

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**August 15, 2007**

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

ABSENT: Mr. Rubenstein

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. Fleischer, seconded by Mr. Susswein, the **Minutes of the December 7, 2006** special meeting were adopted, Ms. Cockey abstaining. On motion by Mr. Fleischer, seconded by Mr. Susswein, the **Minutes of the December 13, 2006** regular meeting were adopted as modified, Ms. Cockey, Mr. Fleischer, and Mr. Haizel abstaining.

On motion by Ms. English, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Steven and Mary Lee Wrede, 24 Greenview Way** was adopted, Ms. Cockey, Mr. Fleischer, and Mr. Haizel abstaining:

**WHEREAS, Steven and Mary Lee Wrede**, owners of property at **24 Greenview Way**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to allow a greater principal building width than permitted pursuant to from **Montclair Code Section 347-45C(4)** and to allow parking between the dwelling and Greenview Way, contrary to **Montclair Code Section 347-46C**, in connection with a proposed addition onto the northerly side of their single-family dwelling on property designated as Lot 31 in Block 4701 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Louis R. Puopolo III dated May 23, 2006 a site plan, floor plan, and elevations prepared by Joseph A. Bruno, AIA, dated January 8, 2007; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 18, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, measuring 75 feet in frontage width, and 10,794 square feet in lot area, and contains a 2½ story single-family dwelling with an attached garage on the northerly side of the dwelling that is recessed approximately 24 feet from the front wall of the dwelling.

2. The applicants propose to construct an addition to the northerly side of the dwelling that would widen the dwelling to the north by approximately 3 feet, extend the recessed portion of the dwelling approximately 17 feet towards the front wall of the dwelling, and add a second floor over most of the added/remodeled area at the northerly portion of the dwelling.

3. The maximum permitted principal building width for the subject property is 48.75 feet, which equals 65 percent of the lot frontage width. The existing dwelling is presently nonconforming in terms of width measuring approximately 55 feet which equals 73.33 percent of the lot width. The proposed addition increases the width of the dwelling to 58.34 feet which equals 77.79 percent of the lot width. The proposed addition meets the 6-foot minimum side yard setback on the northerly side.

4. The New Jersey Residential Site Improvement Standards requires 2 parking spaces for the dwelling. A one-car attached garage is proposed as part of the addition/remodeling at the northerly side of the dwelling. One of the two required parking spaces, which have dimensions of 9 feet by 18 feet pursuant to New Jersey Residential Site Improvement Standards, is located on the driveway in front of the garage, and would project into the front yard by 11 feet since the proposed garage is recessed 7 feet from the front wall of the dwelling. This parking space is partially located between the dwelling and Greenview Way and a variance is requested.

5. The Board concluded that a design that includes part of a parking space between the dwelling and Greenview Way is not acceptable, and that the plans could be redesigned to include conforming parking for 2 vehicles as required by the ordinance.

6. The Board also determined that, subject to certain revisions to the plan, the requested variance for principal building width is acceptable considering the fact that there are a number of dwellings in the neighborhood that are of a similar width on comparable lot sizes.

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

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

**WHEREAS**, the Board, based on the foregoing findings regarding the variance requested for principal building width, 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); and

**WHEREAS**, the Board, based on the aforementioned findings regarding the variance requested for principal structure width, 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); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the variance requested for parking between the dwelling and Greenview Way is denied; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the variance requested for principal building width is approved, subject to the following condition:

1. The plan shall be revised to provide a minimum of 2 conforming parking spaces and the revised plan shall conform to all other zoning requirements.

**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 Ms. English, seconded by Ms. Holloway, the following Resolution memorializing the denial of the application of **Valley National Bank, 539 Valley Road** was adopted as modified, Ms. Cockey, Mr. Fleischer, Mr. Haizel, Mr. Susswein, and Mr. Whipple abstaining:

**WHEREAS**, Valley National Bank, did make application to the Board of Adjustment of the Township of Montclair to utilize the existing two story building as a bank, on property designated as Lot 4 in Block 1712 on the Township Tax Map and located in the N-C Neighborhood Commercial Zone; and

**WHEREAS**, the applicant requested relief as follows:

1. A variance pursuant to N.J.S.A. 40:55D-70d(1) to allow use of the entire building as a bank without providing an equivalent area of retail, personal service uses, medical offices or restaurants in the same building as required by Montclair Code Section 347-90D.

2. A variance pursuant to N.J.S.A. 40:55D-70c to permit 12 parking spaces where a minimum of 30 are required on site pursuant to Montclair Code Section 347-101.

3. A variance pursuant to N.J.S.A. 40:55D-70c to permit a business sign to be mounted above the permitted building sign location band contrary to Montclair Code Section 347-110A.

4. A variance pursuant to N.J.S.A. 40:55D-70c to permit a 22 inch by 27 inch business hours sign on the existing glass door which exceeds the 18 inch by 24 inch maximum permitted by Montclair Code Section 347-110A.

**WHEREAS**, the applicant submitted a preliminary and final site plan prepared by PSS, LLC Consulting Engineers dated August 1, 2006 revised March 27, 2007, a property survey prepared by Control Layouts, Inc. revised to August 3, 2006, floor plans prepared by Stern-Ring Associates, AIA, PA dated November 27, 2006, and signage plans and graphics prepared by Bergen Sign Company dated October 6, 2006; and

**WHEREAS**, this matter came on to be heard at regular meetings of the Board of Adjustment held on June 20 and July 18, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is located on the easterly side of Valley Road north of the intersection with Northview Avenue and contains 7,880 square feet in lot area. The property is improved with a two story bricked building, on-site parking and related site improvements.

2. The surrounding area consists of mixed uses including commercial and residential. Abutting the property to the north is a two story building containing a mix of commercial uses. The adjacent property to the south at 529 Valley Road is a one story building utilized as a drive through facility by the applicant. Across the street from the subject property is a commercial strip containing a mix of commercial uses including a restaurant, nail salon and tailor. Abutting this commercial strip to the south is a mid rise residential building.

3. The applicant seeks to utilize the entire building as a bank. The 3,040 square foot first floor would contain the public area of the bank including teller areas, employee desks and manager's office. The 2,840 square foot second floor would contain primarily storage space, along with an employee break room, conference room and file room. No changes to the site are proposed with the exception of new parking lot signs which do not trigger site plan approval.

4. The applicant argued the proposed bank would be a positive addition to the Township bringing a productive business use which constitutes appropriate municipal action promoting the general welfare pursuant to N.J.S.A. 40:55D-2a. The Board, however, rejected this argument finding that an additional bank in an area already saturated with banks would not constitute a public benefit.

5. The applicant also argued that the application provided adequate light, air and open space and promoted a desirable visual environment consistent with N.J.S.A. 40:55D-2c and i. The Board, however, determined these arguments were without merit and could be made by any potential use of the existing building.

6. The applicant argued that the limited number of available on-site parking makes the building more suitable for a single use as compared to a mix of commercial uses. The Board, however, found this argument was not persuasive since many of the properties in the N-C Zone contain inadequate on-site parking.

7. The applicant failed to offer sufficient proof that the subject property could not be developed with a conforming use as conceived by the Zoning Ordinance. In fact, the existing use of the property is at least substantially conforming to the Ordinance.

8. Approval of this application would substantially impair the intent and purpose of the zoning ordinance which seeks to limit the proliferation of certain uses such as banks at the expense of retail, personal service uses, medical offices or restaurants in order to encourage pedestrian traffic in the zone.

9. Approval of this application would not promote pedestrian traffic and would have a long-term substantial adverse impact on the neighborhood.

10. The applicant failed to offer sufficient proof to prove approval of this application would not substantially impair the intent and purpose of the Master Plan.

**WHEREAS**, the Board, based on the foregoing findings, concluded that the applicant failed to prove the requisite special reasons for the granting of this application, and failed to prove 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 foregoing findings, concluded that the applicant did not prove peculiar and exceptional practical difficulties and exceptional and undue hardship and failed to 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);

**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 failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed

to 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 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 Valley National Bank for variances to utilize the existing two story building as a bank is hereby denied.

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

On motion by Mr. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Larry Hays, 24 Warfield Street** was adopted, Ms. Cockey, Mr. Fleischer, and Mr. Haizel abstaining:

**WHEREAS**, **Larry Hays**, as owner of property at **24 Warfield Street**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to allow a rear yard setback less than required pursuant to **Montclair Code Section 347- 45D** and principal building coverage greater than permitted pursuant to **Montclair Code Section 347- 45E** in connection with a proposed deck onto the rear of his dwelling on property designated as Lot 1 in Block 707 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by Alfred C. Clark Inc., dated June 30, 1973, a zoning calculations sheet, a plot plan, and a south elevation drawing dated March 31, 2007; and

**WHEREAS**, this matter came to be heard at a regular meeting of the Board of Adjustment held on July 18, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The subject property is a corner lot, located at the intersection of Warfield Street and Highland Avenue, and is located in the R-1 One-Family Zone. The lot measures approximately 9,856 square feet in area; the frontage width measures 113.84 feet on Warfield Street and 92.06 feet on Highland Avenue. This easterly yard is the rear yard and the southerly yard is the side yard.

2. The property contains a 2-story single-family dwelling with an attached one-car garage at ground level on the southerly side of the dwelling.

3. The applicant is proposing a deck at the southeasterly corner of the dwelling that would replace a previously existing smaller deck. At the hearing the

applicant modified the size of proposed deck by indicating that it would extend approximately 2 additional feet towards the side property line from what was depicted on the plan.

4. The required rear yard setback is 28.33 feet and the proposed rear yard setback is 27 feet 4 inches. Based on the enlarged deck footprint, indicated to be a maximum of 700 square feet, the proposed principal building coverage would be a maximum of 30 percent of the lot area, which exceeds the maximum permitted principal building coverage of 25 percent.

5. The applicant indicated that the existing attached one-car garage on the ground level is unusable for parking for a number of reasons including its narrow width. The proposed deck is at the first floor level, which provides enough clearance for 2 vehicles to park underneath the deck and have it serve as a carport providing covered parking.

6. The Board concluded that the rear setback variance is a minor deviation that is justified due to the position of the dwelling on the corner lot. The principal building coverage variance is justified due to the fact that the dimensions proposed for the deck allow it to provide covered parking for 2 vehicles on the property, which does not presently exist.

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

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant did prove 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 variance application of Larry Hays is hereby approved, subject to the following condition:

1. The approval is limited to an outdoor deck which shall not exceed 700 square feet in area. The principal building coverage shall not exceed 30 percent, and the rear yard setback shall not be less than 27 feet 4 inches.

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

On motion by Mr. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Richard F. McMahon, 714 Valley Road** was adopted, Ms. Cockey, Mr. Fleischer, and Mr. Haizel abstaining:

WHEREAS, Richard McMahon, as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c to allow a front yard setback less than required pursuant to **Montclair Code Section 347-45B(2)** in connection with a proposed deck on the rear of his single-family dwelling on property designated as Lot 53 in Block 1801 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by EKA Associates, dated June 25, 1995, and a plot plan, deck plans, and elevations; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 18, 2007, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is a corner lot, located at the intersection of Valley Road and Glenwood Place, and is located in the R-1 One-Family Zone. The property contains a 2½ -story single-family dwelling and a detached garage. The lot area measures 10,540 square feet.

2. The front setback requirement for the subject property from Glenwood Place is approximately 30 feet, and is based on front setback of the principal structure on the adjoining lot to the west, which is a one-story commercial structure. The existing dwelling has a non-conforming front yard setback of approximately 8.36 feet as measured from the northerly rear corner of the dwelling to Glenwood Place.

3. The applicant proposes to construct a low-lying wood deck onto the rear of his dwelling that would be 16 inches above the ground and a step along its perimeter. The deck surface would be aligned with the rear corner of the dwelling and the step is aligned main wall of the dwelling that faces Glenwood Place.

4. The Board determined that the requested variance could be granted since the proposed construction is aligned with the dwelling and does not encroach closer to Glenwood Place than the existing dwelling. The proposed deck is also very low to the ground, which reduces its visual impact and is screened by an existing hedge along the Glenwood Place property line.

WHEREAS, the Board, based on the foregoing findings, concluded that the applicant did prove peculiar and exceptional practical difficulties and exceptional and

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Richard McMahon is approved; and

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

On motion by Mr. Susswein, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Jaime Mercado & Andrea Everett, 120 Cooper Avenue** was adopted, Ms. Cockey, Mr. Fleischer, and Mr. Haizel abstaining:

**WHEREAS**, Jaime Mercado and Andrea Everett, owners of property at 120 Cooper Avenue, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow an easterly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** in connection with the construction of a detached garage on property designated as Lot 9 in Block 3506 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey prepared by Dominick J. Venditto, III, dated September 7, 2006, and a site plan, floor plan, and elevations prepared by George A. Held, AIA and Associates, dated April 2, 2007; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 18, 2007 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 subject property is an interior lot located in the R-1 One Family Zone, measuring 63.7 feet in width and approximately 16,370 square feet in area. The property contains a 2½-story single-family dwelling with an attached deck and a detached garage in the southeasterly corner of the rear yard, which is in a state of disrepair and will be demolished.

2. The applicants propose to construct a new detached garage on the same footprint as the existing garage. The footprint of the existing garage measures approximately 20'4" in width by 20 feet in length. The existing garage has a nonconforming easterly side yard setback of approximately 2.4 feet at the front corner and 2.6 feet at the rear corner. The same nonconforming easterly side yard setback, described above, is proposed and a conforming height of 14 feet 9 inches is proposed.

3. The Board determined that the proposed garage can be approved since its location and size is the same as the location and size of the existing garage on subject property and its location is similar to that of many detached garages in the neighborhood.

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

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicants did prove 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 variance application of Jamie Mercado and Andrea Everett 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. Whipple, the following Resolution memorializing the denial of the application of **Alex Salcedo, 90 Bellevue Avenue** was adopted as modified, Ms. Cockey, Mr. Fleischer, and Mr. Haizel abstaining:

**WHEREAS**, Alex Salcedo, owner of property at 90 Bellevue Avenue, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a height greater than permitted pursuant to **Montclair Code Section 347-46A(1)** in connection with the construction of a detached garage on property designated as Lot 19 in Block 3507 on the Township tax map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey prepared by George J. Anderson LLC, dated May 25, 2006, and architectural plans consisting of a plot plan, floor plan, and elevations prepared by Richard Gascoyne & Associates, dated April 6, 2007; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 18, 2007 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 subject property is an interior lot located in the R-1 One-Family Zone, measuring 40 feet in frontage width and approximately 11,069 square feet in area. The subject property contains a 2½-story single-family dwelling and a detached garage in the rear yard that was damaged during a storm in 2006.

2. The applicant proposes to demolish the existing two-car detached garage and replace it with a three-car garage that has a second floor storage area at the rear of the lot. The existing garage measures approximately 18 feet wide by 18 feet long and has a nonconforming easterly side yard setback of 5 feet and a rear setback of approximately 32 feet.

3. The footprint of the proposed garage measures 36 feet 8 inches in width by 24 feet in length and exterior stairs to the second floor storage space are proposed on the westerly side of the structure. A minimum conforming setback of 6 feet is proposed for the easterly side yard setback and rear yard setback.

4. The first floor of the proposed garage, which is 9 feet in height, will be used as garage parking for three cars. The second floor, which is 7 feet 6 inches in height, will be utilized for storage space. The total height of the proposed garage measures 19 feet 10 inches to the ridge of the roof, which exceed that maximum permitted height of 15 feet for accessory structures.

5. The applicant indicated that the proposed garage would provide aesthetic benefits to the neighborhood, while providing him with the type of storage space he desires. The Board, however, concluded that there is no justification for the variance, that the proposed height of the detached garage would have a negative impact on adjoining residential properties and that the requested variance could not be approved.

**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 failed to prove that the variance could be granted without substantial detriment to 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 failed to prove that the benefits of the deviation would substantially outweigh any detriment and failed to prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to 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 Alex Salcedo, 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 Mr. Whipple, the following Resolution memorializing the approval of the application of **Renee Boicourt, 25 Duryea Road** was adopted, Ms. Cockey, Mr. Fleischer, and Mr. Haizel abstaining:

WHEREAS, Renee Boicourt, as owner, did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to *N.J.S.A. 40:55D-70c* to allow a front yard setback less than required pursuant to **Montclair Code Section 347-45B(1)** in connection with a proposed roofed front porch on property designated as Lot 4 in Block 3603 on the Tax Map of the Township of Montclair and located in the R-1 One-Family Residential Zone; and

WHEREAS, the applicant submitted a property survey prepared by Hallard & Associates, dated August 5, 1994, and a plot plan, floor plan, and elevations, prepared by Downtown Group Architects, dated June 27, 2007; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 18, 2007, at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served with notice; and

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

1. The subject property is an interior lot located in the R-1 One Family Zone and contains a 2½-story single-family dwelling and a detached garage at the rear of the lot. The subject property measures 60.88 feet in width along its frontage and contains 8,849 square feet in lot area.

2. The applicant proposes to demolish the existing uncovered front entry stone stoop and steps and construct a roofed front porch that has a width of 23 feet 11 inches.

3. The existing dwelling has a non-conforming front yard setback of approximately 48 feet as measured to the bay window on the front wall. The average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property, is 49 feet 6 inches. The front setback of the proposed porch would be 43 feet and a variance is requested.

4. The required front yard setback is skewed due to the substantially larger front yard setback of the two properties to the north of the subject property. Additionally, the proposed front yard setback is slightly greater than that of the two properties to the south of the subject property, and the proposed roofed front porch fits in well with the existing streetscape in terms of front yard setback.

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

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of Renee Boicourt is approved; and

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

On motion by Mr. Susswein, seconded by Ms. English, the following Resolution memorializing the approval of the application of **Claudia Pascale, 6 Argyle Road** was adopted, Ms. Cockey, Mr. Fleischer, Mr. Haizel, and Mr. Whipple abstaining:

**WHEREAS, Claudia Pascale**, as owner of property at **6 Argyle Road**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to allow a rear yard setback less than required pursuant to **Montclair Code Section 347-45D** and principal building coverage greater than permitted pursuant to **Montclair Code Section 347-45E** in connection with a proposed one-story addition onto the rear of her dwelling on property designated as Lot 90 in Block 4601 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey, prepared by Keelen and Pica, dated March 23, 1983, and a plot plan, floor plans, elevations and photographs, prepared by, M.B.A. Architects, dated June 5, 2007.

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on July 18, 2007 at which time it was established that notice was properly published and that property owners within 200 feet of the subject property had been properly served; and

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

1. The subject property is an interior lot located in the R-1 One-Family Zone, and measures 65 feet in lot frontage width and 6,141 square feet in lot area. The subject property contains a 2½ story single-family dwelling with an attached one garage. Argyle Road is a public street, which is accessible from a road that enters Brookdale Park from Grove Street.

2. On a resolution dated June 20, 2007 the applicant received variances for front yard setback and principal building width from the Zoning Board of Adjustment to construct several additions onto her dwelling. The Board denied, however, rear yard setback and maximum principal building coverage variances associated with a single-story addition at the rear of the property.

3. The existing dwelling has a conforming rear yard setback of approximately 36 feet 8 inches. The rear yard setback requirement is 28.33 feet for the subject property and the proposed one-story addition has a rear yard setback of 25 feet. The previously denied proposal requested a set back of 20'-2" from the rear property line.

4. A principal building coverage of 25.4 percent is proposed, where the maximum permitted is 25 percent of the lot area. The existing dwelling occupies 18.5 percent of the lot area. The previously denied proposal requested principal building lot coverage of 29.7 percent.

5. The Board concluded that the revised plans are acceptable since the variances requested are minimal exceptions to the zoning requirements, which are justified based on the small size of the lot and the placement of the dwelling on the property. Furthermore, the impact of the proposed addition on neighboring properties is minimal as it is in keeping with the nonconforming rear yard setback of the properties located immediately to the east of the subject property.

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

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant did prove 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 variance application of Claudia Pascale 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 and Township Clerk.

The Board discussed the extension of time requested for the application of **Mr. and Mrs. John Washington, 48 Nishuane Road**, which is due to expire on September 7, 2007. The Board expressed concerns over the delay in construction and the current condition of the property. After some discussion, the Board granted an extension of time through the end of April 2008.

The application of **Wallwood Gardens, Inc., 400 Orange Road** was adjourned to the October 17, 2007 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the application of **Mark Citron and Barbara Friedman, 8 Wendover Road**. The applicants were sworn and described the application. The property contains a 2½-story single-family dwelling and a detached garage in the northeasterly corner of the rear yard, which is in disrepair and would be demolished. They propose to construct a new detached garage in the same area as the existing garage with a full basement storage area beneath the proposed garage accessed through a Bilco door on the westerly side. The footprint of the existing garage measures approximately 19 feet in width by 20 feet in length. The existing garage has a nonconforming easterly side yard setback of 1.83 feet, and a nonconforming rear yard setback of 1.45 feet. The footprint of the proposed garage measures 24 feet in width by 22 feet in depth. The easterly side yard setback and rear yard setback are proposed at 2 feet each, which requires variances. The proposed garage complies with all other zoning requirements.

The Board questioned the applicants. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The Board determined that variances for setbacks are justified considering the location of the existing garage and the fact that many garages in the neighborhood have similar nonconforming setbacks. The Board also determined, however, that the easterly side yard and rear yard setback for the proposed garage should be increased to 3 feet from

the 2 feet proposed, because the and size of the garage will be increased from the previously existing garage. The Board also determined that considering amount of excavation required for basement construction and the proximity to the property lines, the proposed basement under the garage should comply with the 6 foot side yard and rear yard setback requirements. On motion by Mr. Whipple, seconded by Mr. Fleischer, the application was approved as modified, subject to the following conditions:

1. All above ground portions of the garage shall have a minimum setback of 3 feet from the easterly side and rear property lines.
2. Any underground or basement portions of the garage shall comply with the minimum side and rear yard setback requirement of 6 feet.

Chair Harrison called the variance application of **Peter and Marilyn Zaret, 346 North Mountain Avenue**. The owners and Kevin Johns, Architect, were sworn. Mr. Johns described the application. The applicants propose to construct 2 shed dormer additions at the second floor level of the dwelling, one on each side of the existing roof. The proposed dormers each measure 21 feet 1 inch in length and are part of a plan to renovate a bedroom and bathroom on the second floor, with the proposed dormers providing more usable floor space. The required rear yard setback for the subject property is 57.71 feet, which is equal to 30 percent of the lot depth, and a rear yard setback of approximately 41.5 feet is proposed for the additions and a variance is requested. The proposed dormers meet all other zoning requirements. Mr. and Mrs. Zaret also described the existing dwelling and the additions from their perspective.

Marked into evidence were:

- A-1 Photographs of the interior of the dwelling
- A-2 Photographs of the exterior of the dwelling
- A-3 Photographs of the interior of the dwelling

The Board questioned the applicants. Chair Harrison called for questions and comments from the public.

Sandra Wilensky, 344 North Mountain Avenue, was sworn and stated her support for the application.

Mitch Puim, 352 North Mountain Avenue, was sworn and stated his support for the application.

The Board discussed the application. Due to the position of the existing dwelling at the extreme rear of the lot, the majority of the dwelling is already located within the required rear yard setback, and the proposed dormer additions are acceptable in that they do not encroach any closer into the rear yard than the existing dwelling and their impact is insignificant. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved.

Chair Harrison called the variance application of **Susan and Cesar Cuba, 23 Fairmount Avenue**. Susan Cuba was sworn and described the application. The dwelling is a bi-level home with the second level serving as the main floor. A wood deck, which has a surface equal with the second level of the dwelling, is proposed at the rear of the dwelling over an existing concrete patio that would remain. The proposed deck measures 30 feet wide by 15 feet deep, including the 2 sets of stairs and the landing between the stairs. The required rear yard setback for the property is 30 feet. A rear yard setback of 25 feet is proposed and a variance is requested. The existing dwelling coverage measures 1,134 square feet. The maximum permitted principal building coverage is 25 percent of the lot area or 1,500 square feet. The proposed deck measures 434 square feet. The total proposed coverage is 1,568 square feet, which equals 26.13 percent of the lot area and a variance is requested.

Marked into evidence were:

- A-1 Photograph of the rear of the dwelling
- A-2 Photograph of the bay window at the rear of the dwelling

The Board questioned the applicant. Chair Harrison called for questions and comments from the public.

John and Arlene Baiardi, 668 Ridgewood Avenue, were sworn and stated their concerns over the deck being at the second floor level of the home. Ms. Cuba stated that she would be willing to landscape the rear yard to provide screening.

The Board discussed the application. The Board concluded that a rear setback variance is justified due to the fact that the deck would not have the negative impact produced by the massing of a building addition, although the Board determined that the depth of the deck should be decreased by 2 feet to 13 feet, which yields a rear yard setback of 27 feet. With the reduction in the depth of the deck, the overall building coverage is reduced to 25.13 percent, which is a minor deviation that can be granted for the same reason as the rear yard setback in terms of massing. On motion by Mr. Whipple, seconded by Mr. Haizel, the application was approved, subject to the following conditions:

1. The approval is limited to an outdoor deck.
2. The rear yard setback shall not be less than 27 feet and the maximum principal building coverage shall not exceed 25.13 percent.

Chair Harrison called the variance application of **Mike and Jessica Freeman, 20 Van Vleck Street**. Mr. Fleischer was recused for this application. The owners and Lynn Williams, Architect, were sworn. Ms. Williams described the application. The property is a corner lot located at the intersection of Van Vleck Street and North Mountain Avenue and contains a 2½-story single-family dwelling with a detached garage. The lot measures approximately 42,230 square feet in area. The frontage width measures 214.98 feet on Van Vleck Street and 201.77 feet on North Mountain Avenue. Based on

the lot dimensions, the northerly yard opposite Van Vleck Street is the side yard, and the westerly yard opposite North Mountain Avenue is the rear yard. The applicants propose to demolish a small existing porch and basement stairway on the northerly side of the dwelling and construct a two-story addition and roofed porch in its place. The required rear yard setback for the property is 61.8 feet, which is equal to 30 percent of the lot depth. The existing dwelling has a nonconforming rear yard setback of 53.4 feet. The proposed addition and porch are aligned with the westerly wall of the dwelling and would have the same nonconforming rear setback of 53.4 feet as the existing dwelling.

Marked into evidence was:

A-1 3 Photographs of the subject property and a copy of the site plan on a board

The Board questioned the applicants. Chair Harrison called for questions and comments from the public.

Jonathan Alter and Emily Lazar, 73 Upper Mountain Avenue, were sworn and stated their concerns.

The Board discussed the application. The Board found the variance request acceptable considering the placement of the existing dwelling on the lot, the irregularities in yard designations caused by the corner lot configuration, and the fact that the plan conforms to all other zoning requirements by a wide margin. On motion by Mr. Whipple, seconded by Ms. English, the application was approved, subject to the following condition:

1. The applicants shall obtain Steep Slope approval from the Board Engineer.

Chair Harrison called the variance application of **Edward Billy, 159 High Street**. Ms. English was recused for this application. The applicant was sworn and described the application. The property is a corner lot, located at the intersection of High Street and Hilltop Place, and contains a 2½-story single-family dwelling with a one-story section at the rear. There is no garage on the property. The property is partially located in West Orange; the municipal boundary goes through the dwelling. The required rear yard setback for the subject property is 30.3 feet, which is equal to 30 percent of the lot depth. The existing dwelling has a nonconforming rear yard setback from the westerly property line of about 24 feet. A two-story addition is proposed at the rear of the dwelling that would be set back 25 feet from the rear property line. He stated that he had been in contact with representatives of West Orange and that the plan would also require a variance from the West Orange Board of Adjustment for a deficient rear yard setback. The existing nonconforming parking located between the dwelling and Hilltop Place has come into existence through a series of events in which the once detached one-car garage on the property was attached to the dwelling with an addition and converted into interior living space. The driveway that led to that garage was then modified to create the nonconforming parking area that presently exists.

Marked into evidence was:

- A-1 Photograph of the subject property as seen from Hilltop Place
- A-2 Photograph of the subject property as seen from Hilltop Place
- A-3 Photograph of the subject property as seen from Hilltop Place

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered.

The Board discussed the application. The Board determined that the rear yard variance is acceptable, since the rear yard setback of the addition is approximately 1 foot greater than that of the existing dwelling. The additional massing produced by the addition would not have a negative impact on any adjoining property and the existing dwelling is in need of additional living space to be modernized and accommodate a family. The Board also determined that due to the size and shape of the corner property and the location of the existing dwelling, there is not a better location on the property for the off-street parking and that the parking area is well shielded from view by existing vegetation, which mitigates any visual impact. On motion by Mr. Whipple, seconded by Ms. Cockey, the application was approved, subject to the following conditions:

1. The applicant shall obtain any variances that are required by the Township of West Orange.
2. Any central air conditioning units on the property shall conform to the zoning requirements.

Chair Harrison called the variance application of **Mountain Avenue Partners, LLC, 77 Upper Mountain Avenue**. Stephen Colbert and Evelyn Colbert, owners, John Reimnitz, Architect, and Sigrid Morgan, Landscape Architect, were sworn. Mr. Reimnitz described the property, the proposed addition to the dwelling, and the variances requested for the addition. The property is a corner lot located at the intersection of Upper Mountain Avenue and Alpine Street, measures 42,666 square feet in area, and contains a single-family dwelling with an attached garage at the rear of the dwelling. The existing driveway has an opening on Upper Mountain Avenue and an opening on Alpine Street. An addition is proposed at the rear of the dwelling that would contain interior living space on the ground floor and the first floor. The addition also contains a new attached 2-car garage at the ground floor that would replace an existing attached garage, and a terrace that is proposed at the first floor level. The required front yard setback from Alpine Street for the proposed addition is 50 feet. The existing dwelling has a nonconforming Alpine Street front yard setback that measures 39.58 feet at the existing front corner of the dwelling and 42.37 feet at the existing rear corner of the dwelling. The proposed addition is slightly recessed from the existing rear corner of the dwelling and is set back 42.88 feet from Alpine Street, and the front setback gradually increases to approximately 46 feet at the rear corner of the addition.

Marked into evidence were:

- A-1 Area Map and 2 photographs, on a board
- A-2 Rendered Site Plan, dated August 13, 2007, on a board
- A-3 Rendered front elevation drawing, and photographs, on a board
- A-4 Rendered Alpine Street elevation, and photographs, on a board
- A-5 Rendered first floor plan, on a board
- A-6 Rendered southerly side elevation, and photographs, on a board

Sigrid Morgan, Landscape Architect, described the proposed modification to the site. The existing driveway that leads into the property from Alpine Street and passes in front of the dwelling would be eliminated. The existing driveway entrance on Upper Mountain Avenue would be utilized for the new driveway configuration. A paved area for guest parking is proposed to be located between the dwelling and Upper Mountain Avenue. A 7-foot tall fence that includes a lattice top section is proposed for a length of 170 feet along the Alpine Street front property line and length of 8 feet along the rear property line near Alpine Street. This proposed fence exceeds the maximum permitted height of 4½ feet in this area of the lot and also does not comply with the requirement of an open fence design. She described a revised landscape plan which was distributed. The revised landscape plans submitted at the meeting depicted a retaining wall with a maximum height of 4 feet along the rear property line, with a 4-foot tall solid fence in the ground set back 1 foot from the top of the retaining wall. This results in a maximum combined height of 8 feet in an area of the lot where the maximum combined height is limited to 4½ feet. The applicants offered to replace the solid wood fence at the top of the retaining wall with an open fence to reduce the impact to the adjoining property. Mr. and Mrs. Colbert also described the proposed modifications to the property from their perspective.

Marked into evidence were:

- A-7 Revised Landscape Plan, dated August 15, 2007
- A-8 Landscape Elevations

The Board questioned the applicants and the witnesses. Chair Harrison called for questions and comments from the public.

Richard Schlesinger and Barbara Gordon, 96 No. Mountain Avenue, were sworn, and stated their concerns over any fences and retaining walls near the rear property line that would affect his property.

Jonathan Alter and Emily Lazar, 73 Upper Mountain Avenue, were sworn and stated their support for the application.

The Board discussed the application. The Board determined that the requested front yard setback variance can be approved since it is based on the location of the existing dwelling, and the proposed front yard setback is greater than that of the existing dwelling and increases towards the rear of the addition. The Board determined that the variance for the front yard parking area could not be granted because there is enough

space on the property to design a fully conforming parking area for guests, and no information was provided to demonstrate that the proposed location of this parking area is beneficial to an adjoining property owner or the public. The Board also determined that, with certain modifications such as setting the fence back and providing landscaping in front of the fence, the variance for fence height and design along Alpine Street could be approved considering the unique characteristics of Alpine Street, such as the topography of the area, the visibility of the rear yard, as well as the fact that there are no sidewalks on Alpine Street and no homes have their main front entrance on Alpine Street.

On motion by Mr. Fleischer, seconded by Whipple, the variance requested for the combined retaining wall and fence height along the rear property line, was unanimously denied. On motion by Mr. Fleischer, seconded by Whipple, the variance requested for front yard parking, was denied, Mr. Susswein and Ms. Cockey voting against the motion. On motion by Mr. Fleischer, seconded by Mr. Haizel, the variance requested for the front yard setback of the addition was unanimously approved. On motion by Mr. Whipple, seconded by Mr. Haizel, the variance requested for the height and design of fences in the Alpine Street front yard was approved, Chair Harrison and Mr. Fleischer voting against the motion. The approved variances are subject to the following conditions:

1. The 7-foot fence in the Alpine Street front yard shall be setback from the property lines a sufficient distance to allow for landscaping on the subject property in front of the fence.
2. The location of any central air conditioning units on the property shall conform to the zoning ordinance.
3. The applicant shall comply with the requirements of the Board Engineer's letter dated June 14, 2007.

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