

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**June 18, 2008**

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

ABSENT: Mr. Franco, Secretary

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 Ms. Cockey, the **Minutes of the February 13, 2008** special meeting were adopted, Mr. Susswein abstaining.

Chair Harrison had indicated he would be arriving late to the meeting and was not yet present. Vice Chair Fleischer called the application of **James Foley and Susan Yoo, 149 North Mountain Avenue**. Mr. Whipple was recused for the application. Susan Yoo was sworn and described the application. On July 19, 2000 the Board of Adjustment approved an application for a northerly side yard setback variance in connection with an addition at the rear of the dwelling. The proposed addition was not built due to personal circumstances and the variance expired. The plan submitted for the current application matches the plan that was previously approved. A one-story addition is proposed at the rear of the dwelling that would align with the northerly side wall of the existing dwelling. The existing dwelling has a nonconforming northerly side yard setback of 3.74 feet at the northerly rear corner, where a minimum of 6 feet is required. The proposed addition will extend 12 feet further back than the existing dwelling. The northerly side property line is angled in relation to the dwelling, which causes the side yard setback of the proposed addition to be reduced from the existing 3.74 down to 3.61 feet. The proposed addition complies with all other zoning requirements. The Board questioned Ms. Yoo. No questions and comments were offered from the public. The Board discussed the application. On motion by Ms. English, seconded by Ms. Cockey the application was approved, subject to the following condition:

1. The applicant shall screen the foundation of the addition with appropriate landscaping.

Vice Chair Fleischer called the variance application of **Ken and Abby Colen, 215 South Mountain Avenue**. Mr. Whipple rejoined the Board. Ken Colen and Jonathan Perlstein, Architect, were also sworn. Mr. Perlstein described the application. The subject property is corner lot located at the intersection of South Mountain Ave and Llewellyn Road. The subject property measures 14,095 square feet in area; the frontage width measures 115.71 feet on South Mountain Avenue and 110.37 feet on Llewellyn Road. The subject property is located in the R-0 Mountainside Zone, and contains a single-family dwelling and surface parking in the front yard accessed by a driveway from Llewellyn Road. An addition is proposed on the easterly side of the dwelling that will

include a basement plus 2 levels. Due to the grade level of property, which slopes downward away from South Mountain Avenue, the first floor level of the addition is more than 6 feet above the adjoining grade level, thereby making the basement level at these areas of the dwelling a story above grade, and the addition a total of 3 stories, which exceeds the maximum of 2½ stories permitted. The height of the addition complies, measuring 31-8¾ feet in height from the grade level of the addition. The proposed addition also complies with all other zoning requirements. The proposed nonconformity is caused by the existing grade levels around the dwelling and is a common condition in various forms for properties in the neighborhood. The Board questioned the applicant and Mr. Perlstein. No questions and comments were offered from the public. The Board discussed the application. On motion by Mr. Susswein, seconded by Mr. Whipple the application was approved.

Cal Trevenen, Esq. appeared as attorney for application of **Akio Kaneda, 608 Valley Road** and requested that the continuation of the application be held off to a later time in the hearing until Chair Harrison arrives. David Owen, Esq., attorney for the application of **Julius and Susan DeSantis, 10 Clinton Avenue** was not present so Vice Chair Fleischer called the application of **Thomas Rose & Peter Wert, 272 Valley Way**. Cal Trevenen, Esq. appeared as attorney and described the application. By resolution adopted December 12, 2001 the Board granted variance relief as well as relief pursuant to N.J.S.A. 40:55D-35, 36 in connection with the construction of a single family home and related improvements. By resolution adopted June 16, 2004, the Board approved an application to amend conditions 3, 4 and 10 of the December 12, 2001 resolution in connection with the extension of the paved driveway leading from Valley Way. By resolution adopted January 19, 2005, the Board approved an application to amend condition 4 of the December 12, 2001 resolution eliminating the requirement to construct a 16 foot wide gravel driveway for emergency access. The applicants seek relief from condition 2 contained in the Board's December 12, 2001 resolution which states: "As set forth in the site plan, the applicants' development shall be limited to one single family dwelling without accessory structures on Block 103, Lot 20." The subject property is landlocked and has no street frontage. The lot is accessed via a private driveway from Valley Way consistent with prior approvals of the Board. The applicants now propose an inground swimming pool on the easterly side of the property and related improvements including pool equipment an outdoor fireplace and countertop, fence, expanded paver patio area, expanded deck area and lighting. The proposed swimming pool complies with Section 305-6 of the Ordinance, which regulates the location of pools on lots; however, approval requires modification of condition 2 which prohibits any accessory structures. The purpose of this condition was to ensure accessory structures would not interfere with access by fire fighting equipment, ambulances and other emergency vehicles.

Thomas Rose was sworn and described the application from his point of view as the homeowner. He stated that no trees would be removed as part of the proposal. The Board questioned Mr. Wert. Vice Chair Fleischer called for questions from the public. Dorothy Oliver, 278 Valley Way, inquired about tree removal and proposed landscaping.

David Egarian, PE, was sworn and described the grading and drainage plan and the layout of the proposed improvements. The Board questioned the witness. He stated that the retaining wall and fence combination could be revised to comply with the zoning ordinance. Vice Chair Fleischer called for questions from the public. Don Zief, 143 Eagle Rock Way inquired about the grading and drainage plan. Dorothy Oliver, 278 Valley Way, inquired about the retaining wall, fence, drainage, and landscaping. Paul Sionas, Professional Planner, was sworn and the described the plan. He stated that the subject property is an unusual lot and that the location of the proposed swimming pool is appropriate. The proposed swimming pool and related improvements will not interfere with emergency vehicle access and represents a reasonable request consistent with the intent and purpose of the original approval.

Marked into evidence were:

A-1 through A-6 Photographs of the subject property

The Board questioned Mr. Sionas. Vice Chair Fleischer called for questions from the public. Dorothy Oliver, 278 Valley Way, further inquired about the landscaping. No public comment was offered. The Board discussed the application. On motion by Mr. Whipple, seconded by Ms. English the application was approved, subject to the following conditions:

1. Subject to review and approval of changes in the drywell configuration as well as compliance with the recommendations contained in the memorandum dated June 12, 2008 from W. Thomas Watkinson, Zoning Board Engineer.
2. The proposed fence shall be relocated towards the pool a minimum of 4 feet from the retaining wall to provide the necessary separation to conform to the applicable height ordinance.
3. The applicants shall install plantings to shield the fence from the view of adjacent neighbors.
4. The proposed lighting shall not exceed 4 feet in height and shall be shielded so that the light source is not visible by neighbors.
5. The applicants shall install the landscaping plan marked as "Exhibit A-1" at the public hearing subject to modification, review and approval by the Planning Office.
6. All conditions imposed by the December 12, 2001, June 16, 2004 and January 19, 2005 resolutions not inconsistent with the within modification shall remain in full force and effect.

The Board took a 10 minute recess at 9:45 pm. Chair Harrison and Mr. Kenney joined the Board.

Chair Harrison apologized for being late and welcomed Mr. Kenney to his first regular meeting. He called the application of **New Cingular Wireless PCS, LLC, 641 Bloomfield Avenue**. Renu Shevade, Esq. appeared as attorney for the applicant and requested that the application be carried to the July 16, 2008 regular meeting of the Board. Chair Harrison announced the adjournment and that no further notice would be given.

Chair Harrison called the continuation of the application of **Akio Kaneda, 608 Valley Road**. Mr. Fleischer recused himself. Cal Trevenen, Esq. appeared as attorney for the application. Jonathan Perlstein, Architect, who was still under oath, described the revised plans that have incorporated the Board's concern over the design of the addition. The applicant originally proposed a "stepped" or "saw tooth" parapet design which was approved by the Montclair Historic Preservation Commission. The Board had expressed concern over this original design and a sloped parapet alternative depicted on Sheet SK-3 dated June 6, 2008 was presented as an alternative.

Marked into evidence were:

- A-7 1 Photograph and 1 Photo-simulation of the revised southwest elevation
- A-8 1 Photograph and 1 Photo-simulation of the revised northwest elevation

The Board questioned Mr. Perlstein. No questions from the public were offered. Chair Harrison called for public comment. Howard Press, Esq. gave his appearance on behalf of the owner of the adjoining property at 602-606 Valley Road and stated an objection to the application. Mr. Trevenen had a few questions for Mr. Press and then provided his closing remarks. The Board discussed the application. The height of the building addition matches the height of the existing building and provides adequate light, air and open space as well as a dramatic aesthetic improvement. The Board determined the sloped parapet alternative depicted on Sheet SK-3 dated June 6, 2008 was aesthetically more attractive and minimized the scale of the additions. The additional intrusion into the rear yard is de minimis and the location is appropriate based upon the existing development of the site and its proximity to the adjacent municipal parking lot. The Board determined there are a number of public lots in the area in addition to the adjacent municipal lot to the rear of the subject property which can accommodate the parking demand generated by this application. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved, subject to the following conditions:

1. The plan shall be revised to incorporate the redesigned sloped parapet; additional second floor window and elimination of the door on the northerly side as depicted on Sheet SK-3 dated June 6, 2008 and the applicant shall obtain revised HPC approval.
2. Prior to the commencement of construction, the applicant shall obtain an easement from the owner of Block 2601, Lot 6.01 to provide the contemplated access to the southerly side entrance of the building and the existing garage.

3. The applicant shall obtain Essex County Planning Board approval.
4. The height of the proposed parapet whether designed for flammable or nonflammable materials shall not exceed the maximum permitted by the applicable construction code.
5. The building is limited to two stories at a height not to exceed 28 feet.
6. Roof leaders from the rear of the building shall be connected directly underground to the existing adjacent stormwater inlet in the municipal parking lot as recommended in paragraph 3 of a memorandum from W. Thomas Watkinson, Montclair Zoning Board Engineer, dated April 5, 2008.

Chair Harrison called the application of **Julius and Susan DeSantis, 10 Clinton Avenue**. David Owen, Esq. appeared as attorney and described the application. Paul Sionas, Architect and Professional Planner, was sworn and the described the plan.

Marked into evidence were:

- A-1 Rendered plot plan
- A-2 Photograph of rear yard
- A-3 Photograph of rear yard
- A-4 Photograph looking to Clinton Avenue from rear yard
- A-5 Photograph looking to south from rear yard

The property is an interior lot that is undersized in required lot area and also in required lot width in that the prescribed lot area is 20,000 square feet and the existing lot area is 18,840 square feet and the prescribed lot width is 100 feet and the existing lot width is 78.83 feet. The property contains a Tudor-style single-family home along with a driveway along the north side of the property that leads into the rear yard and around to the southwest corner of the rear yard, where formerly there was a garage and apartment that have been taken down by a former owner of the property. Currently, there is no garage on the property. The applicants propose to construct a new detached garage in the rear yard; however, they propose to place it along the north side of the property and closer to their home. The applicants also propose to remove the rear portion of the existing driveway and a large asphalt area in the rear yard, to shorten the driveway, and to realign the driveway so that it will lead directly to and stop at the garage. The proposed garage complies with all zoning ordinance requirements except that pertaining to north side yard setback because the required side yard setbacks are 18 feet for one yard and 12 feet for the other yard, and the applicants propose 53.83 feet for the south side yard and 3 feet for the north side yard. The proposed garage is closer to the applicants' home compared to the former garage and provides increased convenience, protection from inclement weather, and enclosure from public view. The project restores approximately 1,600 square feet of lawn, retains existing lawn, maximizes open areas and planting areas, and provides a north side yard that is adequate for access and maintenance.

With respect to the variance to permit a decreased north side yard setback, this particular variance can be granted. Whereas the existing undersized lot width gives rise to practical difficulties in that the applicants have approximately 21 feet less lot width than contemplated by the zoning ordinance, the project as proposed by the applicants serves several purposes of zoning set forth at N.J.S.A. 40:55D-2, including providing garage space for residential use (zoning purpose g), maximizing open space, (zoning purposes c and j), restoring green space (zoning purpose i), and promoting a desirable visual environment with reasonable arrangement and design (zoning purpose i); There is no substantial impairment of the intent and purpose of the zone plan or zoning ordinance, and there is no substantial detriment to surrounding properties: The project meets all zoning ordinance requirements except with regard to north side yard setback, and the requested variance represents a relatively minor deviation from the zoning ordinance requirements. In addition, there are several detached garages adjacent to the property that have side yard setbacks between 1 foot and 6 feet; much of the proposed garage will be placed over existing impervious area; the closest neighbors to the north are separated by an existing 6-foot stockade fence and substantial plantings; and the proposed garage is thoughtful in its design and detail. By eliminating impervious surfaces and preserving existing pervious surfaces, the project brings benefit to the surrounding properties

The Board questioned Mr. Sionas. Chair Harrison called for questions and comments from the public. Bobby Bowers, 8 Clinton Avenue, was sworn and stated his opposition and that there is no justification for any variances. Mr. Owen questioned Mr. Bowers. Dana Kral, 82 Myrtle Avenue, was sworn and stated her opposition. Her concerns were drainage in the rear yard. The Board questioned Ms. Kral. Mr. Owen recalled Mr. Sionas and questioned him. The Board also questioned Mr. Sionas. Mr. Owen summarized the application. The Board discussed the application and determined that the application should be modified in order for it to be approved as described below. On motion by Mr. Fleischer, seconded by Mr. Susswein the application as modified was approved, Mr. Whipple and Ms. Holloway voting against the motion, subject to the following conditions:

1. The north side yard setback of the new detached garage shall be increased from 3 feet to 6 feet from the north side property line;
2. The overall length of the new detached garage shall be shortened from 28 feet to 26 feet so that the rear or west elevation of the garage shall be 2 feet further east from the rear or west property line.
3. The driveway leading to the new detached garage shall be reconfigured west of the existing home so that the north side of the driveway corresponds to the increased side yard setback of 6 feet.

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