

MINUTES OF THE BOARD OF ADJUSTMENT
March 19, 2014

PRESENT: Chair Harrison, Ms. Checca, Mr. Edwards, Mr. Fleischer, Mr. Kenney, Mr. Reynolds, and Vice Chair Whipple; also, Mr. Sullivan, Esq., Mr. Watkinson, P.E., Ms. Talley, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Burr, Mr. Susswein, and Mr. Tsai

Mr. 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. Fleischer, seconded by Mr. Edwards, the **Minutes of the February 19, 2014** meeting were adopted as modified.

On motion by Mr. Fleischer, seconded by Mr. Edwards, the following resolution memorializing the Board's decision on the application of **Ben and Candice Brennan, 121 Chestnut Street** was adopted:

WHEREAS, Ben and Candice Brennan, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to construct a front porch onto the dwelling, on property designated as Lot 4 in Block 2304 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested a variance from Montclair Code Section 347-51 for a front yard setback of less than required; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 19, 2014, 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 applicant submitted plans by Mark Thomas Architect, LLC, dated December 18, 2013, and a property survey dated August 2004; and

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

1. The property is located in the R-2 Two-Family Zone and contains a single-family dwelling with attached garage. The lot measures 94.5 feet wide by 160 feet deep.
2. The average front yard setback of the 4 nearest dwellings, 2 on each side of the subject property, is approximately 36.46 feet, which is the required front yard

setback for new construction on the subject property, including the proposed front porch.

3. The front wall of the dwelling has a conforming front setback of 36.8 feet. The existing front stoop has a nonconforming front setback of approximately 33.05 feet. The proposed front porch would have a front setback of 30.8 feet, and a variance is requested. Building permits have recently been issued for additions and other work on the subject property which comply with zoning.

4. The Board determined that the variance requested could be approved. The proposed porch is not oversized and has been thoughtfully designed relative to the streetscape. The front porch and the other work depicted on the plan will allow the appearance of the dwelling to be more in keeping with the predominant architectural style of the neighborhood. The required front yard setback is slightly skewed due to the larger setback of the properties to the west. The requested front yard setback variance will not negatively impact the streetscape or an adjoining neighbor; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship 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 the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the 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 application 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. Fleischer, seconded by Mr. Edwards, the following resolution memorializing the Board's decision on the application of **Mathew C. Mathew, 231 Claremont Avenue** was adopted as modified:

WHEREAS, Mathew C. Mathew, as owner and applicant, with respect to property located at 231 Claremont Avenue, Montclair, New Jersey (Block 2307, Lot 9) (hereinafter the "property"), made application to the Montclair Township Board of

Adjustment (hereinafter the "Board") for variances and site plan approval necessary to convert the existing principal residential building on the property to provide five dwelling units and to redesign a driveway, parking areas, and other site improvements; and

WHEREAS, the applicant requested relief as follows:

1. The property is located in the OR-3 Garden Apartment and Office Building Zone, and the proposed conversion is a permitted conditional use in the OR-3 Zone, but the proposed conversion does not meet all applicable conditions and requires conditional use variances as follows:

a. A variance pursuant to N.J.S.A. 40:55D-70d(3) and from Montclair Code Sections 347-60A and 347-54B(1) in that the floor area of Units 1, 3, and 4 is less than 800 square feet;

b. A variance pursuant to N.J.S.A. 40:55D-70d(3) and from Montclair Code Sections 347-60A and 347-54B(4) in that the lot area is less than 15,000 square feet within 150 feet of the front street line;

c. A variance pursuant to N.J.S.A. 40:55D-70d(3) and from Montclair Code Sections 347-60A and 347-54B(5) in that the existing fire escape is not enclosed within the existing building walls; and

2. Variances pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Sections 347-65 and 347-58D in that a driveway is located within six feet of a principal building and a driveway and a parking space are set back less than three feet from property lines; and

WHEREAS, the applicant submitted site plans and architectural plans prepared by The Mylan Architectural Group consisting of Sheets SP-1, SP-2, and A-1 revised through January 22, 2014; and

WHEREAS, the application came on to be heard at a meeting of the Board held on February 19, 2014, at which time it was established that notice was properly published and that property owners within 200 feet of the property had been properly served with such notice; and

WHEREAS, the Board carefully reviewed the testimony, the exhibits (A-1 and A-2) and the questions and comments presented at the public hearing and based thereon established the following findings of fact and conclusions of law:

1. The property is an interior lot located on the north side of Claremont Avenue, between Midland Avenue and Park Street, with lot frontage of approximately 70 feet on Claremont Avenue and lot depth of approximately 190 feet. It consists of 13,263 square feet. It contains a two and one-half story frame building with a driveway, a

parking area, and landscaping. According to Township records, the building has served as a rooming house as well as public dining room, but it has changed over the years so that it now contains eight dwelling units. The Township records indicate there are no zoning approvals for the present configuration of eight dwelling units. The within application is intended to provide formal zoning approvals for five dwelling units;

2. The proposed conversion to five dwelling units is a permitted conditional use in the OR-3 Zone, however, the conversion does not meet three conditions and requires conditional use variances as set forth above. The proposed conversion reduces residential density from a non-conforming eight dwelling units to a conforming five dwelling units and meets all other prescribed conditions including lot coverage;

3. The proposed conversion includes modifications to the existing building's interior floor plan and the property's exterior site plan. The existing square footages of the existing eight dwelling units are approximately as follows: Unit 1 – 271 square feet; Unit 2 – 405 square feet; Unit 3 – 292 square feet; Unit 4 – 248 square feet; Unit 5 – 286 square feet; Unit 6 – 630 square feet; Unit 7 – 936 square feet; and Unit 8 – 708 square feet.. The proposed square footages for the proposed five dwelling units are approximately as follows: Unit 1 (first floor) – 751 square feet; Unit 2 (first floor) – 823 square feet; Unit 3 (second floor) – 742 square feet; Unit 4 (second floor) – 770 square feet; and Unit 5 (third floor) - 936 square feet. The increases in the square footages of the dwelling units will upgrade the quality of the dwelling units. The site improvements include: widening of the existing two-way common driveway from a non-conforming 13 feet to a conforming 18 feet; reorganization of the on-site parking spaces to provide 9 on-site parking spaces as required by Montclair Code Section 347-101 and the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-4.14, Table 4.4); new trash enclosure; new shadow box fence along the easterly property line; new lawn areas on both sides of the building; and 15 new plantings;

4. With respect to the conditional use variances, there are various purposes of zoning and special reasons in support of such variances. The project promotes the general welfare (N.J.S.A. 40:55D-2a) because the property is particularly suitable for the project given the residential zone and given the longstanding residential use of the existing residential building. The project promotes appropriate residential density (N.J.S.A. 40:55D-2e) by reducing residential density from the existing non-conforming eight dwelling units to the proposed conforming five dwelling units. The project provides sufficient space at an appropriate location for residential use (N.J.S.A. 40:55D-2g). Overall, the project helps to promote a more desirable visual environment (N.J.S.A. 40:55D-2i). The project promotes the efficient use of land (N.J.S.A. 40:55D-2m);

5. The conditional use variances will not cause any substantial detriment to the public good or surrounding properties. The existing residential building has been established for over 100 years, and the application does not propose any new building or any building addition other than a new front porch (to provide a common front entrance) and a new dormer on the second floor. The project seeks primarily to

consolidate and rehabilitate the interior of the building and, secondarily, to improve the exterior site;

6. Moreover, although three dwelling units are less than 800 square feet, each of these three dwelling units is more than 90% of 800 square feet. The proposed size of Units 1, 3, and 4 is reasonable, and these units provide more affordable apartments. Units 1, 3, and 4 have an additional 200 square feet of private storage in the basement of the building;

7. Although the aggregate lot size is 13,263 square feet, rather than 15,000 square feet within 150 feet of the front street line, the lot size is adequate for the project and allows for the required parking, landscaping, and open space. Also, the building coverage is 16.17%, whereas 25% is permitted, and the impervious coverage is 66.10%, reduced from 73.27%, whereas 70% is permitted;

8. Although the existing fire escape is not enclosed within the existing building, the fire escape is a longstanding feature of the building and is a common feature within the neighborhood;

9. The project brings substantial benefits to surrounding properties. It reduces residential density from a non-conforming eight dwelling units to a conforming five dwelling units and comes within prescribed lot coverage. The project will include widening of the existing two-way common driveway from a non-conforming 13 feet to a conforming 18 feet, along with reorganization of the on-site parking spaces to provide 9 on-site parking spaces as required by Montclair Code Section 347-101 and the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-4.14, Table 4.4). The project will also include a new trash enclosure, new shadow box fence along the easterly property line, new lawn areas on both sides of the building, and 15 new plantings;

10. At the same time, there is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance, and the project is consistent with these documents. The master plan provides for multifamily residential use in the OR-3 Zone. The most recent Master Plan Re-Examination Report of 2006 provides as its first housing goal: "Offer housing types for a diverse population. Provide a wide range of housing styles . . . to meet the needs of a population diverse in age, income, and physical ability. Maintain a zoning pattern which permits a range of housing types at appropriate densities throughout the community." The project fulfills this housing goal with respect to both density and smaller, more affordable apartments. Finally, the zoning ordinance specifically recognizes that an existing principal residential building can, in the OR-3 Zone, be converted to provide more than two dwelling units. The project is fully consistent with the intent and purpose of this part of the zoning ordinance. To the extent certain conditions are not met, or certain dimensional variances are necessary, they are reasonable and justified in the context of the application and do not harm the surrounding neighborhood;

11. With respect to the standard for conditional use variances set forth in *Coventry Square, Inc. v. Westwood Zoning Board*, 138 N.J. 285 (1994), the New Jersey Supreme Court established a special, relaxed standard of proof for applications involving conditional use variances. It held that the applicant must show that “the site proposed for the conditional use, in the context of the applicant’s proposed site plan, continues to be an appropriate site for the conditional use, notwithstanding the deviations from one or more conditions imposed by the ordinance.” Here, the project meets most of the conditional use conditions, provides residential use at the prescribed residential density, maintains or improves existing building and site conditions, and promotes smaller, more affordable dwelling units. Under *Coventry Square*, notwithstanding the deviations from certain conditions, the site continues to be appropriate for the project.

12. With respect to the bulk or dimensional variances concerning a driveway located within six feet of a building and a driveway and a parking space set back less than three feet from property lines, the new widened driveway is located approximately two feet from the existing building and crosses the westerly property line (because it is a common driveway), and parking space #1 is located approximately two feet from the westerly property line. The variances are justified based upon the purposes of zoning set forth above and because of the absence of substantial detriment to the public good and surrounding properties or substantial impairment of the intent and purpose of the zone plan and zoning ordinance, as set forth above. The benefits of the variances substantially outweigh any detriment. In addition, the variances are justified based upon the location of the lawfully-existing building and site improvements, which give rise to peculiar and exceptional practical difficulties or exceptional and undue hardship, and because of the absence of substantial detriment to the public good and surrounding properties or substantial impairment of the intent and purpose of the zone plan and zoning ordinance, as set forth above. The variances are minor technical variances, and they do not present any safety concerns or any inconvenience to surrounding properties;

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved the requisite special reasons for granting the conditional use variances, and proved by a preponderance of the evidence that the same could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan or zoning ordinance pursuant to N.J.S.A. 40:55D-70d(3); and

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the bulk or dimensional variances, 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 N.J.S.A. 40:55D-70c(2);

WHEREAS, the Board, based upon the foregoing findings, concluded with respect to the bulk or dimensional variances, that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 N.J.S.A. 40:55D-70c(1);

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Mathew C. Mathew for conditional use variances, bulk variances, and preliminary and final site plan approval be and is hereby approved and granted, subject to the following conditions:

1. The applicant shall enter into cross-easements with the owner of adjoining Lot 10 providing for joint and mutual use of the common driveway and related vehicle turning areas;

2. The applicant shall comply with items 2 through 5 of Board Engineer W. Thomas Watkinson's report dated November 30, 2013;

3. The applicant shall implement measures to maintain the safety of the existing fire escape during inclement weather, and if the applicant becomes required in the future to enlarge or replace the existing fire escape, it shall return to the Board for review and approval of such enlargement or replacement;

4. The applicant shall be bound by all representations made on its behalf by its attorney, witnesses, and professionals during the course of the public hearing; and

5. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

On motion by Mr. Fleischer, seconded by Mr. Edwards, the following resolution memorializing the Board's decision on the application of **Bellclair II, LLC and Bellclair, LLC, 6, 7 and 18 Bell Street and 693 Bloomfield Avenue** was adopted:

WHEREAS, Bellclair II, LLC, as owner of Lot 19 in Block 1402 located at 18 Bell Street and Bellclair, LLC, owner of Lot 20 in Block 1402 located at 6 Bell Street and Lot 15 in Block 1403 located at 7 Bell Street and 693 Bloomfield Avenue, did make application to the Montclair Township Board of Adjustment for amended preliminary and final site plan to consolidate Lots 19 and 20 and create six parallel parking spaces primarily on Lot 19 located in the "center area" of the C-1 Central Business Zone; and

WHEREAS, the applicants requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to permit expansion of a nonconforming use contrary to Montclair Code Section 347-112.
2. Variances pursuant to N.J.S.A. 40:55D-70c to permit parking in the front yard and parking area setbacks of less than four feet from the side and rear property lines contrary to Montclair Code Section 347-83C(1).
3. An exception pursuant to N.J.S.A. 40:55D-51b to permit a two-way aisle width of 14 feet where a minimum of 18 feet is required pursuant to Montclair Code Section 281-9I.

WHEREAS, the applicants submitted an amended preliminary and final site plan prepared by Omland Engineering Associates, Inc., Sheets 1, 2, 4 and 5 dated November 12, 2013; Sheet 3 dated August 28, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on February 19, 2014, 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 contains the Bellclair apartment complex with two three-story buildings on Lot 15 in Block 1403 and one three-story building on Lot 20 in Block 1402 containing a total of 70 apartments and 4,000 square feet of retail space with 120 parking spaces. Lot 19 in Block 1402 is vacant, having previously received approval from the Board to construct a two-family dwelling by resolution adopted March 19, 2008, which was never built.
2. The applicants seek to consolidate Lots 19 and 20 in Block 1402 and construct six off-street parallel parking spaces for use by tenants and visitors of the Bellclair apartment complex. The applicants propose to install four shoe box style light poles at a height of 14 feet and privet hedges along the southerly side of the parking area. The existing vinyl fence along the northerly and westerly property line of Lot 19 shall remain.
3. Although installation of a new parking area constitutes an expansion of a preexisting nonconforming use, the Board recognizes a public benefit in providing additional parking without any meaningful increase in intensity of use. The applicants previously received approval for a parking variance and providing additional parking will lessen the nonconformity. The Board also recognized that based upon the narrowness of the lot, the strict application of the side yard setback requirements results in peculiar

and exceptional practical difficulties and undue hardship upon the applicants. The expansion of the preexisting nonconforming use and approval of the side yard setback variance will have little or no adverse impact on area properties and based upon the nature and scope of this application will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

4. The two-way aisle serving the parking area is 14 feet where a minimum of 18 feet is required. The Board determined that the literal enforcement of this provision is impracticable and will exact undue hardship on the applicants based upon the limited scope of the parking and shape of the property and granting the exception is reasonable and within the general purpose and intent of the provisions for site plan review.

5. The Board, however, determined that the applicants failed to present sufficient proof in order to warrant relief from the front and rear yard setback requirements. The applicants cannot prove a hardship under N.J.S.A. 40:55D-70c(1) because elimination of two parking spaces obviates the need for these variances. In addition, the applicants failed to prove that the benefits of allowing six parking spaces as opposed to four parking spaces substantially outweighed any detriment. Approval of six parking spaces as originally proposed would result in an overutilization of the property, fail to provide adequate light, air and open space and not permit plantings in the front yard which would cause substantial detriment to the public good and substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

WHEREAS, the Board, based on the foregoing findings, concluded that a parking area of four parking spaces rather than six parking spaces as originally proposed met the requisite special reasons for granting this application and 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 with respect to the side yard setback variance, the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the foregoing findings, concluded that with respect to the front and rear yard setback variances the applicants did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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 Zoning Ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that with respect to the front and rear yard setback variances the applicants did not prove

that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to 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 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 Bellclair II, LLC and Bellclair, LLC for a parking area consisting of six spaces, expansion of a nonconforming use, setback variances and parking aisle exception is hereby denied.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Bellclair II, LLC and Bellclair, LLC be limited to four parking spaces, variance for expansion of a nonconforming use, side yard setback and parking aisle exception is hereby approved subject to the following conditions:

1. The plans shall be revised to reflect four parking spaces conforming with the front and rear setback requirements.
2. The applicants shall obtain Essex County Planning Board approval.
3. The curb detail shall be changed to granite block curb.
4. A clean-out (small inlet) shall be provided for the roof leader at the north corner of the building.
5. The apron detail shall provide a 7 inch thickness.
6. Compliance with the requirements of the Maintenance Manual.
7. The applicants' engineer shall submit an itemized construction cost estimate of site work for determination of inspection escrows.
8. Lots 19 and 20 in Block 1402 shall be consolidated by the filing of a Deed.
9. The applicants shall provide a cross easement to allow residents of Lot 15 in Block 1403 to utilize the parking area approved herein.
10. The entrance to the parking area shall be modified by eliminating the drop curb providing a level sidewalk and tapered entrance.

11. The landscape plan shall be modified to vary the plantings along the southerly side of the parking area and to add low plantings in the front yard subject to review and approval by the Township Planning Department.

12. The applicants shall be bound by all representations made on their behalf by its attorney, witnesses, and professionals during the course of the public hearings.

13. The applicants shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

14. This approval shall not constitute an abandonment of the approval obtained by Bellclair II, LLC memorialized by resolution adopted by the Board on March 19, 2008.

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

The Board discussed the **Draft 2013 Annual Report**. The only section of the report still requiring information is the inclusion of any recommended changes to the zoning ordinance. The Board concluded that the no changes to the zoning ordinance would be recommended at this time. On motion by Mr. Fleischer, seconded by Mr. Reynolds, the following resolution adopting the 2013 Annual Report was memorialized:

WHEREAS, the Municipal Land Use Law (the "MLUL"), specifically, N.J.S.A. 40:55D-70.1, requires the Board to review its decisions on applications and appeals for variances and to prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revisions, if any;

WHEREAS, the MLUL requires that the Board send copies of its Annual Report and resolution of adoption to the Governing Body and the Planning Board;

WHEREAS, the Board has reviewed its decisions on cases heard during 2013 and has prepared the annexed report thereon.

NOW, THEREFORE, BE IT RESOLVED by the Township of Montclair's Board of Adjustment, as follows:

1. The Board's 2013 Annual Report, a copy of which is annexed hereto, is hereby formally adopted.

2. The Secretary of the Board is hereby authorized and directed to transmit a copy of the said Annual Report as well as a copy of the within resolution, to the Governing Body and the Planning Board of the Township of Montclair.

It was announced that at the request of the applicant, the continuation of the application of **Montclair Kimberley Academy Foundation, 40 Upper Mountain Avenue** was postponed until the April 16, 2014 meeting of the Board. The Board was granted an extension of time and no further notice would be given.

The application of **Double EE Development, LLC, 130 Heller Way** was announced. Calvin Trevenen, Esq., appeared as attorney for the applicant. John Guadagnoli, Architect, was sworn and described the plans. A variance is requested to construct a second floor addition onto the dwelling. The property is located in the R-0(a) One-Family Zone and contains a single-family dwelling with an attached garage. The lot measures 100 feet wide and 16,273 s.f. in lot area. A 65 foot wide second floor addition is proposed. The addition has been designed to comply with the setbacks of the R-0(a) zone and the maximum permitted building width. The existing dwelling is a one-story ranch style home from the street view. The grading of the lot is lower around the rear of the dwelling, where a garage exists at the basement level. Based on definitions in the zoning ordinance relating to the number of stories, this topographic condition makes the existing dwelling a two-story home at the rear elevation. Due to the topography at the rear of the dwelling, the second floor addition creates a 3rd story as seen from the rear elevation, and a variance is requested. The Board questioned the applicant. Mr. Guadagnoli described the reasoning behind some of the choices made in the design and scale of the addition.

Roger DeNiscia, Professional Planner, was sworn and described the application. He stated that the requested variance can be granted due to the existing topography of the property along the rear of the dwelling. The variance can also be granted since the proposed improvements to the dwelling will benefit the overall neighborhood. Granting the variance will not negatively impact the streetscape or any nearby neighbor. He stated that this condition is typical wherever the topography around a 2½ story dwelling varies to the degree it does on the subject property. The Board questioned the applicant. Mr. DeNiscia described the topographic conditions of properties in the neighborhood. The Board discussed the application and determined that the variance requested could be approved. On motion by Mr. Fleischer, seconded by Mr. Reynolds, the application was approved.

Mr. Whipple joined the meeting. The application of **Joyce Fleissner, 36 Mountainside Park Terrace** was announced. Calvin Trevenen, Esq., appeared as attorney for the applicant and described the application. The property contains a single family dwelling that was the subject of separate applications to the Board of Adjustment in 1973, 1981, and 2011. Following the 1981 application, the dwelling was constructed some time between 1983 and 1986. The dwelling has not been lawfully occupied since its construction because the improvements to the unimproved portion of Mountainside Park Terrace required to provide access the property, and off street parking for the dwelling, have not been completed pursuant to any approved plan. In order to obtain a Certificate of Occupancy for the dwelling, the applicant must complete the

improvements deemed necessary in the public right-of-way in order to provide access to the property and the applicant must also create off-street parking for the property.

Frank Carlo, from the Montclair Ambulance Unit, was sworn. He provided information on how ambulance vehicles would typically access and exit the dead end street as designed on the plan. He stated that even with the proposed roadway improvements and turn around area on the plan, he'd anticipate that ambulance vehicles would access the property driving in forward, and would likely exit the front of the property by backing out in reverse. The Board questioned the witness. Mr. Carlo stated that the previously designed 40 foot diameter cul-de-sac would not have eliminated the need for ambulances to back out of the front of the property. He also stated that there are various existing properties in Montclair and other communities that he has had experience with, where ambulance vehicles have had to back out in reverse. Chair Harrison called for questions from the public. Marilyn Behnke, 8 Vincent Place, asked how many dwellings exist on Mountainside Park Terrace.

J. Michael Petry, Professional Engineer and Professional Planner, was sworn and described the application for the proposed improvements to the unimproved public street abutting the lot required to provide access to the property, and to create off-street parking for the property. The property is located on the westerly side of the southerly limit of an unimproved portion of Mountainside Park Terrace, which is an existing dedicated 20-foot wide public right-of-way within a steeply sloped area of the Township. The 2011 plan to provide the required roadway access and off street parking was approved by the Board subject to conditions. However, the 2011 plan was not executed by the applicant for several reasons. This includes an inability to comply with all of the conditions of the approval, such as obtaining the necessary permit from the NJDEP related to the grading and drainage plan that utilized the adjacent public parkland. The plan for the current application includes a cartway or roadway extension from the existing paved road with a minimum width of 12 feet that extending into the public right-of-way in front of the subject property. The previous "cul-de-sac" concept in the dead end roadway in front of the dwelling has been eliminated. The current plan includes a semicircular driveway for parking in the front yard of the property, and a paved area in the front yard of the property that is contiguous with the proposed paved roadway that would provide a "turn around area" to allow most vehicles in the dead end to make turning maneuvers, such as a "K turn", to exit the dead end street driving forward. With the existing grading, the 40 foot diameter cul-de-sac on the 2011 plan would require extensive excavating, regrading, and larger retaining walls to accommodate the cul-de-sac. In in comparison to the current plan utilizing a turn around area, the 40 foot diameter cul-de-sac on the previous plan did not provide any substantial advantage to most emergency vehicles in accessing or exiting from the front of the property.

Mr. Petry stated that off street parking provided on the current plan is located on a new 12 foot wide semi-circular driveway that is large enough to contain 3 to 4 vehicles. The parking area is located in the front yard and requires a variance. The previously approved applications for the property included similar variances granted to

construct either a detached garage or parking areas in the front yard. The large existing rubble stone retaining walls in the front yard of the property were impacted by strong storms in the past several years, and have since failed and have broken apart. Various new retaining walls are proposed on the current plan in the front yard and within Mountainside Park Terrace the right-of way. None of the new retaining walls exceed 4.5 feet in height. A 3 foot tall guiderail is proposed along the top of the retaining wall that runs along the easterly border of the Mountainside Park Terrace right-of-way. A 3 foot tall railing or hand rail is proposed along the top of the retaining wall that forms the easterly side of the driveway/parking area. A variance is requested for the combined height of the new retaining walls and railings that exceed the maximum height of 4.5 feet permitted in a front yard.

Exhibits Marked:

- A-1 November 15, 2011 letter from NJDEP Green Acres Program regarding diversion of parkland
- A-2 Portion on Montclair Tax Map depicting subject property
- A-3 Portion of Sanborn Map depicting subject property
- A-4 Sheet SP-1 by Petry Engineering, dated January 7, 2014
- A-5 3 page plan set depicting passenger vehicle and ambulance movement through the roadway, turn around area, and driveway

The Board questioned Mr. Petry. He stated that restricting parking within the turn around area would be best handled through a Council action that would allow the Police to enforce the restriction most effectively. No questions or comments were offered from the public. Mr. Trevenen summarized the application.

The Board discussed the application. The requested variances for the front yard parking and the combined height of the retaining walls and railings can be granted subject to the conditions listed below. The property is located along very steeply sloped terrain which makes it extremely impractical to create a driveway for conforming parking located in a side or rear yard. Due to the existing conditions and the relative location of nearby dwellings, the front yard parking area will not negatively impact the streetscape or any neighboring property. The extreme topography of the site also requires the use of retaining walls for proper site construction and engineering. The proposed retaining walls are shorter than those that previously existed in the front yard of the property, and the railings atop the walls provide the necessary safety measures for people, property, and vehicles near the edges of the retaining walls, without creating a visual nuisance. the requested exceptions can be granted under of the New Jersey Residential Site Improvement Standards, in that the plan is consistent with the intent of the Site Improvements Act; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructure and possible surrounding future development. The circumstances of the subject property are sufficiently unique to warrant the granting of the requested exceptions.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, subject to the following conditions:

1. The proposed turn around area that extends into the applicant's property shall be either dedicated to the Township as an extension of the public right-of-way, or an easement shall be granted to the Township for the purposes deemed necessary by the Township. The parking area proposed for the subject property shall be excluded from either arrangement.

2. Should the Township not accept the dedication of area of the proposed turn around area that extends into the applicant's property as an extension of the public right-of-way, the maintenance of the turn around area located on the applicant's property shall be the responsibility of the property owner, unless the Township accepts such responsibility as part of any easement agreement.

3. Any signage or other approach to restricting parking within the turn around area shall be determined by the Township Council either through the process of having the area dedicated as part of the public right-of-way, or through the alternative easement agreement.

4. As required by the Township Fire Department for the 2011 application, the dwelling will be fully sprinklered, the area of the roadway proposed to be extended by the applicant shall be paved to a minimum width of 12 feet, and the existing fire hydrant on the subject property will remain.

5. The proposed roadway extension and turn around area shall be constructed to Township standards as required by the Township Engineering Department and any all permits for such work shall be obtained from the Township Engineering Department.

6. The applicant shall comply with the comments 1, 4, 5, 7, 8 of the Board Engineer's report dated February 15, 2014;

The Board took a short recess. Chair Harrison left the meeting as he was recused from the final application on the agenda.

Vice Chair Whipple announced the application of **Montclair Town Center, LLC, 37 North Mountain Avenue and 323 Claremont Avenue**. Alan Trembulak, Esq. appeared as attorney for the applicant and described the application. The applicant proposes a minor subdivision to move the existing lot line separating lots 19 and 20 so that the Georgian Inn will be on one lot and the carriage house and Kohout house on the second lot. The applicant proposes to expand the hotel use from 15 rooms to 35 rooms. This expansion will require three additions to the Georgian Inn. Steven Plofker was sworn. He is the managing member of the LLC that owns the property. Mr. Plofker described the existing property and the several aspects of the proposed plan. While

providing his testimony, he presented several photographs, illustrations, and plan images on a large screen using a projector. He provided an explanation with detail regarding the planned modifications to the Georgian Inn that would allow them to modernize the hotel use. He stated that there is an increasing demand in Montclair for the type of facility that they would plan to create. He described the proposed parking lot in the Claremont Avenue front yard. He stated that extensive perimeter landscaping would screen the parking lot which is necessary in their plan to orient their clients towards the grand front entrance, which is presently underutilized because of reliance on the use of the rear parking area. The hotel would have 35 rooms, and they would be able to provide 35 parking spaces with the proposed layout.

The Board briefly questioned the witness. Vice Chair Whipple called for questions from the public. Ronald Istivan, 303 and 315 Claremont Avenue, asked about the proposed parking lot and proposed driveways. Mr. Plofker provided some answers. Mr. Sullivan stated that the applicant's professional witnesses would be provided much more extensive testimony regarding parking and driveways at subsequent meetings. The Board questioned the witness again. Mr. Plofker stated that their thinking behind the new property line results from the need to separate the buildings on the site for the purpose of financing the hotel project. He also stated that the subdivision line would allow the uses in the carriage house building at the rear of the current Georgian Inn property and multifamily dwelling at 323 Claremont Avenue to have the parking spaces that those uses need, aside from the hotel use. He stated that needs the proposed parking lot in the Claremont Avenue front yard to retain interest in doing the hotel project. He stated that they would look more closely at ways to increase the green space in areas of the 2 properties with this plan.

Mr. Trembulak stated that they had no further witnesses for this evening and requested that the application be carried to the next meeting of the Board. Vice Chair Whipple announced that the application would continue at the April 16, 2014 meeting of the Board, and that no further notice will be required. The Board was granted an extension of time.

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