

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**October 18, 2006**

PRESENT: Chair Harrison, Mr. Haizel, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq., Mr. Franco, Secretary and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Cockey, Ms. English, Vice Chair Fleischer, Mr. Flood, and Ms. Holloway

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. Whipple, seconded by Mr. Susswein, the **Minutes of the June 14, 2006** special meeting were adopted, Mr. Haizel abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the **Minutes of the June 21, 2006** regular meeting were adopted as modified, Mr. Haizel abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Lisa Cole, 25 Ramsay Road** was adopted, Mr. Haizel abstaining:

WHEREAS, Lisa Cole, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct an enclosure for an existing inground swimming pool on property designated as Lot 6 in Block 101 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70c to permit a side yard setback of less than 12 feet from the northerly side property line as required by **Montclair Code Section 347-34A(2)(a)**; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated Mary 14, 1997, an enlarged section of the survey with the outline of the pool enclosure depicted, and enclosure details prepared by Libart Enclosure Systems, dated February 17, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 20, 2006, 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 is an interior lot located in the R-0 Mountainside Zone and contains a 2-story single-family dwelling with an inground swimming pool on the northerly side of the lot. The subject property measures 284.01 feet in frontage on Ramsay Road and contains 96,973 square feet in lot area.

2. The existing inground swimming pool measures 20 feet by 44 feet and is surrounded by a slate surface patio; a brick wall exists on the northerly, westerly, and easterly sides of the pool. A swimming pool enclosure is proposed that measures 34 feet by 63 feet.

3. The property survey submitted by the applicant indicates that the existing pool is set back 18 feet from the northerly side property line. The drawings submitted by the applicant depict different versions of a plan that are inconsistent in terms of the northerly side yard setback of the proposed pool enclosure.

4. The plot plan depicted on an enlarged copy of the survey indicates that the proposed swimming pool enclosure would have a northerly side yard set back of 7 feet from the northerly side property line, while a drawing from Libart Enclosures indicates a 10 foot setback, and a third drawing indicates a northerly set back of 5 feet 7 inches.

5. The Board determined that the requested variance for a northerly side yard setback less than the required 12 feet could not be granted without having a plan before them that clearly depicts the proposed enclosure and the proposed northerly side yard setback.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not 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 did not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, did not prove that the benefits of the deviation would substantially outweigh any detriment and did not prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Lisa Cole is hereby denied: and

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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Martin C. Felder, 91 Wildwood Avenue** was adopted, Chair Harrison and Mr. Haizel abstaining:

**WHEREAS**, Martin C. Felder, owner of property at **91 Wildwood Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a westerly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** in connection with the construction of a detached garage where an existing garage has been damaged by a fallen tree on property designated as Lot 32 in Block 3505 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated September 21, 2001, and a site plan, floor plan, and elevations prepared by gk+a Architects, P.C., dated August 1, 2006, which depicts an exact rebuild of the existing damaged garage, and alternative plan, with no preparer or date, that depicts a modified plan for the garage; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on September 20, 2006 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

**WHEREAS**, the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is an interior lot located in the R-1 One-Family Zone, measuring 47.03 feet in width and approximately 10,776 square feet in area. The subject property contains a 2½-story single-family dwelling. The property survey depicts the existing detached garage that was damaged by a fallen tree during a July 18, 2006 storm.

2. The applicant presented 2 plans for the Board to consider: an exact rebuild of the existing garage, and an alternative plan for a garage with a larger footprint and a lower height.

3. The existing damaged garage has a nonconforming westerly side yard setback of 2.76 feet. The plans depicting an exact rebuild of the garage with an attached shed at the rear wall also depict a westerly side yard setback of 2.76 feet, and require a variance for a westerly side yard of less than 6 feet. The footprint of the garage in this plan measures 18 feet 6 inches in width and 18 feet 6 inches in depth,

with an attached shed at the rear wall measuring 14 feet in width by 6 feet 2 inches in depth. The height of the garage in this plan would measure a conforming 14 feet 9½ inches.

4. In the alternative plan for the garage, a variance is also requested for a westerly side yard setback of 2.76 feet, where 6 feet is required. The alternative plan differs from the exact rebuild plan in that the footprint of the garage would be longer, measuring a total of 30 feet in length, and the height of the garage would be lowered to 12 feet 6 inches.

5. The applicant indicated a preference for the alternative garage plan, which eliminated the attached shed, had a longer footprint length, and a shorter height. The applicant pointed to other garages in the neighborhood, including the garage on the adjoining property to the west, which have similar dimensions to the garage in the alternative plan.

6. During the Board's discussion on the plans submitted, a motion to approve the alternative plan did not receive enough affirmative votes to be approved, and was therefore denied. The Board determined that the plan for an exact rebuild of the detached was acceptable being that it is located in the same location as the existing damaged garage and has a reasonably sized westerly side yard setback to allow for proper maintenance and roof drainage.

**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 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 Martin C. Felder is hereby approved; and

**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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **James Byrnes, 66 Dryden Road** was adopted as modified, Mr. Haizel abstaining:

**WHEREAS**, Thomas Byrnes, owner of property at **66 Dryden Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a westerly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of a detached garage on property designated as Lot 137 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by EKA Associates, P.A., dated February 20, 2002, and a plot plan, floor plan, and elevations prepared by the applicant, dated August 9, 2006; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on September 20, 2006 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

**WHEREAS**, the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is an interior lot located in the R-1 One-Family Zone, measuring 55 feet in width and approximately 6,875 square feet in area. The subject property contains a 2½-story single-family dwelling and a driveway which leads to a location in the southwesterly corner of the property where a previously existing garage was seriously damaged by a fallen tree this past July.

2. The applicant proposes to construct a detached garage in the rear yard of his property, where the previous garage existed. The property survey indicates that the existing damaged garage had a westerly side yard setback of 1.78 feet and 1.82 feet, and a rear yard setback of 2.96 feet and 3.01 feet.

3. The plan indicates that for the proposed garage, the westerly side yard setback would be increased to 2 feet and the rear yard setback would be 3 feet. The applicant also indicated that the footprint of the garage would be increased from the previously existing footprint of 20 feet by 20 feet to 22 feet by 22 feet. The proposed garage complies with the height and coverage limits.

4. The Board determined that the proposed garage can be approved since its location is based on the location of the previously existing garage on subject property and its location is similar to that of many detached garages in the neighborhood. Furthermore, the westerly side yard setback provided would also allow for proper

maintenance and roof drainage.

**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 Thomas Byrnes is hereby approved, subject to the following condition:

1. The existing fence belonging to the adjoining property owner located along the westerly side property line shall not be removed in order to construct the proposed garage.

**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 following Resolution memorializing the approval of the application of **Nina Rosenstein, 141 Upper Mountain Avenue** was adopted, Mr. Susswein and Mr. Haizel abstaining:

WHEREAS, Nina Rosenstein, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct a one-story addition and porch onto the southerly side of her single-family dwelling on property designated as Lot 7 in Block 1601 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant requested variances pursuant to N.J.S.A. 40:55D-70c to permit a front yard setback of less than required by **Montclair Code Section 347-33B(1)** and to permit a principal structure width of more than 65 percent of the lot frontage width, contrary to **Montclair Code Section 347-33C(4)**; and

WHEREAS, the applicant submitted a property survey prepared by Frederick C. Meola, dated August 4, 2000, and a plot plan, floor plan, and elevations prepared by John Reimnitz, Architect, PC, dated August 5, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on September 20, 2006, 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 is an interior lot located in the R-0 Mountainside Zone measuring 100 feet in lot frontage width and 18,784 square feet in lot area. The subject property contains a 2½ story single-family dwelling and a detached garage.

2. The applicant proposes to construct a one-story addition and porch onto the southerly side of her single-family dwelling. The proposed addition would contain an enlarged sunroom and an existing rear porch would be enlarged in a southerly direction behind the proposed addition.

3. The existing dwelling has a nonconforming front yard setback of 25 feet 6 inches to the existing front entrance foyer and approximately 36 feet 1 inch along the remainder of the front wall of the dwelling. The proposed sunroom addition would align with the existing front wall of the dwelling and also have a front yard setback of 36 feet 1 inch. The required front yard setback for the property is approximately 57.5 feet, which is based on the average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property.

4. A maximum principal structure width of 65 feet is permitted for the subject property, which measures 100 feet in frontage width. The existing dwelling has a conforming width of 63 feet 1 inch. The proposed addition increases the width of the dwelling to 68 feet 7 inches, excluding the chimney, which is exempted.

5. The Board determined that the requested front yard setback variance can be approved since the required front yard setback is skewed to a large degree by the larger front yard setback of the adjoining to the south. Furthermore, the proposed addition is aligned with the existing front wall of the dwelling and would not encroach any further into the front yard.

6. The Board also determined, however, that the requested variance for a principal structure width exceeding 65 percent of the lot frontage width could not be approved. The Board determined that the applicant failed to demonstrate sufficient hardship in justifying the variance and failed to demonstrate that an addition that complies with the maximum principal structure width requirement could not be constructed.

WHEREAS, the Board, based upon the foregoing findings, with respect to the variance requested for principal structure width, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not 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, with respect to the variance requested for principal structure width, concluded that the applicant did not prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, did not prove that the benefits of the deviation would substantially outweigh any detriment and did not prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

WHEREAS, the Board, based upon the foregoing findings, with respect to the variance requested for a front yard setback, concluded that the applicant did prove 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, with respect to the variance requested for a front yard setback, 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, did prove that the benefits of the deviation would substantially outweigh any detriment 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 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 application of Nina Rosenstein for a variance to permit a principal structure width exceeding 65 percent of the lot frontage width is hereby denied: and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Nina Rosenstein for a variance to permit a front yard setback less than required is hereby approved: and

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 Mr. Whipple, the following Resolution memorializing the approval of the application of **105 Grove, LLC, 105 Grove Street** was adopted Mr. Haizel abstaining:

**WHEREAS**, 105 Grove, LLC, as owner, did make application to the Board of Adjustment of the Township of Montclair to convert warehouse space to office space on property designated as Lot 6 in Block 4205 on the Tax Map of the Township of Montclair and located in the C-2 General Business and Light Manufacturing Zone; and

**WHEREAS**, the applicant requested a variance pursuant to N.J.S.A. 40:55D-70c to permit 36 parking spaces where a minimum of 41 parking spaces is required pursuant to Montclair Code Section 347-101; and

**WHEREAS**, the applicant submitted a site layout plan prepared by John Reimnitz, Architect, dated June 9, 2006 as well as a survey prepared by Louis R. Puopolo, III dated January 30, 2006; and

**WHEREAS**, this matter came to be heard at a regular meeting of the Board of Adjustment held on September 20, 2006, 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 is an irregularly shaped interior lot consisting of 33,600 sq. ft in area. The property is improved with an "L" shaped one story warehouse building which may be viewed as two buildings which have been connected. The original building located to the rear or southeast area of the site was constructed in 1931 and a second connected building was added to the left side or northeastern portion of the property in 1972.

2. The applicant seeks to convert and substantially upgrade what was the original 1931 building into 7,500 sq. ft of office space. The area would be divided with a maximum number of 12 separate office areas. The remaining portion of the building is occupied by E&L Battery and Ignition Co, Inc. which conducts a wholesale auto parts business pursuant to a lease with the applicant through September 30, 2008.

3. The site accommodates a total of 36 parking spaces as shown on the site layout plan. Montclair Code Section 347-101 requires a total of 41 spaces for the site (one space per 750 sq. ft of warehouse which equals 11 spaces; one space per 250 sq. ft of office which equals 30 spaces).

4. Although the Ordinance allocates 11 spaces to the existing warehouse use, the lease agreement between the applicant and the tenant, E&L Battery and

Ignition Co., Inc., allocates 6 spaces to that use. As a result, 5 spaces allocated by Ordinance to the warehouse use would in fact be available for the proposed office use. Additionally, the applicant has obtained a parking permit for the Municipal Lot located behind the Grove Street Pharmacy and has entered a 2 year lease with the owner of the adjacent property (Mitchell Supreme) to utilize 5 parking spaces until September 30, 2008.

5. Approval of this application constitutes appropriate Municipal action since the parking deficiency is adequately addressed by the applicant and the upgrade will result in an aesthetic benefit to the property consistent with the purposes of the Municipal Land Use Law.

6. Based upon the Board's particular knowledge of local conditions, approval of this application 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 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 of 105 Grove, LLC for a variance to permit 36 parking spaces where a total of 41 parking spaces are required is hereby approved subject to the following conditions:

1. The parking spaces depicted on the site layout plan shall be striped.
2. As stipulated by the applicant, an application for site plan approval shall be filed with the appropriate municipal board prior to September 30, 2008 to address parking lot improvements, traffic circulation and other site related issues.
3. The applicant shall have access to 5 off site parking spaces which may be achieved through agreement with an adjacent property owner or by obtaining Municipal parking permit(s) in the lot behind Grove Street Pharmacy until September 30, 2008 which will then be the subject of further review as part of the site plan application referenced in the preceding condition.

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

Chair Harrison called the application of **Redeemer Church of Montclair, 105 Walnut Street**. Grant Gille appeared as attorney for the applicant and stated that he would like to proceed with the application and carry the vote to the next meeting of the Board. Mr. Gille called Randy Lovelace, who was sworn, and stated that he is the Pastor of Redeemer Church of Montclair. Mr. Lovelace described the application and stated that Redeemer Church was started 5 years ago in Montclair. He stated that their lease at their current facility is expiring soon, that they have outgrown that facility, and that they have an agreement in place with the owners of the Senior Care and Activity Center at 105 Walnut Street for a term of 2 years to use that building on Sundays for their worship services. He stated that they would use the site from 7 a.m. to 2 p.m. on Sundays only and that they have office space at another location. He also stated that they have cooperative agreements in place with other congregations to share space if needed for special occasions. He stated that movable seating would be used, which would be stored in space that they would lease in the building located across the driveway at 89 Walnut Street and that they would be accommodating 160 to 190 people, including adults and children. He also stated that in addition to congregation members, 10 to 12 church staff would also be on the site on Sundays. He continued by describing the parking requirement and stated that 24 parking spaces are required according to the zoning ordinance.

Marked into evidence was:

- A-1 A Portion of the Floor Plan, depicting the proposed layout of the setup for worship service at the subject property
- A-2 Site Plan depicting the existing parking area on the subject property

Mr. Lovelace described the existing room layout in the building and stated that the large multipurpose room would be used for worship services and that they would use 5 smaller rooms for classrooms associated with their children's ministry. He described the existing parking lot and stated that it contains 25 parking spaces and that the owner of the property keeps 7 vans on the site over the weekend, which leaves 18 available parking spaces and creates a deficiency of 6 parking spaces for the church. He stated that the parking deficiency could be addressed by utilizing the available street parking on Walnut Street, as well as the municipal parking lot across Walnut Street. Mr. Gille stated that he has inquired about the available parking in the municipal parking lot on Walnut Street and was informed by the Township Clerk's office that 183 parking spaces are available in that lot on Sunday. Mr. Lovelace added that the multipurpose room in the building could probably accommodate around 300 people, although that kind of growth is not anticipated over the next 2 years.

- A-3 Letter from the Township Clerk to Mr. Gille

The Board questioned Mr. Lovelace. Mr. Lovelace stated that the majority of the congregation resides in Montclair, Bloomfield, and West Orange. He also stated that the church across the street has its own on-site parking and that he is searching for a more permanent location. Mr. Lovelace further stated that his best estimation is that approximately 25 to 30 parking spaces are actually needed by the congregation.

Chair Harrison called for questions from the public. Mercure Volt, 89 Walnut Street, asked whether a variance granted for the proposed church would carry over to another church if the applicant left the site.

Mr. Gille called Roger DeNiscia, who was sworn and stated his qualifications as a Professional Planner. Mr. DeNiscia described the variances requested and characteristics of the subject property and stated that the proposed shared use of site represents a planning benefit that the site and the building are particularly suitable for proposed church use. He stated that the subject property is located in the C-2 General Business and Light Manufacturing Zone, which does not permit houses of worship and that the predominant commercial use in vicinity of the subject property is restaurant use. He stated that restaurants are not typically active during the proposed church hours, which allows for more parking on the street and public parking lots to be available for the church to utilize. He further stated that a house of worship is an inherently beneficial use, that the positive criteria and negative criteria have been fulfilled, and that the parking variance can be granted because the benefits of the application outweigh any detriments.

The Board questioned Mr. DeNiscia and Mr. Lovelace. Mr. DeNiscia described the level of usage of the Walnut Street municipal parking lot and the traffic on Walnut Street. Mr. Lovelace stated that he would instruct congregation members to drive onto the site and drop off children and other people and then park in order to reduce the number of people needing to cross Walnut Street.

Chair Harrison called for questions and comments from the public. Mercure Volt, 89 Walnut Street, was sworn. She inquired about the building entrances that would be used by people visiting the site. She also inquired about the driveway on Walnut Street and stated concern over its usage. Mr. Lovelace stated that the main building entrance would be used by the congregation and that the other building entrance would only be used to load in the seating and as an emergency exit. He also stated that the congregation would be instructed to use the Greenwood Avenue driveway entrance and exit only.

Chair Harrison announced that the public hearing on the application has concluded and that the Board's discussion and vote on the application would be continued at the special meeting of the Board scheduled for October 25, 2006 and that no further notice would be given.

Chair Harrison called the application of **Paul Anderson, 34 North Willow Street**. Paul Anderson was sworn and described the application. He stated that since his

proposed parking area requires a variance for the expansion of a nonconforming use, he would like to proceed and have the vote on his application carried until the next meeting of the Board. He stated that he is seeking approval to create a new driveway and parking area for 3 cars on his property, which is in a two-family zone and contains a lawfully existing three-family dwelling. He stated that he had contacted the owners of the adjoining properties to inquire about easements to enlarge the width of the driveway, but that no agreements have been reachable. He also stated that he has received the Board Engineer's comments on his application and is in the process of having a Professional Engineer design a plan in response to those comments and recommendations. He further stated that on-street parking is not permitted on North Willow Street, that he personally parks at the nearby municipal lot, and that he rents parking spaces for his tenants on the adjoining property.

Marked into evidence was:

A-1 Photograph of the southerly side yard of the subject property

The Board questioned the applicant. Mr. Anderson stated that the proposed driveway is only suitable for smaller cars and that he has checked the width of his vehicle and his tenants' vehicles to be certain that they could access the rear yard. He stated that one parking space would be reserved for each dwelling unit. He also stated that would not allow larger vehicles to attempt to access the proposed parking area and damage to the dwelling. He further stated that he would be agreeable to have the parking area behind the dwelling surfaced with gravel and only have the driveway paved and that the professionally designed plan would be available at the next meeting.

Chair Harrison called for questions and comments from the public. None were offered. Chair Harrison announced that the application would be continued at the special meeting of the Board scheduled for October 25, 2006 and that no further notice would be given.

Chair Harrison called the variance application of **Mr. and Mrs. Richard Mitchell, 527 Highland Avenue**. Richard Mitchell, applicant, and John Way, Architect, were sworn and described the application.

Marked into evidence were:

A-1 Plot Plan and Floor Plan on a board

A-2 Elevations and Floor Plan on a board

A-3 Photograph of dwelling on the subject property

A-4 Photograph of dwelling on the subject property

A-5 Photograph of dwelling on the adjoining property

A-6 Photograph of dwelling on the subject property

Mr. Way stated that an addition is proposed which requires a variance for exceeding the limit of 2½ stories. He described the existing dwelling and stated that it is lacking in space and that an addition at the rear of the dwelling is proposed that would provide some additional living space needed to modernize the interior of the dwelling.

Mr. Mitchell stated that he and his wife have lived at the subject property for 30 years and described how the proposed addition would meet their needs at the present time. Mr. Way described the topography of the subject property and stated that the dwelling complies with the limit on stories for the most part and only requires a variance due to the fact that the topography is sloping away at the rear of the dwelling. He further stated that this condition exists for nearly all of the properties in the area of the subject property.

The Board questioned the applicant and Mr. Way. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Whipple, seconded by Mr. Haizel, the application was approved.

Chair Harrison called the variance application of **John Fitzgerald, 25 Carolin Road**. John Fitzgerald was sworn and described the application to rebuild the detached garage in the rear yard of his property. He stated that the garage that existed on the property was destroyed during a powerful storm on July 18, 2006. He stated that the foundation of that garage is in good condition and would be used for the new garage. He also stated that the proposed garage would be the same size and height and the previous existing garage and the same setbacks of 2.5 feet in the side yard and 4.5 feet in the rear yard are proposed.

Marked into evidence were:

A-1 Photograph of the existing foundation

The Board questioned Mr. Fitzgerald. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application and on motion by Mr. Whipple, seconded by Mr. Haizel, the application was approved.

Chair Harrison called the variance application of **Robert and Kathleen Ulrich, 45 Beverly Road**. Robert Ulrich was sworn and described the application to rebuild the detached garage in the rear yard of his property. He stated that the garage that existed on the property was destroyed during a powerful storm on July 18, 2006. He stated that he was told by his builder that he would need to do a new foundation with footings but that the size and location would remain the same as what existed. He stated that

he is not proposing to relocate the garage because his yard is smaller in size and he would have to remove trees.

Marked into evidence were:

A-1 Photograph of an existing garage recently built at another property in Montclair, which represents an example of what is proposed

A-2 Photograph of destroyed garage on subject property

The Board questioned Mr. Ulrich. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application and on motion by Mr. Whipple, seconded by Mr. Haizel, the application was approved.

The Board discussed the request for a special meeting for the application of **The Michael Malinowski Family Trust, 192-194 Bloomfield Ave** made by the applicant's attorney, and it was determined that the no special meeting would be scheduled at this time, and the application would be on the agenda for the November 15, 2007 regular meeting.

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