

MINUTES OF THE BOARD OF ADJUSTMENT
May 16, 2007

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

ABSENT: Ms. Holloway and Mr. Whipple

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

On motion by Mr. Fleischer, seconded by Mr. Haizel the **Minutes of the October 25, 2006** special meeting were adopted Ms. English abstaining.

On motion by Mr. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Michael Aiello, 105 Wildwood Avenue** was adopted, Mr. Fleischer, Mr. Haizel, and Mr. Rubenstein abstaining:

WHEREAS, Michael Aiello, owner of property at **105 Wildwood Avenue**, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a westerly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** in connection with the construction of a detached garage on property designated as Lot 39 in Block 3505 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Azzolina & Feury Engineering, Inc., and a floor plan, elevations, details and photographs, prepared by Nelson Benavides, Architect, dated December 15, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 18, 2007 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 subject property is an interior lot, measuring 50 feet in frontage width and 11,456 square feet in lot area, and is located in the R-1 One-Family Zone. The property contains a 2½-story single-family dwelling and a detached garage in the rear yard that was damaged during a storm in July of 2006.

2. The applicant proposes to demolish the existing garage and construct a new detached garage in the same location. The proposed garage would have the same dimensions as the existing garage, and would measure 19 feet 8 inches in width by 20 feet 4 inches in length, and 13 feet 10 inches in height.

3. The property survey indicates that the existing garage has a nonconforming westerly side yard setback of 2.7 feet. The same side yard setback is proposed for the new garage, and a variance is requested in that a minimum side yard setback of 6 feet is required. The proposed garage complies with all other zoning requirements.

4. The Board determined that requested side yard setback variance can be granted since the location and size of the proposed garage matches that of the existing garage. Furthermore, the location of the proposed garage is similar to that of many existing detached garages in the neighborhood.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 did prove 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 variance application of Michael Aiello is hereby approved; and

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. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Eugene Lieber, 74 Central Avenue** was adopted, Mr. Fleischer, Mr. Haizel, and Mr. Rubenstein abstaining:

WHEREAS, Eugene Lieber, owner of property at **74 Central Avenue**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow a southerly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)**, a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)**, and a greater rear yard coverage than permitted pursuant to **Montclair Code Section 347-22A**, in connection with the construction of a detached garage on property designated as Lot 8 in Block 1514 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey prepared by Alfred J. Clark, Inc., dated February 5, 1980, and a floor plan, elevations, details and photographs, prepared by Nelson Benavides, Architect, dated December 15, 2006; and

WHEREAS, this matter came on to be heard at a meeting of the Board of Adjustment held on April 18, 2007 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 subject property is an irregularly shaped interior lot, which measures 5,363 square feet in lot area and is located in the R-1 One-Family Zone. The property contains a 2½-story single-family dwelling and also contained a detached garage in the southwesterly corner of the lot, which was removed after it was badly damaged during a storm in July of 2006.

2. The applicant proposes to construct a new detached garage in the same location as the previous garage, which is depicted on the property survey. The proposed garage would have the same trapezoidal shape and dimensions as the previous garage, and would measure 13 feet 10 inches in width by 19 feet 8 inches in length at its longest, and 12 feet 6 inches in height.

3. The property survey indicates that the previous garage had a nonconforming southerly side yard setback of 1.5 feet and 1.47 feet measured to the southerly corners of the garage, and a nonconforming rear yard setback of 0.62 feet at the northerly rear corner and 2.10 at the southerly rear corner. The same side yard and rear yard setbacks are proposed and variances are requested in that minimum side yard and rear yard setbacks of 6 feet are required. The height of the proposed garage complies.

4. A variance is also requested in that 28.3 percent of the rear yard would be occupied by the footprint of the proposed detached garage, whereas the maximum permitted rear yard coverage for accessory structures is 25 percent of the rear yard.

5. The extension of the roof eaves on the sides and rear of the proposed garage are proposed to be reduced from that of the previous garage in order to maintain the eaves and gutters completely on the applicant's side of those property lines, which is an improvement from the condition that existed on the previous garage.

6. The Board determined that requested variances could be granted since the location and size of the proposed garage matches that of the previous garage on subject property and other existing detached garages in the neighborhood. Additionally, the irregular shape and small size of the subject property further limits the applicant's ability to comply with the zoning requirements.

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove 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 did prove 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 variance application of Eugene Lieber is hereby approved; and

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. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Michael Melia, 14 Nishuane Road** was adopted, as modified, Mr. Fleischer, Mr. Haizel, and Mr. Rubenstein abstaining:

WHEREAS, Michael Melia as owner did make application to the Board of Adjustment of the Township of Montclair ("Board") for front yard and side yard setback variances required in connection with demolition of an existing single-family dwelling and detached garage and construction of a new single family dwelling and detached garage on property designated at Lot 44 in Block 1916 on the Township Tax Map 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-70c to allow a front yard setback for the new dwelling to be less than 25 feet, contrary to Montclair Code Section 347-45B(1); and

2. A variance pursuant to N.J.S.A. 40:55D-70c to allow a southerly side yard setback for the new garage to be less than 6 feet, contrary to Montclair Code Section 347-46A(2)(a); and

WHEREAS, the applicant submitted site and architectural plans prepared by Sionas Architecture, P.C. dated February 2, 2007; and

WHEREAS, the matter came on to be heard at a public hearing of the Board held on April 18, 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 property at 14 Nishuane Road is an interior lot that is 60 feet wide and approximately 140 feet deep. It contains a one-story single family dwelling and one-story detached garage.

2. The applicant proposes to demolish the existing single family dwelling and detached garage and to construct in their place a new 2 ½ story single family dwelling and one-story detached garage. The new dwelling is approximately 317 square feet larger than the existing dwelling, whereas the new garage is approximately 102 square feet larger than the existing garage.

3. The new dwelling as proposed requires a front yard setback variance. Under Montclair Code Section 347-45B(1), the required front yard setback is 25 feet. However, the existing dwelling has a front yard setback of 15.55 feet, the two dwellings adjoining to the north have front yard setbacks of approximately 16.7 feet, and the two dwellings adjoining to the south have front yard setbacks of approximately 21.7 feet. The applicant initially proposed that the new dwelling would have a front yard setback of 15 feet, but at the public hearing it amended its proposal to request a front yard setback of 16.7 feet.

4. The new garage as proposed requires a side yard setback variance. Under Montclair Code Section 347-46A(2)(a), the required southerly side yard setback is 6 feet. However, the existing garage has a southerly side yard setback of 2.55 feet and 3.10 feet, measured to the southerly corners of the garage. In addition, there are a number of homes in the immediate vicinity that have detached garages within several feet of the side property lines.

5. The applicant proposes a new front yard setback of 16.7 feet rather than 25 feet so that the new dwelling will best align with the existing dwellings adjoining to the north and south. The applicant proposes 16.7 feet rather than 21.7 feet because the dwellings adjoining to the south have five to seven steps descending into the front yard. By placing the front yard setback to 16.7 feet, the steps of the five contiguous properties will be in relative alignment and make for a better uniform streetscape.

6. The applicant proposes a new garage side yard setback of 1 foot rather than 6 feet in order to open up the backyard and also to make it easier to pull in and back out of the new garage. However, at the public hearing the applicant stated that it would agree to a side yard setback in keeping with the existing side yard setback.

7. The proposed front yard setback of 16.7 feet promotes zoning purpose 2(i) and provides a more desirable visual environment by making a pleasing streetscape. For that reason, there is no substantial detriment to the public good or surrounding properties. Also, there is no substantial impairment of the zone plan or zoning ordinance because the variance furthers the best front yard setback for the block.

8. The proposed side yard setback in keeping with the existing side yard setback promotes zoning purposes 2(i) and 2(m) and provides a more desirable visual environment and promotes the more efficient use of land by making a more open background and by making it easier to back out to Nishuane Road. In the context of a neighborhood with detached garages proximate to the side property lines, there is no substantial detriment to the public good or surrounding properties. As well, there is no substantial impairment of the zone plan or zoning ordinance given the permitted uses, the minimum lot width, and the desire to achieve a more open backyard and easier maneuverability in and out of the driveway.

9. The appropriate southerly side yard setback for the new garage is 3.10 feet in keeping with the existing greater southerly side yard setback of 3.10 feet. This 3.10 feet setback allows the applicant to achieve its goals yet maintains the existing greater non-conforming setback.

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

WHEREAS, the Board, based upon 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 Michael Melia for front yard setback and side yard setback variances is hereby approved subject to the following conditions:

1. The southerly yard setback for the new detached garage shall be no less than 3.10 feet.

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

On motion by Ms. English, seconded by Mr. Fleischer, the following Resolution memorializing approval of preliminary and final site plan, variance and design waivers

for the application of **Alter Family, LLC for the Deron School (II), 130 Grove Street** was adopted as modified, Mr. Haizel abstaining:

WHEREAS, Alter Family, LLC for the Deron School (II) did make application to the Board of Adjustment of the Township of Montclair for preliminary and final site plan approval in connection with an addition to the existing school on property designated as Lot 1.01 in Block 4301 on the Township Tax Map and located in the OR-3 Garden Apartment and Office Building Zone; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70c to allow parking areas between the main building and the curb contrary to Montclair Code Section 347-65.
2. An exception pursuant to N.J.S.A. 40:55D-51 for failure to provide the required landscape areas within the parking area pursuant to Montclair Code Section 281-9H.
3. Clarification as to whether the Board's March 21, 2007 resolution included a variance pursuant to N.J.S.A. 40:55D-70d(3) to allow a driveway opening within 200 feet of an intersection contrary to Montclair Code Section 347-12A(6).
4. Modification of Conditions 7, 9 and 16 contained in the Board's March 21, 2007 resolution.

WHEREAS, the applicant submitted engineering and architectural plans prepared by Jarmel Kizel, Sheets T-100, T-200, C-100, C-200, C-300, C-400, C-401, C-500, C-600, C-700, C-800, C-900, C-901, C-902, C-903, C-904, C-905 dated December 12, 2005 revised through March 28, 2007; Sheets A-1, A-3, A-4, A-9, A-10 dated August 9, 2005 revised through November 9, 2006, Sheet A-11 dated August 9, 2005 revised through January 31, 2007, Sheets A-2, A-5, A-6, A-7 and A-8 dated August 9, 2005 revised through March 27, 2007; and

WHEREAS, this matter came to be heard at a special meeting of the Board of Adjustment held on April 11, 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. By resolution adopted March 21, 2007 the Board of Adjustment granted use, bulk variances and conditional use approval in connection with a three story addition to the westerly side of the existing school building.
2. The application proposes parking areas between the main building and the various streets contrary to Montclair Code Section 347-65. Between the building

and Grove Street is the south side parking area containing approximately 12 spaces and the Oxford Street parking area on the north side containing 10 parking spaces. A small portion of the turnaround area extends to the west beyond the building toward Christopher Street. The subject property contains street frontage on three streets and is improved with the existing school building in the center of the lot which results in peculiar and exceptional practical difficulties and undue hardship upon the applicant. Approval of the variance advances various purposes under the Municipal Land Use Law contained in N.J.S.A. 40:55D-2. Specifically, it constitutes appropriate municipal action in a manner which will promote the general welfare (-2a); provides sufficient space in an appropriate location for the school use (-2g) and constitutes more efficient use of land (-2m). The aforementioned benefits substantially outweigh any detriment. Based upon the Board's particular knowledge of local conditions, the grant of this variance will not cause substantial detriment to the public good and is not inconsistent with the intent and purpose of the zoning ordinance.

3. With respect to the requested exception for failure to provide the required landscaped areas within the parking area required by Section 281-9H the layout is appropriate maximizing the number of parking spaces within the parking areas while saving existing trees and providing sufficient on-site landscaping.

4. Although not specifically referenced in the March 21, 2007 resolution, the Board approved a driveway opening at Oxford Street approximately 132 feet from the intersection with Christopher Street contrary to Montclair Code Section 347-12A(6). Any driveway on Oxford Street would require a driveway opening less than the required 200 feet from an intersection. The proposed driveway provides safe ingress and egress and although noncompliant with a conditional use standard, the proposed layout is appropriate for the conditional use consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

5. The applicant sought relief from the drainage requirements under the Oxford Street parking lot imposed by Condition 7 of the March 21, 2007 resolution. The Board determined that an alternate drainage solution which minimizes damage to tree roots and maximizes drainage was viable and appropriate provided it was approved by the Board of Adjustment Engineer.

6. The applicant sought to eliminate the right turn only requirement at the egress from the south street parking lot as required in Condition 9 of the March 21, 2007 resolution. Upon further review, the Board determined the right turn only requirement would not result in any meaningful public benefit and may result in additional unnecessary traffic movements. Consequently, the Board determined eliminating the right turn only requirement was reasonable and appropriate.

7. The applicant sought to eliminate the requirement for the property owner to authorize the Township to enforce Title 39 on the site pursuant to Condition 16 of the March 21, 2007 resolution. The applicant argued such enforcement was not necessary since the south side parking lot was revised to eliminate egress on Christopher Street.

The Board determined enforcement of Title 39 was appropriate and necessary to provide safe and efficient operation of the parking lot.

8. Based upon the findings herein as well as the resolution adopted by the Board on March 21, 2007, the within application is not inconsistent with the character of the neighborhood and will not adversely impact the public good and, furthermore, will not substantially impair the intent and purpose of the zone plan and zoning ordinance which seeks to foster appropriate land use.

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

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant 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 Alter Family, LLC for the Deron School (II) for preliminary and final site plan, variance and design waivers is hereby approved subject to the following conditions:

1. The three pole mounted light fixtures in the Oxford Street parking area shall be shielded.
2. The proposed stop sign to the south of the access drive on Grove Street shall be moved back out of the sidewalk area.
3. The proposed junipers adjacent to the Grove Street driveway shall be replaced with plantings that will have a maximum height that will not exceed 30 inches to allow adequate sight distance.
4. The building exterior shall be consistent with the testimony at the April 11, 2007 public hearing and the sample board marked as Exhibit A-4.
5. There shall be no exterior trash storage except the applicant is permitted to use a dumpster at the end of the school year for a period not to exceed 2 weeks per year.
6. The applicant shall comply with Conditions 1, 2, 4 and 7 contained in the

April 6, 2007 memorandum from W. Thomas Watkinson, Montclair Board of Adjustment Engineer. With respect to Condition 3, the applicant shall comply and also provide a permeability test in connection with drainage to be provided under the Oxford Street parking lot. With respect to Comment 6, the applicant shall comply or utilize an alternative drainage solution which minimizes damage to tree roots and maximizes drainage provided same is approved by the Board of Adjustment Engineer.

7. The applicant shall comply with the conditions imposed by the March 21, 2007 resolution not inconsistent herewith. Specifically, Condition 7 is modified to provide an alternate drainage system may be utilized under the Oxford Street parking lot provided same is approved by the Board of Adjustment Engineer. Condition 9 is modified to delete the right turn only requirement at the egress from the south parking lot.

8. Sheet C-401 shall be revised to correct the mathematical error under the caption "Area 2-Off-Site".

9. The applicant shall pay any required development fees to the Montclair Housing Trust Fund in accordance with Montclair Code Section 202-39 et seq.

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. Haizel, the following Resolution memorializing the approval of certain variances and the denial of preliminary site plan and certain variances for the application of **Wallwood Gardens, Inc., 400 Orange Road** was adopted as modified, Mr. Haizel and Mr. Rubenstein abstaining:

WHEREAS, Wallwood Gardens, Inc., as owner, did make application to the Board of Adjustment of the Township of Montclair for use and bulk variances in connection with a proposal to construct eight dwelling units on property designated as Lot 11 in Block 3901 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Zone; and

WHEREAS, the applicant sought relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) since construction of a development consisting of eight dwelling units in four separate principal structures on a single lot is not permitted in the R-1 Zone pursuant to Montclair Code Sections 347-20 and 347-41A.

2. Variances pursuant to N.J.S.A. 40:55D-70c to allow building heights of 3 stories where a maximum of 2½ stories is permitted pursuant to Montclair Code Section 347-45A(2).

3. Variances pursuant to N.J.S.A. 40:55D-70c to allow a front yard setbacks of 15 feet from Ward Place and 21 feet from Pleasant Way where a minimum of 25 feet is required pursuant to Montclair Code Section 347-45B(1).

4. Variances pursuant to N.J.S.A. 40:55D-70c to allow rear yard setbacks along the westerly property line of 20 and 25 feet where a minimum of 46.2 feet is required pursuant to Montclair Code Section 347-45D.

5. A variance pursuant to N.J.S.A. 40:55D-70c to allow building coverage of 27.5 percent where a maximum of 25 percent is permitted pursuant to Montclair Code Section 347-45E.

6. A variance pursuant to N.J.S.A. 40:455D-70c to allow three parking spaces to be located closer to Orange Road than the principal structures contrary to Montclair Code Section 347-46C.

7. A waiver pursuant to N.J.S.A. 40:55D-51 to allow the visitor parking spaces adjacent to Orange Road to overhang into the setback area contrary to Montclair Code Section 281-9B.

8. A waiver pursuant to N.J.S.A. 40:55D-51 to allow an 18 foot wide driveway where a minimum of 24 feet is required pursuant to Montclair Code Section 281-9D.

WHEREAS, the applicant submitted a site plan, elevations and floor plans prepared by Rocco P. Orlando, Jr., AIA, Sheet A-1 dated December 19, 2005 revised through November 16, 2006; Sheet A-2 dated December 19, 2005 revised through February 13, 2007 and Sheet A-3 dated December 19, 2005 revised through February 16, 2007; and

WHEREAS, this matter came to be heard at meetings of the Board of Adjustment held on March 28 and April 11, 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 24,081.59 square feet and has frontage on three streets known as Orange Road, Ward Place, and Pleasant Way.

2. The property is currently occupied by a retail garden center in accordance with site plan and variance approval granted pursuant to N.J.S.A. 40:55D-70d by the Montclair Township Zoning Board of Adjustment and memorialized in a resolution dated November 13, 1996.

3. The applicant proposes to demolish the existing retail garden center and construct 8 dwelling units in 4 separate principal structures tantamount to two family

homes. The Board determined the subject property is particularly suited for the proposed use which is in greater conformity with the Master Plan of the Township than the present use. It recognized that the property is zoned R-1 Residential which permits single family dwellings and reasoned the proposed use would greater enhance the residential character of the neighborhood than the existing commercial garden center.

4. The Board also recognized the practical difficulties in developing the property due to the unique characteristics of the lot. In particular, the lot is irregularly shaped and has frontage on three roadways. Furthermore, the lot is significantly larger than the majority of lots in the surrounding area whereby development of the lot with a single-family dwelling may not be the most desirable option for development of the property.

5. Notwithstanding the practical difficulties facing the applicant, the Board determined the request for a variance to allow three parking spaces to be located closer to Orange Road than the principal structures contrary to Montclair Code Section 347-46C was not warranted. The applicant can redesign the site to obviate the need for such a variance which would represent an unreasonable aesthetic and visual intrusion into the required front yard setback resulting in substantial adverse impact to the neighborhood contrary to the intent and purpose of the zone plan and zoning ordinance.

6. Subject to the conditions below, 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 adequate light, air and open space (-2c); provides sufficient space in an appropriate location for residential use (-2g) and promotes a desirable environment through creative development techniques and good civic design and arrangements.

7. The plan includes an 18 foot wide driveway where a minimum of 24 feet is required. The Board determined the proposed driveway will provide adequate and safe on- site traffic circulation and the literal enforcement of the ordinance is impracticable and will exact undue hardship because of peculiar conditions pertaining to the development.

8. 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, with respect to the front yard parking setback variance, the Board concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to prove 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 N.J.S.A. 40:55D-70c(1);

WHEREAS, with respect to the front yard parking setback variance, the Board concluded that the applicant did not prove that the purposes of the Municipal Land Use

Law would be advanced by a deviation from the zoning ordinance requirements, and failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove 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 N.J.S.A. 40:55D-70c(2);

WHEREAS, with regard to the building height, coverage and remaining setback variances, the Board concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and 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 N.J.S.A. 40:55D-70c(1);

WHEREAS, with regard to the building height, coverage and remaining setback variances, the Board 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); and

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.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Wallwood Gardens, Inc. for a variance to allow three parking spaces to be located closer to Orange Road than the principal structures is hereby denied;

NOW, THEREFORE BE IT FURTHER RESOLVED that the within application of Wallwood Gardens, Inc. for use, building height, coverage and remaining setback variances and waivers is hereby approved subject to the following conditions:

1. This approval is subject to site plan review and approval.
2. The Board evidenced a strong preference that the buildings bordering Orange Road front on Orange Road.
3. The rear yard setback variance is limited to a 25 foot minimum setback except that a small corner of one of the buildings may encroach not more than 21 feet into the rear yard setback.

4. A minimum separation of 16 feet shall be provided between buildings and projections.
5. Shrubs shall be added along the westerly side of the entire length of the Ward Place driveway.
6. Compliance with the comments contained in a memorandum dated December 13, 2006 from Chris Baptista, Junior Engineer.
7. The applicant shall comply with the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1 et seq.
8. The applicant shall obtain approval from the Essex County Planning Board.
9. The applicant shall obtain approval from the Hudson, Essex and Passaic Soil Conservation District.
10. The applicant shall be responsible for payment of all outstanding escrow fees.
11. 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 Code 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 at the request of the applicants' attorney, the application of **Steven and Mary Lee Wrede, 24 Greenview Way** is adjourned to the next regular meeting of the Board, scheduled for June 20, 2007, and that no further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the application of **Sarah and Giles Colwell, 90½ Wildwood Ave.** Giles Colwell, owner, was sworn and described the application. A one-story addition, measuring 13 feet wide by 11 feet long, and a wood deck, measuring 13 feet wide by 5 feet long, are proposed at the rear of the dwelling, and would be aligned with the easterly side wall of the dwelling. The existing dwelling has a nonconforming easterly side yard setback of 3.7 feet, and the proposed addition and deck are also proposed to be set back 3.7 feet. The dwelling needs the additional space to accommodate modern family living. The Board questioned the applicant. It was noted that the side yard setback at the easterly rear corner may be slightly less than the side yard setback at the front corner of the dwelling. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application.

On motion by Mr. Susswein, seconded by Ms. Cockey, the application was approved, subject to the following condition:

1. The proposed addition and deck shall be aligned with the easterly wall of the existing dwelling.

Mr. Whipple arrived at the meeting. Chair Harrison called the variance application of **Michael Goulder and Carolyn Buck, 34 Elston Road**. Michael Goulder, owner, was sworn and described the application. A dormer addition to the third floor at the rear of their dwelling that would allow for the expansion of a third floor bathroom and the creation of a library in connection with the reconfiguration of the third floor is proposed. Approximately 19 feet of dormer width would be permitted in the roof at the rear of the dwelling without a variance and the proposed dormer addition measures 38 feet in width. The height of the dwelling would not be increased. 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.

Chair Harrison called the variance application of **Claudia Pascale, 6 Argyle Road**. Mr. Whipple recused himself. Claudia Pascale, owner, and Mark Bess, Architect, were sworn. Mr. Bess described the application to construct several additions onto the single-family dwelling. The average front yard setback of the 4 nearest dwellings is approximately 23 feet; therefore, the required front yard setback is 25 feet. The existing dwelling has a slightly nonconforming front yard setback of 24.9 feet. A new roofed front porch is proposed to fill in the recessed section that exists on the left side of the front wall of the dwelling and would be aligned with the front wall of the existing dwelling. The existing dwelling has a nonconforming width of 46.95 feet, where a maximum of 42.25 feet is permitted. The additions proposed to the second floor at the easterly side of the dwelling will add to the width of the second floor, which will match the nonconforming width of the first floor. The existing dwelling has a conforming rear yard setback of approximately 36 feet 8 inches. The rear yard setback requirement is 28.33 feet for the subject property and the proposed one-story addition has a rear yard setback of 20 feet 2 inches. A principal building coverage of 29.7 percent is proposed, where the maximum permitted is 25 percent of the lot area. The existing dwelling occupies 18.5 percent of the lot area. The applicant also proposes to locate 2 central air conditioning units in the easterly side yard. A minimum side yard setback of 6 feet is required for these units and a lesser side yard setback is proposed.

Marked into evidence was:

A-1 Photograph of front of the dwelling

The Board questioned the applicant and Mr. Bess. Chair Harrison called for questions and comments from the public. Richard Rodin, 11 Argyle Road, was sworn and stated his support for the application. The Board discussed the application. The Board noted concerns over certain variances requested and the scale of the proposed work. On motion by Mr. Susswein, seconded by Ms. Cockey, the variances requested

for front yard setback and principal structure width were approved and the variances requested for rear yard setback, principal structure coverage, and central air conditioning unit setback were denied.

Chair Harrison called the variance application of **The Eveline A. Kochling Revocable Trust, Eveline A. & Josef Kochling, Trustees, 10 Edgemont Road**. Mr. Whipple rejoined the Board. David Owen, Esq. appeared as attorney for the applicant and described the application. The applicant agreed to eliminate a driveway width variance by making the re-configured portion of the driveway ten feet wide. He called Paul Sionas, Architect, who was sworn and described the application. The applicant proposes to construct two additions to the single-family dwelling in order to modernize it and meet current needs. One addition, the two-story addition, is mostly in the rear yard although approximately one foot extends into the north side yard. This addition provides a new pantry, kitchen, breakfast area, and mud room on the first floor and a new master bedroom on the second floor. It replaces a small older kitchen on the first floor and a small older bedroom on the second floor. The other addition, a one-story addition, is also mostly in the rear yard although approximately three feet extend into the south side yard and approximately one foot extends into the front yard. This addition provides an enlarged family room to the front and a new sun room to the rear. It replaces a small family room.

Marked into evidence were:

- A-1 Plot Plan with color added on a board, and an aerial photograph
- A-2 Floor plans with color added, on a board
- A-3 Front elevation and floor plan on a board

The Board questioned Mr. Sionas. The applicant was willing to relocate the central air conditioning unit from the north side yard to the rear yard. Chair Harrison called for questions from the public. Deran Hanesian, 6 Edgemont Road, asked whether the proposed addition would negatively affect the value of his property and asked for a clarification on the front setback variance requested. He also questioned whether the proposed side yard setback was a safe condition.

Mr. Owen called Roger DeNiscia, Professional Planner, who was sworn and described the variances requested. The front yard setback variance is necessary because the one-story addition provides less than the required front yard setback. The proposed front yard setback exceeds the minimum front yard setback of 25 feet; however, taking into consideration the two adjoining dwellings to the south, the required front yard setback is 43.5 feet. The proposed front yard setback is 36.3 feet. The existing front yard setback is 38.5 feet. The front yard setback variance is justified as a subsection (c)(2) variance because it allows appropriate residential development (zoning purpose 2a), it allows sufficient space for residential use (zoning purpose 2g), and it allows a desirable visual environment (zoning purpose 2i), including a well-articulated one-story addition to the front, south side, and rear of the home. The front

yard setback variance is also justified as a subsection (c)(1) variance because the physical feature or curve of the front property line, as well as the lawfully-existing home, cause practical difficulties to the applicant and justify relief from the strict application of the front yard setback requirement. With respect to the front yard setback variance, there is no substantial detriment to the public good. The proposed front yard setback is slightly greater than the existing front yard setback of the dwelling adjoining immediately to the south. It is consistent with the front yard setbacks on both sides of the street. Further, there is no substantial impairment of the zone plan or zoning ordinance. The 2006 Master Plan Re-Examination Report encourages maintenance and preservation of the Township's older housing stock. As well, the variance is relatively minor but leaves a front yard setback greater than the existing front yard setback of the dwelling adjoining immediately to the south. In the case of the subsection (c)(2) variance, the benefits of the variance substantially outweigh any detriment.

The dwelling width variance is necessary because the additions cause the dwelling width to exceed the maximum permitted dwelling width. The maximum permitted dwelling width is 65% of the lot frontage. Here, the maximum permitted dwelling width is 56.07 feet. The proposed dwelling width is 58.62 feet. The difference is 2.55 feet. The dwelling width variance is justified as a subsection (c) (2) variance. It allows appropriate residential development (zoning purpose 2a), it allows sufficient space for residential use (zoning purpose 2g), and it allows a desirable visual environment (zoning purpose 2i), including well-articulated home additions and in particular the one-story addition on the south side of the dwelling. There is no substantial detriment to the public good. Even with the proposed additions, the minimum side yard setbacks of 6 feet and 10 feet are met at 7.37 feet to the south and 18.9 feet to the north. Further, there is no substantial impairment of the zone plan or zoning ordinance. The 2006 Master Plan Re-Examination Report encourages maintenance and preservation of older housing stock. Also, the excess dwelling width is minor. In the case of the subsection (c) (2) variance, the benefits of the variance substantially outweigh any detriment.

Marked into evidence was:

A-5 Five (5) photographs of the subject property on a board

Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved, Chair Harrison, Ms. Cockey, and Ms. English voting against the motion, subject to the following condition:

1. As stipulated to by the applicant, the air conditioning unit shall be relocated from the north side yard to the rear yard.

Chair Harrison called the variance application of **Susan McGuire, 24 Edgecliff Road**. The applicant was sworn and described the application. A hot tub is proposed in the southerly side yard of the dwelling, and is proposed to be set back approximately 6 feet from the southerly side property line where a minimum side yard setback of 15 feet

is required. The proposed hot tub has dimensions of 7'6" wide by 9'2" long and would be placed on a proposed patio measuring 14' by 14'. She indicated that her neighbors are not against the application.

Marked into evidence was:

A-1 Packet of photographs of the subject property

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. It was evident that numerous options were available that would either fully conform or more closely conform to the setback requirements. Based on the discussion, the applicant chose to withdraw the application without prejudice in order to examine her options more closely. On motion by Mr. Whipple, seconded by Mr. Fleischer, the withdrawal of the application without prejudice was accepted.

Chair Harrison called the variance application of **Valley National Bank, 539 Valley Road**. Mr. Whipple recused himself and left the meeting. Stuart Yusem, Esq. appeared as attorney for the applicant and requested that the application be carried to the next meeting due to the late hour. Chair Harrison announced that the application would be heard at the June 20, 2007 regular meeting and that no further notice would be given. The Board was granted an extension of time.

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