

MINUTES OF THE BOARD OF ADJUSTMENT
January 21, 2009

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Ms. Holloway, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Vice Chair Fleischer, Mr. Kenney, and Mr. Franco, Secretary

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.

Election of Officers

On motion by Ms. English, seconded by Mr. Susswein, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining.

On motion by Ms. English, seconded by Mr. Susswein, Mr. Fleischer was re-elected as Vice Chair.

On motion by Ms. English, seconded by Mr. Susswein, Mr. Franco was re-elected as Secretary and Mr. Charreun was re-elected as Assistant Secretary.

Ms. Cockey joined the meeting.

Appointment of Professional Staff

On motion by Mr. Whipple, seconded by Ms. English, the following Resolution re-appointing Mr. Sullivan as Board Attorney at the indicated rate for the 2009 year was adopted:

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-71b, provides that the Board may employ legal counsel, experts and staff as it may deem necessary, not exceeding, the amount appropriated by the governing body for its use; and

WHEREAS, the Board has determined it has the need to retain an attorney to provide legal services including, but not limited to advice and consultation, attendance at meetings, preparation of documents and representation of the Board in suits and other proceedings and other services as may be required from time to time; and

WHEREAS, the appointment of the attorney may be made without public bidding as an exception to the bidding requirements of the Local Public Contracts Law, as provided in N.J.S.A. 40A:11-5(1)(a)(i) as a professional service because legal services are rendered by persons authorized by law to practice their recognized profession, whose practice is registered by law and because such services are of a qualitative nature which will not reasonably permit the drawing of specifications or the receipt of competitive bid.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that it does hereby appoint Michael D. Sullivan, Esq. as Board Attorney to serve from January 1, 2009 to December 31, 2009 or until a successor is appointed; and

BE IT FURTHER RESOLVED that the officers of the Board of Adjustment are hereby authorized and directed to sign an Agreement in connection with such services, which agreement shall be on file with the Township Clerk; and

BE IT FURTHER RESOLVED that the Secretary of the Board is hereby directed to cause to be printed once, in an official newspaper of the municipality, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and the contract are on file and available for public inspection in the office of the Township Clerk.

On motion by Mr. Whipple, seconded by Ms. English, the following Resolution re-appointing Mr. Watkinson as Board Engineer at the indicated rate for the 2009 year was adopted:

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-71b, provides that the Board may employ legal counsel, experts and staff as it may deem necessary, not exceeding, the amount appropriated by the governing body for its use; and

WHEREAS, the Board has determined it has the need to retain an engineer to provide engineering services including, but not limited to advice and consultation, attendance at meetings, preparation of reports and other services as may be required from time to time; and

WHEREAS, the appointment of the engineer may be made without public bidding as an exception to the bidding requirements of the Local Public Contracts Law, as provided in N.J.S.A. 40A:11-5(1)(a)(i) as a professional service because engineering services are rendered by persons authorized by law to practice their recognized profession, whose practice is registered by law and because such services are of a qualitative nature which will not reasonably permit the drawing of specifications or the receipt of competitive bid.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that it does hereby appoint W. Thomas Watkinson as Board Engineer to serve from January 1, 2009 to December 31, 2009 or until a successor is appointed; and

BE IT FURTHER RESOLVED that the officers of the Board of Adjustment are hereby authorized and directed to sign an Agreement in connection with such services, which agreement shall be on file with the Township Clerk; and

BE IT FURTHER RESOLVED that the Secretary of the Board is hereby directed to cause to be printed once, in an official newspaper of the municipality, a brief notice

stating the nature, duration, service and amount of the contract, and that the resolution and the contract are on file and available for public inspection in the office of the Township Clerk.

On motion by Mr. Whipple, seconded by Ms. English, the **Minutes of the October 15, 2008** regular meeting were adopted as modified, Ms. Cockey and Mr. Susswein abstaining.

On motion by Mr. Whipple, seconded by Ms. Holloway, the following Resolution memorializing the approval of the application of **Nicole Peaks & Wolfgang Damm, 120 Elm Street** was adopted, Ms. Cockey and Ms. English abstaining:

WHEREAS, Nicole Peaks & Wolfgang Damm, as owners, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a 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 15 in Block 2606 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated October 16, 2002, and a plot plan, floor plan, and elevations prepared by MBA Architects, revised through December 4, 2008; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 10, 2008 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 60 feet in width and 8,520 square feet in area. The property contains a 2½-story single-family dwelling and a detached garage in the rear yard.
2. The existing garage is in poor condition and will be demolished. The existing garage measures approximately 19 feet wide by 18 feet deep, and has a nonconforming northerly side yard setback of 3.15 feet at its closest point, and a nonconforming rear yard setback of approximately 3.5 feet.
3. The proposed garage is larger than the existing garage, measuring 20 feet by 20 feet. The plan indicates a proposed minimum setback of 3.5 feet on the rear and northerly side yard setbacks. Variances are requested in that minimum setbacks of 6 feet are required for side and rear setbacks of the garage. A conforming height of 15 feet is proposed and the proposed garage complies with all other zoning requirements.

4. The Board determined that the application can be approved since the location of the proposed garage is consistent with that of the previously existing garage, and is also similar to that of many existing detached garages in the neighborhood. Furthermore, the nonconforming northerly side yard setback is being slightly improved and there would be no detriment to any nearby property.

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 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 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 application of Nicole Peaks & Wolfgang Damm is hereby approved subject to the following condition:

1. The downspouts on the proposed garage shall be directed away from the rear and northerly side property lines.

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 **Christopher & Linda Baxter, 228 Watchung Avenue** was adopted, Ms. Holloway, Ms. Cockey and Ms. English abstaining:

WHEREAS, Christopher & Linda Baxter, as owners, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a front yard setback less than required pursuant to **Montclair Code Section 347-45B(2)** in connection with the construction of a two-story addition at the rear of their single family dwelling on property designated as Lot 10 in Block 4504 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicants submitted a property survey dated January 3, 1984 and a plot plan, floor plans and elevations, prepared by Gelman Architecture LLC, revised to December 2, 2008; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 10, 2008 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 a corner lot located at the intersection of Watchung Avenue and Fairmount Avenue in the R-1 One Family Zone. The property contains a 2½ -story, single-family dwelling with a detached garage in the northwest corner of the lot accessed by driveways from Watchung Avenue and Fairmount Avenue. The property has 60 feet of lot frontage on Watchung Avenue, 150.43 feet of lot frontage on Fairmount Avenue, and measures 8,949 square feet of area.

2. The applicants propose to construct a two-story addition at the rear of the dwelling. The addition is the full width of the dwelling, and aligns with the existing easterly and westerly side walls of the dwelling. The plans indicate that the first floor of the addition will contain part of an expanded kitchen, a family room, a mud room, a powder room, and a rear porch. The second floor will contain a master bedroom and master bathroom.

3. The required minimum front yard setback along Fairmount Avenue is 30 feet 3 inches, which is based on the average front yard setback of the 2 nearest principal structures on Fairmount Avenue. The existing dwelling is located approximately 7 feet 7 inches from the front property line on Fairmount Avenue, which is nonconforming. The rear unroofed porch, which is to be demolished, is located slightly closer at 7 feet 4 inches. The easterly side wall of the proposed addition would have a setback of 7 feet 1 inch from Fairmount Avenue, and a variance is requested. The slight reduction in the front setback is due to the angled position of the dwelling and the Fairmount Avenue front property line.

4. The proposed addition complies with all other zoning requirements. The existing curb opening and the driveway from Fairmount Avenue would be relocated further to the north to accommodate the addition.

5. The Board determined that the requested variance can be approved. The existing dwelling is small in size and requires additional living space to accommodate modern family living and the existing placement of the dwelling on the corner lot creates difficulty in complying with the front setback requirement from Fairmount Avenue.

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 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 application of **Christopher & Linda Baxter** 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 **B & L Grant Street, Inc., 3 Grant Street** was adopted, Chair Harrison, Ms. Cockey and Ms. English abstaining:

WHEREAS, B & L Grant Street, Inc., as owner, did make application to the Board of Adjustment of the Township of Montclair for variances and site plan approval to construct an off-street parking area for 3 vehicles on the subject property, designated as Lot 20 in Block 4209 on the Township Tax Map and located in the R-4 Three-Story Apartment Zone; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) as the proposed accessory parking area is considered an expansion of an existing nonconforming use pursuant to **Montclair Code Section 347-112**; and

2. Variances pursuant to N.J.S.A. 40:55D-70c to allow a setback of less than 4 feet from the northerly side property line for one of the proposed parking spaces contrary to **Montclair Code Section 347-104**, and to allow the parking spaces to be located closer than 6 feet to a principal building contrary to **Montclair Code Section 347-71**; and

4. Preliminary and final site plan approval, with waivers from **Montclair Code Section 281-9G** to allow a setback of less than 4 feet from the northerly side property line for one of the proposed parking spaces; from **Montclair Code Section 281-9I** to allow a two-way driveway width of less than 18 feet; and from **Montclair Code Section 281-9K** to allow a length of less than 22 feet for parking spaces parallel to or disposed at an angle of less than 30° from the axis of the aisles serving them; and

5. An exception from **NJRSIS 5:21-4.16(c)**, which requires that only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than 90 degrees; and

WHEREAS, the applicant submitted a property survey dated January 3, 2007 and site plan drawings on 2 sheets prepared by James Mastronardy, P.E., P.P., dated November 12, 2008; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 10, 2008, at which time it was established that notice was properly published and the 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 property is located in the R-4 Three-Story Apartment Zone on a corner lot at the intersection Grant Street and Bay Street. The property measures 5,000 square feet in area, with 50 feet of frontage on Grant Street and 100 feet of frontage along Bay Street.

2. The property contains 2 separate buildings, one of which is a 6-unit three-story building known as 80 Bay Street, and the other is a 3-unit three-story building known as 1 Grant Street. 3 Grant Street was the address of a one-story single-family dwelling that existed in the location where the parking area is proposed, and was recently demolished after receiving approval from the Historic Preservation Commission in an application that also included other work on the property.

3. The existing total of 9 dwelling units on the property is considered a nonconforming use because the permitted residential density on the property is 3.21, or 3 dwelling units. The proposed parking area constitutes an expansion of the nonconforming use and a variance is requested in that the existing nonconforming use on the property is not permitted to be expanded, increased, or enlarged.

4. The applicant has proposed two site plan alternatives for the 3 parking spaces, identified as Alternative Scheme 'A' and Alternative Scheme 'B'. The key differences between the 2 plans are: the position of the parking space closest to the street, the width of the curb opening and the driveway apron, the width of the driveway, and the ingress and egress of the parking space closest to the street. The Board determined that Alternative Scheme 'B' was the best option and could be approved, subject to conditions and further information indicated below.

5. A variance is requested in that off-street parking must be set back a minimum distance of 4 feet from property lines, with the intervening space appropriately landscaped, and one of the parking spaces is set back 2 feet from the northerly side property line. A variance is also requested in that no off-street parking area shall be located within 6 feet of any principal building, and 2 of the 3 parking spaces abut the building at 1 Grant Street, and 2 of the 3 parking spaces are 3 feet away from the building at 80 Bay Street.

6. Waivers are requested to allow a setback of 2 feet from the northerly side property line for one of the proposed parking spaces; to allow a width of 13.7 feet for the two-driveway as opposed to the minimum of 18-feet required; and to allow a length of less than 22 feet for the 2 parking spaces that abut the building at 1 Grant Street, which are proposed at 18 feet in length. An exception from NJRSIS requirements is requested in that that only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than 90 degrees; and

7. The Board determined that Alternative Scheme 'B' could be approved. The plan provides some off-street parking in an area where a one-story dwelling unit was removed. The addition of parking coupled with the removal of a building and the landscaping that will be added, is beneficial to the property and the neighborhood. The size of lot limits the ability to provide any more parking and justifies the bulk variances, waivers, and exceptions as presented in Alternative Scheme 'B'.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting the requested use variance 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 applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances for a parking area setback less than required from the northerly side property line and from the principal buildings 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 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 B & L Grant Street, Inc. for site plan approval and variances is hereby approved subject to the following conditions:

1. The site shall be constructed in accordance with Alternative Scheme 'B'.
2. The parallel parking space adjacent to 1 Grant Street shall be a minimum of 22 feet in length.
3. The applicant shall comply with the approval of the Historic Preservation Commission dated July 19, 2007.

4. The applicant shall comply with the requirements contained in the Board Engineer's letter dated November 29, 2008.

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.

On motion by Mr. Whipple, seconded by Ms. Holloway, the following Resolution memorializing the approval of the application of **210 Highland Partners, 210 Highland Avenue** was adopted, Ms. Cockey and Ms. English abstaining:

WHEREAS, 210 Highland Partners, under contract to purchase property at **210 Highland Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70c* in connection with the proposed construction of a single-family dwelling on a vacant lot designated as Lot 3 in Block 601 on the Township tax map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant submitted site plans and engineering drawings, prepared by PPE, revised to August 8, 2005, and additional information prepared by Smith Maran Architects including architectural drawings dated June 27, 2008, a color rendering and site model image, 8 photographs of existing nearby dwellings, and a memorandum to the Board dated July 27, 2008; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 10, 2008 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 subject property was previously before the Board at meetings held on September 22, 2004, October 20 2004, and December 15, 2004, and an application for variances to construct the dwelling was approved subject to conditions by a Resolution dated January 19, 2005; and

WHEREAS, within the January 19, 2005 approval, variances were granted pursuant to *N.J.S.A. 40:55D-70c* from:

■ **Montclair Code Section 347-32** in that a minimum lot area of 20,000 square feet within 200 feet of the street line is required and a lesser lot area of 19,904 square feet exists within 200 feet of Highland Avenue; and

■ **Montclair Code Section 347-27.1B** in that, on interior lots, retaining walls shall not exceed 4.5 feet in height when built in front of the extreme rear corners of the principal building, and a taller height of 5.5 feet is proposed for certain retaining walls in the front and side yards; and

■ **Montclair Code Section 347-102C** in that a maximum driveway gradient of 10 percent within 20 feet of the front property line is permitted, and a gradient of 25

percent is proposed for a portion of the driveway within 20 feet of the front property line; and

WHEREAS, also within the January 19, 2005 approval, a variance was denied pursuant to *N.J.S.A. 40:55D-70c* from **Montclair Code Section 347-34B** to establish a temporary parking space for visitors between the proposed dwelling and Highland Avenue; and

WHEREAS, following the approval of variances on January 19, 2005 no construction occurred on the site. The zoning ordinance was subsequently amended on July 12, 2005 to include, among other things, a limitation of 2½ stories for single-family dwellings in the R-0 Mountainside Zone. This zoning requirement became applicable to the dwelling that was yet to be constructed, and would become an additional variance required for the proposed 3-story dwelling; and

WHEREAS, on June 21, 2006 the Board of Adjustment granted an extension of time on the previously approved variances through February 10, 2007 that was requested by the previous applicants. The question of the additional variance required for the number of stories was unaddressed at that time, and the variance required for exceeding 2½ stories remained applicable. No construction occurred during this period of time through February 10, 2007 and the variance approvals expired; and

WHEREAS, on May 21, 2008, the current applicant, under contract to purchase the subject property, requested an extension of time on the previously approved variances which had now expired. The applicant and the Board were informed of the required variance for exceeding 2½ stories, described further below. The Board of Adjustment granted an extension of time on the expired variances through February 10, 2009, which was conditioned upon a review of the plan to conform to the January 19, 2005 approval, plus the interplay between the approved variances and any new variances requested; and

WHEREAS, on July 19, 2008 an application was filed by the current applicant for a variance pursuant to *N.J.S.A. 40:55D-70c* from **Montclair Code Section 347-33A(2)** in that the proposed dwelling exceeds 2½ stories; and

WHEREAS, at the December 10, 2008 meeting, the applicant also requested an additional extension of time on the previously approved variances to run concurrently with the expiration date of the presently requested variance for exceeding 2½ stories should it be approved; and

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

1. The subject property is a vacant interior lot located in the R-0 Mountainside Zone. The applicant proposes to construct a single-family dwelling with an attached three-car garage at the basement level. Several retaining walls and a driveway are also proposed on the property.

2. The plan submitted with the application is consistent with what the Board had previously reviewed in the prior application, and is compliant with certain modifications and conditions imposed by the Board in the January 19, 2005 approval relating to retaining wall height, the driveway, and the limit of disturbance.

3. The proposed dwelling is a 3-story home with a basement, first floor, and second floor. The proposed dwelling has a flat roof and a stairway bulkhead is located on the roof. A variance is requested in that the proposed dwelling exceeds 2½ stories.

4. The applicant's Architect provided testimony and information regarding the existing and proposed grade levels around the proposed dwelling that indicated a building height of 27 feet 11 inches measured as defined by the zoning ordinance. The proposed height is below the 35-foot maximum height permitted. The proposed dwelling does not require any other variances.

5. The requested variance to exceed 2½ stories is justified due to the steep topography of the property. In order to comply, the applicant would need to excavate deeper into the existing grade on order to bury more of the basement level at the front and sides for the proposed dwelling. This would cause excessive site disturbance and would have a negative effect on the nearby properties. Furthermore, the design of the proposed dwelling is in keeping with that of many other dwellings in the neighborhood and the 3-story design would not have a negative impact on the neighborhood; 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 did prove that the requested variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant 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 **210 Highland Partners** is hereby approved, subject to the following conditions:

1. The applicant shall comply with the conditions of the January 19, 2005 approval as follows:

- a) A formal parking space shall not be established in the front yard.

b) Any trees that are not removed on the subject property, as well as trees on the neighboring properties located at 206 Highland Avenue and 214 Highland Avenue, within 25 feet of the property line which are of a diameter of 6 inches or greater that do not survive within a year after the Certificate of Occupancy is issued for the proposed dwelling, shall be replaced by a like kind tree, which will not have to be the same size as the tree being replaced.

c) The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

d) Any central air-conditioning units placed on the property shall conform to the requirements of the zoning ordinance.

2. Condition 3 from the January 19, 2005 approval shall be amended to include 205 Highland Avenue in the notifications required 7 days in advance of any tree removal or construction of the dwelling and shall read as follows:

a) The applicant shall, 7 days in advance of any grading or blasting, notify the Montclair Water Bureau and all property owners within 200 feet. The applicant shall also, 7 days in advance of any tree removal or construction of the dwelling, notify the Montclair Water Bureau, the immediately adjoining property owners located at 206 and 214 Highland Avenue, as well as the property owners across the street located at 205 and 209 Highland Avenue.

3. The applicant shall comply with the requirements of the Board Engineer's last letter dated October 7, 2005, which is a final approval of site engineering plans dated August 8, 2005, that included a revised Grading and Drainage Plan, dated October 5, 2005.

4. The previously approved variances are extended and shall expire concurrently with the expiration date of the variance being granted with the current application.

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.

The application of **S.W. Flowers, M.D. 460 Bloomfield Avenue** was adjourned to the February 18, 2009 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application. The application of **First Evangelical Lutheran Church, 153 Park Street** was adjourned to the February 18, 2009 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application. The application of **Immaculate Conception High School, Codey Field - 267 Orange Road** was adjourned to the February 18, 2009 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the variance application of **Sharmila Dey, 338 Highland Avenue**. The applicant and Joseph Endres, of Endres Home Builders Incorporated in Nutley, were sworn. Mr. Endres described the proposed second floor addition onto the southerly side of the dwelling above the existing enclosed porch. The second floor addition would extend further to the rear and be supported by columns. The enclosed roof and wall of the enclosed porch would be removed and reconstructed as part of the project. The proposed addition would contain a new bathroom and would be aligned with the southerly side wall and front wall of the enclosed porch below it. The front yard setback requirement for the subject property is approximately 59.3 feet from Highland Avenue, which is based on the average front yard setback of the applicable dwellings on Highland Avenue pursuant to the ordinance. The existing dwelling has a nonconforming front yard setback of 49.79 feet from Highland Avenue as measured to the southeast corner of the main section of the dwelling. The existing enclosed porch and the proposed addition are set back approximately 51 feet from Highland Avenue and a variance is requested.

The Board questioned the applicant and Mr. Endres. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application and determined that the variance requested could be approved. The proposed addition would be aligned with the southerly side wall and front wall of the enclosed porch below it and is located slightly further back than the main section of the dwelling. The proposed addition would not have negative impact on nearby properties. On motion by Mr. Whipple, seconded by Ms. Cockey the application was approved.

Chair Harrison called the continuation of the application of **MetroPCS New York, LLC, 641 Bloomfield Avenue**. Renu Shevade, Esq. appeared as attorney for the applicant. Fahd Kananth, PE, was recalled and was still under oath. He described the expected coverage from the already approved sites located at 36 Hawthorne Place and 56 Walnut Street in Montclair. He also described the coverage that could be expected by using 10 Crestmont Road as an antenna installation location and stated that a coverage gap would still exist that would be filled by the proposed usage of 641 Bloomfield Avenue.

Marked into evidence was:

- A-4 Base Map with 4 overlays including:
-  overlay depicting the expected coverage from 36 Hawthorne Place;
 -  overlay depicting the expected coverage from 56 Walnut Street;
 -  overlay depicting the potential coverage from 10 Crestmont Road;
 -  overlay depicting the potential coverage from 641 Bloomfield Ave;

The Board questioned the witness extensively. He stated that he had also modeled an augmented version of the approved installation at 36 Hawthorne Place and stated that it could provide the coverage that is lacking in the coverage simulations that include 10 Crestmont Road, although it left a few small gaps in coverage that would be otherwise covered by 641 Bloomfield Avenue. He also described the coverage provided

by the approved site at Clairidge Towers in Verona. No questions were offered from the public.

The 5th and 6th overlays were added to Exhibit A-4:

- overlay depicting the expected augmented coverage from 36 Hawthorne Place;
- overlay depicting the coverage from existing/approved sites

Sasseen Abujawadeh, PE was recalled to answer questions from the Board and was still under oath. He stated that the proposed equipment cabinet area could not be moved further to the north on the rooftop because that area is reserved for the equipment cabinets associated with the recently approved application of New Cingular Wireless. Ms. Shevade questioned the witness. Mr. Abujawadeh stated that the equipment platform could be lowered by 10 to 12 inches rather than the 6 inches he testified to at a previous meeting. This would allow the cabinets to be located closer to the roof surface and reduce their visibility. No questions were offered from the public.

David Karlebach, PP was sworn and stated his qualifications as a Professional Planner. He described the application for variances pursuant to N.J.S.A. 40:55D-70d(3) to allow four antennas to exceed the top of the parapet wall to which it is attached contrary to Montclair Code Section 347-17.1C(5)(d). The subject property located on the northerly side of Bloomfield Avenue between Midland Avenue and Valley Road contains 11,620 square feet in size upon which is situated a six story commercial building. The lot is split zoned, the southerly portion containing the building is located in the C-1 Central Business Zone and the northerly portion consisting primarily of a parking area is located in the R-2 Two Family Zone. The building on the subject property and stated that it has been approved for the installation of wireless telecommunication antennas and equipment cabinets in the past. By resolution adopted February 26, 1992, the Board approved the application of Nynex Mobile Communications Company for variance relief to install twelve antennas on the roof of the building on the subject property. By resolution adopted January 15, 1997, the Board approved the application of Sprint Spectrum for variance relief to locate nine PCS antennas and one GPS antenna on the rooftop of the subject property. By resolution adopted December 11, 2000, the Montclair Township Planning Board approved the conditional use application of Nextel of New York, Inc. d/b/a Nextel Communications to install twelve panel antennas on the rooftop of the building on the subject property. By resolutions adopted July 20, 2005 and January 18, 2006, the Board approved the application of Omnipoint Communications, Inc. for variance relief to install six panel antennas, three equipment cabinets and one battery cabinet on the roof of the building of the subject property. By resolution adopted November 19, 2008, the Board approved the application of New Cingular Wireless PCS, LLC for variance relief to install twelve antennas, eight equipment cabinets and one GPS antenna on the roof of the building of the subject property. All the antennas and associated equipment have been installed on the roof of the subject property with the exception of the recently approved New Cingular Wireless PCS, LLC application.

Mr. Karlebach stated that the applicant has made a reasonable and good faith effort to pursue alternate less intrusive sites. The applicant can not flush mount certain

antennas due to the fact that the building is located at the front and side property lines. Installation of the antennas will provide improved coverage and increased capacity to the applicant's potential subscribers as per its FCC license which constitutes appropriate municipal action in a manner which will promote the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law. Based upon the size and location of the existing building, the proposed roof top location of the site is particularly suited for wireless communication antennas and continues to be an appropriate site for the conditional use notwithstanding the deviations from the conditions imposed by the ordinance. The visual intrusion caused by the height of the proposed antennas is minimal and will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance. The application does not involve any noise, vibrations, smoke, dust, odors, heat or glare and thus will not cause substantial detriment to the public good and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance. The application complies with all the conditional use standards contained in the Montclair Township Zoning Ordinance except that four of the antennas exceed the height of the top of the parapet wall to which it is attached contrary to Montclair Code Section 347-17.1C(5)(d). Despite the deviation from this conditional use standard, the site continues to be appropriate for the conditional use.

Marked into evidence were:

- A-5 Northwesterly view – existing photograph and photo-simulation
- A-6 Southwesterly view – existing photograph and photo-simulation
- A-7 Easterly view – existing photograph and photo-simulation
- A-8 Northerly view – existing photograph and photo-simulation

The Board questioned Mr. Karlebach. He stated that he did not review the alternative locations described by Mr. Kananth from a land use perspective. No questions or comments were offered by the public. Ms. Shevade summarized the application and requested that the 6 eligible Board members who are present vote on the application. The Board discussed the application and concluded that the applicant failed to prove the requisite special reasons for the granting of this application and failed to prove 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. Approval of this application would result in substantial adverse impact on adjacent properties which would cause such damage to the character of the neighborhood as to constitute substantial detriment to the public good. A motion to deny the application by Mr. Susswein, which was seconded by Ms. English, failed to carry as it only received 3 affirmative votes. A motion by Mr. Whipple to approve the application subject to a condition that the equipment cabinet platform be lowered by 1 foot was seconded by Ms. Holloway, but did not pass as it failed to receive the requisite 5 affirmative votes, and the application was denied.

The Board took a short recess at 10:00 pm. Ms. Cockey left the meeting.

Chair Harrison called the application of **The Presbyterian Church of Upper Montclair, 53 Norwood Avenue**. Cal Trevenen, Esq. appeared as attorney for the

applicant and described the application. He called Paul Sionas, Architect and Professional Planner, who was sworn and described the application.

Marked into evidence were:

- A-1 Sheet SP-1 in color, dated July 25, 2008, prepared by Sionas Architecture
- A-2 3 photographs of the subject property

Mr. Sionas described the application to locate central air-conditioning units in the northerly front yard of their property between the building and Fernwood Avenue. The subject property is an unusual type of corner lot located within the intersections of three streets: Norwood Avenue, Inwood Avenue, and Fernwood Avenue. This results in an "island" type of lot with multiple front yards, and no side or rear yards. The property contains two buildings; a 1½ -story church and a 2½-story building with an attached garage. The subject property is in the R-1 One-Family Zone and measures 43,300 square feet in area. The applicant proposes to locate 2 central air-conditioning units in the northerly front yard of their property between the church building and Fernwood Avenue. A variance is requested in that accessory structures such as central air-conditioning units are not permitted in a front yard. The units are proposed located in a window well, where 1 central air-conditioning unit already exists, for a total of 3. The applicant indicated that the size of the central air-conditioning units is such that they would not be seen above the top of the window well. The proposed central air-conditioning units are approximately 15.4 feet from the sidewalk and comply with all other zoning requirements.

The Board questioned Mr. Sionas. He stated that landscaping could be added along the edge of the window well. Chair Harrison called for questions and comments from the public. No questions or comments were offered by the public. The Board discussed the application. The Board determined that the variance requested could be approved since the property has no conforming location to locate the central air-conditioning units. The proposed location is the most suitable location on the subject property. With the additional landscaping being added to the area of the window well as described below, as well as the considerable distance to the nearest dwelling, the proposed central air-conditioning units would not have negative impact on nearby properties. On motion by Ms. English, seconded by Mr. Susswein, the application was approved, subject to the following condition:

1. The applicant shall add a row of plantings near the edge of the window well where the central air-conditioning units are located.

Chair Harrison called the application of **Michael & Ariane Duarte, 33 Walnut Street**. Catherine Donadio, Esq. appeared as attorney and described the application. Michael Duarte, restaurant owner, was sworn and described the application to expand the restaurant. The current restaurant contains approximately 1000 square feet of floor area and 30 seats in the dining room. The proposed expansion would increase the total seating in the dining room to 44 seats. They are currently allotted 2 parking spaces within the rear parking area, and would be allotted 2 more if the expansion occurs. The current hours of operation are Wednesday through Saturday, from 5:30 pm to 10 pm.

They do not have a liquor license and between 5 and 10 percent of their business is off-site catering. The building contains 1 other commercial space on the first floor and a total of 5 apartments, including the apartment that would be removed as part of their proposed expansion. He described how deliveries are received and also stated that he has not personally received any complaints from neighbors regarding the business. He described the reasons for the proposed expansion and stated that 1 or 2 more servers would be needed for the expanded business, although the number of kitchen staff would remain as is. They have a sidewalk café permit from the Health Department, and they place 14 seats on the sidewalk on Walnut Street for 3½ months of the year. No changes are proposed to the front wall of the apartment that is being removed to accommodate the expansion.

The Board questioned Mr. Duarte. He stated that there is plentiful available street parking for his customers. He further described the sidewalk seating. He stated that he would agree to a limitation of 44 seats inside and 14 outside and also to keep the hours of operation as they currently are. Chair Harrison called for questions from the public. Carmel Loughman, 26 Walnut Street, had questions about the sidewalk seating and the trash area at the rear of the building.

Paul Sionas, Architect, was sworn and described the plan that depicts the expansion of the existing kitchen area and the existing dining area into the adjoining apartment. The floor plan was described in detail. An ADA compliant restroom is also being added next to the existing restroom. The entrance to the restaurant, which is recessed under the second floor would be modified in order to be enclosed as part of a plan to construct a 5' by 5' landing, one step high, that also includes a ramp. This new landing and ramp is located entirely on the subject property and not in the public right-of-way. The proposed restaurant expansion taking the place of the apartment will increase the required number of off-street parking spaces. Restaurant parking is required at a rate of 1 parking space per 3 seats a table. A total of 44 seats are depicted in the proposed dining area, which is an increase of 26 seats. This represents an increase of 8.6 spaces minus the 2 spaces that were required for the apartment, resulting in an increase in the on-site parking requirement of 6.6 or 7 spaces for the restaurant expansion.

Marked into evidence was:

A-1 3 photographs of the subject property

The Board questioned Mr. Sionas. Chair Harrison called for questions from the public. Carmel Loughman, 26 Walnut Street, asked if the 48 inches of access is provided on the sidewalk or on the grass area between the sidewalk and the curb.

Peter Steck was sworn and stated his qualifications as a Professional Planner. He described the application. The subject property contains 7,960 square feet in area and is a corner lot located at the intersection of Walnut and Pine Streets. The property is improved with a two story mixed use commercial and residential building with a parking lot accessed from Pine Street containing seven parking spaces. The application proposes expansion of the existing restaurant by converting the adjacent apartment into

a restaurant totaling 1,681 square feet of floor area. The plan calls for a horizontal expansion of the existing kitchen area and the existing dining area into the adjoining apartment. An ADA compliant restroom is proposed adjacent to the existing restroom.

Marked into evidence were:

- A-2 Aerial Photos and Use Diagram, prepared by Peter Steck PP, January 21, 2009
- A-3 6 photographs of the subject property, by Peter Steck PP

Mr. Steck stated that the building was constructed in 1926 and the predominant first floor use has been commercial. Conversion of the existing apartment to restaurant use restores the long-standing commercial use on the first floor which constitutes appropriate municipal action in a manner which promotes the general welfare and provides sufficient space in an appropriate location for the proposed use consistent with N.J.S.A. 40:55D-2a, g. The interior dining room accommodates 18 seats and a total of 48 seats are proposed. This represents an increase in the parking requirement of ten spaces minus the two spaces previously associated with the apartment, resulting in an additional on-site parking requirement of eight parking spaces pursuant to Montclair Code Section 347-101. The applicant is unable to provide additional on-site parking due to the existing improvements on site which results in peculiar and exceptional practical difficulties and undue hardship upon the applicants. The application is not inconsistent with the character of the neighborhood and will not adversely impact the public good. Approval of this application is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance which seeks to encourage commercial activity to provide needed services at an appropriate location.

The Board questioned Mr. Steck extensively. Chair Harrison called for questions and comments from the public. Carmel Loughman, 26 Walnut Street, was sworn. She stated that the upscale restaurant does not fit in to the working class neighborhood. The nearby hospital and the restaurant already fill up too much of the street parking. The proposed increase in activity will result in more noise and odor and will have a negative affect on the neighborhood. The manner in which the sidewalk seating has been arranged has caused problems for pedestrians trying to walk by the property.

- O-1 Photographs of the rear of the subject property depicting the trash area

Ms. Donadio questioned Ms. Loughman. The Board also questioned Ms. Loughman. Joe Cetrulo, owner of 36 Walnut Street, was sworn and stated his support for the application. Ms. Donadio summarized the application and requested that Board's discussion and vote on the application be postponed until there are 7 eligible Board members present. Chair Harrison announced that the application would be continued at the January 28, 2009 special meeting and that no further notice would be given. The Board was granted an extension of time.

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