

MINUTES OF THE BOARD OF ADJUSTMENT
January 17, 2007

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, Ms. Holloway, Mr. Rubenstein, and Mr. Susswein; also, Mr. Sullivan, Esq., Mr. Franco, Assistant Planner, and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Haizel and Mr. Whipple

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. Chair Harrison welcomed Mr. Rubenstein to the Board.

Election of Officers

On motion by Mr. Fleischer, 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, Mr. Fleischer abstaining.

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

Appointment of Professional Staff

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution re-appointing Mr. Sullivan as Board Attorney at the indicated rate for the 2007 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, 2007 to December 31, 2007 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. Fleischer, seconded by Mr. Susswein, the flowing Resolution re-appointing Mr. Watkinson as Board Engineer at the indicated rate for the 2007 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, 2007 to December 31, 2007 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. Susswein, the following Resolution memorializing the approval of the application of **Thomas Russo, 5 Inwood Terrace** was adopted as modified, Mr. Fleischer abstaining:

WHEREAS, Thomas Russo did make application to the Board of Adjustment of the Township of Montclair to demolish a one-story section on the southerly side of his dwelling and construct a larger one-story addition in the same location on property designated as Lot 16 in Block 2708 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-45(3)** in that a maximum principal building width not exceeding 65 percent of the lot frontage width is permitted and a greater principal building width is proposed; and

WHEREAS, the applicants submitted a property survey, dated January 19, 1991, and a plot plan, floor plan, and elevations and photographs prepared by, Oasis Architecture and Planning, P.C., dated September 18, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 13, 2006, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located on a dead-end street in the R-1 One-Family Zone, and measures 68.44 feet in width across its slightly curved lot frontage and 8,970 square feet in lot area. The subject property contains a 2½ story single-family dwelling and an attached garage at the rear.

2. The dwelling has a one story enclosed porch on the southerly side of the dwelling, which was damaged by fallen tree limb approximately 18 months ago. The existing enclosed porch measures 9 feet wide by 14 feet 4 inches in depth.

3. The applicant proposes to demolish the one-story enclosed porch on the southerly side of his dwelling and construct a larger one-story addition in the same location. The proposed addition would measure 3 feet 1 inch wider and 1 foot 10 inches deeper than the existing enclosed porch.

4. The maximum permitted width of the dwelling is 44.49 feet, which equals 65 percent of lot frontage width. The existing dwelling is nonconforming in that respect,

measuring 48.2 feet in width, which is 70 percent of lot frontage width. The proposed addition would widen the dwelling to a width of 51.2 feet, which is 75 percent of frontage width and a variance is required. No other variances are required.

5. The Board determined that the requested variance can be approved since the proposed addition would be only one-story and would not affect the overall scale of the dwelling. The Board also determined that the dwelling would remain similarly sized to other dwellings in the neighborhood and that the existing landscaping on the southerly side of the lot would mitigate any visual impact of the proposed addition.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 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 did prove 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 Thomas Russo is approved, subject to the following conditions:

1. The addition shall be limited to one story maximum.
2. The existing landscaping in the area of the addition shall be maintained, and to the extent that the addition requires the removal of any landscaping, it shall be replaced in kind in the area to front of the addition.

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

On motion by Ms. English, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Robert F. Perdue, 54 North Mountain Avenue** was adopted, Mr. Fleischer abstaining:

WHEREAS, Robert F. Perdue did make application to the Board of Adjustment of the Township of Montclair to construct an attached two-car garage addition to the front of his dwelling on property designated as Lot 1 in Block 1501 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347- 45B(1)** in that a minimum front yard setback in keeping with the average front yard setback of the 2 nearest principal structures, 1 on each side of the subject property, is required, and a lesser front yard setback is proposed; and

WHEREAS, the applicants submitted a property survey prepared by Miller and McGiffert, Inc., dated August 17, 1964, a property survey prepared by Gerald G. Capasso, dated June 1997 for the Essex County Department of Public Works, and a plot plan, elevations, and a front yard setback illustration, prepared by Mark Geissen, dated September 12, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on December 13, 2006, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One Family Residential Zone and contains a 1½-story single-family dwelling with a gravel driveway at the front of the dwelling; there is no garage on the property. The property measures 109.35 feet in width along its frontage and contains 16,398 square feet in lot area.

2. The applicant proposes to construct a one-story addition at the front of the dwelling to contain a two-car garage with a paved driveway. Due to the fact that the front wall of the dwelling is not parallel to the street, and the front wall of the proposed garage would be parallel to the street, the addition is trapezoidal in shape. As a result, the proposed garage would extend 34 feet 1½ inches from the dwelling on the northerly side and 23 feet 2 inches on the southerly side. The proposed one-story addition has a flat-roof design and would measure 11 feet 4 inches in height.

3. The required front yard setback for the subject property is the average of the 2 nearest principal structures, 1 on either side of the subject dwelling, since the adjoining property to the south borders a different zone district and the large property to the north is a corner lot. At the hearing, the applicant indicated that the average front yard setback of the 2 principal structures on the adjoining lots is 45 feet 7 inches, which is the required front yard setback for the proposed addition. A front yard setback of 28 feet 10 inches is proposed, and a variance is requested; no other variances are required.

4. The Board determined that a front yard setback variance could be granted since the required front yard setback is skewed by the unusually large front setback of the principal building on the large property to the north. Furthermore, the applicant demonstrated that there is no other location on the lot for the proposed garage or

driveway, although the Board determined that the shape of the proposed garage should be modified from the proposed trapezoidal shape to a rectangular shape.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 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 did prove 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 Robert F. Perdue is approved, subject to the following conditions:

1. The garage addition shall be rectangular in shape, with the front wall parallel to the front wall of the dwelling, and shall not be closer than 28 feet 10 inches from front property line.
2. The revised engineering drawings and drainage calculations shall be approved by the Board Engineer.

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

On motion by Ms. English, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Carlos Montoya and Penny Weissman, 27 Columbus Avenue** was adopted, Mr. Fleischer abstaining:

WHEREAS, Carlos Montoya and Penny Weissman, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a new front porch, a two-story addition on the westerly side of their dwelling, and a one-story addition on the easterly side of their dwelling on property designated as Lot 21 in Block 4407 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant sought variances pursuant to N.J.S.A. 40:55D-70c as follows:

1. A variance from **Montclair Code Section 347-45B(1)** in that a minimum front yard setback in keeping with the average front yard setback of the 4 nearest principal structures, which is 41 feet 1 inch, is required and a lesser front yard setback of 38 feet 2 inches is proposed; and

2. A variance from **Montclair Code Section 347-45C(1)** in that minimum side yard setbacks of 6 feet for one yard and 10 feet for the other yard are required, and lesser side yard setbacks, described below, are proposed; and

WHEREAS, the applicant submitted a property survey, prepared by Richard J. Hingos, Inc., and a plot plan, floor plans, and elevations prepared by Andesign Architects, dated September 23, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 13, 2006, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, measures 55 feet in width across its curved lot frontage and 9,600 square feet in lot area, and contains a 2½ story single-family dwelling and an attached garage at the rear.

2. A new roofed front porch that would measure the full width of the dwelling is proposed to replace an existing smaller front porch. At the hearing, the applicants indicated that the average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property, is 41 feet 1 inch. The front setback of the proposed porch would be 38 feet 2 inches and a variance is requested.

3. The existing dwelling has nonconforming side yard setbacks of 4.52 and 4.68 feet on the westerly side and 7.69 feet on the easterly side. The lot is irregular in shape, so it narrows as it goes back, and the side yard setbacks are reduced from the front of the dwelling to the rear of the dwelling.

4. The proposed front porch would extend the full width of the dwelling and align with the existing side walls of the dwelling. The proposed front porch would be set back 4 feet 8½ inches on the westerly side and approximately 9 feet 0½ inches on the easterly side, where 6 feet and 10 feet are required, respectively. The proposed two-story addition on the westerly side of the dwelling, which would be located behind an existing one-story section of the dwelling and be aligned with that section of the dwelling, would be set back 4 feet 3 inches at its rear corner where 6 feet is required. An existing roofed side entrance porch on the easterly side of the dwelling would be enclosed and incorporated as interior space to enlarge the existing kitchen, and would be set back 7 feet 8½ inches and 7 feet 1½ inches, where 10 feet is required.

5. The Board determined that the front setback variance for the proposed front porch could be granted since it was a minimal intrusion that is caused by the angle of the dwelling in the lot and is also affected by the curvature of the street. The Board also determined that the side setback variances could be granted since all of the proposed additions are aligned with the existing walls of the dwelling and the decreases in the side setback, which are minimal, are caused by the shape of the lot.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested 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 the applicants did prove 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 Carlos Montoya and Penny Weissman is approved; and

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

On motion by Mr. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Roger and Mary Ann Cucci, 20 Columbus Avenue** was adopted, as modified, Mr. Fleischer abstaining:

WHEREAS, Roger and Mary Ann Cucci, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a new front porch and an addition to third floor of their dwelling on property designated as Lot 36 in Block 4304 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant sought variances pursuant to N.J.S.A. 40:55D-70c as follows:

1. A variance from **Montclair Code Section 347-45B(1)** in that a minimum front yard setback in keeping with the average front yard setback of the 4 nearest principal structures, which is 59 feet 4 inches, is required and a lesser front yard setback of 57 feet 5 inches is proposed; and

2. A variance from **Montclair Code Section 347-45A(2)** in that a maximum of 2½ stories is permitted and the proposed addition to the third floor creates a third story at the rear of the dwelling; and

WHEREAS, the applicant submitted a property survey and a plot plan, floor plans, elevations, and photographs prepared by MBA Architects, revised to October 11, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on December 13, 2006, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, on a curved section of Columbus Avenue, measures 50 feet in width across its angled lot frontage and 7,976 square feet in lot area. The subject property contains a 2½ story single-family dwelling and a detached garage at the rear.

2. A new roofed front porch addition that would measure the full width of the dwelling is proposed. The existing front entrance porch, which is recessed under the roof of the one-story section at the front of the dwelling, would be enclosed and incorporated into the first floor living space.

3. The average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property, is 59 feet 4 inches. The existing dwelling has a conforming front yard setback of 62 feet 5 inches, measured the right front corner of the dwelling. The front setback of the proposed porch would be 57 feet 5 inches at its closest point and a variance is requested.

4. A conforming dormer addition is proposed on the third floor front elevation. A larger addition is proposed the third floor rear elevation that requires a variance because it creates a third story at the rear elevation.

5. The Board determined that the front setback variance for the proposed front porch could be granted since it was a minimal intrusion that only occurs at one corner of the porch. The Board also determined that the variance for the third story at the rear of the dwelling could be approved since the existing dwelling is modest in size, the proposed addition is modest in size, the dwelling would still be in keeping with the existing size, scale, and character of the existing dwellings in the neighborhood, and the overall height of the dwelling would not be increased.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicants did prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the requested 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 the applicants did prove 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 Roger and Mary Ann Cucci is approved, subject to the following condition:

1. The proposed front porch may be modified in shape; however, the front setback shall not be less than 57 feet 5 inches, and the size of the area of the porch that will be located closer than 59 feet 4 inches to the front property line shall not exceed the size of the area located closer than 59 feet 4 inches to the front property line shown on the plan submitted to the Board of Adjustment.

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

Chair Harrison called the application of **Nancy and Matt Silverman, 168 Gordonhurst Avenue**. Ms. English recused herself for this application. Mr. Silverman and Edmundo Lopez, Architect, were sworn. Mr. Silverman described the proposed shed dormer addition. He stated that they are proposing to increase the usable space on the third floor of their dwelling to accommodate their growing family. He stated that the height of the dwelling would remain the same and that no change to the footprint is proposed. Mr. Lopez also briefly described the existing dwelling and the proposal.

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

Chair Harrison called the application of **Michael Starr, 128 Westview Road**. Michael Starr, owner, and Shalini Taneja, Architect, were sworn. Mr. Starr described the application and stated that he is proposing to build a detached garage and a retaining wall and fence combination along the easterly side property line in the rear yard of his property. He stated that the existing grading of his property and the pattern of stormwater runoff has contributed to structural damage of the existing garage and that the existing smaller retaining wall on the easterly property line made of railroad ties and stones also needs to be replaced. He stated that stormwater runoff from his property negatively affects the neighboring lot to the east, which is lower in grade and that the

owners of that adjoining property are in support of his application to build a new retaining wall that would help to alleviate this problem. He stated that he has discussed the plan with his neighbors and that he has agreed to use an open-style fence on an approximately 45-foot long section of the wall, which runs from the tallest section of the wall to the rear corner of the his property, and create a tree well with the wall in order to protect an existing tree along the easterly side property line. He further stated that he has discussed the proposed garage with his neighbor on the westerly side of his property and that they are fully supportive of his application.

Ms. Taneja described the property and stated that the footprint of the proposed garage would be slightly enlarged from the existing garage and that the westerly side yard setback would be increased from less than 1 foot to 3 feet.

Marked into evidence was:

- A-1 Existing and Proposed Site Plans, rendered on a board
- A-2 Proposed elevations, rendered on a board
- A-3 Photographs of subject property on a board
- A-4 Property survey of the adjoining property at 126 Westview Road

Ms. Taneja stated the proposed 3-foot setback for the new detached garage would be paved and graded to direct stormwater runoff away from the garage and towards drainage swales to be constructed on the property. She stated that the proposed garage would conform to all other zoning ordinance requirements and that the westerly side yard setback of 3 feet cannot be increased any further due to the location of an existing Oak tree in the applicant's rear yard, and because moving the proposed garage any further to the east would make vehicular access to the garage difficult.

Ms. Taneja stated that the plan provides improvements in grading, landscaping, and stormwater runoff. She stated that the proposed grading would channel surface runoff towards the front of the property and that roof leaders from the dwelling and the proposed garage would be attached to underground drainage pipes that discharge at the curb. She stated that the proposed retaining wall and fence combination is conforming in height at locations closer to the dwelling, and that as the wall goes towards the rear of the lot, it increases in height to a maximum of 5 feet 6 inches with a 3-foot fence at the top, which produces a total maximum height of 8 feet 6 inches at a specific section of the wall. She also stated that the height of the wall and fence combination reduces to a conforming height of 7 feet as it reaches the rear corner of the lot and that the section of the proposed retaining wall and fence combination that requires a variance for exceeding 7 feet in combined height measures approximately 31 feet in length. She further stated that the fence proposed at the top of the retaining wall is required by Uniform Construction Codes for safety purposes and that the applicant wishes to keep the fence at top of wall because setting it back as required by zoning could create an unsafe condition.

Mr. Starr stated that he has agreed to place an open style fence at the top of the retaining wall along the section where it is at its tallest, which measures approximately 45 feet in length and is highlighted in yellow on the elevations depicted on Exhibit A-2.

The Board questioned the applicant and Ms. Taneja. Ms. Taneja discussed the possibilities of lowering a section of the retaining wall to reduce the overall height and the extent the variance requested and stated that it is possible to lower the height of the wall in certain sections, although a variance would still be necessary. Mr. Starr again described the proposed condition of approval that relates to the open style fence along a 45-foot long section of the wall.

Ms. Cockey joined the meeting. Chair Harrison called for questions and comments from the public.

Carol Gamm, 126 Westview Road, was sworn and stated that she is the owner of the property to east of the subject property. She stated that the applicant has been cooperative in discussing the project and addressing their concerns. She confirmed the applicant's statements that there has been an agreement concerning the fence at the top of the wall.

The Board discussed the application. On motion by Mr. Fleischer, seconded by Mr. Susswein, the application was approved, with Ms. Cockey abstaining, subject to the following conditions:

1. The fence at the top of the retaining wall shall be an open style fence.
2. Except as modified by condition 4, the plan that is being approved is the plan that was submitted at the hearing by the applicant and marked as Exhibit A-1.
3. All of the construction involved with the application, including the footings of the retaining wall, shall be located on applicant's property only.
4. The approved plan shall be revised to depict one of the following, as appropriate: a maximum 6 inch deviation from the maximum permitted height of 7 feet if a 3 foot fence is required by the construction code, or a 1 foot deviation from the maximum permitted height of 7 feet if a 3.5 foot fence is required by the construction code. The revised plan shall be submitted to the Planning Department in order to demonstrate compliance with this requirement.

Chair Harrison called the variance application of **Stephanie and Dawayne Roberts, 8 Enfield Avenue.** Dawayne Roberts was sworn and described the application. He stated that the dwelling as part of an extensive renovation, the third floor would be expanded with a new roof in order to make the third floor more usable. He stated that the proposed modifications are the best way to add space and improve the dwelling since the lot is narrow and shallow, and the footprint of the dwelling is also small. He stated that expanding the footprint will require multiple variances and that the

proposed plan is the least disruptive to the site and the neighbors. He also stated that a new one-car garage is proposed on an existing slab where a garage previously existed and that a small wood deck is proposed at the rear of the dwelling, which was designed to meet the previous rear yard setback requirement of 25 feet.

The Board questioned the applicant. Mr. Roberts stated that dormers are not an option for the third floor because of the narrow width of the dwelling. He also stated that central air conditioning units would be located on southerly side of property and may project 6 inches into the side yard setback requirement. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved, subject to the following conditions:

1. The proposed detached garage shall be constructed no closer than 2 feet from the rear property line and 1 foot 8 inches from the northerly side property line.
2. The central air conditioning unit shall be located no closer than 5.5 feet to the southerly side property line. The applicant shall submit details and specifications for the proposed central air conditioning unit to the Planning Department, in order to demonstrate that no more than a 6-inch encroachment into the required 6-foot southerly side yard setback is necessary.

Chair Harrison called for a short recess.

David Owen, Esq., attorney for the 2 remaining applications on the agenda gave his appearance and requested that the application of **Alcaro Realty, 112 Pine Street** be carried to the Board's regular meeting on February 21, 2007 and granted the Board an extension of time. Chair Harrison announced the new date for the application and that no further notice would be given.

Chair Harrison called the continuation of the application of **The Michael Malinowski Family Trust, 192-194 Bloomfield Avenue**. David Owen, Esq., appeared as attorney and called Peter Steck, Professional Planner.

Marked into evidence was:

A-16 Planning Exhibit, prepared by Peter Steck, P.P. consisting of aerial photographs and other information

Mr. Steck described the application, the variances requested, and the background and history of the subject properties. He also described the land use characteristics of the neighborhood and stated that the area is not an intensely active commercial section of the C-1 Zone and that the area is predominantly residential. He stated that the Master Plan recommends the C-1 Central Business Zone "community area" zoning designation for the property and that the most recent Master Plan Re-examination report states that consideration should be given to increasing residential density in the area to encourage redevelopment. He stated that the area has been

identified as blighted in recent redevelopment studies, and that while no official redevelopment plan has been adopted, the proposal before the Board is largely consistent with the recommendations contained in these redevelopment studies. He continued by describing the recent approval of the plan by the Historic Preservation Commission.

Mr. Steck described the variances requested and stated that they can be approved. He stated that the plan saves a historic building, removes an incompatible building and use, and redevelops the site, all of which are beneficial to the area. He stated that locating multiple buildings on one property is not unusual in a commercial zone and that certain requested variances are caused by the preservation of the historic two-family dwelling on the site. He also stated that the Historic Preservation Commission has found the plan appropriate and that the plan provides the most efficient use of the land under the circumstances. He continued by stating that the on-site parking proposed is sufficient for the number of units proposed, particularly since the site is in an urbanized environment that is within walking distance to a train station and public transportation.

The Board questioned Mr. Steck. Mr. Steck stated that in his opinion, a narrower and taller building would likely not be approved by the Historic Preservation Commission and that the proposed scale of the building is the most appropriate for the streetscape. He also stated that adding retail uses to the plan would increase the on-site parking requirement and that utilizing a garage door from an architectural design and security standpoint is superior to only having an opening in the building for vehicular access to the parking area. Chair Harrison called for questions and comments from the public.

Stacy Robin Meranus, 50 Pine Street, was sworn. She stated many concerns over issues that exist in the neighborhood and stated her support for the application.

Mr. Owen stated that the applicant would seek a vote with the 6 eligible Board members present. He summarized the application and gave his closing. The Board discussed the application. Chair Harrison suggested that the applicant consider the modifications to the plan that were discussed earlier which would allow the rear yard setback of the parking area to be increased. On motion by Mr. Fleischer, seconded by Ms. Holloway the application was approved, subject to the following conditions:

1. The existing fence in violation of the ordinance shall be removed within 30 days.
2. This approval is based upon preservation of the historic building located at 192 Bloomfield Avenue.
3. The applicant shall install an historic marker commemorating the historic significance of the site at 192 Bloomfield Avenue. It is the Board's preference for a discreet freestanding marker visible to pedestrians on the public sidewalk, however, the

wording, location and size of the marker shall be approved by the Montclair Historic Preservation Commission.

4. The applicant shall comply with paragraphs 1 and 2 contained in the report of W. Thomas Watkinson, Board of Adjustment Engineer, dated December 28, 2006.

5. The landscaping shall be installed in accordance with Sheet 7 of 8 of the approved site plan.

6. The building mounted lighting on the easterly side of the new building shall be shielded so as not to shine into the windows of the adjacent apartment building to the east.

7. The proposed fencing and gates shall conform to the maximum height requirements contained in Montclair Code Section 347-27A(1).

8. The property owner shall record a perimeter deed in the Essex County Register's Office consolidating Lots 23 and 24 in Block 3102.

9. The applicant shall obtain approval from the Montclair Historic Preservation Commission for any changes made to the plan since the initial approval on June 29, 2006.

10. The applicant shall pay development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq. and shall comply with the Inclusionary Zoning Ordinance, Montclair Section 347-151, as applicable.

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