

MINUTES OF THE BOARD OF ADJUSTMENT
March 16, 2011

PRESENT: Chair. Harrison, Mr. Burr Ms. Cockey, Ms. English, 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. Edwards

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 February 16, 2011** regular meeting were adopted, Ms. English abstaining. On motion by Mr. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **The Montclair Foundation, 21 Van Vleck Street** was adopted, Ms. English abstaining:

WHEREAS, The Montclair Foundation, as owner, did make application, as amended, to the Board of Adjustment of the Township of Montclair for preliminary and final site plan in connection with the construction of a new accessory storage building and improvements to the existing parking, circulation and service areas of the property designated as Lot 7 in Block 1501 on the Township Tax Map and located in the R-O Mountainside Zone and 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) because the expansion of the use previously granted by use variance is not permitted in accordance with Montclair Code Section 347-112.
2. A variance pursuant to N.J.S.A. 40:55D-70c to allow the proposed accessory storage building to exceed the maximum 15 foot height requirement for accessory structures contrary to Montclair Code Section 347-46A(1).
3. A variance pursuant to N.J.S.A. 40:55D-70c to allow the southerly end of the new parking area to extend closer to North Mountain Avenue than the principal building on the site contrary to Montclair Code Section 347-46C.
4. A variance pursuant to N.J.S.A. 40:55D-70c to permit 40 parking spaces where a minimum of 60 parking spaces are required pursuant to Montclair Code Section 347-101.

5. An exception from Montclair Code Section 281-9A to permit utilization of oil and chips in lieu of a hard-surface paving in the parking area and drives.

6. An exception from Montclair Code Section 281-9B to permit rubber wheel stops in lieu of painted striping of the parking spaces.

WHEREAS, the applicant submitted a site plan prepared by Petry Engineering, LLC, Sheets SP-1 through SP-7 dated July 7, 2010, landscape plans, floor plans and elevations prepared by Sionas Architecture, PC, Sheets L-1, A-1 and A-2 dated July 7, 2010 as well as a boundary and topographic survey prepared by ZL Land Surveying, LLC dated April 2, 2010; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on January 19 and February 16, 2011, 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 property is located on the southerly side of Van Vleck Street, between North Mountain Avenue and Upper Mountain Avenue. The subject property consists of 248,192 square feet and contains a two story principal building containing a non-profit office, two separate two story dwellings with garages underneath, two existing greenhouses, a shed and 26 parking spaces and associated driveways.

2. By resolution adopted October 23, 1993, the Board granted preliminary and final site plan approval and a use variance in connection with the conversion of the one-family dwelling on the property into a non-profit office and club and the construction of accessory parking. By resolution adopted April 20, 1994, the Board approved an amended site plan and use variance in connection with the relocation of the accessory parking on the property. On July 19, 1995, the Board adopted a resolution granting a one-day use variance to allow the late Howard Van Vleck's granddaughter to use the premises for a wedding reception. By resolution adopted July 12, 2002, the Board granted site plan approval and a use variance in connection with the construction of a 1,500 square foot greenhouse on the property.

3. Since taking ownership of the property in 1993, the Montclair Foundation has used the property as a public garden, educational center, non-profit offices and as a venue for events for non-profit organizations including Board meetings, retreats, receptions and fund raisers. The property continues to be particularly suited for this unique use which will not be intensified by approval of this application. The purpose of this application is to improve safety and appearance and make it function optimally as a public garden and resource for non-profits. Specifically, the applicant proposes the following improvements:

- barrier
- area
- the
- handicapped space and spaces.
- A. Install a new access driveway from North Mountain Avenue at the southeastern corner of the property.
 - B. Construct a new accessory storage building at the southern end of the property which will contain three parking spaces and two free bathrooms.
 - C. Construct a new driveway and parking area with twelve 9 feet by 19 feet parking spaces, including one handicapped space, at the southern end of the property. This new driveway and parking will replace the existing gravel work area.
 - D. Install 12 new trees, including nine Canadian hemlocks that will provide evergreen screening of the new improvements from adjacent property to the south (Block 1501, Lot 1).
 - E. Plant 94 new shrubs in the vicinity of the new improvements at the southern end of the property.
 - F. Resurface the existing gravel parking lot at the northern end of the property. New striping will be painted for 16 parking spaces measuring 9 feet by 18 feet, including one two 9 feet by 14 feet compact parking spaces.
 - G. Install a new information kiosk adjacent to the main parking area.
 - H. Construct a new flagstone walkway and paver driveway between the parking area and the main building.
 - I. Install two concrete pads and bicycle racks.
 - J. Construct a four foot wide gravel pathway throughout the property and relocate existing flagstones as required.

4. Approval of this application 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 public health, safety, morals and general welfare (-2a); provides sufficient space in an appropriate location for the proposed use (-2g); promotes a desirable visual environment (-2i) and promotes the conservation of historic sites (-2j).

5. At the public hearing, the applicant agreed to reduce the height of the proposed accessory storage building to one story and not to exceed 16 feet in height

measured at the west (garage) elevation rather than as per the ordinance. The proposed deviation is minimal and will allow the building to maximize its functionality without creating any detrimental visual impact.

6. 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.

7. In 1993, the Board granted a variance to permit 40 parking spaces, however, they were not fully built. The proposed parking will adequately accommodate typical daily use. To provide additional parking would result in the loss of additional landscaping and open space.

8. The use of oil and chips in lieu of a hard surface paving and rubber wheel stops in lieu of painted striping of the parking spaces will improve aesthetics and maintain the historical integrity of the site. Such exceptions are reasonable and consistent with the intent and purpose of the Site Plan Ordinance.

9. 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.

10. Based upon the Board's particular knowledge of local conditions, the within application, which does not increase the intensity of use at the site 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 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 Montclair Foundation for Preliminary and final site plan is hereby 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 lower trench drains at the proposed driveway at North Avenue and the plans revised accordingly unless the the Board Engineer reach agreement on management measures.

proposed
Mountain
applicant and
alternative stormwater

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.

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. Whipple, seconded by Mr. Susswein, the following Resolution memorializing the Board's decision on the application of **Brian & Laura Lokker, 41 Elston Road** was adopted, Ms. English abstaining:

WHEREAS, Brian & Laura Lokker, 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 from **Montclair Code Section 347-46A(2)(a)** for a side yard setback less than permitted and from **Montclair Code Section 347-46A(3)** for a rear yard setback less than permitted associated with the proposed reconstruction of a detached garage in the rear yard of the property designated as Lot 18 in Block 2701 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey dated March 24, 1994 and a plan prepared by Andrew Podberezniak R.A., dated November 1, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 16, 2010 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. 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 property is located in the R-1 One-Family Zone, contains a single-family dwelling, and measures 100 feet in width and 0.41 acres in lot area.

2. 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.

3. 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.

4. 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.

5. The Board and 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.

6. The Board 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.

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 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.

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 **Serge & Chandra Hunkins, 643 Grove Street** was adopted as modified, Ms. English abstaining:

WHEREAS, Serge & Chandra Hunkins, 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 from **Montclair Code Section 347-46A(1)** for a greater accessory structure height than permitted associated with the proposed reconstruction of a detached garage in the rear yard of the property designated as Lot 8 in Block 3706 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey dated May 8, 2008 and a plan prepared by Downtown Group Architects, dated December 6, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on February 16, 2010 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 contains a single-family dwelling and a detached garage in the rear yard. The lot measures 25,605 square feet in lot area. A new detached garage is proposed that would replace the existing detached garage in the rear yard which is in a deteriorated condition.

2. 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.

3. 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.

4. Due to the deteriorated condition of the existing structure, the applicant 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.

5. 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.

6. 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.

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 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.

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

Mr. Burr arrived at the meeting. The application of **Bart & Patricia Krupp, 300 Upper Mountain Avenue** was called. Bart Krupp and Julie Anne Cecere, Architect, were sworn. Ms. Cecere described the application. An addition to the first floor and second floor of the dwelling is proposed at the southerly rear corner of the dwelling. The first floor of the addition is larger than the second floor addition. The first floor addition contains a rear entry foyer and bathroom; the second floor addition provides space for an existing bedroom. The minimum rear yard setback permitted for new construction on the property is 88.95 feet, which is 30 percent of the lot depth of 296.5 feet. The existing dwelling already has a nonconforming rear yard setback of 81 feet 1 inch to an existing section of the dwelling located at the center of the rear wall of the dwelling. The first floor portion of the proposed addition would have a rear yard setback of 84 feet 8 inches and a variance is requested for a rear yard setback less than the minimum permitted. No other variances are requested. The second floor portion of the addition has a greater rear yard setback than the first floor portion, and complies with the rear yard setback requirement and all other zoning requirements.

Exhibits submitted:

- A-1 Photographs of the subject property on a board
- A-2 Floor plans with color added on a board
- A-3 Elevation plans with color added on a board

The Board questioned the applicant. Mr. Krupp stated that that the adjoining properties to the rear are located on higher ground. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be granted. The proposed addition is relatively modest in size. Due to the large front yard setback of the dwelling, the proposed addition is not visible from roadway. The proposed addition would be set back further from the rear property line than portions of the existing dwelling. Due to the topography of the area, the proposed rear yard setback would not negatively impact any adjoining property along the rear property line. On motion by Ms. Cockey, seconded by Mr. Fleischer the application was approved.

The application of **Steven J. Halasz, 312 Linden Avenue** was called. Steven J. Halasz was sworn and described the application. An entry foyer is proposed at the front of the dwelling to provide weather protection at the front entrance and to improve the appearance of the dwelling. The foyer would extend 4 feet from the first floor wall and is 7 feet in width. The minimum permitted front yard setback for new construction on the property 38 feet 11 inches, which is based on the average front yard setback of nearby dwellings on Linden Avenue pursuant to the zoning ordinance. The existing dwelling has a conforming front yard setback of 41 feet at the first floor level. The existing second floor level extends 2 feet closer to Linden Avenue than the first floor and has a conforming front yard setback of 39 feet. The proposed entry foyer would have a front yard setback of 37 feet and a variance is requested for a front yard setback less than the minimum permitted. No other variances are required.

The Board questioned the applicant. Mr. Halasz described the existing conditions further. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be granted. The proposed addition is very modest in size, provides a practical function of weather protection at the front entrance that presently does not exist, and would improve the appearance of the dwelling. The requested deviation would not negatively impact the streetscape or any nearby property. On motion by Ms. Cockey, seconded by Mr. Fleischer the application was approved.

The application of **Joyce Fleissner, 36 Mountainside Park Terrace** was called. Calvin Trevenen, Esq. appeared as attorney for the applicant who was not present. Mr. Trevenen described the application. The property contains a single-family dwelling that was the subject of two separate applications to the Board of Adjustment in 1973 and 1981. Within the previous applications for proposals that are similar to the current application for the subject property, relief was requested and received, subject to conditions, from the Board of Adjustment pursuant to N.J.S.A. 40:55D-35 and N.J.S.A. 40:55D-36 to permit the construction of the dwelling contingent upon the construction of the necessary improvements within the unimproved public right-of-way abutting the lot in order to provide access to the property. Variances were also granted in those applications to permit a detached garage in the front yard of the property. Following the 1981 application, the dwelling was constructed with permits sometime between 1983 and 1986. No garage was constructed and that variance has expired. The dwelling has remained unoccupied to the present day because the previously required improvements to the unimproved portion of Mountainside Park Terrace to provide access the property have not been completed. In order to obtain a Certificate of Occupancy for the dwelling, the applicant must complete the improvements deemed necessary at this time in the public right-of-way in order to provide access to the property and the applicant must also create off-street parking for the property. The current application requires a variance for front yard parking, 2 de minimis exceptions from the New Jersey Residential Site Improvement Standards, and any relief deemed necessary from N.J.S.A. 40:55D-35 and N.J.S.A. 40:55D-36.

Dennis Mylan, Architect and Professional Planner, was sworn. Mr. Mylan described the existing property, the proposed improvements, and the relief requested. The property is located on the westerly side of the southerly limit of an unimproved portion of Mountainside Park Terrace, which is an existing dedicated 20-foot wide public right-of-way within a steeply sloped area of the Township. The current plan includes a proposed cartway or roadway extension with a minimum width of 12 feet that leads to a proposed cul-de-sac with a 40-foot diameter. The proposed cul-de-sac extends into the subject property. The area of the cul-de-sac that extends into the subject property would either be dedicated to the Township as an extension of the public right-of-way or an easement to the Township would be provided as required by the Township. A parking area for 2 vehicles is proposed along the southwesterly end of the cul-de-sac on land that would remain privately owned by the subject property.

Mr. Mylan stated that the requested variance for front yard parking can be granted. The property is located along very steeply sloped terrain which makes it extremely impractical to create a driveway for conforming parking located in a side or rear yard. The proposed parking area is located at the southerly limit of a proposed cartway or roadway extension which is fairly secluded from public view and provides less of a visual impediment than the previously approved garage building. The de minimis exception from the New Jersey Residential Site Improvement Standards to permit the existing 20-foot right-of-way width in lieu of the 50-foot minimum width can be granted. The existing right-of-way width was created by the Township and the applicant can not enlarge the width of the right-of-way. The necessary Township officials have approved the plan as it relates to the work in the existing 20 foot right-of-way. The tentative agreement to either have that area of the cul-de-sac that extends into the subject property dedicated to the Township as an extension of the public right-of-way or to have an easement provided to the Township will effectively expand a portion of the right-of-way serving the subject property and allow it to function effectively.

The proposed cartway width would be increased from the 11 feet depicted on the plan to 12 feet to comply with the recent comments of the Township Fire Department. The proposed roadway extension and cul-de-sac have been reviewed and approved by Township officials indicated above subject to certain requirements that the applicant has agreed to. Due to the existing conditions, the proposed roadway and cul-de-sac would generally be limited for access to the subject property only. The proposed cartway width could not be widened any further without creating significant land disturbances and utilizing larger retaining walls to support the proposed roadway extension and cul-de-sac on the steeply sloped land, which would negatively impact the adjoining properties. Mr. Mylan also reviewed the comments of the Board Engineer, the Township Engineer and the Fire Department.

Exhibits marked:

- A-1 March 16, 2011 email correspondence from Township Planner, Janice Talley, to Mr. Trevenen including the comments on the plan from Kevin Allen, Township Fire Chief.
- A-2 March 11, 2011 email correspondence from Steve Wood, Director of the Department of Community Services to Township Planner, Janice Talley, indicating an approval of the plan

The Board questioned Mr. Mylan. Mr. Trevenen provided additional details on the history of the property as it relates to the Township action regarding the right-of-way. Ms. Talley informed the Board further on the Department of Community Services comments and approval of the proposed roadway and cul-de-sac regarding access for trash removal and snow plowing. Mr. Mylan indicated that there is no plan to relocate the existing stair that encroaches into the adjoining property to the north. Mr. Trevenen indicated that the proposed improvements that are to be located within an existing dedicated public right-of-way have been reviewed and approved by the necessary Township officials, which would thereby be in compliance with the requirements of N.J.S.A. 40:55D-35 and N.J.S.A. 40:55D-36, and that relief from the Board of Adjustment may not be necessary. He requested that to the extent it is necessary, the Board grant any new or amended relief pursuant to N.J.S.A. 40:55D-35 and N.J.S.A. 40:55D-36 required for the current application. Questions from the public were offered. Linda Duckworth, 494 Highland Avenue, asked made several statements and asked questions about the proposed construction, the existing dwelling, and the drainage plan.

Joseph Dioslaki, Professional Engineer was sworn and provided his qualifications. Mr. Dioslaki described the existing conditions from the standpoint of storm water runoff and provided the technical details and methodology used to develop the proposed grading and drainage plan for the proposed project. He described the relocated drainage basin and other changes to the drainage plan depicted on the amended plans prepared by The Mylan Architectural Group following the recommendations of the Township Engineer and the Board Engineer. He stated that the proposed grading and drainage plan would significantly improve the conditions relating to storm water runoff within the area they are proposing to work in.

Exhibits marked:

- A-3 Seven photographs of the subject property
- A-4 Revised plan prepared by The Mylan Architectural Group dated February 28, 2011 presented at the public hearing in response to comments from the Township Engineer and the Board Engineer

The Board questioned Mr. Dioslaki. The drainage basin has been relocated to the center of the cul-de-sac, which would be on what is presently the applicant's property. The inlet within the cul-de-sac remains in the same location. Mr. Trevenen stated that the

applicant will have to look into the process of discharge storm water into the adjoining public parkland as it relates to the New Jersey Department of Environmental Protection Green Acres Program Rules. No public comment was offered. The Board took a short recess.

The Board discussed the application. The Board finds that the requested variance for front yard parking can be granted based on the testimony provided subject to the conditions listed below. The Board finds that the requested de minimis exceptions from the New Jersey Residential Site Improvement Standards can be granted under 5:21-3.1(g) of those rules, in that the plan is consistent with the intent of the Site Improvements Act; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructure and possible surrounding future development. The circumstances of the subject property are sufficiently unique to warrant the granting of the requested de minimis exceptions. To the extent it is necessary, the Board also grants any new or amended relief pursuant to N.J.S.A. 40:55D-35 and N.J.S.A. 40:55D-36 required for the current application. On motion by Mr. Fleischer, seconded by Mr. Whipple, the application was approved, subject to the following conditions:

1. The area of the 40-foot diameter cul-de-sac that extends into the applicant's property shall be either dedicated to the Township as an extension of the public right-of-way, or an easement shall be granted to the Township for the purposes deemed necessary by the Township. The parking area proposed for the subject property shall be excluded from either arrangement.

2. Should the Township not accept the dedication of area of the 40-foot diameter cul-de-sac that extends into the applicant's property as an extension of the public right-of-way, the maintenance of the proposed drainage basin located on the applicant's property shall be the responsibility of the property owner, unless the Township accepts such responsibility as part of any easement agreement.

3. The parking area on the applicant's property shall be delineated from the cul-de-sac by utilizing striping painted onto the pavement or by extending the proposed Belgian block curbing around the perimeter of the cul-de-sac to form a depressed curb along the entrance to the parking area.

4. Prior to construction of the proposed improvements, a determination shall be made as to whether a diversion pursuant to the New Jersey Department of Environmental Protection Green Acres Program Rules is necessary to locate any stormwater structures on the adjoining parkland, Mountainside Park. If a diversion is necessary and is not approved, the applicant must return to the Board for an amended approval. The applicant shall provide documentation to the Planning Department pursuant to this condition.

5. As required by the Township Fire Department and as the testimony of the applicant's professionals indicated, the dwelling will be fully sprinklered, the area of the roadway proposed to be extended by the applicant to meet the proposed cul-de-sac shall be paved to a minimum width of 12 feet, and the existing fire hydrant on the subject property will remain.

6. The proposed roadway and cul-de-sac shall be constructed to Township standards as required by the Township Engineering Department and any all permits for such work shall be obtained from the Township Engineering Department.

7. The applicant shall comply with the comments of the Board Engineer's report dated March 11, 2011. Should the site disturbance exceed 5,000 square feet, the applicant shall obtain approval from the Soil Conservation District and provide such approval to the Board Engineer.

The Board remained in open session and Mr. Sullivan provided a brief update regarding the pending litigation against the Board concerning the previously denied application of **The Mental Health Association, 354 Orange Road**. Mr. Sullivan stated that the Federal court case is on hold. In terms of the State case, Mr. Karasick has indicated that the plaintiff's trial brief is due March 18, 2011, that the defendant's trial brief is due April 29, 2011, the plaintiff's reply brief is due May 16, 2011, and that the trial is scheduled for June 2, 2011. The Board had no questions or comments. On motion by Mr. Fleischer, seconded by Mr. Whipple the meeting was adjourned.