

MINUTES OF THE BOARD OF ADJUSTMENT
January 19, 2011

PRESENT: Mr. Harrison, Mr. Burr, Mr. Edwards, Ms. English, Mr. Fleischer, Ms. Holloway, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq., and Ms. Talley and Mr. Charreun

ABSENT: Ms. Cockey

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. Mr. Harrison welcomed Mr. Edwards to the Board.

Election of Officers & Appointment of Professional Staff

On motion by Ms. English, seconded by Mr. Whipple, Mr. Harrison was re-elected as Chair, Mr. Harrison abstaining. On motion by Ms. English, seconded by Mr. Whipple, Mr. Fleischer was re-elected as Vice Chair, Mr. Fleischer abstaining. On motion by Ms. English, seconded by Mr. Whipple, Ms. Talley was re-elected as Secretary and Mr. Charreun was re-elected as Assistant Secretary. On motion by Ms. English, seconded by Mr. Whipple, the following Resolution re-appointing Mr. Sullivan as Board Attorney at the indicated rate for the 2011 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, 2011 to December 31, 2011 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 Ms. English, seconded by Mr. Whipple, the following Resolution re-appointing Mr. Watkinson as Board Engineer at the indicated rate for the 2011 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, 2011 to December 31, 2011 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 Mr. Susswein, the **Minutes of the December 15, 2010** regular meeting were adopted as modified, Ms. English abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Timothy T. Foster, Fairfield Street (Lot 7.01 in Block 3412)** was adopted, Ms. English abstaining:

WHEREAS, Timothy T. Foster, as owner and applicant with respect to a vacant lot located at the southeasterly corner of Fairfield Street and Essex Avenue and designated as Lot 7.01 in Block 3412 (hereinafter "the property"), did make application to the Montclair Township Board of Adjustment (hereinafter "the Board") for a front yard setback variance in connection with constructing a new single-family dwelling on such property; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70c and from Montclair Code Section 347- 45B(2) in that for a corner lot the required front yard setback is 25 feet, except that where the average front yard setback of the two nearest principal structures on the street frontage and within the same block and zoning district is greater, such greater setback shall control, and here the required Essex Avenue front yard setback is 52.70 feet whereas the proposed Essex Avenue front yard setback is 25 feet;

WHEREAS, the applicant submitted perspective views, a site plan, elevations and floor plans for the proposed dwelling and detached garage prepared by James N. Brighton, Architect dated January 18, 2010 and revised through July 14, 2010;

WHEREAS, the application came on to be heard at a meeting of the Board held on December 15, 2010, 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, the exhibits (A-1 through A-6), and the questions and comments of members of the public presented at the public hearing and based thereon established the following findings of fact and conclusions of law:

1. The applicant owns the vacant corner lot located at the southeast corner of Fairfield Street and Essex Avenue in the R-1 One-Family Zone and has prepared plans for a new single-family dwelling to be built on the property; the applicant and his wife own the existing single-family dwelling on the adjoining interior lot at 12 Fairfield Street (Block 3412, Lot 7) and intend to sell the existing single-family dwelling at 12 Fairfield Street and move into the proposed dwelling on the corner lot;

2. The subject corner lot was created from a two-lot subdivision approved by the Planning Board in 1973; before the subdivision, there was one large corner lot,

essentially a double lot, and after the subdivision, there was a new interior lot (Block 3412, Lot 7) and the subject corner lot (Block 3412, Lot 7.01); attached to Exhibit A-1, the Planning Department's memorandum dated December 8, 2010, are copies of the Planning Board minutes and subdivision resolution and the deed perfecting the subdivision and creating the new lots;

3. The Planning Board subdivision resolution reflects that the subject corner lot, consisting of 13,165 square feet, was approved with a lot frontage width of 69 feet, rather than 70 feet (the standard in 1973 and today), and that the Planning Board granted specific relief for such one-foot differential; the resolution also reflects that the corner lot width increases as its depth increases, that at the established Fairfield Street front yard setback line of 40 feet the lot width is 75 feet, and that at the rear lot line the lot width is 90.49 feet "thereby providing this ... irregular parcel with an average width of 79.74 feet";

4. The Planning Board subdivision resolution provides as a condition of approval that the Fairfield Street front yard setback must be 40 feet, whereas in this application the applicant proposes a Fairfield Street front yard setback of 41.60 feet in keeping with the current ordinance requirement of the average front yard setback of the two nearest principal structures on Fairfield Street -- the required Fairfield Street front yard setback is 41.56 feet whereas the proposed Fairfield Street front yard setback is 41.60 feet;

5. As reflected on Exhibits A-2 and A-3, relevant portions of the 1969 and 1975 zoning ordinance regulations for the R-1 Zone, at the time of the 1973 subdivision the required Essex Avenue front yard setback was 15 feet, whereas in this application, as stated above, the applicant proposes an Essex Avenue front yard setback of 25 feet;

6. As reflected on Exhibit A-6, a map of the subject property prepared by Richard J. Hingos, Inc. dated December 14, 2009 with the current allowable building envelope depicted thereon, the current as-of-right building envelope for the property, taking into account the existing applicable zoning regulations, allows only an extremely narrow dwelling with a 15.30 feet front façade parallel to Fairfield Street and a 24.80 feet rear façade parallel to the rear property line; such a dwelling would be completely impractical for living quarters and would be fully out of character with the existing neighborhood;

7. The applicant's elevations and floor plans provide for a two and one-half story, three-bedroom dwelling with detached two-car garage; the size of the dwelling exclusive of basement and attic is 3,448 square feet and is generally consistent with the size and width of dwellings in the neighborhood; the design of the dwelling incorporates thoughtful and pleasing architectural contours, shapes and details, as well as quality building materials, and is harmonious with the architecture in the neighborhood; the proposed dwelling is not unusual or atypical for the neighborhood;

8. As reflected on Exhibit A-5, sheet 1 of 10, the proposed building coverage is less than the allowed building coverage;

9. The neighborhood is almost fully-developed, and the property is the last vacant corner lot that remains undeveloped; most of the neighborhood was developed prior to the adoption of the current zoning ordinance provision requiring front yard setbacks to be calculated based upon the average front yard setback of the two nearest principal structures on the street frontage; the neighborhood includes several corner lots that contain existing dwellings with a non-conforming front yard setback less than 25 feet; as reflected on Exhibit A-5, the architectural drawings, sheet 3 of 10, the Essex Avenue front yard setback of the dwelling at 18 Fairfield Street directly across Essex Avenue from the subject property is 23.4 feet, and is much less than the average front yard setback of the two nearest principal structures on its side of Essex Avenue; as the applicant's professional planner testified, if a one-story porch is included in the calculation of the actual front yard setback of the dwelling at 18 Fairfield street, the Essex Avenue front yard setback is approximately 15 feet;

10. Under N.J.S.A. 40:55D-70c(1), the strict application of the front yard setback regulation, due to the particular size and irregular shape of the property, results in peculiar and exceptional practical difficulties or exceptional and undue hardship because it requires the applicant to construct an unreasonably narrow dwelling with a 15.30 feet front façade parallel to Fairfield Street and a 24.80 feet rear façade parallel to the rear property line, which dwelling would be quite impractical for living space and would be very unattractive in the neighborhood; the proposed dwelling, or a dwelling similar to the proposed dwelling, subject to the conditions set forth below, is reasonable and merits variance relief in order to relieve such difficulties and hardship;

11. Alternatively, under N.J.S.A. 40:55D-70c(2), the purposes of the Municipal Land Use Law are advanced by a deviation from the applicable front yard setback regulation; these purposes include but are not limited to the promotion of a desirable visual environment (N.J.S.A. 40:55D-2i) and the provision of sufficient space for residential use (N.J.S.A. 40:55D-2g); the benefits of the deviation substantially outweigh any detriment;

12. The variance, subject to the conditions set forth below, does not cause any substantial detriment to the public good, nor does it cause any substantial impairment of the intent and purpose of the master plan or zoning ordinance: The proposed dwelling is a permitted use for an approved building lot; its size and width are consistent with the neighborhood, and its design is harmonious with the neighborhood; the proposed building coverage is less than the allowed building coverage, and the proposed dwelling meets all requirements of the zoning ordinance except for the Essex Avenue front yard setback; the Essex Avenue front yard setback is greater than that of the corner lot located directly across Essex Avenue at 18 Fairfield Street; the applicant proposes to maintain a substantial landscape buffer along the Essex Avenue property line; the master plan recommends a single-family dwelling for the property and does not

address front yard setbacks established by the zoning ordinance; the Essex Avenue front yard setback is greater than the minimum required front yard setback of 25 feet and, given the surrounding neighborhood and subject to the conditions set forth below, the Essex Avenue front yard setback does not substantially impair the intent or purpose of the zoning ordinance;

13. Based upon the Board's particular knowledge of local conditions, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good.

WHEREAS, the Board, based on the foregoing, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variance can be granted without substantial detriment to the public good and will 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, concluded with respect to the variance that the applicant proved that the purposes of the Municipal Land Use Law are advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation substantially outweigh any detriment, and will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to 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 Timothy T. Foster, for an Essex Avenue front yard setback variance, be and is hereby approved and granted, subject to the following conditions:

1. The Essex Avenue front yard setback shall be no less than 30 feet;
2. The Essex Avenue façade of the new single-family dwelling shall include offsets and alignments substantially consistent with the façade shown on Exhibit A-5;
3. The applicant shall maintain evergreen shrubbery along Essex Avenue to the same extent as the landscaping presently at such location, and the applicant shall submit a sketch to the Planning Department showing the length of the existing landscaping along Essex Avenue within one month of this approval; any replacement evergreen shrubbery shall be five feet in height at the time of planting and the evergreen shrubbery shall include at least three evergreen trees at all times.

The Board discussed the **2010 Annual Report**. In addition to including within the report the recommendations and revisions to the zoning ordinance discussed at the previous meeting, the Board discussed including a recommendation that the Township Council consider developing a comprehensive plan for wireless telecommunications equipment within the Township as the technological requirements within the wireless

telecommunications industry evolve. A consultant should be utilized to work with the industry and provide guidance to Township in finding ways to cite wireless telecommunication facilities and minimize their visual impact while providing the benefits to the Township's residents. This process should include looking into using Township owned properties, the railroad right-of-way, and also working with adjoining towns in looking for opportunities to achieve these goals. On motion by Mr. Whipple, seconded by Mr. Susswein, the 2010 Annual Report was adopted as modified to include the Board's recommendations.

It was announced that at the request of the applicant, the site plan application of **Wallwood Gardens, Inc, 400 Orange Road** was postponed until the September 21, 2011 meeting of the Board. The Board was granted an extension of time and the applicant would be required to complete a full public notice for that pending date. It was also announced that at the request of the applicant, a special meeting date to continue the application of **Omnipoint Communications, Inc., 153 Park Street** would be selected at the Board's regular meeting on February 16, 2011. The Board was granted an extension of time.

There were only six Board members present at this time who were eligible on the application of **Hillside Square, LLC, 8 Hillside Avenue**. Assistant Secretary Charreun indicated that Mr Burr, who is also eligible to vote on the application, would arrive at the meeting in approximately 15 minutes. David Owen Esq., attorney for the application that they would wait for Mr. Burr's arrival.

The application of **Michael and Mary Fourte, 331 Orange Road** was called. The applicants were sworn Mr. Fourte described the application. A variance is requested for the height of a fence constructed on the property. The property is located at the northeasterly corner of Orange Road and Grenada Place across from a commercial zone. They recently constructed a fence with a height of 5 feet 7 inches on the northerly side of their property. The fence runs the extent of the northerly property line from the rear yard through the northerly side yard and into the front yard of the property. The fence at the 5 foot 7 inch height exceeds the maximum permitted height of 4 feet 6 inches for the locations in the northerly side yard and front yard of the property. They had inquired about the zoning ordinances governing fences prior to installing the fence, but they misunderstood the information that was provided. As a result, the area of the fence that exceeds the permitted height was constructed in error. They have been cited by the Township for a zoning violation and are now seeking the variance to retain the fence as constructed. The neighborhood is busy with pedestrians and vehicles due to the commercial activity across the street, which negatively affects their property with noise and compromises their privacy. The northerly side yard of the dwelling is approximately 4 feet wide, which is too narrow to utilize a hedge to attain the privacy and noise reduction provided by the fence. The fence in question also replaced a previously existing chain link fence along the same area of the property that also exceeded the maximum permitted height of 4 feet 6 inches.

The Board questioned the applicant. Ms. Fourte indicated that the adjoining neighbor has no objection to the fence that has been constructed. Mr. Fourte stated that the properties to the north of their property mostly use hedges rather than fences for screening. No questions or comments were offered from the public. The Board discussed the application. The majority of the Board determined that a variance for a 5 foot 7 inch fence height was justified to provide increased privacy and noise reduction for the applicant's property, but that the extent of the fence should be limited from what has been constructed so that it does not extend into the front yard area at the nonconforming height. There was some discussion as to whether the fence should be allowed to be aligned with the front edge of the dwelling or the front edge of the front porch. A motion by Mr. Whipple, seconded by Mr. Edwards, to approve the variance for the fence height up to the front edge of the front porch failed, as it received 3 positive votes and 4 negative votes. A second motion by Mr. Whipple, seconded by Ms. English, to approve the variance for the fence up to the front edge of the dwelling not including the front porch was approved, with Chair Harrison and Mr. Fleischer voting against the motion. The variance was granted subject to the following condition:

1. The variance for a 5 foot 7 inch fence height is limited to the northerly side yard of the property up to the front corner of the dwelling excluding the front porch.

Mr. Burr arrived at the meeting. Seven eligible Board members were now present for the conclusion of the application of **Hillside Square, LLC, 8 Hillside Avenue**. David Owen Esq. appeared as attorney for the applicant and provided a summation of the application. He stated that the Board should approve the application based on the testimony and plans submitted. He also asked that copies of the plan on record be marked into evidence.

Exhibits marked:

A-22 Set of architectural drawings prepared by Sionas Architecture, revised through 10/5/10

A-23 Set of site engineering drawings prepared by prepared by Petry Engineering, revised through 10/5/10

The Board discussed the application. The majority of the Board was in favor of the application, with the exception of the front yard parking variance, subject to the conditions below. The majority of the Board determined that there are various purposes of zoning and special reasons in support of the use variance taking into account the unique characteristics of the property and the application. Subject to certain conditions, the use variance does not cause any substantial detriment to the public good and does not cause any substantial impairment of the intent and the purpose of the master plan or zoning ordinance. Given the present circumstances the project presents a reasonable plan for the property featuring low intensity office use and low intensity church use particularly adaptable to the existing building. With respect to the bulk variances

requested to exceed 2½ stories, to provide less off-street parking, to exceed the permitted fence height, and to install building identification signage, those purposes of zoning that support the use variance also support those bulk variances. The bulk variance requested to permit two parking spaces in a front yard is unjustifiable because the project provides sufficient parking space supply without need to have any parking spaces in a front yard. The site plan exception requested to permit the parking lot to provide less than 5 percent landscaped areas within the pavement perimeter is justified given that the parking lot is set back further than required along the south and west property lines and that it provides substantial landscaping within those increased setbacks as well as within islands in the pavement perimeter that together equal or exceed the 5 percent standard

A motion by Mr. Susswein, seconded by Ms. English, to approve the requested variances with the exception of the variance for front yard parking, and to approve preliminary and final site plan approval, was approved by a vote of 6 to 1, subject to the conditions listed below, with Mr. Fleischer voting against the motion. The conditions of approval are as follows:

1. The applicant shall obtain at least silver level LEED certification;
2. There shall not be any retail use within the building;
3. The church space is reserved for house of worship use;
4. The house of worship use is limited to the space and seating shown on the approved plans which shall not be construed to prohibit use of the common areas for access or use of the common conference room and ADA-compliant bathrooms;
5. The exterior building-mounted lights (not the bollard parking lot lights) shall be turned off by 10 p.m.;
6. The applicant shall comply with items 1 through 4, 6, and 8 through 10 of the Board engineer's report dated September 7, 2010;
7. The applicant shall submit to the Planning Department, three months after the building is fully occupied, a summary of the utilization of the on-site parking lot, and if there is need for off-site parking spaces, then the applicant shall obtain up to 12 permits from the Township for municipal parking spaces;
8. The proposed fence and wall located near the east property line shall be installed at the location of the existing chain link fence located near said property line;
9. Prior to construction, the applicant shall consult with an arborist regarding measures to protect the 24 inch black walnut tree, and based on that consultation, implement measures to protect said tree. If said tree dies within two years after

construction of the project, then it shall be replaced with a comparable deciduous tree with three inch caliper at the time of planting;

10. The applicant shall execute the draft agreements circulated with the neighbors during the course of the hearing concerning buffering and access for installation of same, subject to condition #8 above; and

11. With respect to the detached garage located on Block 1302, Lot 9, and in particular the portion of such garage that encroaches onto the property, the applicant shall not take action to remove such encroaching portion for a period of ten years;

12. The plans shall be revised to eliminate the two parking spaces in the front yard;

13. There shall be no disturbance within four feet of the rear property lines of Lots 8, 9, 10, and 11 in Block 1302, except for replacement fence and wall and the installation of same.

After a short recess, the application of **Diahann Homer, 9 Crestview Court** was called. The applicant and Dennis George, Architect were sworn. Mr. George described the application for variances associated with proposed additions and alterations to the dwelling located in the R-0(a) One Family Zone. The property is an irregularly shaped lot located at the end of a cul-de-sac. The lot measures approximately 17,688 square feet in lot area and 96.75 feet in lot frontage, part of which is curved. The property contains a 2½ story single-family dwelling with a basement level garage on the southerly side of the dwelling. The dwelling is proposed to be modified with several additions and alterations at 3 levels: basement, first floor, and second floor. The site would also be modified by altering the driveway, constructing new walkways, and constructing patios utilizing retaining walls. The proposed additions and alterations to the dwelling would result in a 3 story design, which requires a variance. The basement level of the dwelling, which would be enlarged and reconfigured, is included as a story above grade, as is the first floor level. The existing sloping roof which presently constitutes a half-story is to be removed in its entirety and a flat roof is to be utilized in the design. A 405 square foot addition, also with a flat roof, is proposed at the second floor level at the top of the dwelling and is included as a third story.

Mr. George stated that the required front yard setback for new construction on the subject property is 50 feet. The existing dwelling complies, having a front setback of 51.32 feet at its closest point. The 288.4 square foot basement level addition for the new attached garage at the southerly end of the front wall of the dwelling and the 139.5 square foot first floor addition at the northerly side of the front wall of the dwelling require variances for front setbacks of 47 feet 2 inches and 48 feet 8 inches, respectively. Mr. George provided the corrected the minimum required rear yard setback for the subject property, which is 41.22 feet. The southerly rear corner of the existing dwelling has a nonconforming rear setback of 38 feet 4 inches. The 333.6 square foot

basement level addition at the center of the rear wall of the dwelling has a rear setback of 32 feet 10 inches and requires a variance. The proposed first floor level deck at the southerly rear corner of the dwelling has a rear yard setback of 30 feet and requires a variance. The maximum permitted principal structure width is 62.88 feet or 65 percent of the lot frontage width of 96.75 feet. The existing dwelling complies, measuring 59 feet 2 inches in width. The basement level addition for the attached garage on the southerly side of the dwelling would expand the width of the dwelling to 69 feet 4½ inches and a variance is requested.

Exhibits marked:

- A-1 Enlarged copy of the site plan submitted on a board with color added
- A-2 Photographs of the existing dwelling alongside renderings of the proposal on a board

Mr. George clarified that no variance was requested to exceed the maximum principal building coverage. The calculation of principal building coverage was corrected on the plan provided to the Board, so that the dwelling, the additions, and all of the terraces, patios, and decks, cover 19.99 percent of the site whereas 20 percent of the site is permitted. The Board questioned the applicant. The applicant indicated that should the variances be approved, a grading and drainage plan would be submitted for review by the Board Engineer pursuant to Chapter 294 Steep Slopes of the Township ordinance. The Planning staff clarified that the retaining walls and patios on the northerly side of the dwelling are an allowable encroachment into the 18 foot side yard setback requirement on that side of the dwelling and do not require variances. Chair Harrison called for questions and comments from the public. Mark Lister, 10 Crestview Court, was sworn and stated his concern over any enlargement of the second floor of the dwelling that could affect his eastward view. Ms. Homer stated that she has instructed the architect to design and position the second floor addition in a manner that it would not negatively affect the eastward views of her neighbors. Alan Walter, 32 South Mountain Avenue, was sworn and stated his concerns over the proposed deck and its affect on his privacy. Richard Pelati, 24 South Mountain Avenue, was sworn and stated his concerns over the rear setback of the building addition, and any increase in storm water runoff that could negatively impact his property. Susan Bershad, 28 South Mountain Avenue was sworn and stated her concern over any approval that could increase storm water runoff that could negatively impact her property.

The Board discussed the application and determined that the variances requested could be granted subject to the conditions listed below, based on the characteristics of the property and the existing dwelling and the specific plan and design proposed. The variance to exceed 2½ stories can be granted based on the topography of the lot, the compliant overall height of the dwelling, and the specific design proposed that staggers the 3 levels of the dwelling and does not produce the effect of massing intended to be reduced by the ordinance. The front yard setback, rear yard setback, and principal structure width variances can also be granted based on the specific design

proposed and the irregular shape of the lot and the location of the existing dwelling on the lot. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved subject to the following conditions:

1. A grading and drainage plan shall be submitted for review by the Board Engineer to assure that there is no increase in storm water runoff from the property as a result of the proposed improvements.
2. The drainage plan shall incorporate measures that allow storm water collected from the roof of the dwelling to be collected and discharged towards the front of the property.
3. As per the submitted plans, no principal building coverage variance and no side yard setback variances are either required or granted with this approval.
4. The applicant shall remove the areas of existing driveway as depicted on than plans and those areas of pavement being removed shall be replaced with lawn or landscaped areas.

The application of **The Montclair Foundation, 21 Van Vleck Street** was called. Barbara Fox, Esq. appeared as attorney for the applicant. Ms. Fox described the application and called Jerry Raymond, who was sworn. Mr. Raymond is a member of the Van Vleck Board of Management and the former Chairman of The Montclair Foundation. He described the background and details of the applicant as a charitable organization serving the community, including the management and operation of the house and gardens on the property as a community resource. The goal of the proposed project is to improve the safety and function of the property. The plan would improve the traffic circulation and parking on the site. A parking area would be constructed for staff and tenants at the rear of the property that will be accessed by a separate driveway on North Mountain Avenue. A service building would also be constructed at the rear of the site. The existing visitors parking area on the northerly side of the property would be improved and an informational kiosk would be erected. The overall parking on the site would be increased from 26 spaces to 40 spaces. Vehicular traffic through the center of the garden would be eliminated. He stated that the project has been submitted to the NJDEP for review in accordance with Green Acres funding.

Exhibit marked:

- A-1 NJDEP letter dated September 24, 2010 regarding the proposed project and the Green Acres Program

The Board questioned the witness. Chair Harrison called for questions from the public. Jessica Freeman, 20 Van Vleck Street, asked about Green Acres grant and uses that were approved by variance. She also asked about the scope of the existing uses on the property. Mr. Raymond stated that the Green Acres grant was received in 1995. Use

variances were granted in 1993, 1994, 1995 and 2002. He also provided several details on the scope of existing uses and events. Michael Freeman, 20 Van Vleck Street, also asked about the scope of the uses on the property and the potential for growth as a result of the proposed improvements.

Chair Harrison announced that the application would continue at the February 16, 2011 regular meeting of the Board. No further notice would be given. On motion by Mr. Susswein, seconded by Mr. Whipple the meeting was adjourned.