



Township of Montclair

205 Claremont Avenue

Montclair, NJ 07042

tel: 973-509-4954

fax: 973-509-4943



MONTCLAIR ZONING BOARD OF ADJUSTMENT

*Janice E. Talley, PP/AICP
Director of Planning and Community Development
jtalley@montclairnjusa.org*

MINUTES OF THE BOARD OF ADJUSTMENT June 15, 2011

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

ABSENT: Mr. Edwards, Ms. English, Ms. Holloway, and Ms. Talley, 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 Mr. Susswein, the **Minutes of the May 18, 2011** regular meeting were adopted as modified, Ms. Cockey abstaining.

On motion by Mr. Whipple, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **John S. DiGeronimo, Richard DiGeronimo, and Angelo J. Benfante, 170-172 Pine Street** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, John S. DiGeronimo, Richard DiGeronimo, and Angelo J. Benfante, owners of property located at 170-172 Pine Street, Montclair, New Jersey (hereinafter "the property"), did make application to the Montclair Township Board of Adjustment (hereinafter "the Board"), for use and bulk variances, and site plan approval, to improve and enlarge the existing four-family dwelling and existing parking area on the property, designated as Lot 22 in Block 4205 on the Montclair Township Tax Maps and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(2) to permit the expansion of a non-conforming use under Montclair Section Code 347-112;
2. A variance pursuant to N.J.S.A. 40:55D-70c to permit the front yard setback for the expanded four-family dwelling to be less than the prescribed front yard setback under Montclair Code Section 347-51;

3. A variance pursuant to N.J.S.A. 40:55D-70c to permit the southerly side yard setback for the expanded four-family dwelling to be less than the prescribed side yard setback under Montclair Code Section 347-51;
4. A variance pursuant to N.J.S.A. 40:55D-70c to permit the width of the expanded four-family dwelling to exceed the maximum permitted width under Montclair Code Section 347-51;
5. A variance pursuant to N.J.S.A. 40:55D-70c to permit the building coverage for the expanded four-family dwelling to exceed the maximum permitted building coverage under Montclair Code Section 347-51;
6. A variance pursuant to N.J.S.A. 40:55D-70c to permit one new parking space to have a setback less than four feet from the southerly property line without the intervening space appropriately landscaped under Montclair Code Section 347-104;
7. A variance pursuant to N.J.S.A. 40:55D-70c to permit the new driveway to have a setback of less than one foot from the northerly side property line under Montclair Code Section 347-104;
8. A variance pursuant to N.J.S.A. 40:55D-70c to permit the new trash enclosure to have a setback of less than six feet from the southerly side property line under Montclair Code Section 347-52;
9. A variance pursuant to N.J.S.A. 40:55D-70c to permit less than one-third of the proposed parking spaces to be within a garage building and/or principal building under Montclair Code Section 347-101;
10. An exception from Montclair Code Section 281-9I to permit the new driveway to be less than eighteen feet wide; and

WHEREAS, the applicant submitted a property survey prepared by Pronesti Surveying, Inc. dated July 30, 2010; existing conditions plans (10 pages per set) and improvements plans (16 pages per set) including site, architectural, streetscape, and landscape plans prepared by Derek Cox Architecture and Landscape Design, LLC dated August 25, 2010 as well as certain revisions to such plans (sheets SP-1, SC-1, A-2, A-3, and A4) dated May 1, 2011; a drainage report prepared by Bilow Engineering, LLC dated February 11, 2010 along with an amended grading and drainage plan dated May 15, 2011 and an amended drainage report dated May 16, 2011; and

WHEREAS, this matter came on to be heard at meetings of the Board held on April 13, 2011, and May 18, 2011, at which time it was established that notice was properly published and that property owners within 200 feet of the property had been properly served with such notice; and

WHEREAS, the Board carefully reviewed the testimony, exhibits (A-1 through A-18), questions, and comments presented at the public hearings and established the following findings of fact and conclusions of law:

1. The property is an interior lot consisting of 6,957 square feet with 50 feet of frontage on Pine Street. It contains a two and one-half story four-family dwelling along with asphalt driveway and unstriped parking area. The four-family dwelling is a legal non-conforming use, having been constructed in or about 1912 prior to zoning regulations;

2. The property is bordered by a large brick and concrete block industrial building to the south in the C-2 Zone, a concrete block garage to the west in the R-2 Zone, a two-family dwelling to the north in the R-2 Zone, and the rear yards of several other properties that in part store commercial vehicles;

3. The four-family dwelling contains four apartments, two side-by-side downstairs apartments and two side-by-side upstairs apartments. Each apartment contains two small bedrooms and one small bathroom. The apartments are substandard, measured against modern apartments, and would benefit greatly from modernizing improvements. Further, the parking area is not code-compliant and would also benefit from modernizing upgrades.

4. The applicants propose to improve and enlarge the four-family dwelling and the parking area. They propose to extend the dwelling approximately 14.5 feet into the rear yard and thereby enlarge all bedrooms and bathrooms and to add an additional bathroom to each apartment, to redesign the living rooms and kitchen facilities in each apartment, to create recreational space in the basement for the benefit of the apartments on the first floor and storage and general purpose space in the attic for the benefit of the apartments on the second floor, to provide both front and rear ingress and egress for all apartments, to eliminate two side entrances with stairs located on the southerly sidewalk and in the northerly driveway, and to generally make the apartments more livable and desirable. The applicants also propose to replace the existing vinyl siding with a combination of brick, stucco, and half timbering, to install new clad wood windows and doors, and to incorporate standing seam canopy roofs, brick and stone steps, painted railings and other accents and details to enhance the appearance of the building. Finally, the applicants propose to repave the driveway and parking area and provide eight parking spaces, including one barrier-free parking space, which comply with the number and size required by the code. The exterior site will also include a new rear patio, wheelchair lift, trash and recycling area, fencing, and landscaping;

5. Initially, the applicants proposed a new and expansive cross-gable roof with dormers. In view of comments by the Board concerning the size and mass of such roof, the applicants reworked the roof and later proposed a simpler hip roof similar to the design of the existing hip roof and in keeping with the existing streetscape. While the hip roof reduced the size of the attic space available to the second floor apartments, it provided a significant visual improvement to the project;

6. With respect to the variance to permit the expansion of non-conforming use, there are purposes of zoning and special reasons in support of such variance. The project promotes public safety and the general welfare (N.J.S.A. 40:55D-2(a)) insofar as it rehabilitates and modernizes the existing apartments and provides code-compliant parking spaces. The project also promotes a desirable visual environment (N.J.S.A. 40:55D-2(i)) given the improvements to the exterior building and site. The project also promotes the efficient use of land (N.J.S.A. 40:55D-2(m)) given the renovations to an existing building and parking area. Moreover, the variance does not cause any substantial detriment to the public good: The four-family dwelling has been in existence since 1912. There is no increase in density. The number of bedrooms per apartment remains the same. There is a relatively minor expansion of the building towards the rear. The proposed roofline is similar to the existing roofline. The expansion does not cause the on-site parking requirement to change. The upgrades to the building and exterior site in fact benefit the neighborhood. As well, the variance does not cause any substantial impairment of the intent and purpose of the master plan or zoning ordinance. The master plan reexamination report states with respect to housing goals the importance of maintaining a range of housing types and maintaining the condition of the older housing stock, and it encourages the maintenance and preservation of the housing stock. Overall, the improvements enhance the property, and the code-compliant parking area is in keeping with the requirements of the zoning ordinance. Finally, the expansion is relatively minor but provides much better living space and exterior site;

7. With respect to the bulk variances for building front yard setback, building side yard setback, principal structure\building width, building coverage, parking space setback, driveway setback, trash enclosure setback, and no enclosed parking spaces, those purposes of zoning that support the variance for expansion of a non-conforming use, set forth above, also support the bulk variances under N.J.S.A. 40:55D-70c(2). These bulk variances are integral to the overall project. Moreover, they do not cause any substantial detriment to the public good: The existing front yard setback is 6.2 feet, and the proposed front yard setback is 6.2 feet. The existing side yard setback is 2.7 feet, and the proposed side yard setback is 2.7 feet. The existing principal structure width is 36.5 feet, and the proposed principal structure width is 36.5 feet. The existing building coverage is 25.5%, and the proposed building coverage is a slightly greater 31.3% and necessitated by the improvements. The one parking space that is set back less than 4 feet from the southerly property line adjoins the industrial building in the C-2 Zone and is buffered with a wood fence. The existing and extended driveway that are set back less than 1 foot from the northerly property line are also buffered with a wood fence. The trash enclosure is also surrounded by a wood fence. The property has never had enclosed parking spaces, and to enclose same would likely cause a reduction in the number and size of on-site parking spaces. Enclosing parking spaces within a garage building or the principal building would increase building coverage and reduce landscaping. As well, these variances do not cause any substantial impairment of the intent and purpose of the master plan or the zoning ordinance for the reasons set

forth above in connection with the variance for expansion of a non-conforming use. The benefits of these bulk variances substantially outweigh any detriment;

8. The bulk variances for building front yard setback, building side yard setback, principal structure\building width, building coverage, parking space setback, driveway setback, and no enclosed parking spaces are also justified under N.J.S.A. 40:55D-70c(1) by reason of the existing four-family dwelling lawfully existing on the property, which because of its configuration and placement on the property gives rise to peculiar and exceptional practical difficulties or exceptional and undue hardship, which justifies variance relief. The analysis of the negative criteria applies as set forth above;

9. The exception from the site plan ordinance to permit the new driveway to be less than eighteen feet wide is justified given the existing building lawfully existing on the property, the existing narrowness of the driveway, and the low traffic volume to be generated by the four apartments. The literal enforcement of the driveway width standard is impracticable or will exact undue hardship given the characteristic of the property, and the exception is reasonable and within the general purpose and intent of the site plan ordinance; and

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

WHEREAS, the Board, based upon the foregoing findings, concluded that the applicant proved the requisite special reasons for granting the variance for expansion of a non-conforming use, and proved by a preponderance of the evidence that the same could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan and zoning ordinance; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of John S. DiGeronimo, Richard DiGeronimo, and Angelo J. Benfante for use and bulk variances, an exception, and

preliminary and final site plan approval is hereby approved and granted, subject to the following conditions:

1. The applicant shall adhere to the conditions set forth within the Board Engineer's report dated March 21, 2011; and
2. The applicant shall submit a revised drawing GD-1 that is consistent with revised drawing SP-1.

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

Mr. Burr had not yet arrived. Mr. Susswein was the only eligible Board member present to vote on the resolution for the application of **Walter Kos, 21 Forest Street**. Mr. Sullivan indicated that the resolution could be memorialized by the approval of Mr. Susswein solely. Mr. Susswein approved the following resolution as modified, Chair Harrison, Ms. Cockey Mr. Fleischer, and Mr. Whipple abstaining:

WHEREAS, Walter Kos, 21 Forest Street, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c associated with a roofed porch that was constructed onto the southerly side of the dwelling, on property designated as Lot 4 in Block 3204 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested variances from **Montclair Code Section 347-51** in that a minimum side yard setback of 10 feet is required from the southerly side property line and a lesser side yard setback is proposed, and in that the principal structure width exceeds the maximum permitted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 18, 2011 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated August 13, 2005 and plans prepared by HQW Architects, LLC, dated February 11, 2011; and

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

1. The property is located in the R-2 One-Family Zone and contains a two-family dwelling. The lot measures 56 feet in width and 150 feet in lot depth.
2. Variances are requested for a roofed porch that was constructed onto the southerly side of the dwelling. The porch is not completed at this time. On July 29, 2010, the Construction Official stopped the work since no permits had been issued. To obtain

permits and complete the work on the porch, 2 variances are required from zoning. The variance application was filed on March 3, 2011.

3. The northerly side yard of the property has a minimum side yard setback of 9.2 feet; therefore the southerly side setback must be at least 10 feet. A southerly side yard setback of approximately 4.1 feet is proposed and a variance is requested.

4. The maximum permitted dwelling width is limited to 36.4 feet, which is 65 percent of the lot width of 56 feet. With the proposed porch, which adds approximately 6.5 feet to the dwelling width, the dwelling measures approximately 43.3 feet, or 78 percent of the lot width, and a variance is requested.

5. The majority of the Board determined that the requested variances could be approved subject to conditions. The existing lot is less than 60 feet in lot width, and due to the placement of the existing dwelling, the applicant's ability to conform is limited. The proposed side yard setback and building width would not have the negative impact on the adjoining property or the streetscape intended to be eliminated by the ordinance. The proposed roofed porch is limited to one-story and is open without walls, and would provide aesthetic benefits to the neighborhood, and also helps to achieve the Master Plan goal of maintaining the Township's older housing stock.

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. The approval is limited to a one-story open porch without walls as depicted on the plans and exhibits submitted.

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 **David Adleman, 115 Buckingham Road** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, David Adleman, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c associated with a proposed one-story addition at the rear of the dwelling, on property designated as Lot 22 in Block 3702 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance from **Montclair Code Section 347-45C(1)** for a westerly side yard setback less than 6 feet; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 18, 2011 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated November 4, 1999 and plans prepared by Brinkman Architecture, LLC, dated March 16, 2011; and

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

1. The property is located in the R-1 One Family Zone and contains a single-family dwelling. The lot measures 50 feet in width by 175 feet in depth, and a total of 8,750 square feet in lot area.

2. The westerly side wall of the existing dwelling has a nonconforming side yard setback of 3.61 feet. The proposed addition is aligned with the westerly side wall of the dwelling and would also have a side yard setback of 3.61 feet from the westerly side property line and a variance is requested.

3. The proposed addition would extend the westerly side wall of the dwelling by 16 feet 6 inches. The addition is 16 feet 5 inches wide and would contain part of an expanded kitchen, an office, and bathroom.

4. The Board determined that the requested variance could be approved for the plan as submitted. The addition is modest in size and the lot is relatively narrow. The proposed addition is limited to one-story and is aligned with the existing side wall of the dwelling and would not negatively impact any adjoining property or the streetscape.

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; 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. Whipple, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Colette Dunworth, 13 Stonehenge Road** was adopted as modified, Ms. Cockey abstaining:

WHEREAS, Colette Dunworth, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c associated with proposed roofed porch at the front of the dwelling, on property designated as Lot 76 in Block 4805 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested a variance from **Montclair Code Section 347-45B(1)** in that a front yard setback less permitted is proposed; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 18, 2011 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated December 12, 1991 and plans prepared by Sionas Architecture, PC, dated March 22, 2011; and

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

1. The property is located in the R-1 One Family Zone and contains a single-family dwelling with an attached garage located at the front wall within the footprint of the dwelling. The lot has a curved front property line, measures approximately 59 feet in

width across the front setback of the dwelling, and approximately 7,840 square feet in total lot area.

2. The average front yard setback of the 4 nearest dwellings, to the 2 dwellings each side of the subject property, is 29.4 feet, which is the required front yard setback for new construction on the subject property.

3. The existing dwelling has a nonconforming front yard setback that varies due to the curved front property line and the design of the existing dwelling. The existing nonconforming front yard setback is a minimum of 23 feet at the existing roofed entry way, and a maximum of 28 feet 2 inches at the southerly front corner of the dwelling where the proposed roofed porch would be located.

4. The proposed porch extension would have a nonconforming front yard setback that varies from a minimum of 20.3 feet at the southerly end to a maximum of 23 feet where it meets the existing roofed front entry way and a variance is requested.

5. The Board determined that the requested variance could be approved for the plan as submitted. The placement of dwelling on the lot, coupled with the curved front property line, sufficiently distinguishes the subject property from the other properties on Stonehenge Road that also do not have front porches. The proposed porch essentially fills in a notch in the dwelling footprint and also provides an aesthetic benefit to the property and the neighborhood; and

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

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

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

It was announced that at the request of the applicant, a special meeting date to continue the application of **Omnipoint Communications, Inc., 153 Park Street** would be selected at the Board's regular meeting on August 17, 2011. No further notice would be given. The Board was granted an extension of time. It was announced that at the request of the applicant, the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the August 17, 2011 regular meeting. No further notice would be given. The Board was granted an extension of time. It was also announced that at the request of the applicant, the application of **Montclair Kimberly Academy Foundation, 201 Valley Road** was postponed until the July 20, 2011 regular meeting. No further notice would be given. No extension of time was necessary.

Mr. Burr had not yet arrived. Mr. Fleischer would be recused from the first application on the agenda, **Philip & Leslie Hatch, 137 Montclair Avenue**, which would only leave 4 Board members for that application. To avoid the potential of a split vote of 2-2, Chair Harrison called the next application to be heard by the 5 Board present.

The application **Beatrice Price, 6 Jefferson Place** was called. Ms. Price was present and elected to proceed with her application, which includes a use variance requiring 5 affirmative votes. Ms. Price was sworn and described the application. The property is located in the R-1 One Family Zone and contains a lawfully existing nonconforming two-family dwelling. Variances are requested for the proposed construction of a detached garage to replace an existing detached garage destroyed by a fallen tree. The footprint of the existing garage measures approximately 17 feet wide by 18 feet long. The rear yard setback of the existing garage is 1.4 feet. The southerly side yard setback of the existing garage is 0.7 feet at the front corner of the garage and 2.1 feet at the rear corner of the garage. The proposed detached garage would be larger, measuring 20 feet wide by 22 feet long. The rear yard setback would be increased to 3 feet and the southerly side yard setback would be increased to 3 feet at the front corner of the garage, and 4.4 feet at the rear corner of the garage. A conforming height of 15 feet is proposed.

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested use variance to expand the nonconforming two family use of the property by constructing a detached garage could be approved because the proposed garage would provide covered parking on the site, which promotes a desirable visual environment and is consistent with the purposes of the Municipal Land Use Law. The Board also determined that subject to certain conditions, the requested variances for the side yard and rear yard setback could also be approved. The applicant is proposing to increase the setbacks of the garage from the existing condition described above to a minimum of 3 feet, which would improve the conditions near the property lines and provide an opportunity for proper maintenance of the garage and ground area around the garage. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved, subject to the following conditions:

1. The garage shall be at least 3 feet away from the southerly side property line and the rear property line.
2. Storm water collected from the roof of the garage shall be directed away from the southerly side property line and the rear property line.

The application of **David & Karen Gash, 290 Park Street** was called. David Gash, and Erik Schultz, Architect, were sworn. Mr. Schultz described the application. The property is located in the R-1 One Family Zone and contains a single-family dwelling. The property is a corner lot at the intersection of Park Street and Gordonhurst Avenue. The lot measures 81.56 feet in width across the Park Street frontage and 53.57 feet in width across the rear property line. Variances are requested for the proposed construction of an enclosed porch at the front of the dwelling. The existing landing and steps at the front corner of the dwelling would be replaced by a new larger roofed and enclosed front porch measuring 16 feet 2 inches in width by 9 feet 4 inches in depth excluding the steps. The average front yard setback of the nearest 2 dwellings on Park Street to the north of the subject property is 48 feet 5 inches, which is the minimum permitted front yard setback for the property. The existing dwelling has a conforming front yard setback of 49.15 feet measured to the wall at the northerly front corner of the dwelling. The proposed roofed porch would have a front yard setback of 39 feet 8 inches, whereas a minimum of 48 feet 5 inches is permitted, and a variance is requested. The northerly side yard setback of the dwelling at the northerly front corner of the dwelling is nonconforming at 4.2 feet where as minimum of 6 feet is permitted. The roofed porch would have a side yard setback of 4 feet 10 inches from the northerly side property line, whereas a minimum of 6 feet is permitted, and a variance is requested.

Exhibit marked:

- A-1 12 photographs of the front of the dwelling subject property and the front of several other dwellings in the neighborhood

The Board questioned the applicant. Mr. Schultz stated the design of the front porch was based on the applicant's requests and aesthetic considerations. Mr. Gash described their thought process as homeowners in designing the size of the enclosed porch. Chair Harrison called for questions and comments from the public. Doug Moore, contractor for the applicants, was sworn and stated his support for the application. The Board discussed the application and determined that the application could not be approved for the plan as submitted. The proposed encroachment into the front yard setback is significant and would have a negative impact on the streetscape. No sufficient justification was provided for the proposed dimensions of the enclosed porch, and there was no alternative for a smaller enclosed porch proposed by the applicant. The side yard variance was also denied as it pertains to the plan before the Board. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was unanimously denied.

Mr. Burr arrived at the meeting. There were now 6 Board members present. The continuation of the application of **Philip & Leslie Hatch, 137 Montclair Avenue** was called. Mr. Fleischer recused himself from the application as he lives across the street the applicant's property, leaving 5 Board members to review the application. The applicants were sworn and described the application. A variance is requested for the front yard setback of a proposed enclosed entryway at the front of the dwelling. The existing front porch is the full width of the dwelling and is roofed and enclosed with screens. The existing porch would be improved by enclosing it with glass doors and windows. A new smaller roofed entryway that would also be enclosed with glass doors and windows is proposed at the center of the existing porch to act as the new front entrance to the dwelling. The proposed entryway measures 11 feet 4½ inches wide by 4 feet 9 inches deep. The average front yard setback of the 4 nearest dwellings on Montclair Avenue is 47.72 feet, which is the minimum front yard setback permitted for new construction on the subject property. The proposed entryway addition would have a front yard setback of 43.99 feet and a variance is requested.

The Board questioned the applicant. The applicants continued to describe the plans. Chair Harrison called for questions and comments from the public. Count Stovall, 139 Montclair Avenue, was sworn and stated his support for the application. Steven Corso, 136 Montclair Avenue, was sworn and stated his support for the application. The Board discussed the application and determined that the requested variance could be approved for the plan as submitted. The proposal is limited to the entryway, which is not oversized and is significantly comprised of glass panels. The proposed encroachment of 3.73 feet is minor and would not negatively impact the appearance of the streetscape, which already has some variation in the front yard setback of nearby dwellings. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was unanimously approved.

Mr. Fleischer rejoined the Board. The application of **Latifah Jannah, 19 Wheeler Street** was called. The applicant and Mark Bess, Architect were sworn. Mr. Bess described the application. The property is located in the R-2 Two Family Zone and contains a two-family dwelling. The lot measures 25 feet in width and approximately 124 feet in depth. Variances are requested for the proposed construction of a two-story deck and access stairway at the rear of the dwelling. An existing 2 story deck and stairway that is roofed and partially enclosed would be demolished as it is in disrepair. An existing foundation wall below the structure is to remain. The new 2 story deck and stairway that is proposed to replace the existing deck and stairway would not have a roof and would have no walls, but would have a different stairway configuration and a larger first floor deck area. The existing dwelling has a nonconforming side yard setback of 3 feet from the northerly side property line. The new construction beyond what is being replaced on the property is required to have a 6 foot side yard setback from the northerly side property line. The new stairway extending down from the second floor deck is aligned with the northerly side of the new deck and the dwelling, extends into the rear yard, and requires a variance for a side yard setback less than required from the northerly side property line. The existing dwelling including the existing deck, porches, and stairways is presently nonconforming, having a principal structure

coverage of 25.4 percent, whereas a maximum of 25 percent is permitted. The proposed plan increases the principal building coverage to 28.8 percent of the lot area and a variance is requested.

Exhibit marked:

A-1 5 photographs of the dwelling on the subject property

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variances could be approved for the plan as submitted. The proposed 2 story deck and stairway is not oversized and provides several aesthetic and safety improvements to the property. The proposed northerly side yard setback is aligned with the existing nonconformity, and the proposed increase in the nonconforming principal structure coverage is relatively minor considering the size of the lot and is vastly outweighed by the aesthetic and safety improvements provided by the project. Mr. Susswein, seconded by Mr. Whipple, the application was unanimously approved.

The application of **Brianne Johnson, 30 William Street** was called. The applicant and Joseph Asfour, Architect, were sworn. Ms. Johnson briefly described the application for proposed improvements to the dwelling. Mr. Asfour also described the application. The property is located in the R-2 Two Family Zone and contains a two-family dwelling. The lot measures 25 feet in width and 3,090 square feet in lot area. Variances are requested for proposed improvements, which include an enclosure for an existing basement entrance on the easterly side of the dwelling, a two-story deck and stairway at the rear of the dwelling, and a ramp along the westerly side of the dwelling. The proposed ramp along the westerly side of the dwelling has been designed for handicapped accessibility.

Mr. Asfour described the variances for setbacks. The minimum permitted front yard setback for new construction on the subject property is 25 feet. The existing dwelling is nonconforming with a front yard setback of 3.8 feet. The proposed basement stairway enclosure on the easterly side of the dwelling is set back 23 feet 4.5 inches from the front property line and a variance is requested. The minimum permitted side yard setbacks are 10 feet on one side and 6 feet on the other side. The existing side yard setbacks are nonconforming as 3.8 feet exists to the dwelling wall on the westerly side and 4.1 feet exists to the dwelling wall on the easterly side. An existing wood stairway to the 2nd floor on the easterly side of the dwelling is to be removed. The side yard setback of the existing wood stairway is approximately 1 foot to the easterly side property line. The proposed basement stairway enclosure on the easterly side of the dwelling would have a side yard setback of 6.5 inches and a variance is requested. The proposed two-story deck and stairway at the rear of the dwelling, exclusive of the ramp areas, has minimum side yard setbacks that match the existing nonconforming side yard setback of the dwelling described above, and variance is requested.

Mr. Asfour described the variances for principal structure width and principal structure coverage. The maximum permitted principal structure width is 16.25 feet or 65 percent of the lot frontage width of 25 feet. The total width of the existing dwelling including the wood stairway to the 2nd floor on the easterly side of the dwelling is nonconforming at approximately 20.1 feet, or 80.4 percent of the lot frontage width. After the removal of the wood stairway to the 2nd floor on the easterly side of the dwelling, the proposed ramp along the westerly side of the dwelling and the proposed basement stairway enclosure on the easterly side of the dwelling would increase the overall width of the dwelling at the ground level, to a total width of approximately 23.79 feet, or 95.2 percent of the lot frontage width, and a variance is requested. The maximum permitted principal structure coverage is 25 percent of the lot area. The lot area is 3,090 square feet and the maximum permitted principal structure coverage is 773.25 square feet. The existing dwelling, including the front entrance landing and steps and wood stairway to the 2nd floor on the easterly side of the dwelling is presently nonconforming, covering approximately 32.3 percent of the lot area. After the removal of the wood stairway to the 2nd floor on the easterly side of the dwelling, the proposed basement stairway enclosure on the easterly side of the dwelling, the proposed two-story deck and stairway, the proposed ramp on the westerly side of the dwelling, increase the nonconforming principal structure coverage to approximately 43.4 percent of the lot area and a variance is requested.

The Board questioned the applicant. It was clarified for the Board and the applicant by Mr. Sullivan and Mr. Charreun that the proposed ramp along the westerly side of the dwelling is for handicapped accessibility is therefore not required to comply with the setbacks requirements based on the definition of YARD in the zoning ordinance, although it has been included in the consideration of principal structure width and principal structure coverage. The applicant and Mr. Asfour answered several questions regarding their choices and their options in designing the ramp, whether or not a chair lift could have been used, and their choices in designing an enclosure or other type or roof recovering for the existing basement entrance.

Chair Harrison called for questions or comments from the public. Aimee and John Hansen, 32 William Street, were both sworn. They stated that they were concerned with the proposed ramp along the westerly side of the subject property and that the ramp would negatively affect their privacy. The Board questioned Mr. and Ms. Hansen regarding the paved driveway on their property that encroaches approximately 4 feet onto the applicant's property. Mr. and Ms. Hansen stated that they have been at 32 William Street since 1999, and that since that time, the owners of 30 William Street have not used the driveway and parking that is mostly on their property in common. Mr. Asfour also questioned Mr. and Ms. Hansen about their driveway and its extension onto to 30 William Street. Mr. and Ms. Hansen stated that the driveway is about 14 feet wide, about 10 feet of which on their own lot, and extends about 4 feet onto 30 William Street.

Theodore H. Williams, 426 William Street, East Orange was sworn. Mr. Williams is a draftsperson who works for Mr. Asfour and was the involved in the designing the project. Mr. Williams provided additional information clarifying the decisions that were

made regarding the ramp and the enclosure for the basement entrance. The Board questioned Mr. Williams. Mr. Asfour also answered additional questions. The applicant's mother, Michelle Williams, Keasler Avenue, Lodi was sworn. She and her handicapped father would be residents at 30 Williams Street if the proposed improvements are approved and completed. She stated that the home was in severe disrepair and abandoned prior to their purchase that they are in the process of doing extensive renovations beyond the proposed improvements that require variances. They currently utilize a lift at their existing residence in Lodi and it costs them between 200 and 400 dollars a month which is too costly for them to continue using. The mortgage for the purchase and renovation of 30 William Street includes the cost of constructing the ramp. The Board did not question Ms. Williams. Mr. Asfour provided some additional comments.

The Board discussed the application and determined that the requested variances could be approved for the plan as submitted, subject to one condition listed below. The requested variances are based on existing nonconforming conditions of the property. The proposed improvements are not oversized and would provide aesthetic, safety, and accessibility improvements which outweigh the impacts of the increases in the existing nonconformities. On motion by Mr. Fleischer, seconded by Mr. Susswein, the application was approved, with Mr. Whipple voting against the application, subject to the following condition:

1. The applicant shall obtain permission from the Township Engineering Department regarding the work depicted in the public right-of-way, including any new sidewalk, curbing, and plantings, including the proposed street tree.

Chair Harrison announced that the Board would go into closed session to discuss litigation. Mr. Sullivan distributed a resolution for that purpose. On motion by Mr Whipple, seconded by Mr. Susswein, the following resolution was adopted:

WHEREAS, N.J.S.A. 10:4-12 (the Open Public Meetings Act) authorizes the Board to exclude the public from that portion of a meeting at which the Board discusses certain matters; and

WHEREAS, the Board is about to discuss such a matter, specifically, to discuss pending litigation entitled The Mental Health Association of Essex County, Inc. v. Board of Adjustment of the Township of Montclair, New Jersey, captioned in the Superior Court of New Jersey, Law Division, Essex County, and The Mental Health Association of Essex County, Inc. v. Township of Montclair, New Jersey and Board of Adjustment of the Township of Montclair, New Jersey, captioned in the United States District Court For The District of New Jersey; and

WHEREAS, the Board believes the public should be excluded from that discussion in order to discuss litigation strategy; and

NOW, THEREFORE, BE IT RESOLVED, by the Montclair Township Board of Adjustment on this 15th day of June, 2011, that the Board now go into closed session and the public be excluded and that the Board believes that the discussion conducted in the closed session may be disclosed to the public after final disposition of the litigation, including any and all appeals.

The public left the room entirely and the Board went into closed session. Upon reconvening in open session, Chair Harrison stated that while in closed session the Board discussed the Federal lawsuit filed against the Township and the Board, and the State lawsuit filed against the Board, regarding the denial of the application of **The Mental Health Association of Essex County, Inc.** In closed session, the Board unanimously approved a motion that authorized the Township Attorney to file an appeal on the Board's behalf regarding the recent decision made in the State Court which reversed the Board's denial of the application referenced above.

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