



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT July 20, 2011

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

ABSENT: Ms. English, Mr. Whipple, 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.

Chair Harrison indicated the minutes and resolutions would be reviewed at a later point in the meeting.

The application **Ross Roudez, 8 Carlton Drive** was called. Mr. Roudez was present. Phil Harris, Architect, and Adrian Bond, Draftsperson, were sworn. Mr. Harris provided his qualifications. Mr. Harris and Mr. Bond described the application. The property is located in the R-1 One Family Zone and contains a one story single-family dwelling that has been damaged by a fire. The is lot an irregularly shaped corner lot at the intersection of Carlton Drive and Lee Place, and measures 10,117 square feet. The dwelling is proposed to be reconstructed on the existing foundation. The extent of reconstruction required is considered the same as new construction for zoning purposes, therefore all zoning regulations apply.

The required front yard setback on Carlton Drive is 25 feet because the average front yard setback of the 2 nearest dwellings to the south on Carlton Drive is less than 25 feet. The reconstructed dwelling would be set back 31.63 feet from the Carlton Drive front property line and complies with zoning. In this conforming area of the footprint, there would be some minor increase in volume created by a modification of the roof lines above the front entrance and attached garage area, which complies with zoning. As a corner lot with frontage on Lee Place, which is a cul-de-sac, the reconstructed dwelling must also comply with the front yard setback on Lee Place as well. The average front yard setback of the nearest 2 dwellings on Lee Place to the west is 31 feet, which is the minimum permitted Lee Place front yard setback for the subject property. The existing Lee Place front yard setback of 24.38 feet would be reconstructed and a variance is requested.

The Board questioned the applicant. The reconstructed dwelling would match the existing dwelling in terms of size and appearance along the nonconforming Lee Place front yard setback. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. The existing foundation is being utilized, and the dwelling is being replicated in the area of the nonconformity. Furthermore, being on a corner lot, along with the configuration of the adjoining lots in the Lee Place cul-de-sac, creates significant hardship for the applicant to comply with the Lee Place front yard setback. On motion by Mr. Susswein, seconded by Ms. Cockey, the application was approved.

The application of **Jack & Jennifer Abuhoff, 54 Prospect Avenue** was called. Jack Abuhoff, and Joseph Bruno, Architect, were sworn. Mr. Abuhoff gave a brief statement regarding the application. Mr. Bruno described the application. The property is located in the R-0 Mountainside Zone and contains a single-family dwelling. The lot measures approximately 100 feet in width by 164 feet deep. A one-story addition is proposed on the northerly side of the dwelling to expand the kitchen. The minimum permitted side yard setback from the northerly side property line is 12 feet. The existing dwelling is presently nonconforming having a northerly side yard setback of 4.4 feet to the attached garage and 10.39 feet to a section of the dwelling. The proposed addition would be aligned with an existing section of the dwelling and would also have a side yard setback of 10.39 feet to the wall of the addition. Brick wainscot is proposed on the lower portion of the exterior wall of the addition that reduces the setback by a few inches to approximately 10 feet.

Exhibits marked:

- A-1 Plans dated June 17, 2011, with color added
- A-2 Aerial photograph
- A-3 Photographs of the northerly side yard

The Board questioned the applicant. Mr. Bruno indicated that one of the two existing central air conditioning units located in the northerly side yard would be relocated to accommodate the proposed addition. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. The proposed addition is one story and is small in size, measuring approximately 72 square feet in area. The addition is aligned with an existing section of the dwelling and the dwelling on the adjoining lot to the north is located approximately 70 feet away from the applicant's dwelling. On motion by Mr. Susswein, seconded by Ms. Cockey, the application was approved, subject to the following condition:

1. The central air conditioning unit that is to be relocated to accommodate the proposed addition shall not be any closer to the northerly side property line than the existing central air conditioning unit located in the northerly side yard.

Mr. Fleischer arrived. The application of **Montclair Kimberly Academy Foundation, 201 Valley Road** was called. Barbara Fox, Esq., appeared as attorney for the applicant and described the application. Richard Sunshine, Assistant Headmaster and CFO, was sworn and provided information about the application. The private school operates on 3 campuses within Montclair for grades pre-K through 12. They anticipate an enrollment of approximately 1,040 students for the upcoming school year for grades pre-K through 12. The primary school is located at 224 Orange Road, the upper school is located at 6 Lloyd Road, and the middle school is located at the subject property. MKA has been at the subject property since 1940. The middle school consists of grades 4 through 8 with approximately 380 students. Enrollment at the middle school has never exceeded the 435 student maximum permitted by the Planning Board in 1971. The proposed project will not increase the number of student or employees at the property. The plan serves to improve and modernize the existing program. The Board questioned the applicant. Mr. Sunshine answered questions pertaining to the summer camp at the subject property. No questions or comments were offered from the public.

J. Michael Petry, Professional Engineer and Professional Planner, was sworn and described the application. The subject property contains 8.82 acres in area and has frontage on three streets, namely, Valley Road, Brunswick Road and Central Avenue. The property is improved with an irregularly shaped school building, a parking area consisting of 77 spaces adjacent to Brunswick Road, tennis courts, multi-purpose, baseball and softball fields and related site improvements. He described the proposed improvements in detail and addressed the grading and drainage. The only new impervious coverage is the paved play area measuring 40 feet by 40 feet. The addition is located on what is currently a paved area. No new storm water detention system is proposed. The storm water runoff from the paved play area and collected from the roof of the proposed addition would be directed into the existing drainage system which is sufficient for the project. He addressed the Board Engineer's review and stated that they would comply with the latest comments dated July 19, 2011.

Mr. Petry provided testimony on the variances. The applicant's proposal will not result in an increase in students, faculty, staff or traffic and changes to the operation of the site will be virtually indiscernible to the neighborhood. Although the applicant has requested variances pursuant to N.J.S.A. 40:55D-70d(3) relating to noncompliance with conditional use standards, all of these conditions are preexisting and will not be exacerbated by approval of this application. The school is an inherently beneficial use in accordance with N.J.S.A. 40:55D-4 and the proposal will advance the use and constitutes an appropriate modernization of the facilities which will increase efficiency. Despite the deviations from the conditional use standards, the site continues to be appropriate for the conditional use. With respect to the height of the screening wall, 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 questioned the applicant. Mr. Petry addressed questions about increasing the height of the wall enclosing the exterior walk-in freezer and mechanical equipment. Questions about the conditional use requirements for schools and how the ordinance is applied to existing school uses for certain applications was briefly discussed. Chair Harrison stated that the Board would address certain questions to the Planning Department on the topic at another time. No questions or comments were offered from the public.

Exhibits marked:

- A-1 Aerial photograph
- A-2 Photographs of subject property
- A-3 Site Plan, dated May 2, 2011, color added
- A-4 Layout Sheet, dated May 2, 2011, color added
- A-5 Grading and Drainage, dated May 2, 2011, color added

Walter Kneis, Architect, was sworn and described the application. The applicant's proposal includes the renovation of the existing kitchen/dining hall and construction a 1,750 square foot addition to the existing building. The addition will contain an expanded dining hall and an enlarged classroom. The exterior walls of the addition will match the existing stucco on concrete multiple unit façade. A paved play area measuring 40 feet by 40 feet is proposed in an existing grass area near the dining hall. An enclosed equipment area is proposed adjacent to the kitchen entrance to enclose a new exterior walk-in freezer and mechanical equipment. The area will be screened by an approximately 7 foot high wall comprised of concrete wall with a stucco façade. A new service platform with railing is proposed above the kitchen and new exterior kitchen exhaust hoods.

The Board questioned the applicant. The height of the wall enclosing the exterior walk-in freezer and mechanical equipment could be increased to approximately 9.5 feet so as to be of sufficient height to screen the aforementioned structures. No questions or comments were offered from the public.

Exhibits marked:

- A-6 Elevations, dated April 18, 2011
- A-7 Existing and Proposed Floor Plans, dated April 18, 2011

Ms. Fox summarized the application. The Board discussed the application and determined that the application could be approved subject to the condition below. On motion by Mr. Fleischer, seconded by Mr. Susswein, the application was approved, subject to the following conditions:

1. All conditions of prior approvals not inconsistent herewith shall remain in full force and effect. The maximum number of 435 enrolled students previously imposed as a condition of approval shall apply to summer campers. During those months when

the applicant operates a summer camp, the number of students and campers on the site shall not exceed 435.

2. The applicant shall obtain approval from the Essex County Planning Board.

3. The applicant shall obtain approval from the Hudson-Essex-Passaic County Soil Conservation District, if necessary.

4. A detail of the trench drain shall be added to the plans subject to review and approval by the Board Engineer.

5. A construction cost estimate for site improvements shall be submitted for inspection escrow determination by the Board Engineer.

6. The plans shall be revised to increase the height of the proposed screening wall to approximately 9.5 feet sufficient to shield the equipment area and freezer subject to review and approval by the Planning Department.

7. The plans shall be revised to provide additional screening of the new kitchen exhaust hoods which may include increasing the height of the railing and/or use of perforated screen subject to review and approval by the Planning Department.

8. The applicant shall be responsible for all inspection fees required under Montclair Code Section 202-27 as well as escrow fees incurred in connection with review of this matter.

The application of **Dennis & Leslie Masuzzo, 132 Alexander Avenue** was called. Leslie Masuzzo was sworn and 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 Alexander Avenue and Alexander Court, which is a cul-de-sac. The lot measures approximately 6,360 square feet in lot area. An existing deck at the rear of the dwelling is to be replaced by a new and larger deck. The proposed deck is approximately 2 feet longer into the rear yard than the existing deck, with the exception of a 6.5 foot wide portion in the central area of the deck that would extend an additional 1 foot 8 inches beyond the added 2 feet. The deck would also be extended 10 feet 4¾ inches to the east to align with the easterly side of the dwelling.

The minimum permitted front yard setback for new construction on the property from the Alexander Court front property line is the average front yard setback of the two nearest principal structures on the respective street frontage. Based on the unusual lot configuration of the Alexander Court cul-de-sac, a through lot that also has frontage on Grove Street with an existing dwelling oriented towards the Grove Street frontage would be included in the average front yard setback requirement for the property, and would increase the minimum front yard setback requirement for the property. The existing dwelling and the existing deck have a nonconforming front yard setback of 16.5 feet

from Alexander Court. The enlarged deck would match this existing nonconforming front yard setback and a variance is requested. The minimum permitted rear yard setback for new construction on the property is 35.11 feet, which is 30 percent of the lot depth as defined in the ordinance. The existing deck is presently nonconforming with a rear yard setback of approximately 34 feet. The proposed deck would have minimum rear yard setback of 31.13 feet at its closest points and a variance is requested.

Exhibits marked:

- A-1 Written description of the application that includes a 1986 lot plan for the Alexander Court subdivision
- A-2 Revised plot plan and zoning chart, undated
- A-3 Photograph of the subject property and the adjoining 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. The existing dwelling predates the development of the Alexander Court cul-de-sac, which has created a nonconforming front yard condition for the property. The proposed front yard setback of the deck is aligned with the dwelling and the existing deck, and the proposed enlargement of the deck is minor. The rear encroachment is relatively minor considering the location of the dwelling on the lot and the specific design of the proposed deck. The view of the deck from the adjoining property to the rear is also obscured by the wooded boundary and the lower grade level of the applicant's property. On motion by Mr. Susswein, seconded by Ms. Cockey, the application was approved.

The application of **Jason Luther, 2 Vera Place** was called. The applicant was sworn and 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 Vera Place and Valley Road. The application is for a variance for the proposed relocation of 2 recently installed central air conditioning units. The applicant recently received a permit to install the units on the easterly side of the detached garage on the property, which is a conforming location. The central air conditioning units are proposed to be relocated in order to improve the appearance and usability of the limited rear yard space. The easterly side yard is too narrow for the units. The proposed location for the central air conditioning condensers would be on the westerly side of the dwelling, between the dwelling and Valley Road, which is a front yard on the corner lot and requires a variance.

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the requested variance could be approved. Conforming locations in the rear yard provide less distance and less screening from neighbors' properties. There are 2 landscaped areas on the property located between the Valley Road and the proposed location of the central air conditioning units that contain existing mature hedges and shrubbery, which would fully shield the view and reduce noise. A driveway also exists in this front yard area of the

property, further distinguishing this corner lot from others. The unique conditions of the subject property warrant the granting of the variance. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved.

The application of **Michael Cucka, 14 Edgecliff Road** was called. The applicant and James Schriener, Architect, were sworn. Mr. Cucka and Mr. Schriener described the application. The property is located in the R-1 One-Family Zone and contains a single-family dwelling. The lot measures approximately 69.6 feet in width across its frontage and is over 240 feet deep. An addition is proposed to the front of the second floor of the dwelling. The testimony and plans provided indicated the need for the improvements to the interior of the second floor of the dwelling. The required front yard setback for new construction on the subject property is 52 feet, which is the average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property. The existing dwelling has a nonconforming front yard setback of 38.5 feet. The front wall of the proposed second floor addition is aligned with the front wall of the first floor below it and will also have a front yard setback of 38.5 feet, and a variance is requested.

The front elevation of the existing dwelling is 2½ stories based on the ordinance. The existing basement contains a garage area along the front elevation, and the first floor of the dwelling is more than 6 feet above grade in the area of the garage door. As a result, at the front elevation, the basement is counted as the 1st story and the existing first floor as the 2nd story. The front of the existing second floor as it is currently designed is a half story. The width of the dwelling at the second floor measures approximately 46 feet wide. The proposed second floor addition measures approximately 23.5 feet wide. The addition is 6 inches wider than permitted to qualify as a dormer in a half-story, therefore the proposed addition creates a 3rd story at the front elevation, and a variance is requested to exceed 2½ stories.

The Board questioned the applicant. No questions or comments were offered from the public. The Board discussed the application and determined that the variances could be approved. The front yard setback of the proposed second floor addition is aligned with the existing first floor below it. Due to the characteristics and topography of the neighborhood, the front yard setback of the addition will not negatively impact neighbors or the streetscape. The Board determined that the variance requested to exceed 2½ stories could be approved. The ground floor exposure of the existing dwelling is limited to the garage on the southerly side of the facade, and the massing of the proposed second floor addition is located on the northerly side of the façade. The location of the addition on the dwelling limits the appearance of massing in terms of number of stories, which is in keeping with the intent of the ordinance. On motion by Mr. Fleischer, seconded by Mr. Burr, the application was approved.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the June 15, 2011** regular meeting were adopted as modified, Mr. Edwards and Ms. Holloway abstaining.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Beatrice Price, 6 Jefferson Place** was adopted, Mr. Edwards and Ms. Holloway abstaining:

WHEREAS, Beatrice Price, did make an application to the Board of Adjustment of the Township of Montclair for variances associated with a proposed detached garage in the rear yard of the property designated as Lot 3 in Block 4006 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following variances:

1. A variance pursuant to N.J.S.A. 40:55D-70d from **Montclair Code Section 347-112** in that the proposed detached garage is considered an expansion of the nonconforming two family use of the property; and

2. A variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-46A(2)(a)** to permit a side yard setback of less than 6 feet from the southerly side property line; and

3. A variance pursuant to N.J.S.A. 40:55D-70c from **Montclair Code Section 347-46A(3)** to permit a rear yard setback of less than 6 feet; and

WHEREAS, the applicant submitted a property survey dated May 27, 2002 and drawings of the proposed garage prepared by the applicant; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 15, 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 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 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 proposed construction of a detached garage is considered an expansion of the nonconforming two family use of the property and a variance is requested.

2. The lot is irregular in shape, measuring 80.49 feet in width across the front and 63.98 feet in width across the rear. The lot measures approximately 120 feet in depth. The dwelling extends deep into the rear of the lot. The property survey depicts the location of the existing garage. 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.

3. 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. Variances are requested in that minimum side yard and rear yard setbacks of 6 feet are required.

4. The Board 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.

5. 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; and

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting the requested use variance and proved by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good, and would not substantially impair the intent and purpose of the zone plan and zoning ordinance; 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 setback 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 setback 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 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.

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. Fleischer, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **David & Karen Gash, 290 Park Street** was adopted, Mr. Edwards and Ms. Holloway abstaining:

WHEREAS, David & Karen Gash, 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 proposed enclosed porch at the front of the dwelling, on property designated as Lot 32 in Block 2504 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(2)** for a front yard setback less than permitted, and from **Montclair Code Section 347-45C(2)** a for a side yard setback less than permitted from the northerly side property line; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 15, 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 February 9, 1999 and plans prepared by Erik Schultz, Architect, dated May 11, 2011; 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 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 property is located in the R-1 One Family Zone and contains a single-family dwelling.

2. 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.

3. 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.

4. 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.

5. The Board 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; and.

WHEREAS, the Board, based on the foregoing findings concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and did not 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(1); and

WHEREAS, the Board, based on the aforementioned findings 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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application is hereby denied; 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 Ms. Cockey, the following resolution memorializing the Board's decision on the application of **Philip & Leslie Hatch, 137 Montclair Avenue** was adopted, Mr. Fleischer, Mr. Edwards, and Ms. Holloway abstaining:

WHEREAS, Philip & Leslie Hatch, 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 enclosed entryway at the front of the dwelling, on property designated as Lot 24 in Block 4514 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)** for a front yard setback less than permitted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 15, 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 May 12, 1921 and plans prepared by Chris Blake, Architect, dated May 9, 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 60 feet in width by 168.64 feet in depth. A variance is requested for the front yard setback of a proposed enclosed entryway at the front of the dwelling.

2. 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.

3. 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.

4. The Board 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; 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. Fleischer, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Latifah Jannah, 19 Wheeler Street** was adopted, Mr. Edwards and Ms. Holloway abstaining:

WHEREAS, **Latifah Jannah**, 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 for the proposed construction of a two-story deck and access stairway at the rear of the dwelling, on property designated as Lot 11 in Block 4105 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** for a side yard setback less than required and to exceed the maximum permitted principal structure coverage; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 15, 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 21, 2000 and plans prepared by mba Architects, dated May 18, 2011; and

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

1. 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.

2. 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.

3. 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.

4. 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.

5. The Board 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: 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; 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. Fleischer, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Brianne Johnson, 30 William Street** was adopted, Mr. Edwards and Ms. Holloway abstaining:

WHEREAS, **Brianne Johnson**, 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 for proposed improvements on property designated as Lot 30 in Block 1511 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the proposed improvements 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; and

WHEREAS, the applicant has requested the following variances:

1. A variance from **Montclair Code Section 347-51** for a front yard setback less than 25 feet for the basement entrance enclosure;
2. A variance from **Montclair Code Section 347-51** for side yard setbacks of less than 6 feet on one side and 10 feet for the other side for the basement entrance enclosure and the two-story deck and stairway at the rear of the dwelling; and
3. A variance from **Montclair Code Section 347-51** to exceed the maximum permitted principal structure width of 65 percent of the lot frontage width, or 16.25 feet, for the basement entrance enclosure, the two-story deck and stairway at the rear of the dwelling, and the ramp along the westerly side of the dwelling; and
4. A variance from **Montclair Code Section 347-51** to exceed the maximum permitted principal structure coverage of 25 percent of the lot area, which is 773.25 square feet, for the basement entrance enclosure, the two-story deck and stairway at the rear of the dwelling, and the ramp along the westerly side of the dwelling; and

WHEREAS, the proposed ramp along the westerly side of the dwelling has been designed for handicapped accessibility is not required to comply with the setbacks requirements based on the definition of YARD in the zoning ordinance; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on June 15, 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 30, 2010 and plans prepared by Alzra Design, LLC, dated May 17, 2011.; and

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

1. 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.
2. 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.
3. The proposed ramp along the westerly side of the dwelling has been designed for handicapped accessibility is not required to comply with the setbacks requirements based on the definition of YARD in the zoning ordinance, but has been included in the consideration of principal structure width and principal structure coverage.
4. 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.
5. 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.
6. 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.

7. The maximum permitted principal structure coverage is 25 percent of the lot area. The lot area is 3,090 square 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.

8. After discussion, the majority of the Board 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; 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 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.

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.

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. Fleischer, 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 lawsuits filed against the Board regarding the denial of the application of **The Mental Health Association of Essex County, Inc.** The Board has received a settlement proposal from the plaintiff. Following discussion in closed session, the Board unanimously approved a motion that authorized a counter settlement proposal from the Board's counsel.

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