

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**February 21, 2007**

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

ABSENT: None

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. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Nancy and Matt Silverman, 168 Gordonhurst Avenue** was adopted as modified, Ms. English, Mr. Haizel and Mr. Whipple abstaining:

WHEREAS, Nancy and Matt Silverman, as owners, did make application to the Board of Adjustment of the Township of to construct an addition to the third floor of their dwelling on property designated as Lot 5 in Block 2503 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c 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 plan, and elevations, prepared by Edmundo Lopez, Architect, P.C., revised to November 8, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 17, 2007, 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 74 feet in frontage width, and 10,780 square feet in lot area. The subject property contains a 2½ story single-family dwelling, with a one-story section at the rear, and a detached garage at the rear yard.

2. The applicants propose to construct an addition to the third floor at the rear of their dwelling to accommodate 2 bedrooms.

3. The roof of the third floor at the rear of the dwelling would be lifted to provide a clearance of 6 feet 2 15/16 inches from the attic floor level, which creates a third story. The ordinance permits a maximum lift of 2 feet at the wall plate, or the point where the roof meets the wall, for half stories above the second story, and a variance is requested. No other variances are required.

4. The ordinance also permits within a half story, dormers that do not exceed 50 percent of the width of the façade. In this case, approximately 16.5 feet of dormer width would be permitted in the roof at the rear of the dwelling without a variance and a shed dormer measuring 32.5 feet in width is proposed.

5. The Board determined that the variance for the third story at the rear of the dwelling could be approved since the proposed addition is modest in size and would not be visible from the street. Additionally, the dwelling would remain in keeping with the existing size, scale, and character of the 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 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 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); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Nancy and Matt Silverman 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. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Michael Starr, 128 Westview Road** was adopted as modified, Mr. Haizel and Mr. Whipple abstaining:

WHEREAS, Michael Starr, as owner, did make application to the Board of Adjustment of the Township of Montclair to construct detached garage in the rear yard of his property and to construct a retaining wall and a fence along the easterly side

property line on property designated as Lot 3 in Block 3702 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 347-46A(2)(a)** in that a minimum side yard setback of 6 feet from the westerly side property line is required for the proposed garage and a lesser setback is proposed; and

2. A variance from **Montclair Code Section 347-27.1F** in that a fence is proposed at the top of a proposed retaining wall, which would not be set back a sufficient distance from the top of the retaining wall, and consequently the combined height of the retaining wall and fence exceeds the maximum permitted height of 7 feet at certain locations; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos, Inc., dated June 1, 2006, and a site plan, floor plan, and elevations prepared by Taneja Architecture & Design, dated October 7, 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 17, 2007, 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, measuring 55 feet in width and approximately 9,625 square feet in area. The subject property contains a 2½-story single-family dwelling and a detached garage in the rear yard, which is in need of reconstruction due to water damage.

2. The applicant proposes to construct a new detached garage in the same general area of the rear yard as the existing garage. The existing garage has dimensions of 18 feet in width by 21 feet in length, and a westerly side yard setback of 0.96 feet and 0.83 feet at its westerly corners. The proposed garage would have dimensions of 19 feet in width by 26 feet in length, and the westerly side yard setback would be increased to 3 feet.

3. Although the westerly side yard setback of the detached garage is being increased to 3 feet, a variance is still required because the minimum permitted side yard setback is 6 feet. A conforming height and rear setback are proposed. The Board determined that this variance could be approved since a garage has existed in the general area of the property and the nonconforming side yard setback is being improved.

4. The grade level of the adjoining property to the east is lower than the subject property, and the applicant proposes to construct a retaining wall along the easterly side property line and regrade his rear yard to a more level surface, in order to better control and redirect stormwater runoff towards the front of the property. The proposed retaining wall would have a maximum height of 5 feet 6 inches at its tallest point and a 3-foot tall post and rail fence is proposed at the top of the retaining wall.

5. In the area of the property where it is proposed, a maximum height of 7 feet is permitted for a retaining wall or a fence, or a combination of both where the fence is not set back from the top of retaining wall a distance equal to or greater than its height. The plan indicates that the proposed retaining wall and fence combination would exceed the 7-foot height limit for a length of 31 feet along the easterly side property line to the rear corner of the lot, where the maximum combined height of the retaining wall and fence would be 8 feet 6 inches at its tallest, and a variance is requested.

6. At the hearing, revised plans were submitted that depicted the proposed topography of the rear yard and a more detailed plan for the proposed retaining walls. Also, during the hearing, it was determined that the proposed post and rail fence at the top of the retaining wall may have to be a minimum of 3 feet 6 inches in height in order to meet construction code requirements, and that the gaps in the fence would have to be filled with some type of mesh fencing.

7. The Board determined that the proposed regrading of the rear yard and retaining wall construction is generally beneficial in that it would serve to mitigate what is an existing drainage problem, which justifies the granting of a variance for the retaining wall and fence to some extent. The Board determined to grant the variance subject to a further revision of the plan in terms of regrading and the stepping down the wall as described further below.

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 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 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 Michael Starr is approved, 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.

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. Fleischer, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Stephanie and Dawayne Roberts, 8 Enfield Avenue** was adopted as modified, Mr. Haizel and Mr. Whipple abstaining:

WHEREAS, Stephanie and Dawayne Roberts, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct several additions onto their dwelling and a detached garage in the rear yard on property designated as Lot 4 in Block 2901 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- 45D** in that a minimum rear yard setback of no less than 30 percent of the lot depth is required, which is 30 feet in this case, and a lesser rear yard setback of 25.6 feet is proposed for a rear deck; and
2. A variance from **Montclair Code Section 347- 45A(2)** in that a maximum of 2½ stories is permitted and 3 stories are proposed for the dwelling; and
3. A variance from **Montclair Code Section 347- 46A(2)(a)** in that a minimum side yard setback of 6 feet is required for the proposed detached garage, and a lesser side yard setback of 1 foot 8 inches is proposed from the northerly side property line; and

4. A variance from **Montclair Code Section 347- 46A(3)** in that a minimum rear yard setback of 6 feet is required for the detached garage, and a lesser rear yard setback of 2 feet is proposed; and

5. To the extent it is necessary, a variance from **Montclair Code Section 347- 46A(2)(a)** to permit a side yard setback less than 6 feet from the southerly side property line for a central air conditioning unit; and

WHEREAS, the applicant submitted a property survey, prepared by Lakeland Surveying, Inc. dated September 22, 2006, a plot plan, floor plans, and elevations, prepared by Rod Nyenna Tee Lewis, AIA, dated September 2006; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on January 17, 2007, 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, and measures 40 feet in frontage width and 4,000 square feet in lot area. The property contains a 2½ story single-family dwelling and a driveway on the northerly side of the lot that leads to the rear; there is no garage presently on the lot.

2. Several additions are proposed to the dwelling, which would have the effect of squaring off the footprint of the dwelling and building up to 3 stories on the slightly enlarged footprint for the purpose of adding floor space. A rear deck is also proposed. The additions to the dwelling, aside from the deck, conform to the setback and coverage requirements.

3. The proposed deck at the rear of the dwelling requires a variance in that a minimum rear yard setback of no less than 30 percent of the lot depth, which is 30 feet in this case, is required and a lesser rear yard setback of 25.6 feet is proposed for the rear deck. The Board determined that this variance could be granted since the lot is small and the house is set back a relatively large distance from the front property line, which creates a smaller rear yard, and the proposed deck is modest in size.

4. The proposed additions above the second floor of the dwelling require a variance in that the creation of a third story is proposed. The Board determined that this variance could be approved since the footprint of the dwelling is modest in size and building upward is the most viable solution to add space to the dwelling. Furthermore, 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 still comply with the maximum permitted height of 35 feet.

5. The property survey depicts a concrete pad at the end of the driveway and the Sanborn Map depicts that a detached garage previously existed at the northerly rear corner of the lot where the new garage is proposed.

6. The proposed detached garage requires variances for setbacks less than permitted from the northerly side and rear property lines. The Board determined that these variances could be granted since a garage clearly existed on the property in the same location, and the proposed location and setbacks are typical in the neighborhood.

7. At the hearing, the applicant indicated the proposed location for a central air conditioning unit. Based on this information, it was determined that a side yard setback variance may be required for a setback of less than 6 feet from the southerly side property line. The Board determined that this variance could be granted since it was the most appropriate location for a central air conditioning unit.

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 Stephanie and Dawayne Roberts is 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.

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. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **The Michael Malinowski Family Trust, 192-194 Bloomfield Avenue** was adopted, as modified, Mr. Haizel and Mr. Whipple abstaining:

**WHEREAS**, The Michael Malinowski Family Trust did make application to the Board of Adjustment of the Township of Montclair for use and bulk variances, de minimus RSIS exception and preliminary and final site plan approval in connection with merger of the subject properties, restoration of the existing two family dwelling and construction of a nine unit residential building on property designated as Lots 23 and 24 in Block 3102 on the Township Tax Map and located in the "Community Area" of the C-1 Central Business Zone; and

**WHEREAS**, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to allow a two-family dwelling and another principal building on the same lot which is not permitted by Montclair Code Section 347-20.

2. A variance pursuant to N.J.S.A. 40:55D-70c to permit a lot area of 9,127 square feet where a minimum of 20,000 square feet is required pursuant to Montclair Code Section 347-83A(1).

3. A variance pursuant to N.J.S.A. 40:55D-70c to permit a lot width of 93.84 feet where a minimum of 100 feet is required pursuant to Montclair Code Section 347-83A(1).

4. A variance pursuant to N.J.S.A. 40:55D-70c to allow a northerly side yard setback of 3.33 feet for the new building where either zero feet or 6 feet is required pursuant to Montclair Code Section 347-83B(3).

5. A variance pursuant to N.J.S.A. 40:55D-70c and a de minimus exception from the RSIS provisions to allow 19 parking spaces (4 of which are not directly accessible) where a minimum of 21 parking spaces are required pursuant to Montclair Code Sections 347-101 and 347-102A.

6. A variance pursuant to N.J.S.A. 40:55D-70c to allow grade level parking under the proposed 9 unit building contrary to Montclair Code Section 347-82A.

7. A variance pursuant to N.J.S.A. 40:55D-70c to allow parking area setbacks of 2 feet 8 inches from the westerly side property line and 2 feet 1 inch from the rear property line where a minimum of 4 feet is required pursuant to Montclair Code Sections 347-83C(1) and 347-104.

**WHEREAS**, the applicant submitted a site plan prepared by Boswell Engineering dated August 3, 2006 revised through December 1, 2006 as well as a site plan,

demolition plan and floor plans prepared by Dassa Haines, Architects, dated May 25, 2006 revised through December 1, 2006; and

**WHEREAS**, this matter came on to be heard at meetings of the Board of Adjustment held on November 15, December 13, 2006 and January 17, 2007, 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 consists of 192 Bloomfield Avenue, designated as Lot 24 in Block 3102 which is improved with an existing two family dwelling and 194 Bloomfield Avenue designated as Lot 23 in Block 3102 which is improved with a one story building. The application contemplates renovation and restoration of the existing two family dwelling, demolition of the one story building and construction of a four story nine unit two bedroom residential building, on-site parking and related site improvements.

2. The application has been approved by the Historical Preservation Commission by letter dated June 29, 2006 and resolution adopted July 20, 2006. The property at 192 Bloomfield Avenue formerly served as the site of the rectory of St. Mark's Methodist Episcopal Church, the first African American Church in Montclair established in 1885. The restoration of the 2½ story two family Queen Anne Victorian building according to the HPC "will result in the preservation of one of the "Key Buildings" in the third phase of the Town Center Historic District".

3. The application involves the demolition of the incompatible one story building at 194 Bloomfield Avenue and elimination of the large front yard parking lot. The HPC found "the design of the proposed new four story building, the use of the projecting tower element over the ground level entrance is an appropriate nod to its smaller historic neighbor at 192 Bloomfield Avenue". The HPC also recognized that the proposed materials for the new building including a combination of brick, limestone and slate were found in other buildings in the Town Center Historic District.

4. The subject property is located in a blighted area in need of redevelopment. The proposal revitalizes the downtown "Community Area" of the C-1 Central Business Zone and provides for affordable housing as recommended in the 2006 Master Plan Reexamination Report and required in the 2006 Inclusionary Zoning Ordinance.

5. The proposed project advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq. specifically encouraging appropriate use of land which promotes the general welfare (-2a); provides sufficient space in an appropriate location for residential use (-2g); promotes a desirable visual environment through creative development techniques and good civic design and arrangements (-2i) and promotes the conservation of historic sites and districts (-2j).

6. The location of the historic building on the lot gives rise to exceptional practical difficulties and undue hardship upon the applicant in connection with the requested variances for dimensional standards.

7. The plan includes 19 parking spaces where 21 parking spaces are required and parking space numbers 6, 8, 10 and 11 are not directly accessible and constitute "tandem parking". The slight deficiency in the required number of parking spaces is inconsequential given the proximity of the site to bus and train mass transit and the availability of off-site parking. Additionally, the tandem parking arrangement will function adequately since individual unit owners will have control over the affected spaces. The literal enforcement of the parking requirement is impracticable and will exact undue hardship because of peculiar conditions pertaining to the development. The de minimus exception is reasonable and limited, is within the general purpose and intent of RSIS, meets the needs of public health and safety, and takes into account surrounding conditions.

8. In connection with the requested variances relating to lot area, lot width and parking area setback, the proposed layout constitutes appropriate use of land which promotes the general welfare and promotes the conservation of historic sites and districts consistent with N.J.S.A. 40:55D-2a, j.

9. With respect to the requested side yard setback variance, the proposal provides a fully fenced landscape area and does not create a narrow passageway between buildings and provides adequate light, air and open space and promotes a desirable visual environment consistent with N.J.S.A. 40:55D-2c, i.

10. With respect to the variance in connection with grade level parking under the proposed new building, the proposal is consistent with the intent and purpose of the zoning ordinance in minimizing the visual impact of parked vehicles and promotes a desirable visual environment consistent with N.J.S.A. 40:55D-2i.

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

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application and proved by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan and zoning ordinance.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair that the within application of The Michael Malinowski Family Trust for preliminary and final site plan approval, use variance, bulk variances, de minimus RSIS exception and merger of the subject properties is hereby 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.

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

Assistant Secretary Charreun announced that the application of **Matthew and Wendy Foley, 178 Alexander Avenue** was withdrawn at the applicants' request.

Chair Harrison called the application of **Wallwood Gardens, Inc., 400 Orange Road** for the purpose of rescheduling the application at a special meeting. Ruth Wallestad, one of the owners of the property, was present. After some discussion, Chair Harrison announced that the application would be heard at a special meeting of the Board on March 28, 2007, and that no further notice would be given.

Chair Harrison called the application of **Clifford F. Lindholm, III, 168 Gates Avenue**. Mr. Susswein recused himself for this application. Mr. Lindholm was sworn and described his application. He stated that the existing garage had been damaged by a vehicle driven by a family member in the summer of 2006 and that he is seeking to construct a new detached garage in the same general area as the existing garage, except that it would be 6 feet wider to the east. He stated that the existing garage has a nonconforming westerly side yard setback of 4.71 feet where 12 feet is required, and a nonconforming rear yard setback of 3.45 feet, where 10 feet is required. He also stated that he has revised his plan to increase the proposed rear yard setback to 8.5 feet, which was done to help preserve trees that exist behind the garage.

Marked into evidence were:

- A-1 Revised plot plan, prepared by John Thomas Collins, Architect, dated February 2007
- A-2 Photograph of the garage on the subject property taken from a second floor window of the dwelling on the property
- A-3 Photograph of the easterly side of the existing detached garage
- A-4 Photograph of the rear of the existing detached garage

Ms. Cockey arrived. The Board questioned the applicant. 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. Haizel, the application was approved, subject to the following conditions:

1. The westerly side yard setback shall be no less than 4.7 feet and the rear yard setback shall be no less than 8.5 feet.
2. Any outstanding property taxes shall be made current.

Chair Harrison announced the continuation of the application of **Alter Family, LLC for the Deron School (II), 130 Grove Street**. Jerry Friedland, Esq. appeared as attorney for the applicant. Mr. Friedland stated that he would not call the Traffic Engineer for further testimony and proceeded with his summation. The Board discussed the application. The Board noted concerns with the application, particularly issues with the traffic study and the proposed driveway configuration. It was determined that site plan approval would not be granted at this time, and that the applicant would need to revise the site plan and return at a special meeting on April 11, 2007 for site plan review, which was announced by the Chair. Mr. Friedland granted an extension of time to the Board. A motion was made by Mr. Fleischer, seconded by Mr. Haizel, to approve the application for conditional use and bulk variances and to deny the 'd' variance for height and preliminary and final site plan approval, with Ms. English and Mr. Whipple voting against the motion, subject to the following conditions:

1. The portable classroom shall be removed within 30 days of issuance of a Certificate of Occupancy for the addition approved herein.

2. The applicant's use of the dumpster at the end of the school year shall not exceed 2 weeks per year.

3. Students shall not be permitted to drive to school.

4. The driveway exit to Christopher Street is not approved and the proposed adjacent parking area shall be modified so as not to encroach any further than the limits of the existing westerly paved area behind the school. A backup area shall be provided with a cutout to protect the oak tree on the adjacent Township property to the south. At the edge of pavement a retaining wall shall be constructed so as to eliminate the need for any disturbance of soil beyond the edge of the retaining wall.

5. The applicant shall comply with the conditions imposed by the Essex County Planning Board approval dated October 11, 2006.

6. The applicant shall comply with the following comments contained in the report of W. Thomas Watkinson dated October 17, 2006:

- lot on
- a. The plans shall be revised to indicate replacement of the existing curb with a new depressed curb at the egress of the parking Oxford Street as per comment 4.
  - b. The sidewalk between the school and Oxford Street shall be repaired as per comment 5.
  - c. The existing sidewalk between Christopher Street and the school shall be removed and replaced with lawn as per comment 7.
  - d. The plans shall be revised to provide the seepage pit shall contain a pipe distribution field utilizing perforated pipe with a clean

out access on both ends of the main drain into the system as recommended in comment 9.

- e. The plans shall be revised to reflect the main drain shall be perforated HDPE in lieu of PVC as per comment 10.
- f. With reference to comment 11, the plans shall be revised to provide a slotted pipe installed across the parking lot at the driveway exit.
- g. With regard to comment 15, the plans shall be revised to include installation of a grate.
- h. A soil test shall be performed to confirm the permeability of the soil underlying the proposed seepage pit as recommended in comment 16.

7. The applicant shall provide drainage under the Oxford Street parking lot as provided on the south side parking lot and perform a soil test as required in condition 6h above.

8. The two parking spaces on the westerly side of the Oxford Street parking lot shall be eliminated.

9. The driveway from the south side parking lot shall be revised to provide for two way traffic and the egress shall be right turn only.

10. The air conditioning units shall be located away from Christopher Street to minimize their visibility from the train station parking lot.

11. Shrubs shall be installed along the south side of the southerly parking lot in conformance with the ordinance.

12. The applicant shall consult with and retain an arborist to supervise the site work in order to minimize damage to the large oak trees on and adjoining the subject property.

13. In the event any large oak trees are to be removed, they shall be replaced with oak trees that will mature to an equivalent size.

14. The white pine shown on the site plan on the Oxford Street side shall be eliminated as a gratuitous intrusion into the root zone of the oak trees.

15. The applicant shall comply with the following conditions contained in the Planning Board resolution adopted June 18, 1990 as follows:

- 1. There shall be a maximum enrollment of 187 students.

3. The applicant shall provide for interior refuse storage or if exterior storage is necessary, the applicant shall submit a detail of the refuse storage area and location of same to the planning and Health Departments for their approvals.
4. The applicant shall renovate the building in compliance with all relevant New Jersey Department of Education regulations and municipal building and fire Codes.
16. The property owner shall authorize the Township to enforce Title 39 on site.
17. The sculptures at the rear of the building shall be relocated consistent with the testimony before the Board.
18. The height of the addition shall not exceed 44 feet.
19. The number of classrooms shall not exceed 24 including specialty classrooms and speech rooms.
20. Subject to site plan review and approval.
21. The applicant shall be responsible for payment of all outstanding escrow fees.

Chair Harrison called the application of **Alcaro Realty, 112 Pine Street**. David Owen, Esq., appeared as attorney and described the application, the variances requested, and the background of the property. He stated that in 1981 the applicant was approved by the Planning Board for conditional use approval, and that in 1995, the Planning Board approved an addition onto the commercial building. He also stated that in 2005, the Township's Department of Code Enforcement advised the applicant of complaints concerning noise from rooftop fans, odor, front yard storage, fencing along New Jersey Transit property adjoining to the north, and drainage at the rear of 35 Cloverhill Place adjoining to the west. He stated that the present application addresses these complaints and also proposes a canopy addition onto the building which the applicant had independently planned. Mr. Owen called Paul Sionas, Architect, who was sworn and stated his qualifications.

Mr. Sionas described the existing property and the plans in detail. He described the existing storage containers on the property and the proposed metal roof canopy.

Marked into evidence were:

- A-1 Site and architectural plans prepared by Sionas Architecture, P.C. revised through December 19, 2006

- A-2 Site plan on a board, color added, prepared by Sionas Architecture, P.C. revised through December 19, 2006 depicting a different dumpster location
- A-3 Floor plan and elevations on a board, color added, prepared by Sionas Architecture, P.C. revised through December 19, 2006

Mr. Sionas stated that the storage containers on the site would be located under the canopy, and that planters are proposed to screen the area under the canopy from view. He described the existing rooftop exhausts and flues depicted on the roof plan and that the rooftop exhausts and flues on the original building existed prior to 1995, but weren't shown on the plan approved for the addition. He also described the existing fencing on the site and the areas the applicant is presently leasing and proposes to lease from New Jersey Transit along the railroad right-of-way. He stated that the fencing around the leased area and the area to be leased improves the on-site parking area and creates a buffer from the railroad property and helps to prevent litter and loitering, which aids the applicant in maintaining the property. He also stated that the existing 10-car parking lot would be reconfigured and improved and that Exhibit A-2 depicts a revised location for parking space 1 and the dumpster, which improves the accessibility to parking space 1. He continued by addressing the Board Engineer's comments on the current plan and discussed the Board Engineer's 1995 review of the prior application.

Marked into evidence were:

- A-4 Packet of correspondence between the Board Engineer and Sionas Architecture concerning the drainage review from the 1995 application
- A-5 Board Engineer's first letter on the current application, dated July 21, 2006
- A-6 Trash Enclosure Detail
- A-7 Board Engineer's second letter on the current application, dated January 16, 2007

The Board questioned Mr. Sionas. Chair Harrison stated that the Board could not act on the proposed 20-foot area to be leased without written consent from New Jersey Transit who owns the property. Mr. Sionas referred to the approved 1995 site plan and described what it depicted in terms of fences and stated that no outside storage containers were depicted.

Marked into evidence was:

- A-8 1995 site plan, prepared by Sionas Architecture

Chair Harrison called for questions from the public. Anthony Ianuale, 37 Cloverhill Place, inquired about the statement that the exhaust fans existed on the roof prior to the 1995 application.

Mr. Owen called Anthony Alcaro, owner, who was sworn. Mr. Alcaro described the existing electroplating business and stated that it has been on the site for over 25 years. He stated that he presently has a dozen employees, reduced from 14 or 15 in 1995, about half of which live in Montclair. He described the 1995 approval and the issues involving the complaints received by the Township. He described the existing outside storage containers and stated that the plan calls for all of the containers to remain hidden from view. He stated that the existing exhaust fans on the original building have been there since 1981, and that during 2002 or 2003, exhaust fans were installed on the addition. He stated that these fans only exhaust hot air out of the building and that the heat flues are vents for gas heaters within the building. He stated that the Essex Regional Health Commission previously investigated the subject property with respect to complaints involving noise and odor but never issued any violations. He also stated that during May or June of 2006 a sound specialist was retained and that certain fans were insulated to bring sound levels down. He addressed the issue of odors emanating from his building and stated that the DEP has stringent air permitting standards for his industry and that he has all of the required permits. He continued by stating that the currently leased 10-foot wide area adjoining the parking area has been leased since May 1999, and allows for better parking. He also stated that fence around the proposed existing leased area and proposed leased area is there to improve maintenance of the property and security.

The Board questioned Mr. Alcaro. Mr. Alcaro stated that his facility is also regulated by the Passaic Valley Sewerage Authority, the EPA, the DEP, and OSHA, as well as other agencies, and that they have not had any notices of violation issued to them in their years on the property. He stated that the new DEP stormwater regulations require the proposed canopy. Chair Harrison stated that New Jersey Transit can lease the property to Mr. Alcaro, however, that the local ordinances pertaining to zoning and site plan review are still applicable since the proposed use of the leased areas are purely a private use not associated with the use of the State. Mr. Owen stated that they will return with written consent for the application pertaining to the use of the proposed 20-foot wide leased area. Mr. Alcaro stated the he installed the original rooftop exhaust fans in 1981.

Chair Harrison called for questions from the public. None were offered.

Mr. Owen called Michael Banhidi, Ph.D. who was sworn, and stated his qualification in the areas of Chemical and Environmental Engineering. Mr. Banhidi testified that he visited the subject property on various occasions in June, July, and August 2006 and also January 2007. He investigated inside the commercial building, on the property, and around the property for odor. He concluded that there were no detectable odors and therefore did not make any recommendations as to any remedial measures.

Marked into evidence was:

A-9 Resume of Michael Banhidi, Ph.D.

The Board questioned Mr. Banhidi. He stated that the processes involved in the applicant's business are accepted all over the United States. He stated that in his expert opinion, the applicant's business emits virtually no odor, and certainly no obnoxious or pungent odors, based on the standards dictated by the DEP. He also stated that the only types of instrumentation available for measuring odors are used in conjunction with measuring levels of dangerous gases, which do not exist at this site.

Chair Harrison called for questions from the public. Anthony Ianuale, 37 Cloverhill Place, asked whether the witness entered his property to test odors. He also submitted a photograph of the subject property and asked whether the gas discharge from an exhaust pipe on the building was tested. Mr. Banhidi stated that he did not enter Mr. Ianuale's property and that he believes that water vapor is discharged from the pipe shown in the photograph, although it was not tested for odors.

Marked for ID was:

O-1 Photograph of the exhaust pipe on a wall of the building at 112 Pine Street

Chair Harrison announced that the application would be continued at the March 21, 2007 regular meeting of the Board and that no further notice would be given. Mr. Owen granted the Board an extension of time. On motion by Mr. Fleischer, seconded by Mr. Susswein the meeting was adjourned.