

**MINUTES OF THE BOARD OF ADJUSTMENT
JULY 18, 2012**

PRESENT: Chair Harrison, Mr. Burr, Ms. Checca, Mr. Edwards, Mr. Fleischer, Mr. Kenney, Mr. Reynolds, and Vice Chair Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Ms. Holloway, Mr. Tsai, 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. Fleischer, the **Minutes of the June 13, 2012** regular meeting were adopted as modified, Mr. Kenney abstaining.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Elaine Fiveland, 262 North Fullerton Avenue** was adopted as modified, Mr. Kenney abstaining:

WHEREAS, Elaine Fiveland, 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 to construct a one-story addition at the rear of the dwelling, on property designated as Lot 4 in Block 3403 on the Township Tax Map and located in the R-1 One-Family Zone; and

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

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 13, 2012 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 plans prepared by George A. Held, AIA & Associates, revised April 3, 2012, and a property survey dated October 10, 1929; and

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

1. The property is an interior lot located in the R-1 One-Family Zone and contains a single family dwelling with a detached garage in the rear yard. The lot is irregular in shape, measures 50.24 feet in frontage width and approximately 6761.5 square feet in lot area.

2. The existing dwelling has an existing nonconforming northerly side yard setback of 4.78 feet measured at the northerly rear corner of the dwelling, where a minimum side yard setback of 6 feet is required.

3. A one story addition measuring 5 feet 6 inches by 8 feet 6 inches is proposed at the rear of the dwelling, to be aligned with the northerly side wall of the dwelling, and would continue the existing nonconforming northerly side yard setback of 4.78 feet, and a variance is requested. The addition would contain a portion of a renovated and expanded kitchen and a new half bathroom. No other variances are required.

4. The Board determined that the requested variance could be approved. The proposed addition is small in size, is aligned with the existing walls of the dwelling, and provides a functional benefit to the occupants of the dwelling. Additionally, the requested variance will not have a negative impact on any nearby property; 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.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Matthew & Marisa Beneventi, 44 College Avenue** was adopted as modified, Mr. Kenney abstaining:

WHEREAS, Matthew & Marisa Beneventi, 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 to construct an addition onto the 2nd floor of the dwelling, on property designated as

Lot 6 in Block 2805 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, a variance is requested from Montclair Code Section 347-45B(2) for a front yard setback of less than required; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 13, 2012 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 plans prepared by Kurt Vierheilig, AIA, dated May 15, 2012, and a property survey dated May 29, 2007; and

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

1. The property is a corner lot at the intersection of College Avenue and Hamilton Terrace, located in the R-1 One-Family Zone. The lot contains a single family dwelling with an attached garage accessed by a driveway from Hamilton Terrace. The lot measures 6,130 square feet in lot area.

2. As a corner lot, the property has two front yards: one along each street frontage. The required Hamilton Terrace front yard setback for new construction on the subject property is 25.45 feet, which is the average front yard setback of the 2 nearest dwellings located to the west on Hamilton Terrace.

3. The existing dwelling has a nonconforming Hamilton Terrace front yard setback of 15 feet measured at southeasterly front corner of dwelling. The setback increases slightly moving westerly along the façade, but remains nonconforming.

4. An addition is proposed to the 2nd floor of the dwelling, aligned with an existing area of the 1st floor that is set back 15 feet 6 inches from the Hamilton Terrace front property line. A variance is requested to permit a front yard setback of 15 feet 6 inches for the new construction, where a minimum of 25.45 feet is required. The addition would contain a new master bathroom. No other variances are required.

5. The Board determined that the requested variance could be approved. The proposed addition is relatively small in size, is aligned with the existing walls of the dwelling, and provides a functional benefit to the occupants of the dwelling. Additionally, the requested variance will not have a negative impact on any nearby property; 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.

On motion by Mr. Whipple, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Kumar Singh, 16 Rosedale Avenue** was adopted as modified, Mr. Kenney abstaining:

WHEREAS, Kumar Singh, 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 to construct a landing and stairway to the second floor at the rear of the dwelling, on property designated as Lot 3 in Block 3904 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, variances are requested from Montclair Code Section 347-51 for a side yard setback of less than the minimum of 6 feet from the westerly side property line, and to exceed the maximum permitted principal building lot coverage of 25 percent of the lot area; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 13, 2012 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 includes plans prepared by Brinkman Architecture, LLC, dated May 17, 2012, and a property survey dated July 19, 2001; and

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

1. The property is an interior lot measuring 40 feet in width and 3,845 square feet in lot area. The property is located in an R-2 Two-Family Zone and contains a two family dwelling with a detached garage in the rear yard.

2. An existing metal stairway and landing leading out from a bedroom window at the rear of the dwelling would be removed. A new wooden landing and stairway to the 2nd floor is proposed at the rear of the dwelling. A new doorway is also proposed at the 2nd floor to provide access to the new landing and stairway into the rear yard.

3. The existing metal landing and stairway is aligned with the westerly side wall of the dwelling, which has a nonconforming side yard setback of 3.18 feet, where a minimum of 6 feet is required. The proposed wooden landing and stairway would be set back 3.43 feet from the westerly side property line, which requires a variance but slightly improves the nonconformity. The proposed stairway would also be slightly longer, extending the nonconforming side yard setback deeper into the rear yard by approximately 1 foot.

4. The existing dwelling, landing, and stairways, occupy 30.3 percent of the lot area, where a maximum of 25 percent is permitted. With the additional area added with the new landing and stairway, the principal building lot coverage will increase to 33.5 percent and a variance is requested. No other variances are required.

5. The Board determined that the requested variances could be approved. The small lot size and narrow lot width along with the position of the existing dwelling make it impossible to fully comply with the zoning ordinance. The proposed landing and stairway are replacing a similar existing condition, and the proposal represents an improvement in safety and aesthetics. Additionally, the requested variances will not have a negative impact on any nearby property; 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 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 use of the property shall be limited to a one-family or two-family dwelling.

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. Fleischer, the following resolution memorializing the Board's decision on the application of **Joseph Martella & Susan Baer, 21 Norman Road** was adopted as modified, Mr. Kenney abstaining:

WHEREAS, Joseph Martella & Susan Baer, 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 to construct a taller roof onto the existing detached garage in the rear yard of the property, designated as Lot 19 in Block 1806 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, variances are requested from Montclair Code Section 347-46A(2)(a) for a westerly side yard setback of less than the minimum of 6 feet, and from Montclair Code Section 347-46A(3) for a rear yard setback of less than the minimum of 6 feet; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 13, 2012 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 packet of information dated May 22, 2012 that includes written information, construction drawings, a property survey dated December 20, 1993, and photographs; and

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

1. The property is an interior lot measuring 81.82 feet in width and 12,273 square feet in lot area. The property is located in an R-1 One-Family Zone and contains a single family dwelling with a detached garage in the rear yard.

2. The existing detached garage had a flat roof, which the applicant has removed due to its deteriorated condition. A typical gable roof is proposed on the existing garage. The proposed gable roof would slope to the east and west.

3. The footprint of the existing garage has a nonconforming westerly side yard setback of 0.39 feet and a nonconforming rear yard setback of 1.9 feet, both at westerly rear corner of garage.

4. The minimum setback from side and rear property lines for the new construction above and beyond what existed with the flat roof is 6 feet. The proposed gable roof will increase the size and volume of the garage within 6 feet of the westerly side and rear property lines and variances are requested. No other variances are required.

5. The Board determined that the requested variances could only be approved with modifications to the plan described below, so as to eliminate any negative impact an adjoining property. With the existing westerly side yard setback of 0.39 feet, having the proposed gable roof slope to the west causes an issue with storm water runoff from that portion roof spilling onto the adjoining property, and roof gutters would have to extend over the property line.

6. The Board determined that the gable roof should be switched to slope to the front and rear of the garage, which will allow for gutters on the front and rear of the garage to collect storm water and discharge into the applicant's yard on the east side of the garage. The applicant has the option of installing a dormer in the sloping roof at the front of the garage in order to retain some of the design element that was intended with the initial design having a gable end at the front; 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 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 conditions:

1. The garage roof shall be redesigned so that it will slope to the front and rear of the garage only.

2. Gutters must be installed and maintained on front and rear of the garage roof.

3. Storm water collected from the garage roof must be directed to the east side of the garage into the applicant's rear yard and away from the westerly side and rear property lines.

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. Fleischer, the following resolution memorializing the Board's decision on the application of **Samantha & Adam Kaplan, 251 South Mountain Avenue** was adopted, Mr. Kenney abstaining:

WHEREAS, Samantha & Adam Kaplan, 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 to demolish the existing single-family dwelling and construct a new single-family dwelling on property designated as Lot 7 in Block 1102 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant requested the following variances:

1. A variance from Montclair Code Section 347-32B to permit a new dwelling on a lot of less than 150 feet of lot frontage width; and

2. A variance from Montclair Code Section 347-33A(2) to permit the new dwelling to exceed 2½ stories; and

3. A variance from Montclair Code Section 347-102C to permit a portion of a new driveway to exceed a 10 percent gradient within 20 feet of the southerly side property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 13, 2012 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 includes a property survey dated November 15, 2011, and plans by Barry Jay Kaplan, Architect, dated April 19, 2012; and

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

1. The property is an interior lot measuring 105.98 feet in frontage width and 20,287 square feet in lot area. The property is located in an R-0 Mountainside Zone and contains a single family dwelling with an attached garage along the front facade.

2. Variances are requested to demolish the existing dwelling and construct a new single-family dwelling. The new dwelling would have a garage at grade level along the southerly side of the dwelling. The new driveway would enter the property from the street in the same location as the existing driveway along the northerly side of the frontage, and would cut across the front yard and turn into the southerly side yard to access the proposed garage area.

3. The zoning ordinance requires a lot frontage width of 150 feet for a new dwelling at this location in the R-0 Zone. The existing lot frontage width of 105.98 feet is nonconforming and a variance is requested to permit a new dwelling on a lot of less than 150 feet of lot width.

4. The dwelling as proposed is considered to be 3 stories in design which is notable along the side elevations and the rear elevation, and a variance is requested to exceed 2½ stories.

5. The zoning ordinance limits the driveway gradient to a maximum of 10 percent within 20 feet of a property line. A variance is requested in that a portion of a new driveway will exceed a 10 percent gradient within 20 feet of the southerly side property line.

6. The Board determined that the requested variances could be approved subject to the conditions listed below. The lot with its existing frontage width has contained a single family dwelling since approximately 1960. There is no practical way or opportunity to enlarge the lot width without creating new nonconformities for the adjoining lots. The design of the dwelling in terms of the number of stories and the driveway gradient is caused by the existing steep grade of the lot and is a typical characteristic of dwellings and properties in the neighborhood. The plan as proposed seeks to limit these factors in every way that is practical while limiting the impact to the nearby properties; 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 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 conditions:

1. The applicant shall retain the services of an Arborist or Landscape Architect to provide guidance on measures to protect the trees indicated to remain on the plan submitted.

2. A grading and drainage plan shall be submitted for review and approval by the Board Engineer prior to any construction. The applicant shall be responsible for escrow fees associated with the Board Engineer's review of plans and inspection of site work.

3. The applicant shall, in connection with the development of a grading and drainage plan and the guidance provided by an Arborist or Landscape Architect on tree protection, confirm that that design of the westerly end of the driveway and the regrading proposed adjoining that area of the driveway is appropriately designed so as to prevent storm water runoff from negatively impacting an adjoining property and also to not cause harm to existing trees in that area of the site.

4. The section of the driveway entering the site from South Mountain Avenue that is perpendicular to South Mountain Avenue shall not exceed a 10 percent gradient within 20 feet of the front property line.

5. The applicant shall be responsible for any Development Fee required by Chapter 202 Article VI of the Township ordinance for the proposed single-family dwelling.

6. The zoning chart on the plans shall be corrected to reflect the variance required for lot frontage width; 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.

The applicant for the first application, **Savita & Matthew Lepore, 137 Cooper Avenue**, was not yet present but would arrive shortly. Chair Harrison stated that the second and only other application, which was expected to take much more time, should present an opening statement in the meantime.

The application of **Frank & Marcia Haimbach, Park Street** was announced. Calvin Trevenen, Esq., appeared as attorney for the applicant and described the application. He stated that the application was presented at the January 18, 2012 meeting, however, due to insufficient notice, that proceeding was invalidated and he described the corrected public notice procedure. He stated that they have been in contact with several neighbors, now represented by Alan Trembulak, Esq. who is present and will speak in support of the application. Working with Mr. Trembulak, the applicant and the other property owners with interest in the shared private road and other common areas will establish a home owners association. The applicant is prepared to create a deed restriction that limits the property to the dwelling as depicted on the plans submitted. Mr. Trevenen stated that he would call 3 witnesses.

The application of **Savita & Matthew Lepore, 137 Cooper Avenue** was called. Savita Lepore, applicant, and Kip Siebert, contractor, were sworn. Mr. Siebert described the plan and the variance requested to construct a dormer addition onto the third floor at the rear of the dwelling. The width of the dwelling at the third floor level is 34 feet. The proposed third floor dormer addition at the front of the dwelling measures 15 feet 4 inches in width and complies with the ordinance limiting dormers to 50 percent of width of the dwelling. The proposed dormer addition at the rear of the dwelling would measure the full width of the third floor and requires a variance.

The Board questioned the applicant. Mr. Seibert stated that the idea behind the dormer addition was to create interior space without proposing additions to the footprint of the dwelling. The Board discussed the application. A majority of the Board determined that they would not be in favor of the application as submitted but would consider a design that still requires a variance but would not extend the full width of the dwelling. Based on these comments, the applicant requested that the Board not vote on the application, and that they would resubmit a new plan for the Board to consider at a subsequent meeting.

Chair Harrison announced that the application would be continued at the August 15, 2012 meeting of the Board and that no further notice would be given.

The Board took a short recess.

The application of **Frank & Marcia Haimbach, Park Street** was announced to continue. Mr. Trevenen called Paul Sionas, Architect, was sworn and described the application. A new single family dwelling is proposed on an existing vacant lot that does not abut a public street. The subject property is identified as lot 38 in block 2804 on the Tax map and is located within an existing cul-de-sac style cluster of properties at the north end of Park Street between Macopin Avenue and Mt. Hebron Road that are accessed by a private shared driveway from Park Street. The private shared driveway is located on a separate property identified as lot 33 in block 2804 and acts as the roadway access for the lots within the cul-de-sac, but it is not a public street. 43.50 feet

of the easterly property line of the subject property abuts the property that contains the shared driveway.

Mr. Sionas described the revised plans for the proposed dwelling. The applicants propose to construct a 2.5 story, four bedroom Tudor style single family home consisting of 4,269 square feet including 505 square feet of garage. The proposed dwelling meets all applicable bulk standards contained in the Zoning Ordinance and the New Jersey Residential Site Improvement Standards. The proposed dwelling is positioned to face the shared driveway lot to the east. The plans treat the easterly property line that abuts the shared driveway lot like a front property line, the northerly and southerly property lines like side property lines, and the westerly property line like a rear property line. This orientation is sensible and is in keeping with typical zoning. The proposed principal building coverage is 13.6 percent of the lot area, where a maximum of 25 percent is permitted in the R-1 Zone. The proposed dwelling would also comply with the maximum height allowed in the zone, and would also comply with the minimum amount of on-site parking spaces required by the N.J.R.S.I.S. The relatively flat private road is approximately 16 to 17 feet in width with a slight curvature. The development of the property would require compliance with N.J.D.E.P. regulations since there is a stream located along the rear property line. The Montclair Fire Department has recommended that a residential sprinkler system be included within the proposed home, which would be accomplished.

Exhibits marked:

- A-1 Sheet SP-1 Site Plan, by Sionas Architecture, PC, revised to 06/22/12
- A-2 Rendering of proposed dwelling, by Sionas Architecture, PC
- A-3 First Floor Plan, by Sionas Architecture, PC, revised to 07/18/12
- A-4 Second Floor Plan, by Sionas Architecture, PC, revised to 07/18/12
- A-5 Reduced sized version of Exhibit A-2
- A-6 East and North Elevations, by Sionas Architecture, PC, revised to 07/18/12
- A-7 West and South Elevations, by Sionas Architecture, PC, revised to 07/18/12

The Board questioned Mr. Sionas. He described how the proposed front yard setback compares to that of the existing dwellings in the cul-de-sac. He stated that the only change on the Exhibit A-1 from what was submitted is the fire truck depicted on the site plan. The floor plan exhibits are the same as the plans submitted. The exhibits depicting the elevations include revisions added after meeting with the neighbors. There were no questions from the public.

Mr. Trevenen called Deputy Fire Chief John Herrmann, who was sworn. He stated his qualifications as an expert in Fire Department practices and procedures including emergency equipment and vehicles. Through direct questioning by Mr. Trevenen, Deputy Fire Chief John Herrmann provided the following information. He has

visited the site and reviewed the plans. He described the procedures utilized by the Fire Department and emergency personnel when using fire fighting and emergency equipment and vehicles in a setting such as that of the subject property. The existing roadway is adequate for emergency vehicle access if necessary. There are two existing fire hydrants in the area available to service the property. Although the property would be accessible to fire fighting and emergency equipment, the Fire Department recommends a residential sprinkler system as an additional aid in fire suppression. The Board questioned Deputy Chief Herrmann. He described the existing fire hydrant locations and how those could be utilized in the event of a fire. He stated that the residential sprinkler system is not a substitute for Fire Department equipment. A residential sprinkler system can have various effects on a fire, including extinguishing a fire or slowing its progression. Chair Harrison called for questions from the public.

Anne Caldas, 15 Macopin Avenue, asked if having a Township employee testify on behalf of a Township property owner represents a conflict of interest.

Mr. Conroy, 19 Macopin Avenue, asked about the procedures of utilizing a fire hose in certain challenging scenarios such as bad weather.

Behzad Mottahed, 7 Macopin Avenue, asked if Mr. Herrmann was being compensated for his testimony. Mr. Herrmann answered that he is not. Mr. Herrmann also answered questions about fire fighting scenarios in challenging situations such as road blockages.

J. Michael Petry was sworn, provided testimony as a Professional Engineer and Professional Planner. Mr. Petry described the topographic and boundary survey prepared for the application. A wetlands delineation was also prepared pursuant to N.J.D.E.P. guidelines. The applicant is requesting a variance pursuant to N.J.S.A. 40:55D-70c which requires a building lot to front on a public street pursuant to Montclair Code Section 347-20. To direct issuance of a permit for a building not related to a street giving access to such proposed building pursuant to N.J.S.A. 40:55D-35, 36 and Montclair Code Section 202-22A(2). There is adequate access for firefighting equipment, ambulances and other emergency vehicles to the home. Based upon the layout of the lot and private road as part of the enclave, which constitutes an extraordinary and exceptional situation uniquely affecting a specific piece of property, the strict application of the Zoning Ordinance results in peculiar and exceptional practical difficulties and exceptional and undue hardship upon the applicants consistent with N.J.S.A. 40:55D-70c(1). Approval of the requested variance advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq., specifically encouraging appropriate use of land which promotes the general welfare (-2a); provides adequate light, air and open space (-2c) and promotes a desirable visual environment through creative development techniques and civic design arrangements (-2i) which represents a public benefit. The proposed home is substantially consistent with the character of the development in the area, will protect the riparian zone and will not adversely impact the public good.

Exhibits marked:

- A-8 Boundary and Topographic Surveys, by Petry Engineering, dated 04/22/12
- A-9 Aerial Photograph showing Tax lot information, by Petry Engineering, dated 07/18/12

The Board questioned Mr. Petry. He stated that the wetlands delineation was done through observation and recording information in the field. He also clarified how the existing shared private driveway would be categorized by N.J.R.S.I.S. standards. Chair Harrison called for questions and comments from the public.

Behzad Mottahed, 7 Macopin Avenue, questioned the validity of a planning or engineering argument that identifies long standing history of the existing condition for the other properties in the cul-de-sac as a factor in determining whether the proposed dwelling and existing driveway is adequate.

Alan Trembulak, Esq, gave his appearance. He stated that he is representing the owners of the other 4 dwellings in the cul-de-sac. He stated that the applicant and their professionals have met extensively with his clients, who are in favor of the application as presented. The Board briefly questioned Mr. Trembulak.

Anne Caldas, 15 Macopin Avenue, was sworn and stated her opposition to the application.

Beth Panucci, 33 Macopin Avenue, was sworn and stated her opposition to the application.

Mr. Trevenen summarized the application. The Board discussed the application and concluded that the applicants proved peculiar and exceptional practical difficulties and exceptional and undue hardship and that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to N.J.S.A. 40:55D-70c(1). The Board also concluded that the applicants 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). The Board also concluded that the applicants met the requisite proofs contained in N.J.S.A. 40:55D-36 in order to direct issuance of a permit.

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

1. The applicants shall install a sprinkler system in the house.
2. Air conditioner condenser units shall not be permitted on the easterly side of the house.
3. Development of the property shall be substantially in accordance with the plans and elevations submitted and the footprint of the house shall not be exceeded.
4. Lots 34 and 35 in Block 2804 shall be merged by deed and the existing restrictions on Lot 34 as an open space park lot shall be applicable to Lot 35.
5. The private road shall be maintained as a fully paved road at its current width. An existing "as built" plan of the private road shall be submitted to the Township prior to the issuance of a construction permit for future verification of compliance with this condition.
6. The applicants shall be responsible for the payment of affordable housing development fees as required by Montclair Code Section 202-39 et seq.
7. The applicants shall be responsible for payment of all escrow fees incurred in connection with review of this matter.

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