

MINUTES OF THE BOARD OF ADJUSTMENT
June 20, 2007

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

ABSENT: Vice Chair Fleischer, Ms. Cockey, Ms. English, and 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. Chair Harrison welcomed Mr. Rubenstein to the Board.

On motion by Mr. Haizel, seconded by Mr. Susswein the **Minutes of the November 15, 2006** regular meeting were adopted as modified.

The application of **Wallwood Gardens, Inc., 400 Orange Road** was adjourned to the August 15, 2007 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application.

The application of **Steven and Mary Lee Wrede, 24 Greenview Way** was adjourned to the July 18, 2007 regular meeting of the Board, at the applicants' request. No further notice would be given. The Board was granted an extension of time on the application.

The Board discussed the request for an extension of time on the variance approval of **Arie & Elaine Hochberg, 39 Porter Place**. The applicants requested an extension through August 31, 2008. On motion by Mr. Haizel, seconded by Mr. Susswein the Board approved an extension through May 31, 2008.

On motion by Mr. Susswein, seconded by Mr. Rubenstein, the following Resolution memorializing the approval of the application of **Sarah and Giles Colwell, 90½ Wildwood Ave** was adopted, Ms. Holloway abstaining:

WHEREAS, Sarah & Giles Colwell, as owners, did make application to the Board of Adjustment of the Township of Montclair to construct a one-story addition and deck onto the rear of their single family dwelling on property designated as Lot 23 in Block 3504 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-45C(1)** in that a minimum side yard setback of 6 feet is required in the easterly side yard, and a lesser side yard setback of 3.7 feet is proposed; and

WHEREAS, the applicant submitted a property survey and a plot plan, partial floor plan, and elevations; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 16, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, measures 50 feet in width of lot frontage and 12,544 square feet in lot area, and contains a 2½ story single-family dwelling with a deck and a detached garage at the rear.
2. 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.
3. 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.
4. The Board determined that the side setback variance could be granted since the proposed addition and deck are aligned with the existing walls of the dwelling and the dwelling needs the additional space to accommodate a family.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Sarah & Giles Colwell is approved with the following condition:

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

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. Susswein, seconded by Mr. Rubenstein, the following Resolution memorializing the approval of the application of **Michael Goulder and Carolyn Buck, 34 Elston Road** was adopted, Ms. Holloway abstaining:

WHEREAS, Michael Goulder and Carolyn Buck, as owners, did make application to the Board of Adjustment of the Township of to construct a dormer addition to the third floor of their dwelling on property designated as Lot 11 in Block 1803 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Zone; and

WHEREAS, the applicant sought a variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-45A(2)** in that a maximum of 2½ stories is permitted and the proposed addition creates a third story at the rear of the dwelling; and

WHEREAS, the applicant submitted a property survey prepared by Richard J. Hingos, dated April 11, 1994, and a third floor plan, elevations, and a photograph prepared by Yanku Architects, dated March 7, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 16, 2007, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, measures 100.26 feet in frontage width, and 14,561 square feet in lot area. The subject property contains a 2½ story single-family dwelling, with one-story section on both sides, and a detached garage in the rear yard.

2. The applicants propose to construct 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.

3. The ordinance permits within a half story, dormers that do not exceed 50 percent of the width of the façade. For the subject property, 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.

4. The Board determined that the variance for the third story at the rear of the dwelling could be approved since the dwelling would remain in keeping with the existing size, scale, and character of the dwellings in the neighborhood, the overall height of the

dwelling would not be increased, and the proposed addition would not be visible from the street.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Michael Goulder and Carolyn Buck is approved; and

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

On motion by Mr. Susswein, seconded by Mr. Rubenstein, the following Resolution memorializing the Board's decision on the application of **Claudia Pascale, 6 Argyle Road** was adopted as modified, Ms. Holloway abstaining:

WHEREAS, Claudia Pascale, owner of property at **6 Argyle Road**, did make application to the Board of Adjustment of the Township of Montclair to construct several additions onto her single-family dwelling on property designated as Lot 90 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant sought variances as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70c to allow a front yard setback less than required pursuant to **Montclair Code Section 347-45B(1)**; and
2. A variance pursuant to N.J.S.A. 40:55D-70c to allow a rear yard setback less than required pursuant to **Montclair Code Section 347- 45D**; and
3. A variance pursuant to N.J.S.A. 40:55D-70c to allow a greater principal structure width than permitted pursuant to **Montclair Code Section 347-45C(4)**; and
4. A variance pursuant to N.J.S.A. 40:55D-70c to allow a greater principal building coverage than permitted pursuant to **Montclair Code Section 347- 45E**; and

5. A variance pursuant to N.J.S.A. 40:55D-70c to allow a side yard setback less than required for proposed central air conditioning units pursuant to **Montclair Code Section 347-46A(2)(a)**; and

WHEREAS, the applicant submitted a property survey, prepared by Keelen and Pica, dated March 23, 1983, and a plot plan, floor plans, elevations and photographs, prepared by, M.B.A. Architects, dated February 1, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on May 16, 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; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, and measures 65 feet in lot frontage width and 6,141 square feet in lot area. The subject property contains a 2½ story single-family dwelling with an attached one garage.

2. 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 Board finds this variance can be approved since the encroachment into the front yard is minor, the average front setback of the 4 nearest dwelling is less, and the addition is aligned with the existing dwelling.

3. 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 Board finds that this variance can be approved since the side yard setbacks are met and the second floor additions are aligned with the existing dwelling.

4. 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. The Board finds that this variance could not be approved due to the extent of the encroachment into the required rear yard. The Board determined that it is possible to reduce the extent of this encroachment.

5. 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 Board finds that this variance could also not be approved

due to the extent of the proposed nonconformity. The Board determined that it is possible to reduce the level of the proposed nonconformity.

6. 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. The Board finds that this variance could not be approved since there are other locations on the property that conform to the setback requirements where the units could be located.

WHEREAS, the Board, based on the foregoing findings regarding the variances requested for rear yard setback, building coverage, and central air unit setback, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances could not 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 regarding the variances requested for rear yard setback, building coverage, and central air unit setback, 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 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 regarding the variances requested for front yard setback and principal structure width, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based on the aforementioned findings regarding the variances requested for front yard setback and principal structure width, 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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variances requested for rear yard setback, building coverage, and central air unit setback are denied and the variances requested for front yard setback and principal structure width are approved; and

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

On motion by Mr. Susswein, seconded by Mr. Rubenstein, the following Resolution memorializing the approval of the application of **The Eveline A. Kochling Revocable Trust, Eveline A. & Josef Kochling, Trustees, 10 Edgemont Road** was adopted, Chair Harrison and Ms. Holloway abstaining:

WHEREAS, The Eveline A. Kochling Revocable Trust, Eveline A. Kochling and Josef Kochling, Trustees, as owner, did make application to the Board of Adjustment of the Township of Montclair ("Board") to construct a two-story addition onto the rear and northerly side of the existing single-family dwelling and a one-story addition onto the rear and southerly side of the existing single-family dwelling on property designated as Lot 14 in Block 1603 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 less than the prescribed front yard setback, contrary to Montclair Code Section 347-45B(1); and
2. A variance pursuant to N.J.S.A. 40:55D-70c to allow the width of the single-family dwelling to exceed 65% of the lot frontage, contrary to Montclair Code Section 347-45C(4); and

WHEREAS, the applicant submitted site and architectural plans prepared by Sionas Architecture, P.C. (SP1, A2, A3, and A4) dated August 25, 2006 and revised through March 5, 2007; and

WHEREAS, the matter came on to be heard at a public hearing of the Board held on May 16, 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 10 Edgemont Road is an interior lot that adjoins the Edgemont School. It contains a single-family dwelling and detached carriage house and garage. It is located in the R-1 One-Family zone.
2. 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.

3. The applicant is planning other improvements, including but not limited to new mechanicals and a new patio.

4. The applicant agreed to eliminate a driveway width variance by making the re-configured portion of the driveway ten feet wide.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. Based on 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 aforementioned findings, concluded that the applicant did prove 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 zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1); and

WHEREAS, the Board, based upon the aforementioned findings, concluded that the applicant did prove that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and did prove that the benefits of the deviation would substantially outweigh any detriment 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 zoning ordinance pursuant to N.J.S.A. 40:55D-70c(2); and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Montclair, that the within application of The Eveline A. Kochling Revocable Trust, Eveline A. Kochling and Josef Kochling, Trustees, for front yard setback and dwelling width variances, is hereby approved, 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.

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

Chair Harrison called the application of **Valley National Bank, 539 Valley Road**. Mr. Whipple was recused from the application. Stuart Yusem, Esq. appeared as

attorney and described the application to utilize the existing two story building as a bank in the N-C Neighborhood Commercial Zone. Michael Kauker, Professional Planner, was sworn. The surrounding area consists of mixed uses including commercial and residential. Abutting the property to the north is a two story building containing a mix of commercial uses. The adjacent property to the south at 529 Valley Road is a one story building utilized as a drive through facility by the applicant. Across the street from the subject property is a commercial strip containing a mix of commercial uses including a restaurant, nail salon and tailor. Abutting this commercial strip to the south is a mid rise residential building. The proposed bank would be a positive addition to the Township bringing a productive business use which constitutes appropriate municipal action promoting the general welfare. The application provides adequate light, air and open space and promotes a desirable visual environment consistent with N.J.S.A. 40:55D-2c and i. The limited number of available on-site parking makes the building more suitable for a single use as compared to a mix of commercial uses.

The Board questioned Mr. Kauker. He did not look into the number of existing banks in the Upper Montclair business district. He stated that the sign variances could be approved under the c(2) criteria considering the HPC approval.

Robert Ring, Architect, was sworn. He described the plans in detail. The applicant seeks to utilize the entire building as a bank. The 3,040 square foot first floor would contain the public area of the bank including teller areas, employee desks and manager's office. The 2,840 square foot second floor would contain primarily storage space, along with an employee break room, conference room and file room. No changes to the site are proposed with the exception of new parking lot signs. The Board questioned Mr. Ring.

Mr. Yusem requested that the application be carried to the July 18, 2007 regular meeting of the Board. Chair Harrison announced the adjournment. No further notice would be given. The Board was granted an extension of time.

Chair Harrison called the application of **Edmund Auw, 53 Club Road**. The applicant and Gerald Novak, Architect, were sworn. Mr. Whipple joined the Board after testimony had started and was not eligible to vote. Mr. Novak described the application and stated that the subject property contained a single-family dwelling with an attached garage that has been substantially demolished. The property is located adjacent to Yantacaw Brook Park, which is on the corner to the east, and measures 98.74 feet along the curved frontage on Club Road and contains 12,500 square feet in lot area. The applicant was last before the Board on August 2, 2006, when an application to construct several additions onto the single-family dwelling was approved. That approved plan depicted a great deal of demolition, however, the plan also depicted that a significant amount of the existing first floor exterior framing would remain. On or around May 31, 2007, the applicant was advised that the extent of demolition of the dwelling that had occurred exceeded the extent of what the approved plans depicted, and that a new variance application to reconsider the approved variances would be required in order to continue the work on the property.

The present application calls for the first floor framing to be completely demolished. The footprint of the dwelling would be enlarged by additions to the front, rear, and easterly side of the dwelling. A complete first and second floor is proposed over the enlarged footprint. The average front yard setback of the 2 nearest dwellings to the west of the subject property is 32.46 feet. A front yard setback of 26 feet is proposed for the front entrance foyer addition, and a front yard setback of 30 feet is proposed for the 2-story bay addition on the front wall of the dwelling. The previously denied height variance is not being sought. The Board questioned the Mr. Novak. Chair Harrison called for questions and comments from the public.

Robert Lalli, 56 Yantacaw Brook Road, asked for a clarification of the plan, and whether the footprint of the dwelling was to be expanded.

Alvin Bell, 59 Club Road, also asked for a clarification of the plan.

The Board discussed the application. On motion by Mr. Susswein, seconded by Mr. Haizel, the application was approved, Mr. Whipple abstaining, subject to the same condition as the previous application, which was:

1. The height of the dwelling shall comply with the maximum principal structure height of 35 feet, measured as required by the ordinance.

The Board took a short recess.

Chair Harrison called the application of **Edward & Kathleen Rosen, 41 South Mountain Ave.** David Owen, Esq. appeared as attorney and described the application to construct a detached two-story structure in the rear yard of the subject property containing garage parking for three cars on the first floor and a dwelling unit on the second floor, while maintaining the existing single-family dwelling on the subject property.

Paul Sionas, Architect, was sworn. The subject property is a large property consisting of 62,824 square feet and has lot frontage of 268 feet and lot depth of 278 feet. The property slopes downward from South Mountain Avenue toward St. Luke's Place at an average downward slope of 8%. Currently the property contains a 2 ½ story one-family dwelling with in-ground pool and substantial landscaping but without any garage. The one-family dwelling was constructed in or about 1887, has been recognized by the New Jersey Office of Cultural and Environmental Services as having substantial historic and architectural merit, and has been identified in the Montclair Township Master Plan Historic Preservation element as a significant individual property. Formerly the property contained a carriage house. Based upon atlases, building department records, newspaper publication, and physical evidence, the carriage house appeared on the Essex County Atlas of 1906 and was located in the north corner of the rear yard proximate to the side and rear property lines. It was 30 feet by 40 feet and 2 ½ stories high. It contained a 2-car garage and original horse stalls and a 5-room apartment on the second floor. The carriage house was destroyed by a fire in January 1959. The remnants of the carriage house foundation remain in the rear yard. The

applicants propose to construct a new structure that will take the place of the carriage house that burned down in 1959. The proposed new structure is a 2-story building with approximately the same square footage as the former carriage house. There is garage parking for three cars on the first floor, an apartment on the second floor, and workshop space and storage in the basement. The new building is also located in the rear yard, but it has been moved to the south rear yard closer to the existing main home and with greater setbacks from the side and rear property lines than the original carriage house. The location and design re-create the driveway circle shown on the Atlas of 1906, and the existing mature Japanese Maple is to be retained in the center of the circle. The design avoids the driveway extension that formerly traversed across the rear lawn to the former carriage house. The new building reflects the outstanding architecture of the main home.

Marked into evidence was:

- A-1 Building permit records for the subject property
- A-2 Plan Section, color added, on a board
- A-3 Site Plan, color added, on a board

The Board questioned Mr. Sionas. The proposed retaining wall would measure 4 feet maximum in height. Chair Harrison called for questions from the public.

Josh Dudley, 26 St. Lukes Place, asked if the impervious coverage of the property would increase. Mr. Sionas indicated that it would.

Edward Rosen, owner, was sworn. He described his plan to plant additional large evergreens behind the proposed building. The new dwelling unit would be occupied by his oldest daughter in the near future and by caretakers once their children no longer live with them. The Board questioned Mr. Rosen. Chair Harrison called for questions from the public.

Terri Walter, 32 So. Mountain Avenue, asked how an approval of the current application would affect a potential subdivision of the subject property. Mr. Owen stated that the Planner could address that question.

Peter Steck, Professional Planner, was sworn. Although the new building does not meet the definition of "carriage house" as defined in the zoning ordinance, the new building does reflect the look and function of a carriage house. With respect to the section d variance to allow two principal buildings on one lot, there are special reasons in favor of such variance. The applicants' proposal promotes zoning purpose 2a because the property is particularly suited for the new building insofar as it is a substantial estate property with recognized historic merit and insofar as it contained a carriage house for more than 50 years. The proposal also promotes zoning purpose 2a because it promotes the appropriate use of property by solidifying the estate and historic character of the property and by returning a traditional component to the property. the proposal also promotes zoning purpose 2e because it promotes appropriate residential density, zoning purpose 2i because it promotes a desirable

visual environment, and zoning purpose 2j because it promotes conservation of an historic site. With respect to the section c variance to allow less than the prescribed minimum rear yard setback, there are also sufficient grounds in favor of this variance:

The required rear yard setback is 30 feet or 30% of lot depth, whichever is greater. Because of the extreme lot depth of 278 feet, the required rear yard setback is 83.67 feet, and the proposed rear yard setback is 73.50 feet. Under the subsection c(1) standard, the lawfully existing structures on the property, including the main home and stone wall behind the main home, present peculiar and exceptional practical difficulties because it is not feasible to move the carriage house from the rear property line and maintain a comfortable spatial separation from the main home and at the same time recreate the historic driveway circle. Also under the subsection c(1) standard, the extreme lot depth of 278 feet presents peculiar and exceptional practical difficulties insofar as a literal application of the 30% requirement necessitates an unusual and exceptional rear yard setback of 83.67 feet. Alternatively, under the subsection c(2) standard, the rear yard setback variance is in furtherance of the applicants' overall proposal and promotes zoning purposes 2a, e, i, and j set forth above. It also promotes zoning purpose 2c because it provides more than adequate light, air, and open space to adjacent properties. In the case of subsection c(2), given the substantial 73.50 feet rear yard setback, the benefits of the variance substantially outweigh any detriment. With respect to both variances, there is no substantial detriment to the public good or substantial impairment of the zone plan or zoning ordinance:

The property is a substantial estate property and is large enough to be subdivided into two conforming lots. Traditionally, the property contained a carriage house. The proposal to recreate that which was destroyed by fire places the new building closer to the main home with improved and substantial side yard and rear yard setbacks. If the new building were already existing as a carriage house, it would satisfy all the conditions of section 347-9 for re-establishment of a carriage house as a conditional use. The combined building coverage of both the main home and the new building is approximately 7.5% and well under the prescribed maximum building coverage of 20%. The architectural design of the new building reflects the recognized historic and architectural merit of the main home. The project promotes the Master Plan policy of preserving historic estates. The application is not inconsistent with the character of the neighborhood and will not adversely impact the public good. The Board questioned Mr. Steck.

Chair Harrison called for questions and comments from the public.

Josh Dudley, 26 St. Lukes Place, was sworn. He expressed concerns over the visibility of the proposed structure from his rear windows, and stated that the increase in the stormwater runoff should be mitigated with a grading and drainage plan.

Mr. Owen recalled Mr. Rosen. He stated that he would be willing to do whatever is necessary to mitigate the drainage impacts of the proposed construction. The Board questioned Mr. Rosen and Mr. Sionas. Mr. Sionas described the details of what could be done to manage stormwater runoff from the site. The Board discussed the

application. On motion by Mr. Whipple, seconded by Mr. Haizel, the application was approved, subject to the following conditions:

1. The applicants shall install additional evergreen trees along the rear property line between the storm sewer line to the south and the south/southwest corner of the existing apartment building on St. Lukes Place (Block 1406, Lot 7) so as to increase the rear yard buffer on the property;

2. The applicants shall prepare a drainage plan for the increased impermeable square footage resulting from the driveway and new building for the approval of the Board Engineer;

3. The height of the new building shall not exceed 25 feet; and

4. There shall be no future subdivision of the property.

Chair Harrison called the application of **Nancy Mercurio, 360 Up. Mountain Ave.** Albert Mercurio, spouse of the applicant and also owner of the subject property was sworn. The property is a corner lot, located at the intersection of Upper Mountain Avenue and Bradford Avenue and contains a 1-story single-family dwelling with an attached two-car garage. On August 20, 2003 the subject property, under a different owner, received Board of Adjustment approval for a front yard setback variance from Bradford Avenue for the construction of a one-story addition at the northwesterly corner of the dwelling. A conforming deck was also part of that plan, and was constructed but the bathroom addition was never built. At this time, it is proposed to demolish an existing single-story section at the rear of the dwelling and construct a slightly larger one-story addition in the same location. The required rear yard setback for the subject property is 51 feet. Due to the position of the existing dwelling on the lot, a significant portion of the dwelling does not conform to the rear yard setback requirement. The proposed addition measures 14' deep by 10'-4" wide and will be used as a sitting room. The existing section of the dwelling that is proposed to be removed is set back 28 feet from the rear property line. The proposed addition would project 3 additional feet further into the rear yard and a rear yard setback of 25 feet is proposed. The proposed addition would be aligned with the existing deck at the rear of dwelling that also has a rear setback of 25 feet.

Marked into evidence was:

A-1 Two (2) photographs of the dwelling: 1 of the front and 1 of the rear

The Board questioned the Mr. Mercurio. 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. Haizel, the application was approved, subject to the following condition:

1. The prior variance approval for a front yard setback from Bradford Avenue for an addition at the northwesterly corner of the dwelling has expired, and should that addition be pursued in the future, a new application the Board is required.

Chair Harrison called the application of **Susan Schulz, 40 Marion Road**. The applicant was sworn and described the application to install a central air conditioning unit between the dwelling and the street. The property is a corner lot at the intersection of Marion Road and Valley Road and contains a 2½-story single-family dwelling with a detached garage in the rear yard. The proposed unit measures approximately 41" in height by 36.5" in width and 40" in depth. There are two options proposed to locate the central air conditioning unit. The "first choice" depicted on the plan has the proposed unit located near the southwesterly corner of the dwelling in a recessed area of the westerly side of the dwelling that faces Valley Road. The "second choice" depicted on the plan is located 8 feet from the southwesterly corner of the dwelling between the fence and the driveway on the property. Detailed information along with photographs was described to show that "first choice" was the best location on the property to locate the proposed central air conditioning unit. At this location on the property, the proposed unit would be screened by the existing wood fence, the large existing yew adjacent to the westerly side of the dwelling, as well as the existing privet hedge that exists along Valley Road. The proposed location would be less visible to the public than the conforming locations along the rear of the dwelling, and the screening provided by locating the central air conditioning unit as proposed would mitigate any visual impact.

Marked into evidence were:

A-1 through A-4 Photographs of the dwelling

The Board questioned the Ms. Schulz. She described detailed information about her "first choice" behind an existing large yew.

Marked into evidence were:

A-5 and A-6 Photographs of the dwelling

Chair Harrison called for questions and comments from the public.

John Grube, 2 Valley Place, was sworn and stated his support for the application.

The Board discussed the application. On motion by Mr. Susswein, seconded by Mr. Whipple, the application was approved, subject to the following condition:

1. The proposed central air conditioning unit shall be located on the westerly side of the dwelling, near the southwesterly corner of the dwelling, centered on the bay window on that wall that faces Valley Road behind the large existing yew.

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