been properly published and that property owners within 200 feet of the property had been properly served with notice; and

WHEREAS, the Board carefully considered the applicant's site plans and the testimony and other evidence presented in support of and in opposition to this application, and made the following findings:

1. The subject property consists of a "double lot" of .77 acres, with 158 feet of frontage on the northerly side of Cooper Avenue directly across from the Union Congregational Church located at 176 Cooper Avenue (the "Main Church Property"). The Main Church Property includes the Church building, a parsonage, and the "Vincent Building" which includes a nursery school, classrooms, offices, a library, chapel, and related facilities.

2. The subject property contains a second parsonage which has been used primarily as a residence for the Church's assistant pastor. The property has been used for church committee and group meetings and other church-related activities accessory to the principal use of the property as a parsonage.

3. The property is located in the R-1 Zone in which single-family dwellings are the primary permitted use. Houses of worship are not permitted uses in the R-1 Zone, although such uses were permitted prior to a 1979 amendment to the Zoning Ordinance.

4. The applicant proposes to construct a parking area on the subject property to provide eight off-street parking spaces in addition to two spaces located in an existing garage. The primary purpose and intended use of the parking area is to provide parking for the faculty and staff of the nursery school and the church – uses

which are not located on the subject property but on the Main Church Property on the opposite side of Cooper Avenue. As such, the proposed parking area is not a permitted “accessory use” under Montclair Code Section 347-2 which requires that an accessory use must be located “on the same lot” and serve “a purpose customarily incidental to the use of the principal building”.

5. Although off-street parking for not more than four vehicles is a permitted accessory use in the R-1 Zone, the Ordinance only applies if the parking spaces are “accessory” to the principal use on the subject property. Since the parking lot is intended to serve the Main Church Property, it is not “subordinate to the principal use of a building on the same lot” nor is it “customarily incidental to the use of the principal building”. Consequently, the proposed parking lot is an “accessory use” under the Zoning Ordinance and the applicant requires a use variance under N.J.S.A. 40:55d-70d(1) to permit “a use or principal structure in a district restricted against such use or principal structure.”

6. Although houses of worship are inherently beneficial uses, the proposed accessory parking area cannot be considered an inherently beneficial use as it would be located on a separate lot and not on the Main Church Property. The subject property is best suited for continued use as a parsonage or single-family residence and it is not particularly suitable for use as a parking area. The applicant failed to establish “special reasons” to justify the granting of a use variance pursuant to N.J.S.A. 40-55D-70d(1).

7. The applicant also failed to establish that the use variance could be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The proposed parking area would be located in the R-1 Zone on the northerly side of Cooper Avenue in the midst of a well-established uninterrupted block of well-maintained single family homes. The construction of a parking area in the midst of this row of single-family homes would be inconsistent with the master plan and the zoning ordinance which contemplate single-family residential uses in the R-1 Zone.

WHEREAS, based on the foregoing findings, the Board concluded that the applicant failed to establish “special reasons” and also failed to establish that the requested use variance could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance; and

WHEREAS, based on the evidence presented, the Board also concluded that the applicant had failed to present competent and sufficient proofs to support the issuance of a certificate pursuant to N.J.S.A. 40-55D-68 confirming that the proposed parking area is a pre-existing nonconforming use on the subject property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of

the Township of Montclair that the within application of Union Congregational Church for a use variance and site plan approval to construct a parking area on the property located at 169 Cooper Avenue is hereby denied.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the applicant, the Township Manager, the Township Council and the Township Clerk.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the following Resolution memorializing the approval of the site plan and variance application of **Union Congregational Church, 176 Cooper Avenue** was adopted as modified, Mr. Chapman and Mr. Haizel abstaining:

WHEREAS, Union Congregational Church (hereinafter "the applicant"), owner of property located at 176 Cooper Avenue and designated as Block 2606 Lot 23 on the Montclair Township Tax Maps, filed an application with the Board of Adjustment of the Township of Montclair for variances and site plan approval to construct a new parking area on the subject property; and

WHEREAS, the applicant applied for the following approvals under the Municipal Land Use Law:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to expand a preexisting, nonconforming use contrary to Montclair Code Section 347-112;
2. A variance pursuant to N.J.S.A. 40:55D-70c(2) to construct a gravel parking area rather than a paved parking area as required by Montclair Code Section 347-102A ;
3. A waiver from Montclair Code Section 281-9I to permit the existing two-way driveway to remain less than 18 feet wide; and
4. A certificate pursuant to N.J.S.A. 40:55D-68 confirming that the proposed use may be continued as a legal, pre-existing nonconforming use; and
5. Preliminary and final site plan approval; and

WHEREAS, the applicant submitted site plan drawings SP1, SP2, SP3, and SP4 prepared by Sionas Architecture, P.C. bearing a final revision date of October 25, 2001, site plan drawings SP2A and SP3A prepared by Sionas Architecture, P.C. bearing a final revision date of February 13, 2002, site plan drawings SP1, SP2A, SP3, and SP2A-Alt prepared by Sionas Architecture, P.C. bearing a final revision date of May 17, 2002, and drainage reports prepared by McCumsey-Petry/RCC Design, Inc., dated January 3, 2002 and last revised May 23, 2002; and

WHEREAS, the Board of Adjustment conducted a public hearing on this application, together with a related application involving property located at 169 Cooper Avenue, at meetings held on February 6, 2002, February 27, 2002, March 7, 2002, April 24, 2002, May 6, 2002 and June 5, 2002, at which time it was established that notice of the application had been properly published and that property owners within 200 feet of the property had been properly served with notice; and

WHEREAS, the Board of Adjustment carefully considered the applicant's site plans and the other evidence presented in support of and in opposition to the application, and made the following findings:

1. The subject property consists of 2.2 acres and has been utilized as a house of worship for more than a century. The property contains three buildings: the original church building completed in 1900, a parsonage erected in 1911, and a third structure (the "Vincent Building") which contains a nursery school operated by the applicant since 1968, with classrooms, offices, a library, chapel and related facilities.

2. Since its inception, the applicant's activities have included worship and other traditional religious activities, as well as wide variety of Church-sponsored functions and community-oriented programs and uses. The applicant's activities have varied and continue to vary in response to changes in the Church and the community.

3. The subject property is located in the R-1 Zone in which single-family dwellings are the principal permitted use. Houses of worship are not currently permitted in the R-1 Zone, although such uses were permitted prior to a 1979 amendment to the zoning ordinance. Accordingly, the church is a preexisting, nonconforming use on the subject property.

4. The applicant proposes to construct a new parking area in the southeast corner of the property to the rear of the parsonage. The applicant originally proposed 19 parking spaces with two spaces located in an existing garage which will be modified slightly by the applicant. The applicant subsequently amended the site plan to reduce the number of spaces in the parking area to 15 and to relocate 4 spaces to other locations on the property proximate to the main church building and the Vincent Building. The revised site plan also provided for additional screening and a greater setback from adjoining residential properties.

5. The primary purpose of the proposed parking area is to provide off-street parking for the faculty and staff of the nursery school and the church, as well as to accommodate handicapped and other persons with special needs. In recent years, the applicant has encountered difficulties and inconveniences resulting from the absence of on-site parking on the property and the Township's 4-hour parking limitation on Cooper Avenue between the hours of 8:00 a.m. and 6:00 p.m. As a result of the parking shortage, the applicant's staff has had to park along Cooper Avenue and adjoining streets and to move their cars every four hours. The lack of off-street parking has also

precluded frail and elderly persons and other individuals with special needs from parking on-site in proximity to the Church facilities.

6. The applicant originally proposed a gravel parking area but subsequently amended its plan to provide an alternate paved parking surface in compliance with Montclair Code Section 347-102A. The applicant stated it would employ either of the parking lot designs at the Board's election.

7. The Church is an "inherently beneficial" use 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), *rev'd* 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). The proposed on-site parking area is an accessory use to the principal use of the property and it is, therefore, also inherently beneficial. Shim v. Washington Twp. Planning Board, 298 N.J. Super. 395 (App Div. 1997); Medical Center at Princeton v. Township of Princeton, 343 N.J. Super. 177 (App. Div. 2001).

8. Subject to the conditions set forth below, the proposed parking area can be approved without substantial detriment to the public good. The church and its related activities have existed on Cooper Avenue for many years dating back to the early 20th century, and thus its impact upon the neighborhood has long been established. In addition, the applicant has used its U-shape driveway for decades and cars continue to utilize this driveway on a daily basis for access to the nursery school and other church facilities. Furthermore, no credible evidence was presented to demonstrate that there will be a substantial adverse impact on property values in the surrounding neighborhood. As with other established churches located in R-1 Zones throughout the community, adjacent single-family homes continue to be well-maintained and have not experienced any substantial adverse impact as to property value. The proposed on-site parking area will also reduce traffic congestion and on-street vehicle maneuvers, thereby increasing safety and improving sight distances along Cooper Avenue.

9. The proposed off-street parking area is also consistent with the zoning ordinance and the zone plan and can be approved without substantial detriment to either plan. Section 347-101 of the Zoning Ordinance mandates that off-street parking be provided for all land uses, including houses of worship, and if applied to the subject property, the Ordinance would require at least 60 off-street parking spaces on the applicant's property. The applicant presently has no off-street parking spaces other than those associated with the parsonage and the site plan proposes for less than one-third of the parking spaces required by the ordinance.

10. In addition, the 1999 Master Plan Reexamination Report recommends that houses of worship be required to provide off-street parking for ancillary uses, and the applicant's plan is consistent with this land use objective. The proposal also provides barrier-free parking as well as convenient, accessible parking to accommodate the needs of the frail, elderly and other persons with special needs, which was also recognized as a goal in the Master Plan Reexamination Report.

11. The parking space dimensions and aisle widths comply with the requirements of the Site Plan Ordinance, and the proposed fence and landscaping plan, subject to the conditions below, will provide adequate screening from adjacent residential properties.

12. The lighting plan will not have any adverse impact on the surrounding neighborhood.

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the use variance, the applicant proved the requisite special reasons for the granting of the variance and proved, in accordance with the requirements of Sica v. Board of Adjustment of Wall Twp, 127 N.J. 152 (1992), that subject to certain site plan revisions and conditions imposed by the Board, the proposed 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that the proposed site plan complies with the standards contained in the Site Plan Ordinance and the concerns expressed by the Board during the May 6, 2002 hearing, and can be approved without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-76b; and

WHEREAS, based on the foregoing findings, the Board concluded that the requested waiver from Montclair Code Section 281-9l to permit the existing driveway to remain less than 18 feet wide is reasonable and within the general purpose and intent of the site plan ordinance and literal enforcement of the ordinance would require the applicant to remove existing structures and/or fencing and would be impracticable and cause undue hardship to the applicant.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Union Congregational Church for a use variance pursuant to N.J.S.A. 40:55D-70d(2) and preliminary and final site plan approval is hereby approved in accordance with the revised site plans prepared by Sionas Architecture, P.C., bearing a final revision date of May 17, 2002, subject to the following conditions:

1. The parking area shall not be used after 10:00 p.m. Sunday through Thursday or after 11:00p.m. Friday and Saturday, except for overnight parking associated with the residential use of the parsonage.

2. The nursery school shall not utilize more than the 7 classrooms currently used in the Vincent Building and the applicant shall return to the Board of Adjustment for approval if it seeks to use any additional classrooms.

3. The applicant shall comply with comments 1 through 3 in the letter report from the Board Engineer, dated June 4, 2002.

4. The applicant shall submit a stormwater maintenance plan to the Board Engineer for his review and approval.

5. The applicant shall install a 7-foot high fence along the eastern property line along the entire length of the rear lot line of the property located at 362 Park Street.

6. The landscaping plan shall be revised as follows:

(a) all Arborvitae shall be replaced with American Holly;

(b) on the easterly side of the property, the American Holly shall be planted halfway between the eastern property line and the garage; and

(c) on the southerly side of the property, the American Holly shall be planted on the northerly (parking area) side of the existing trees rather than on the southerly side of the existing trees.

7. Any shrubs removed from the front of the Vincent Building shall be replaced by the applicant, taking into account existing landscaping and the Copper Beach tree.

8. The applicant shall place a sign at the entrance to the 15-space parking area indicating the closing hours for the parking area.

9. No buses or other commercial vehicles shall use the parking area.

10. The parking area shall be paved in compliance with Montclair Code Section 347-102A.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the applicant, the Township Manager, the Township Council, the Township Clerk, the Township Engineer, the Township Tax Assessor, and the Construction Code Official.

Chair Harrison called the variance application of **Steven Heydemann & Gail David, 9 Nassau Road**. Mr. Heydemann was sworn. He stated that a great effort was made to develop a plan for the proposed addition and deck that would not require variances and that the proposed plan represents the best option for his property both functionally and aesthetically. He stated that he had spoken to many of his neighbors concerning the proposal, including the adjacent neighbors who would be the most affected, and that there is no objection to their proposal. He further stated that the owner of the adjacent property at 17 Nassau Road is present at the hearing to support the application.

Susan Chandler, architect for the project, was sworn. Ms. Chandler described the proposed addition and deck and described the variances requested. She stated that the subject property is a through lot with frontages on Nassau Road and Mount Hebron Road. She also stated that the proposed setback from Mount Hebron Road is approximately 49 feet and that the average setback of the two adjacent properties from Mount Hebron Road is approximately 60.5 feet. She continued by stating that the existing through lot condition is an unusual condition and that the setback requirements do not allow the proposed addition and deck to be constructed without variances. Ms. Chandler stated that the owners of the property have lived in the existing home for 12 years and that the family has outgrown the home. She stated that the existing home contains 2 bedrooms and 1 bathroom and that the proposed addition would contain an expanded kitchen on the first floor and a new master bedroom and master bathroom on the second floor.

Ms. Chandler stated that the Mount Hebron Cemetery is directly across from the applicants' property and that the view of the proposed addition and deck from Mount Hebron Road is obscured by trees. She continued by stating that the proposed westerly side yard setback allows for the addition to be aligned with the existing walls of the home and creates more space between the addition and the garage. She also stated that there is a 3-foot elevation change between the applicants' property and the adjacent property on the westerly side and that existing evergreen shrubs would screen the proposed addition.

Marked into evidence was:

A-1 Five (5) photographs of the subject property

Ms. Chandler stated that the northwest corner of the addition is approximately 5.5 feet away from the westerly property line. She further stated that the proposed addition and deck are aligned with the existing lines of the homes and that the proposed location of the addition and deck are the best options aesthetically and functionally. She stated that the addition is 9 feet away from the existing garage and that the proposed side yard setback of the deck from the easterly property line could be increased to 10 feet if necessary. She continued by stating that the exterior of the addition would match the existing cedar shingle exterior of the home.

The Board questioned Ms. Chandler.

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. Chapman, seconded by Mr. Haizel, it was resolved to approve the variance application, subject to the following conditions:

1. The addition shall be aligned with the westerly side wall of the existing dwelling.
2. The outdoor deck shall be aligned with the easterly side wall of the existing dwelling.

Chair Harrison called the variance application of **The Junior League of Montclair-Newark, Inc., 99 Lloyd Road**. Rita A. Chimel, Esq., appeared as attorney for the applicant. Ms. Chimel described the application and introduced the witnesses who would be testifying. She stated that the applicant is requesting a temporary use variance to last 39 days. She further stated that the proposal is beneficial to the community and does not pose a detriment to the public good.

Ms. Chimel called Barbara Casulli, of 206 Watchung Avenue, who was sworn. Ms. Casulli stated that she is the president of the Junior League of Montclair-Newark, Inc. for the 2002-2003 year. Ms. Casulli described the purpose of the organization, their various programs and their affect on Montclair. She stated that the Junior League of Montclair-Newark, Inc. is a not-for-profit organization made up of 470 members, 270 of which are located in Montclair and that the proceeds from the proposed showhouse would help to fund the organization's programs.

The Board questioned Ms. Casulli.

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

Ms. Chimel called Paula Tuffin, of 71 Hathaway Lane, Essex Fells, who was sworn. Ms. Tuffin stated that she is the Chair of the Showhouse Executive Board and described the showhouse proposal. She stated that the variance request is for the period of May 1, 2003 through June 8, 2003. She stated that designers and landscapers from the local and larger metropolitan area would do their design work on the property and that events, such as raffles and luncheons, would be held on the property. She stated that proceeds are obtained from the public admittance fee, the

retail boutique and café, and the sale of advertising space in the showhouse program guide. She continued by stating that the showhouse would operate on Tuesdays, Wednesdays, Fridays, and Saturdays from 10 a.m. to 4 p.m., on Thursdays from 10 a.m. to 8 p.m., and on Sundays from 12 p.m. to 4 p.m.. She stated that the showhouse would be closed to the public on Mondays, with the exception of Memorial Day.

Ms. Tuffin described the positive impacts of the proposed showhouse and stated the money that is raised is put back into the community. She further stated that the proposed showhouse would increase the exposure of the community and increase business for local merchants and that the subject property would be enhanced.

The Board questioned Ms. Tuffin.

Ms. Chimel stated that the operating hours indicated on the submitted Schedule A should be amended to reflect the testimony of Ms. Tuffin. Ms. Chimel also stated that the Junior League staffs the sales office on the property and that no vendors would be on the property while the showhouse is in operation.

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

Ms. Chimel called Karen Turner, of 74 Highland Avenue, who was sworn. Ms. Turner stated that she is the Finance Chair for the Junior League of Montclair-Newark, Inc. for the 2002-2003 year and stated her qualifications as a Certified Public Accountant. Ms. Turner described the funds raised from the previous showhouse programs conducted in Montclair.

The Board questioned Ms. Turner.

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

Ms. Chimel called Lisa Kennedy, of 20 Vera Place, who was sworn. Ms. Kennedy stated that she is the Chair of Special Events for the Junior League of Montclair-Newark, Inc.. Ms. Kennedy described the special events involved with the proposed showhouse and stated that all of the proper licenses would be obtained.

The Board questioned Ms. Kennedy.

Ms. Kennedy stated that all of the scheduled events would take place in the outdoor tent and that the tent would be erected approximately 1 week prior to the first scheduled event.

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

Ms. Chimel called Lori MacDonald, of 78 Lincoln Street, Glen Ridge, who was sworn. Ms. MacDonald stated that she is the House Executive for the Junior League of Montclair-Newark, Inc., and that her responsibilities include the parking associated with the showhouse and security. She stated that she has consulted with Deputy Chief Vitarello and Sgt. Keane of the Police Department, and that in order to minimize the negative impacts caused by traffic and parking, the Police Department had recommended that an off-duty Police Officer be temporarily hired by the Junior League to monitor traffic and parking as well as assist pedestrians. Ms. MacDonald stated that the Junior League would abide by all applicable laws. She continued by stating that the parking associated with the showhouse has a rapid turnover rate and that visitors to the showhouse typically stay 2 to 3 hours on the property. She also stated that no parking associated with the showhouse would be on the property and that no vehicles would be allowed on the site during the hours of operation.

Ms. MacDonald stated that an existing security system at the home on the subject property would be utilized during off-hours and that an off-duty Police Officer would provide security during operation of the showhouse. She also stated that a 30-yard dumpster would be located on the site prior to the showhouse opening, from March 31, 2003 through April 30, 2003, and that a 10-yard dumpster would be on the site during the showhouse period of May 1, 2003 through June 8, 2003. She stated that the dumpster would be emptied twice a week. Ms. MacDonald stated that 8 individual portable sanitary facilities would be located on the site and that those facilities would be serviced weekly. She also stated that fire sprinklers would be installed in the main rooms used for the showhouse.

The Board questioned Ms. MacDonald.

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

Ms. Chimel called Pat Aronoff, of 10 Crestmont Road, who was sworn. Ms. Aronoff stated that she is a Realtor with Schweppe Realty in Montclair. She stated that based on her experience with previous showhouse projects in Montclair, the proposed showhouse would have a positive impact because it would significantly improve the property and increase the value of the property. She also stated that the proposed temporary use would not have a negative impact on the value of surrounding properties.

The Board questioned Ms. Aronoff.

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

Chair Harrison called for public comment. None was offered.

On motion by Mr. Fleischer, seconded by Ms. Rock-Bailey, it was resolved to approve the variance request, subject to the following conditions:

1. The applicant shall adhere to the Montclair Police Department's recommendations in regards to parking and public safety.
2. The applicant shall adhere to the Montclair Fire Department's recommendations in regards to fire and public safety.
3. All necessary fire and building permits shall be obtained by the applicant at the applicant's expense.
4. Any tent erected on the property shall only be in place between April 27, 2003 and June 10, 2003. The placement of any temporary tent structure shall conform to all applicable setback requirements specified in the Township Zoning Ordinance.
5. The applicant may install one identification sign on the site for the duration of the use of the tent and which shall not exceed 12 square feet in area.
6. There shall be no on-site parking during the hours of operation of the showhouse.
7. The applicant shall provide a 30-yard dumpster on the property for the period of March 31, 2003 through April 30, 2003, and a 10-yard dumpster on the property for the period of May 1, 2003 through June 8, 2003, and such dumpsters shall be emptied twice a week as indicated by the testimony provided.
8. The applicant shall adhere to the following schedule of operation for public events:

May 6, 2003 through June 1, 2003, the showhouse shall be open to the public from 10 a.m. to 4 p.m. on Tuesdays, Wednesdays, Fridays, and Saturdays; 10 a.m. to 8 p.m. on Thursdays; and on Sundays from 12 p.m. to 4 p.m., and be closed to the public on Mondays except for Memorial Day from 10 a.m. to 4 p.m.
9. The applicant shall adhere to the following special events schedule functions that may take place at the subject property:

"Bare Beginnings Party" on Friday, February 28, 2003 between the hours of 7 p.m. and midnight

"Bare Beginnings Party (Sustainers)" on Saturday, March 1, 2003 between

the hours of 7 p.m. and midnight

“Press Party” on Thursday, May 1, 2003 between the hours of 1 p.m. and 4 p.m.

“Donor Cocktail Party” on Friday, May 2, 2003 between the hours of 6 p.m. and 9 p.m.

“Patron’s Party” on Saturday, May 3, 2003 between the hours of 6 p.m. and midnight

“Mother’s Day Tea” on Sunday, May 11, 2003 between the hours of 2 p.m. and 5 p.m.

“Garden Lecture/Workshop” on Monday, May 12, 2003 between the hours of 11 a.m. and 2 p.m.

“Wine & Cheese Party” on Thursday, May 15, 2003 between the hours of 6 p.m. and 8 p.m.

“Chamber Music Concert” on Saturday, May 17, 2003 between the hours of 7 p.m. and 11 p.m.

“Men’s Outing” on Sunday, May 18, 2003 between the hours of 10 a.m. and 4 p.m.

“Lecture/Auction” on Monday, May 19, 2003 between the hours of 11 a.m. and 2 p.m.

“Wine Tasting” on Thursday, May 22, 2003 between the hours of 7 p.m. and 11 p.m.

“Lecture” on Sunday, May 25, 2003 between the hours of 2 p.m. and 4 p.m.

“Tea” on Tuesday, May 27, 2003 between the hours of 2 p.m. and 4 p.m.

“Wine & Cheese” on Thursday, May 29, 2003 between the hours of 6 p.m. and 9 p.m.

“Auction” on Saturday, June 7, 2003 between the hours of 6 p.m. and midnight

The Board took a short recess.

Chair Harrison called the variance application of **Wintworth H. Lewis, Jr., 48 North Willow Street**. Clinton Lewis, of 10 Elmwood Avenue, appeared before the Board on behalf of the applicant. Mr. Lewis was sworn and stated that his father is the applicant and is present at the hearing, and that he will be speaking on behalf of his father for the application due to his father's age. Mr. Lewis described the application. He stated that his parents are both over 80 years of age and have lived at the subject property for over 50 years. Mr. Lewis described the subject property and stated that the existing side yards on the property are too narrow to allow a parking area in a side or rear yard. He also stated that the nearest permit parking lot is 2 blocks away and that health-related conditions prevent his parents from walking that distance. He further stated that overnight parking is prohibited on the street. Mr. Lewis continued by stating that his father has rented parking from 6 different neighbors in the past 3 years and that it has become arduous to seek out a new parking space.

Mr. Lewis described the proposed front yard parking area. He stated that the proposed front yard parking space would be for 1 vehicle and measure 12 feet wide by 19 feet long. He stated that the proposed parking space is setback 4 feet from the northerly side property line and that a number of properties on the westerly side of North Willow Street currently use a front yard parking area.

Marked into evidence was:

- A-1 10 photographs of the subject property
- A-2 Photograph of the front yard parking area at 60 North Willow Street
- A-3 Photograph of the front yard parking area at 70½ North Willow Street

The Board questioned Mr. Lewis.

Mr. Lewis stated that his father is presently parking his vehicle at a property located on North Willow Street and that his permission to do so is due to expire in September of this year.

Chair Harrison called for questions from the public.

Debra K. Knowling, of 230 Raymond Avenue, South Orange, asked how many parking spaces are proposed. She also asked if the proposed parking area would be level and where the turnaround area would be.

Chair Harrison called for public comment.

Brian Kay, of 1 Orchard Court, was sworn. Mr. Kay stated that the proposed parking area could easily be used for more than 1 vehicle and that it should not be permitted.

Lance K. Knowing, of 230 Raymond Avenue, South Orange, was sworn. He stated that the parking area could be used by more than 1 vehicle and would be difficult to control. He also stated that the proposed front yard parking area is unsightly and should not be permitted.

The Board questioned Mr. Lewis.

Mr. Lewis stated that the proposed parking space could be reduced to the standard 9-foot width.

On motion by Fleischer, seconded by Mr. Chapman, it was resolved to approve the variance application, Chair Harrison voting in the negative, subject to the following condition:

1. The proposed parking space shall be reduced to the standard size of 9 feet wide by 19 feet long and that the parking space be located so that an area of grass is preserved on each side of the parking space.

Chair Harrison called the variance application of **William Snipes & Margaret Means, 218 Upper Mountain Avenue**. William Snipes, applicant and owner, and Clay Eicher, project manager for the proposed work, were sworn. Mr. Snipes described the application. He stated that the basis for the proposed 3-car garage is convenience and safety. He stated that the first floor of the existing carriage house at the rear of his property is used for the storage of landscaping and gardening equipment, including a small tractor, and that the second floor dwelling is unoccupied.

Marked into evidence was:

A-1 Six (6) photographs of the landscaping and gardening equipment currently stored in the first floor of the carriage house at 218 Upper Mountain Avenue.

Mr. Snipes stated that the excessive distance of the carriage house from the principal residence, as well as the drastic change in elevation between the structures, prevents the parking of their vehicles in the garage bays of the carriage house. He stated that the proposed 3-car garage is much closer to the principal residence and would be used to park their vehicles. He further stated that first level of the carriage house would continue to be used for storage. Mr. Snipes continued by stating that his proposal is not contrary to the intent of the ordinance from which a variance is required. He stated that the subject property is abundantly sized as a double lot measuring approximately 3 acres. He also stated that the proposed 3-car

garage would be constructed entirely into the slope of the terrain, which would significantly reduce the visual impact to neighboring properties.

The Board questioned Mr. Snipes.

Mr. Snipes stated that the front yard setback variance request for the proposed accessory greenhouse is withdrawn. He also stated that the paved area on the southerly side of the proposed garage would provide access to the trash enclosure area for the Department of Public Works vehicles. He continued by stating that the existing carriage house contains 3 vehicle bays, including a very narrow bay.

Mr. Eicher stated that the terrain of the property would be modified to allow the garage to be constructed completely into the slope of the property.

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

Chair Harrison called for public comment.

Warren Monsees, 197 Highland Avenue, was sworn and stated that the subject property is near the intersection of Upper Mountain Avenue and Watchung Avenue and that allowing more parking on the property may add to an already busy traffic area.

The Board discussed the application.

On motion by Mr. Fleischer, seconded by Mr. Chapman, it was resolved to approve the variance application, subject to the following conditions:

1. The existing carriage house shall be limited to 2 vehicle parking spaces.
2. The applicant shall obtain approval from the Board Engineer for Steep Slope construction.

On motion by Mr. Fleischer, seconded by Mr. Chapman, the **Minutes of the May 15, 2002** regular meeting were adopted as modified.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the **Minutes of the June 5, 2002** special meeting were adopted as modified, Mr. Chapman and Mr. Haizel abstaining.

On motion by Mr. Fleischer, seconded by Mr. Gallardo, the **Minutes of the June 12, 2002** special meeting were adopted, Mr. Chapman and Mr. Haizel abstaining.

On motion by Mr. Fleischer, seconded by Ms. Costello, the **Minutes of the June 19, 2002** regular meeting were adopted as modified, Ms. Rock-Bailey abstaining.

On motion by Mr. Gallardo, seconded by Mr. Susswein, the following Resolution memorializing the approval of the variance application of **Tana and Mark Kamine, 9 Clairidge Court** was adopted, Chair Harrison, Mr. Chapman, and Mr. Haizel abstaining:

WHEREAS, Tana and Mark Kamine, owners of property at **9 Clairidge Court**, 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 westerly side yard setback less than that required pursuant to **Montclair Code Section 347-45C(1)** in connection with the construction of an addition on property designated as Lot 10 in Block 4509 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey prepared by Robert M. Siluk, dated November 19, 1994 and floor plans and elevations prepared by John Thomas Collins, Architect, dated March 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 June 12, 2002 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 55 feet and contains a 2½-story single-family dwelling with a one-story section at the westerly side of the dwelling.
2. The existing dwelling has a nonconforming westerly side yard setback of approximately 3.8 feet measured from the northwesterly corner of the dwelling and approximately 5.4 feet measured from the southwesterly corner of the dwelling.
3. The applicants' proposal is to construct a second-story addition plus attic over the existing one-story section at the westerly side of the dwelling which conforms to the height and rear yard setback requirements but does not meet the side yard setback requirement.
4. The proposed addition will be aligned with the existing westerly wall of the single-story portion of the dwelling.

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 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 Tana and Mark Kamine is hereby approved subject to the following condition:

1. The addition shall be built no closer to the westerly side property line than the existing dwelling.

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. Gallardo, the following Resolution memorializing the approval of the site plan and variance application of **The Montclair Foundation, 21 Van Vleck Street** was adopted, Mr. Chapman and Mr. Haizel abstaining:

WHEREAS, The Montclair Foundation, owner of property at **21 Van Vleck Street**, did make application to the Board of Adjustment of the Township of Montclair for site plan approval and a variance to construct a one-story greenhouse on property designated as Lot 7 in Block 1501 on the Township Tax Map and located in the R-0 Mountainside Zone and the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance pursuant to NJSA40:55D-70d to expand the existing nonprofit office and club use on the property contrary to **Montclair Code Section 347-112**; and

WHEREAS, the applicant submitted a site plan, floor plan, and elevations,

prepared by Sionas Architecture, P.C., dated February 22, 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 June 12, 2002 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 measures 248,192 square feet and contains a two-story principal building containing the non-profit office, two (2) separate two-story dwellings with garages underneath, an existing greenhouse, a shed, and 40 parking spaces and associated driveways.

2. The applicant's proposal is to construct a second greenhouse measuring 1,500 square feet and 15 feet in height at the southerly end of the property. The proposed greenhouse meets all of the height and setback requirements for accessory structures in the R-0 and R-1 Zone.

3. The findings of the Board within previous applications by the applicant for this property and regarding the existing use of the property have indicated that the non-profit office and club use of the property is consistent with the 1992 Master Plan Re-examination Report in that it is a beneficial use and an asset to the community.

4. The proposed use of the greenhouse as an educational facility is consistent with the previous findings of the Board in that it provides additional opportunities for educational programs and is necessary for the applicant to continue providing this public benefit.

5. The proposed greenhouse will provide a necessary facility that will allow the applicant to continue in pursuit of the scientific aspects of horticulture, including the propagation and hybridization of plant species.

6. Based upon the Board's particular knowledge of local conditions and the testimony provided by the applicant, the proposed greenhouse 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 site plan and variance application of The Montclair Foundation is hereby approved subject to the following conditions:

1. Any sale of plant material on the subject property shall be limited to special occasions, such as holidays.
2. The applicant shall comply with the comments of the Board Engineer's letter dated May 7, 2002.
3. All lighting associated with the proposed greenhouse shall be extinguished by 10:00 P.M. nightly.
4. The applicant shall remain in compliance with the conditions of the prior approvals specified in previous Board of Adjustment Resolutions, dated October 20, 1993 and April 20, 1994.

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. Chapman, seconded by Mr. Haizel, the following Resolution memorializing the approval of the site plan and variance application of **Evergreen I, LLC, 29 Park Street** was adopted, Mr. Fleischer and Ms. Rock-Bailey abstaining:

WHEREAS, Evergreen I, LLC, did make application to the Board of Adjustment of the Township of Montclair to construct an addition to the rear of an existing building to be utilized for medical office use designated as Lot 19 in Block 2212 and located in the "Center Area" of the C-1 Zone; and

WHEREAS, the applicant sought site plan approval and relief as follows:

1. A variance pursuant to *N.J.S.A. 40:55D-70d(1)* to allow a medical office use on the first floor which is not permitted in the "Center Area" of the C-1 Zone pursuant to Montclair Code Section 347-80B(3);

2. An exception to permit parking stalls with a width of 8 feet 6 inches rather than the 9 foot width required by Montclair Code Section 281-9B;
3. An exception to allow less than the required 24 foot aisle width pursuant to Montclair Code Section 281-9D(1);
4. To allow a driveway width of approximately 10 feet where a minimum of 18 feet is required for two-way traffic pursuant to Montclair Code Section 281-91;
5. An exception to permit a picket style fence along the southerly property line where a solid fence is required pursuant to Montclair Code Section 281-9F;

WHEREAS, the applicant submitted a site plan, floor plans and elevations prepared by Sionas Architecture, P.C., dated March 14, 2002, revised through May 10, 2002; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 19, 2002 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 application contemplates conversion of the existing building consisting of basement, first and second floors to medical office use as more particularly described in the floor plans submitted as part of the application. A barrier free parking space shall be provided and a two story elevator/lobby addition will make the property handicap accessible. The proposed improvements constitute appropriate municipal action which advance the general welfare consistent with *N.J.S.A. 40:55D-2a*.
2. The property was not designed for retail use and has been utilized as a bank and consulting firm and the first floor could not readily be converted to retail use as required by the ordinance.
3. The property is situated between the YMCA and the OR-3 Zone boundary and is remote from retail pedestrian traffic which the ordinance seeks to promote by requiring retail establishments on the first floor.
4. Based upon existing improvements and lack of retail pedestrian traffic, the site is particularly suited for the medical office use and will provide sufficient space in an appropriate location for the use consistent with *N.J.S.A. 40:55D-2g*.
5. The driveway and aisle widths as well as parking stall width (as revised

by condition 3 below) are appropriate based upon structures lawfully existing on the site and are functionally adequate for the proposed use.

6. The black aluminum picket style fence proposed along the southerly property line matches the existing fence of the adjacent property and provides aesthetic and safety benefits.

7. Based upon the Board's particular knowledge of local conditions, the proposed use is not inconsistent with the development of the neighborhood and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that 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

WHEREAS, the Board, based on the foregoing findings, concluded that the requested exceptions are reasonable and within the general purpose and intent of the ordinance and literal enforcement of the ordinance is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Evergreen I, LLC, for site plan approval, variance and exceptions is hereby approved subject to the following conditions:

1. The owners of the subject property and the adjacent office building to the north shall execute cross-easements permitting driveway access and turnaround. The form of the cross-easements shall be approved by the Board Attorney and recorded in the Essex County Register's Office.

2. Parking space number 19 shall be eliminated and a 6 foot landscaped area in the easterly corner of the property shall be provided.

3. As a result of the preceding condition, 6 of the parking spaces designated as 2 through 18 shall provide a 9 foot width.

4. The plans shall be revised to include the proposed trash/recycling bin as depicted on Exhibit A-1.

5. The existing fuel tank shall be removed in compliance with all applicable governmental regulations.

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. Chapman, seconded by Mr. Fleischer, the following Resolution memorializing the approval of the variance application of **Marlene Hallman, 7 Woodland Avenue** was adopted as modified, Ms. Rock-Bailey abstaining:

WHEREAS, Marlene Hallman did make application to the Board of Adjustment of the Township of Montclair to construct an open exterior wooden stairway at the rear of the three-story multifamily dwelling on her property located at **7 Woodland Avenue** and designated as Lot 16 in Block 4106 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested the following relief:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to expand a preexisting nonconforming three-family dwelling contrary to **Montclair Code Section 347-112**.

2. A variance pursuant to N.J.S.A. 40:55D-70c to permit the open wooden exterior stairway to have side yard setbacks less than that required by **Montclair Code Section 347-51**.

WHEREAS, the applicant submitted a property survey prepared by Bernard W. Criscenzo, dated February 14, 2002 and a site plan and elevations prepared by John Guadagnoli, Architect, dated April 30, 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 June 19, 2002 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 measures approximately 2,562.71 square feet in area with a street frontage width of approximately 25.35 feet and contains a 3-story, nonconforming three-family dwelling. The existing multifamily dwelling on the property is a legal nonconforming use.

2. The applicant's proposal is to replace an existing open exterior wooden stairway with a new open exterior wooden stairway at the rear of the multifamily dwelling for use as a secondary ingress and egress for each dwelling unit.

3. The existing open exterior wooden stairway has nonconforming side yard setbacks of approximately 3.9 feet in the easterly side yard and approximately 1.7 feet in the westerly side yard.

4. The proposed easterly side yard setback of the new open exterior wooden stairway is approximately 5 feet. The westerly side yard setback is proposed to remain at 1.7 feet due to the location of the existing rear doorways of the dwelling. The proposed stairway meets the height and rear yard setback requirements.

5. Approval of this application will not increase the intensity of the preexisting nonconforming use and will not adversely impact area properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

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 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 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 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 Marlene Hallman is hereby approved subject to the following conditions:

1. The proposed open exterior wooden stairway shall comply with all applicable Building Codes.

2. The new construction shall be built no closer to the easterly and westerly side property lines than the existing stairway.

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. Fleischer, seconded by Mr. Susswein the meeting was adjourned.