



Township of Montclair

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MONTCLAIR ZONING BOARD OF ADJUSTMENT

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## **MINUTES OF THE BOARD OF ADJUSTMENT August 17, 2011**

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

**ABSENT:** Mr. Edwards, 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.

It was announced that at the request of the applicant, a special meeting date to continue the application of **Omnipoint Communications, Inc., 153 Park Street** would be selected at the Board's regular meeting on October 19, 2011. The Board was granted an extension of time. It was also announced that at the request of the applicant, the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the October 19, 2011 regular meeting. No further notice would be given. The Board was granted an extension of time.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the July 20, 2011** closed session were adopted. On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the July 20, 2011** regular session were adopted as modified.

On motion by Mr. Burr, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Ross Roudez, 8 Carlton Drive** was adopted, Mr. Fleischer abstaining:

WHEREAS, Ross Roudez, 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 reconstruct a dwelling on an existing foundation, on property designated as Lot 10 in Block 4802 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

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 20, 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 June 6, 2011 and plans prepared by Philip M. Harris, Architect, dated June 14, 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 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.

2. 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.

3. 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.

4. 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 plans and the testimony indicate that the reconstructed dwelling would match the existing dwelling in terms of size and appearance along the nonconforming Lee Place front yard setback.

5. The Board 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; 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. Burr, seconded by Ms. Cockey, the following resolution memorializing the Board's decision on the application of **Jack & Jennifer Abuhoff, 54 Prospect Avenue** was adopted, Mr. Fleischer abstaining:

WHEREAS, Jack & Jennifer Abuhoff, 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 onto the dwelling, on property designated as Lot 13 in Block 406 on the Township Tax Map and located in the R-0 Mountainside Zone; and

WHEREAS, the applicant requested a variance from Montclair Code Section 347-33C(1) for a northerly side setback less than permitted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 20, 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 June 1, 2011 and plans prepared by Joseph J. Bruno, AIA, dated June 17, 2011; and

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

1. 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.

2. 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.

3. 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. The plan indicates that "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.

4. The Board 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; 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 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.

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 Ms. Cockey, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Montclair Kimberly Academy Foundation, 201 Valley Road** was adopted:

WHEREAS, Montclair Kimberley Academy Foundation, did make application, as amended, to the Board of Adjustment of the Township of Montclair for site plan approval in connection with additions and renovations to the existing school on property designated as Lots 1 and 12 in Block 1515 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-70d(3) to permit one way driveways where two way driveways are required and to allow a driveway located 138.7 feet from an intersection where a minimum of 200 feet is required pursuant to Montclair Code Section 347-12A(6).
2. A variance pursuant to N.J.S.A. 40:55D-70d(3) to permit a front yard setback of 4.5 feet from Valley Road where a minimum of 25 feet is required pursuant to Montclair Code Section 347-12A(7).
3. A variance pursuant to N.J.S.A. 40:55D-70d(3) to allow a setback of five feet from the tennis courts on Brunswick Road where a minimum of 50 feet is required pursuant to Montclair Code Section 347-12A(8).
4. A variance pursuant to N.J.S.A. 40:55D-70d(3) to allow 77 parking spaces where a minimum of 168 parking spaces are required pursuant to Montclair Code Section 347-12A(9).
5. A variance pursuant to N.J.S.A. 40:55D-70c(2) to allow the proposed screening wall to exceed the maximum height of 4.5 feet pursuant to Montclair Code Section 347-27A(2).

WHEREAS, the applicant submitted a site plan consisting of Sheets SP-1, SP-3 and SP-5 dated April 18, 2011 and Sheet SP-2 dated April 15, 2011; Sheet SP-4 dated April 18, 2011 revised July 8, 2011 prepared by Petry Engineering, LLC, and floor plans and elevations consisting of Sheets A-1 and A-2 dated April 18, 2011 prepared by Nadaskay Kopelson Architects; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 20, 2011, 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 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.

2. Montclair Kimberley Academy Foundation operates an independent school with grades from pre-kindergarten through 12th grade on three campuses. The subject property contains the middle school which has been in operation since 1940.

3. The applicant's proposal includes the following:

A. Renovate the existing kitchen/dining hall and construct 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 (CMU) façade.

B. Create a paved play area measuring 40 feet by 40 feet in an existing grass area near the dining hall.

C. Create an enclosed equipment area adjacent to the kitchen entrance to enclose a new exterior walk-in freezer and mechanical equipment. The area will be screened by an approximately 9.5 foot high wall comprised of CMU with a stucco façade.

D. Install a new service platform with railing above the kitchen and new exterior kitchen exhaust hoods.

4. 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.

5. 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.

6. The applicant initially proposed an 8 foot high stucco wall to screen the equipment area and walk-in freezer box. At the Board's request, the application was amended to increase the height of the wall to approximately 9.5 feet so as to be of sufficient height to screen the aforementioned structures. Although the proposed height exceeds the maximum permitted by Ordinance, approval of the variance results in an aesthetic benefit to the public and promotes a desirable visual environment consistent with the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-1 et seq.

7. 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 consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

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

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant proved the requisite special reasons for the granting of this application 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.

WHEREAS, the Board, based on the aforementioned findings, 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 with respect to the height of the screening wall, 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 Montclair Kimberley Academy Foundation for site plan and variances is hereby 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.

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. Burr, seconded by Ms. Cockey, the following resolution memorializing the Board's decision on the application of **Dennis & Leslie Masuzzo, 132 Alexander Avenue** was adopted:

WHEREAS, Dennis & Leslie Masuzzo, 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 deck onto the dwelling, on property designated as Lot 8 in Block 3705 on the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicant requested variances from Montclair Code Section 347-45B(2) for a front yard setback less than permitted, and from Montclair Code Section 347-45D a for a rear 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 July 20, 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 June 10, 1997 and plans prepared by Gromek & Associates, dated May 2, 2011, which were partially updated by Exhibit A-2 submitted at the hearing; 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 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.

2. An existing deck at the rear of the dwelling is to be replaced by a new and larger deck, which is required to comply with zoning regulations. 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  $4\frac{3}{4}$  inches to the east to align with the easterly side of the dwelling.

3. The minimum permitted front yard setback for new construction on the subject 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 subject property, and would skew the minimum front yard setback requirement for the subject property to approximately 50 feet.

4. 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.

5. The minimum permitted rear yard setback for new construction on the subject 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.

6. The Board determined that the requested variances could be approved. The existing dwelling predates the development of the Alexander Curt 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; 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. Susswein, seconded by Mr. Fleischer, the following resolution memorializing the Board's decision on the application of **Jason Luther, 2 Vera Place** was adopted, Mr. Fleischer abstaining:

WHEREAS, Jason Luther, 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 for the proposed relocation of 2 recently installed central air conditioning units, on property designated as Lot 16 in Block 2502 on the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the property is a corner lot at the intersection of Vera Place and Valley Road and the applicant has requested a variance from Montclair Code Section 347-46C in that the central air conditioning units are proposed to be located between the dwelling and Valley Road along the westerly wall of the dwelling, which is a front yard on the corner property and is not permitted; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 20, 2011 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated November 19, 2008 and information and photographs submitted by the applicant; 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 property is a corner lot at the intersection of Vera Place and Valley Road.
2. 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.

3. 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.

4. The Board 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; 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. Burr, seconded by Mr. Susswein, the following resolution memorializing the Board's decision on the application of **Michael Cucka, 14 Edgecliff Road** was adopted:

WHEREAS, Michael Cucka, 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 an addition to the second floor of the dwelling, on property designated as Lot 12 in Block 701 on the Township Tax Map and located in the R-1 One Family Zone; and

WHEREAS, the applicant requested variances from Montclair Code Section 347-45B(1) for a front yard setback less than permitted, and from Montclair Code Section 347-45A(2) to exceed 2½ stories; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 20, 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 July 29, 2009 and plans prepared by James A. Schriener, AIA, dated May 16, 2011; and

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

1. The property is located in the R-1 One-Family Zone and contains a single-family dwelling. The lot measures approximately 69.6 feet in width across its frontage and is over 240 feet deep.

2. 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.

3. 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.

4. 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 1<sup>st</sup> story and the existing first floor as the 2<sup>nd</sup> story. The front of the existing second floor as it currently designed is a half story.

5. 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 3<sup>rd</sup> story at the front elevation, and a variance is requested to exceed 2½ stories.

6. The Board determined that the variance requested for the front yard setback 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.

7. The Board also 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; 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.

Mr. Sullivan briefly addressed the Board concerning the recently concluded litigation regarding **The Mental Health Association of Essex County, Inc.** He stated that since the Township and the plaintiff had reached and finalized a settlement, that some of the documents pertaining to the matter that were previously considered confidential could now become available to the public. This action would be in keeping with the Municipal Land Use Law, and would exclude information determined to be within attorney and client privilege, which is exempted under the Open Public Records Act. Mr. Sullivan also stated that the appeal period for a third party to potentially contest the decision of the State Court in the matter has already expired. The Board had a brief discussion. A motion by Mr. Fleischer, seconded by Mr. Burr, was unanimously approved, confirming that information pertaining to the matter that is not exempted can be made available to the public.

There were no public hearing scheduled for the remainder of the meeting. On motion by Mr. Fleischer, seconded by Mr. Susswein the meeting was adjourned.