

MINUTES OF THE BOARD OF ADJUSTMENT
February 16, 2011

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

ABSENT: Mr. Burr and Ms. English

Assistant Secretary Charreun called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Whipple, seconded by Mr. Susswein, the **Minutes of the January 19, 2011** regular meeting were adopted as modified, Ms. Cockey abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Hillside Square, LLC, 8 Hillside Avenue** was adopted as modified, Mr. Fleischer and Ms. Cockey abstaining:

WHEREAS, Hillside Square, LLC, under contract to purchase property located at 8 Hillside Avenue, Montclair, New Jersey (hereinafter "the property"), did make application to the Montclair Township Board of Adjustment (hereinafter "the Board"), for use and bulk variances, as well as site plan approval, to modify the existing church on the property for use as business, professional, and medical offices and for continuing use by the First Church of Christ, Scientist and to reconstruct and expand the existing parking lot on the property, designated as Lot 7 in Block 1302 on the Montclair Township Tax Maps and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to permit business, professional, and medical offices and a church, which are not permitted uses under Montclair Code Section 347-41;
2. A variance pursuant to N.J.S.A. 40:55D-70c to permit the modified building to exceed 2 ½ stories contrary to Montclair Code Section 347-45A(2);
3. A variance pursuant to N.J.S.A. 40:55D-70c to permit less than the required number of on-site parking spaces under Montclair Code Section 347-101;
4. A variance pursuant to N.J.S.A. 40:55D-70c to permit certain on-site parking spaces to be located within a front yard contrary to Montclair Code Section 347-46C;

5. A variance pursuant to N.J.S.A. 40:55D-70c to permit certain fences to exceed 4 ½ feet in height contrary to Montclair Code Section 347-27A;

6. A variance pursuant to N.J.S.A. 40:55D-70c to permit signage identifying Hillside Square and The First Church of Christ, Scientist on a wall-mounted sign, a wall-mounted plaque, and on plaques located on the masonry piers at the driveway entrance, and to permit the existing Church sign located in the yard in front of the main building entrance on Hillside Avenue to be relocated, contrary to Montclair Code Section 347-108; and

7. An exception from Montclair Code Section 281-9H to permit the parking lot to provide less than 5 percent landscaped areas within the pavement perimeter; and

WHEREAS, the applicant submitted architectural and landscape plans prepared by Sionas Architecture, P.C. dated August 30, 2010 and revised through November 1, 2010, site and light plans prepared by Petry Engineering, LLC dated August 30, 2010 and revised through November 5, 2010, a boundary and topographic survey prepared by Petry Engineering, LLC dated August 17, 2010, and a stormwater management report prepared by Petry Engineering, LLC dated August 30, 2010; and

WHEREAS, this matter came on to be heard at meetings of the Board held on October 20, 2010, November 17, 2010, December 15, 2010, and January 19, 2011, at which time it was established that notice was properly published and that property owners within 200 feet of the property had been properly served with such notice; and

WHEREAS, the Board carefully reviewed the testimony, exhibits (A-1 through A-23), questions, and comments presented at the public hearings and established the following findings of fact and conclusions of law:

1. The property is a corner lot consisting of 1.65 acres. It has frontages on Hillside Avenue and Orange Road. The existing church building faces the Hillside School, which occupies the entire block frontage directly across Hillside Avenue. To the north and west are mostly multifamily dwellings including garden apartment buildings and shared senior housing. To the south and west are single-family and multifamily dwellings along with the Montclair Community Pre-K, the Montclair Board of Education offices, and the Orange Road parking deck;

2. The property is located at the edge of the R-1 Zone and is adjacent to a number of other zones. The Neighborhood-Commercial Zone is about 200 feet away to the east, and the Central Business District is about 350 feet away to the northeast;

3. The property contains the existing church building and parking lot. The applicant proposes to retain and adaptively reuse the existing church building for use as business, professional and medical offices and for continuing use by the First Church of

Christ, Scientist. The applicant also proposes to retain, reconstruct, and expand the parking lot and provide drainage improvements, landscaping, and fencing;

4. The proposed business and professional office space consists of approximately 18,310 gross square feet, and the proposed medical office space consists of approximately 1,800 gross square feet. The proposed church space consists of approximately 2,992 gross square feet with 117 seats. Given that the First Church of Christ, Scientist has occupied the entire building since 1926, but that the Church's membership has declined substantially over the recent years, the reduced church space greatly benefits the Church and allows it to remain in its longstanding home and in the Montclair community;

5. The architectural plans call for business, professional, and medical office space on all levels and church space on the first floor. The office space includes a large open central foyer and common conference room on the first floor; arched ceilings, views into the rotunda, large windows, and specialized office suites on the second floor; sloped ceilings and exposed structural elements on the third floor; retention and reuse of existing architectural elements; and generally a variety of large open spaces and high ceilings conducive to unique office space. The church space includes a sanctuary, a community room, and two private church entrances. The plans call for limited changes to the building's exterior and emphasize the building's prominent architecture. The plans provide for an addition to the south side of the building that will primarily enclose a new elevator giving barrier-free access to the building;

6. The site plans as amended call for 74 on-site full-size parking spaces. In addition, the applicant has made arrangements to purchase 11 daytime parking permits in the nearby Orange Road parking deck. As a result, the applicant proposes a total of 85 parking spaces for the project. However, the activity periods for the offices and the church do not coincide. When the offices are in use, they will have 85 parking spaces required by the zoning ordinance. When the church is in use, it will have more than the 15 parking spaces required by the zoning ordinance;

7. The site plans as amended incorporate other important features, including a new underground stormwater detention system that significantly reduces existing drainage flows onto neighboring properties, an electric vehicle charging station, bicycle racks, solid wood fences to replace existing chain link fences, bollard-style light fixtures to illuminate the parking lot, and over 2,700 new plantings;

8. With respect to traffic, the applicant's traffic engineer studied the site, the nearby roadways, and the Hillside School activities and concluded that vehicles will operate efficiently and smoothly in and out of the property and will not interfere with surrounding uses. He found that the offices will generate minimal peak hour traffic and that the church will not generate any significant traffic. He also concluded that at the signalized intersection of Orange Road and Hillside Avenue, the smoothness of traffic operation will be at superior level of service B and that at the site driveway and Hillside

Avenue the smoothness of traffic operation will be at superior level of service A. When there is increased pedestrian activity at the Orange Road and Hillside Avenue intersection for approximately 20 minutes in the morning, such activity is regulated by a traffic light, painted crosswalks across all four approaches to the intersection, and a crossing guard that controls vehicles and pedestrians. The proposed offices will add on average one car to the intersection every two minutes during peak times;

9. With respect to the use variance, there are various purposes of zoning and special reasons in support of such variance. The project promotes the general welfare (N.J.S.A. 40:55D-2(a)) because the property and building are particularly suitable for the proposed uses. The existing building, with its prominent architecture and large interior space, is especially suitable and easily adaptable for the proposed offices and their unique designs and amenities. The existing building is also especially suitable for the First Church of Christ, Scientist because it has been its home since 1926 and because a portion can be easily refitted to meet the Church's current needs, thereby allowing the Church to remain in Montclair. The property already contains a large parking lot behind the existing building, which parking lot as reconfigured is sufficient for the project. The proposed uses are low intensity and do not interfere with the surrounding uses. The property is adjacent to a signalized intersection and proximate to the downtown and Orange Road parking deck. These considerations present a unique situation;

10. The project also preserves a beautiful building of historical and architectural value and thereby promotes the conservation of such building and surrounding open space, and, as a renovated green sustainable building, it promotes the conservation of energy resources (N.J.S.A. 40:55D-2(j)). In addition, the project promotes a desirable visual environment through creative development technique and good civic design and arrangement (N.J.S.A. 40:55D-2(i));

11. The use variance does not cause any substantial detriment to the public good. The property is already developed with the existing church building, and the applicant seeks to preserve the building. There are no additions to the building that increase footprint or volume, other than the addition for the new elevator. The proposed number of parking spaces is sufficient. The uses are low intensity activities that have peaks that operate at different times. They do not adversely impact quality of life in the surrounding area. The drainage structures improve the existing drainage conditions. The landscaping is extensive and shields the on-site parking spaces and provides substantial green areas for the benefit of the neighborhood. The project features special amenities such as the electric vehicle charging station and a LEED-certified energy-efficient green building;

12. As well, the use variance does not cause any substantial impairment of the intent and the purpose of the master plan or zoning ordinance. Whereas the master plan and zoning ordinance call primarily for single-family dwellings in the R-1 Zone, the existing building is extremely unlikely ever to be used as a single-family dwelling given

its extremely large gross square footage. Moreover, it is undesirable to tear down the existing significant building and construct a number of new single-family dwellings. In addition, the master plan and zoning ordinance no longer permit houses of worship in the R-1 Zone, and the master plan reexamination report of 2006 is critical of intensive programs and traffic generation that can result from modern houses of worship, whereas here the existing church space is to be greatly reduced to a much smaller space and the existing church space will no longer be available to a congregation in need of approximately 20,000 square feet of operating space. Furthermore, although the master plan and zoning ordinance call primarily for single-family dwellings in the R-1 Zone, they do allow for certain more intensive uses in the R-1 Zone, including municipal facilities and private and public schools. Given the present circumstances, and in light of the master plan and zoning ordinance, 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. Finally, there are a number of master plan reexamination report policies that are furthered by the project, including the use of shared off-street parking and the promotion of energy efficiency, green energy, and green space;

13. The applicant's proofs included an enhanced quality of proof as prescribed by Medici v. BPR Co., 107 N.J. 1 (1987). First, the applicant carefully analyzed the positive and negative criteria, including the relationship of the application to the master plan and zoning ordinance. Second, the applicant demonstrated that in granting the use variance, the Board would not be usurping governing body authority. Such concern arises when variances from a particular restriction have been granted in other instances and the governing body has been made aware of those variances yet has not changed the zoning in response thereto, from which one can deduce that another variance should not be granted. Here, however, the application is one of a kind and has never been made before, and it is judged on its own merits without concern that the governing body has already addressed the application;

14. With respect to the bulk variances pertaining to story height, on-site parking space supply, fence height, and building identification signage, those purposes of zoning that support the use variance, set forth above, also support the bulk variances under N.J.S.A. 40:55D-70c(2). The bulk variances are integral to the overall project. The increased story height is a technical matter, relating to alterations to the building's interior, and it does not cause any change in building footprint, building volume, or building linear height. The parking space supply incorporates shared parking for two uses that operate at different times and is sufficient for such uses. The new wood fences are the same height as the old chain link fences and together with extensive landscaping make a better buffer for the property. The proposed signage is either existing or restrained and is necessary to properly identify the building and its uses. The bulk variances do not cause any substantial detriment to the surrounding area and do not cause any substantial impairment of the intent and purpose of the master plan and zoning ordinance. The benefits of the bulk variances substantially outweigh any detriment;

15. The bulk variance pertaining to 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;

16. The bulk variances pertaining to story height and parking space supply are also justified under N.J.S.A. 40:55D-70c(1). They are caused by the presence and position of the lawfully existing church building on the property, which under this standard causes peculiar and exceptional practical difficulties and/or exceptional and undue hardship, arising from the features of the land, and justifies variance relief. The analysis of the negative criteria applies as set forth above;

17. The property owners who appeared at the public hearing spoke in support of the project;

18. The exception 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% standard. The literal enforcement of the 5 percent standard is impracticable or will exact undue hardship given the characteristics of the property, and the exception is reasonable and within the general purpose and intent of the site plan ordinance; and

19. 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 upon the foregoing findings, concluded that the applicant proved the requisite special reasons, including but not limited to particular site suitability, for granting the use variance, and proved by a preponderance of the evidence that the same could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan and zoning ordinance;

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 height variance and parking space supply variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the foregoing findings, concluded with respect to the height variance, the parking space supply variance, the fence height variance, and the building identification signage variance that the applicant proved that the

purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and that the benefits of the deviation would substantially outweigh any detriment, and would not cause substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(2).

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of Hillside Square, LLC for use and bulk variances, an exception, and preliminary and final site plan approval is hereby approved and granted, except that the variance for front yard parking is hereby denied, as set forth herein, subject to the following conditions:

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.

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

On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Michael and Mary Fourte, 331 Orange Road** was adopted, Chair Harrison, Mr. Fleischer and Ms. Cockey abstaining:

WHEREAS, **Michael and Mary Fourte, 331 Orange Road** did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c associated with the height of a fence constructed on the property, designated as Lot 1 in Block 4003 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant is requesting a variance from **Montclair Code Section 347-27A(2)** to exceed the maximum permitted height of 4 feet 6 inches for fences in side yards and front yards; and

WHEREAS, the applicant submitted a property survey dated June 5, 2003 and written information and photographs, prepared by the applicant, dated August 23, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 19, 2011 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 property is located at the northeasterly corner of Orange Road and Grenada Place and contains a residential dwelling. The property is located across the street from a commercial zone.

2. The applicant 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.

3. The applicant indicated that they had inquired about the zoning ordinances governing fences prior to installing the fence, but that they had 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.

4. The applicant indicated that 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 property 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.

5. The majority of the Board determined that the requested variance could be granted if the extent of the fence at the proposed height was limited so as not to extend forward past the front corner of the dwelling, excluding the front porch. The majority of the Board determined that the variance for a 5 foot 7 inch fence height in the northerly side yard of the property was justified to provide increased privacy and noise reduction for the applicant's property; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application is hereby approved, 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.

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 Board's decision on the application of **Diahann Homer, 9 Crestview Court** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, **Diahann Homer, 9 Crestview Court** did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c associated with proposed additions and alterations to the dwelling on property designated as Lot 23 in Block 304 on the Township Tax Map and located in the R-0(a) One Family Zone; and

WHEREAS, the applicant requested variances from **Montclair Code Section 347-39A** to exceed 2½ stories; from **Montclair Code Section 347-39B(1)** for front yard setbacks less than required; from **Montclair Code Section 347-39C** for rear yard setbacks less than required; and from **Montclair Code Section 347-39C** to exceed the permitted principal structure width; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 19, 2011 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a topographic property survey dated July 6, 2010 and architectural plans prepared by George Architects, dated August 15, 2010; and

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

1. 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 basement a level garage on the southerly side of the dwelling.

2. 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.

3. 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 is 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.

4. 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.

5. At the hearing, the applicant 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.

6. 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.

7. At the hearing the applicant 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.

8. 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.

9. 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.

10. The Board 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.

11. 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.

12. 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; and

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application is hereby 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.

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.

It was 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 April 13, 2011. The Board was granted an extension of time. Ms. Talley updated the Board on the current situation regarding the proposed telecommunications tower at the Department of Community Services site. She was informed that the location of the tower has been selected on the Township property and that construction may start sometime in the spring of 2011. She did not know the status of any lease agreement between the owner of the tower and Omnipoint Communications. It was also announced that at the request of the applicant, the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the April 13, 2011 regular meeting. No further notice would be given. The Board was granted an extension of time.

Ms. Talley also updated the Board on upcoming meetings concerning the Redevelopment Plan for the Montclair Center Gateway project and upcoming meetings with community groups in preparation for the amendment to certain elements of the Master Plan. Ms. Talley also stated that the Planning Board has recently accepted a proposal from Township Arborist for the review of certain landscape plans submitted with applications. The Board had several questions regarding which types of applications should be reviewed and the cost to applicants for such a review. There was also a question about the proposed rate for the review in comparison with the Board Engineer's rate. The Board delayed further discussion on the proposal until the next meeting.

The continuation of the application of **The Montclair Foundation, 21 Van Vleck Street** was called. Barbara Fox, Esq. appeared as attorney for the applicant. Ms. Fox recalled Jerry Raymond, who was still under oath. Mr. Raymond described the agreement between the applicant and the State of New Jersey in terms of the Green Acres Grant that they had received in September 1995. The Green Acres funding was a one time \$500,000 grant which required a conservation easement on the property. The funds have been used for maintenance and preservation of the property for the use and enjoyment of the public, including the study, instruction, and education in horticulture. The proposed changes to the property have been reviewed by the State and deemed to be in keeping with the Green Acres Program and the conservation easement. Mr Raymond described the types of events that have taken place on the property in the recent years and stated that the last 3 years the number of events and attendees has

been very similar. He also stated that approximately 150 different non-profit organizations have utilized the property for meetings, retreats, and fundraisers since 1993.

Exhibits marked:

- A-2 Graph charting the number of events and number of event attendees from 2008, 2009, and 2010
- A-3 List of non-profit organizations that have utilized the property for meetings, retreats, and fundraisers since 1993
- A-4 Green Acres Agreement, September 13, 1995

The Board briefly questioned the witness. Chair Harrison called for questions from the public. Jessica Freeman, 20 Van Vleck Street, asked how the Green Acres funds they have received have been used, and if any of those funds will be used to construct the proposed accessory building. She also asked if any type of horticultural educational program was permitted by zoning or the Green Acres Program. Mr. Raymond indicated that Green Acres funds will not be used to construct the proposed improvements and that the types of horticultural educational programs conducted on the site are permitted by the previous use variance and the Green Acres Program. Michael Freeman, 20 Van Vleck Street, asked why the applicant had not included the number of events and number of event attendees prior to 2008. Mr. Raymond indicated that they did not keep those types of records prior to 2008. Mr. Freeman also asked about the funds the applicant has raised for the proposed project and other projects.

Ms. Fox called J. Michael Petry, PE, who was sworn. Mr. Petry described the existing conditions and the proposed site improvements in detail. The design is centered on improving safety by eliminating vehicular and pedestrian conflicts, improving the on-site parking, and limiting the disturbance of the unique landscape environment on the property. The plan includes the installation of a new access driveway from North Mountain Avenue at the southeastern corner of the property and the construction of a new accessory storage building at the southern end of the property which will contain three parking spaces and two barrier free bathrooms. A new parking area with twelve 9 feet by 19 feet parking spaces, including one handicapped space is also proposed at the southern end of the property. The new driveway and parking area will replace the existing gravel work area at the southern end of the property. The existing gravel parking lot at the northern end of the property would be regraded and paved. The northern parking area would contain 16 parking spaces measuring 9 feet by 18 feet, including one handicapped space and two 9 feet by 14 feet compact parking spaces. The plan would be modified to incorporate the use of oil and chips surface for the paving in lieu of asphalt paving, and rubber wheel stops would be used in lieu of painted striping of the parking spaces, which will improve aesthetics and maintain the historical integrity of the site. He described the proposed drainage improvements and stated that the proposal would result in a minor increase in storm water runoff from the site. Due to the type of soil on the site and the unique environment consisting of mature

vegetation on the property, the Board should grant a waiver from the required drainage system described in the Board Engineer's December 28, 2010 report.

Exhibits marked:

- A-5 Property survey of existing conditions, with color, on a board, dated April 2, 2010, by ZL Land Surveying
- A-6 Site Plan Layout, with color, on a board, dated July 7, 2010, by Petry Engineering
- A-7 Grading and Drainage sheet, with color, on a board, dated July 7, 2010 by Petry Engineering

The Board questioned Mr. Petry. He answered several questions regarding the proposed driveway from North Mountain Avenue, the parking area on the southerly side of the property, and the potential for increasing the proposed drainage improvements. There were no questions from the public.

Ms. Fox called Paul Sionas, Architect, Landscape Architect, and Professional Planner, who was sworn. Mr. Sionas described the existing conditions and proposed plans in detail. He stated that in 2006 the applicant hired Rodney Robinson Landscape Architects from Delaware to develop a long range Master Plan for the property, which was used as a basis for the proposed improvements. The purpose of this application is to improve safety and appearance and make it function optimally as a public garden and resource for non-profit organizations. He described the proposed accessory building and its function on the property. In addition to the new driveway, redesigned parking areas, and new accessory building, a new flagstone walkway and paver driveway between the northern parking area and the main building would be constructed, as well as a new four foot wide gravel pathway throughout the property. He described the additional plantings proposed on the site and stated that a new information kiosk and 2 bicycle racks would be installed adjacent to the main parking area. Mr. Sionas described the requested variances and site plan waivers. In terms of the use variance requested, the property continues to be particularly suited for this unique use which will not be intensified by approval of this application. Approval of this application advances the purposes of the Municipal Land Use Law. In 1993, the Board granted a variance to permit 40 parking spaces; however, they were not fully built and are not needed for the use. The proposed parking will adequately accommodate typical daily use. To provide additional parking would result in the loss of additional landscaping and open space.

Exhibits marked:

- A-8 "Master Plan" for the property, prepared by Rodney Robinson Landscape Architecture
- A-9 Landscape and Lighting Plan, with color, on a board, dated July 7, 2010, by Sionas Architecture

- A-10 Proposed Service Building Plan, with color, on a board, dated July 7, 2010, by Sionas Architecture
- A-11 Proposed Kiosk Plan, with color, on a board, dated July 7, 2010, by Sionas Architecture
- A-12 Rendering of the propose accessory building as seen from North Mountain Avenue, by Sionas Architecture
- A-13 Essex County Planning Board approval, January 19, 2011

The Board questioned Mr. Sionas. He answered questions about the design of the proposed accessory building including the height of the building. The path connecting the northern and southern parking lots is not intended for vehicular access. Plantings could be utilized to block potential vehicular access subject to a review form the Fire Department that they do not want to access the rear of the property through that pathway. There were no questions from the public. Chair Harrison called for public comment. Robert Perdue, 54 North Mountain Avenue was sworn and stated his support for the application. Susie Kass, 40 Glenwood Avenue, was sworn and stated her support for the application. The Board took a short recess. Upon returning form the break, the applicant indicated that they could reduce the height of the proposed accessory storage building to one story and not to exceed 16 feet in height measured at the west elevation rather than as per the ordinance. Ms. Fox also provided a closing statement.

The Board discussed the application and determined that the application could be granted subject to the conditions listed below. The modified variance for the proposed accessory building height is minimal and will allow the building to maximize its functionality without creating any detrimental visual impact. The size and shape of the property combined with the fact that it contains frontage on three streets and lawfully existing structures thereon, results in peculiar and exceptional practical difficulties and undue hardship upon the applicant in attempting to comply with the prohibition against front yard parking. Approval of this application is not inconsistent with the intent and purpose of the Master Plan which seeks preservation of the larger, older estate properties as well as trees and park land. The application does not increase the intensity of use at the site and will not adversely impact the public good. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved subject to the following conditions:

1. The applicant shall be permitted to install rubber wheel stops of a bland color in lieu of painted striping of the parking spaces which shall be installed prior to the issuance of a Certificate of Occupancy for the proposed accessory storage building.
2. The handicap spaces shall not be required to be striped but shall be delineated visually subject to review and approval by the Planning Department.
3. The applicant shall comply with the following items contained in the Board Engineer's reports dated November 13, 2010 and December 28, 2011:

- A. A soil permeability test shall be performed to determine filtration rates. Two drywells shall be installed adjacent to the proposed lower trench drains at the proposed driveway at North Mountain Avenue and the plans revised accordingly unless the applicant and the Board Engineer reach agreement on alternative stormwater management measures.
 - B. Review and approval by the Soil Conservation District.
 - C. The roof leaders from the building shall be connected to the underground drainage system where possible.
 - D. The Township Engineer shall review all proposed construction in Township right-of-ways.
4. The applicant shall comply with all conditions imposed by the Board's prior resolutions adopted October 20, 1993, April 20, 1994 and July 12, 2002 not inconsistent with this action which shall remain in full force and effect.
 5. The storage bins shall be relocated to provide a minimum setback from the property line of six feet.
 6. In the event any of the transplanted rhododendron die within two years of planting, they shall be replaced with an equivalent number of rhododendron of the type listed on the plant schedule on Sheet L-1.
 7. The proposed accessory storage building shall be one story and limited to 16 feet in height measured at the west (garage) elevation and not as per the ordinance.
 8. The applicant shall consult with the Fire Department and obtain a determination as to whether access from the front of the property to the rear should remain unencumbered, otherwise plantings shall be added at each end of the driveway, subject to review and approval by the Planning Department.
 9. The staff shall utilize the rear parking area when events are utilizing the main building or the surrounding gardens.
 10. Any new signs shall comply with Montclair Code Section 347-108C.
 11. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

The application of **Brian & Laura Lokker, 41 Elston Road** was called. Mr. Lokker was sworn and described the application for variances for a side yard setback

less than permitted and for a rear yard setback less than permitted associated with the proposed reconstruction of a detached garage in the rear yard of the property. A new detached garage is proposed that would replace the existing detached garage in the rear yard that was damaged by a fallen tree during a storm. The existing detached garage includes an attached shed section, and has a nonconforming easterly side yard setback of 2.5 feet and a nonconforming rear yard setback of 2.6 feet. The walls and roof of the existing damaged garage would be removed entirely. The existing concrete slab floor would be mostly retained. The concrete slab floor would be cut away around the perimeter to allow for the construction of a new footing and foundation. The new garage would have the same dimensions and the same easterly side yard setback and rear yard setback as the existing garage. A conforming height of 12 feet is proposed. Variances are requested in that minimum side yard and rear yard setbacks of 6 feet are required, and a lesser side yard setback of 2.5 feet is proposed from the easterly side property line, and a lesser rear yard setback of 2.6 feet is proposed. No other variances are requested.

The Board questioned the applicant. The applicant acknowledged the concern of the property owner to the rear of the subject property concerning any surface runoff of the storm water collected from the roof of the new garage. The applicant indicated that storm water collected from the roof of the proposed garage would either be directed away from the rear property line or directed to a seepage pit to prevent surface runoff. No questions or comments were offered from the public. The Board discussed the application and determined that considering the reutilization of the existing concrete slab floor and the fact that the dimensions and setbacks of the proposed garage would match the existing garage, the requested setback variances could be approved, subject to the condition below. On motion by Ms. Cockey, seconded by Mr. Fleischer the application was approved subject to the following condition:

1. Storm water collected from the roof of the new garage shall either be directed away from the rear property line or directed to a seepage pit to prevent surface runoff.

The application of **Serge & Chandra Hunkins, 643 Grove Street** was called. Chandra Hunkins and Christopher Rose, of Heritage Home Design Corp., were sworn. Ms. Hunkins gave a brief description of the project. Mr. Rose stated that his company has been hired by the applicant to handle the proposed construction. He described the application for a variance for a greater accessory structure height than permitted associated with the proposed reconstruction of a detached garage in the rear yard of the property. A new detached garage is proposed that would replace the existing detached garage in the rear yard which is in a deteriorated condition. Due to the deteriorated condition of the existing structure, Mr. Rose indicated that it was likely that the entire structure would have to be reconstructed. A new foundation and concrete slab floor are required. The framing of the structure is to be either repaired or replaced completely as needed. All of the exterior dimensions of the garage will remain the same with the proposed structure.

The footprint of the existing garage measures 46 feet 9½ inches in the east/west direction, and 20 feet 2¾ inches in the north/south direction. The first floor of the existing garage presently has 4 vehicle bays with overhead doors, as well as a storage space on the westerly end accessible through a typical pedestrian-type doorway. The existing garage also contains a partial second floor that measures 27 feet in the east/west direction, and 20 feet 2¾ inches in the north/south direction and is under a steeply sloped roof. The height of the existing sloped roof section of the building is nonconforming at 24 feet, whereas the maximum height allowed for accessory structures in the R-1 Zone is 15 feet. The setbacks of the existing structure comply with zoning and the existing overall size of the structure conforms in terms of rear yard coverage. The first floor of the proposed garage would contain 3 vehicle bays with overhead doors and 2 typical pedestrian-type doorways located at opposite ends of the garage; one doorway to access a new storage area and one to access the new stairway to the second floor. The second floor of the garage is depicted as unfinished space. No plumbing fixtures are depicted in the building.

The Board questioned the applicant. Mr. Rose stated that the time and cost of the project would significantly increase if they were to attempt to keep substantial portions of the structure. Ms. Hunkins stated that the design and scale of the existing structure, which would be duplicated with the rebuilt structure, is proportionate and in keeping with the dwelling. She also stated that the second floor would be used for storage. Mr. Rose stated that the existing chimney would not be rebuilt. Chair Harrison called for questions or comments from the public. R.A. Becker, 639 Grove Street, was sworn. He has owned his property for 35 years. He stated that the flat roof area of the garage was used as a laboratory by a previous resident who was a pharmacologist and that the garage used to have a water line, gas line, and a sewer line, and asked if those utilities would be removed. Mr. Rose stated the cast iron sewer pipe is rotted and is to be removed and not reinstalled. There is no gas line proposed. There will be a water line for an exterior hose connection and the garage would have electricity. Dorian Hunter, 647 Grove Street, was sworn and stated his support for the application. Jennifer Hunter, 647 Grove Street, was sworn and stated her support for the application.

The Board discussed the application. The majority of the Board determined that the requested height variance could be approved subject to the conditions below. All of the exterior dimensions of the proposed garage would match the existing garage. The proposed garage would be in the same location and in the same position as the existing structure and there would be no change to any setback or the nonconforming height. The garage is located far from every property line and its view from the street is obscured by the dwelling on the lot. The proposed garage would provide some aesthetic improvements and its architectural style, design, and scale is in keeping with or proportionate to the dwelling on the lot. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved, Mr. Susswein voting against the motion, subject to the following conditions:

1. The proposed garage shall be in the same location and in the same position as the existing garage and there shall be no change to any setback or the height.

2. All of the exterior dimensions the proposed garage shall match those of the existing garage. The second floor shall not be enlarged beyond the size of the second floor of the existing garage.

3. No permanent heating system shall be installed in the garage.

4. The existing sanitary sewer line connected to the garage shall either be removed or capped and no toilet shall be permitted in the garage.

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