

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**September 19, 2007**

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

ABSENT: Ms. English, Mr. Haizel, Mr. Rubenstein, Mr. Whipple, and Mr. Franco, Secretary

Assistant Secretary Charreun called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Fleischer, seconded by Mr. Susswein the **Minutes of the January 17, 2007** regular meeting were adopted. On motion by Mr. Susswein, seconded by Ms. Holloway the **Minutes of the January 31, 2007** special meeting were adopted, Mr. Fleischer abstaining. On motion by Mr. Fleischer, seconded by Mr. Susswein the **Minutes of the February 21, 2007** regular meeting were adopted. Ms. Cockey arrived at the meeting.

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Mark Citron and Barbara Friedman, 8 Wendover Road** was adopted:

**WHEREAS**, Mark Citron and Barbara Friedman, owners of property at 8 Wendover Road, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c to allow an easterly side yard setback less than required pursuant to **Montclair Code Section 347-46A(2)(a)** and a rear yard setback less than required pursuant to **Montclair Code Section 347-46A(3)** in connection with the construction of a detached garage on property designated as Lot 7 in Block 1606 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey, dated March 11, 1988, and a plot plan, floor plan, and elevations prepared by Heyrich Architects, dated April 26, 2007; and

**WHEREAS**, this matter came on to be heard at a regular meeting of the Board of Adjustment held on August 15, 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 60 feet in width and 7,806 square feet in area. 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.

2. The applicants 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.

3. 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.

4. 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.

5. 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.

**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 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 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 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 Mark Citron and Barbara Friedman is hereby approved, 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.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Peter and Marilynn Zaret, 346 North Mountain Avenue** was adopted:

**WHEREAS, Marilyn and Peter Zaret**, owners of property at **346 North Mountain 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 rear yard setback less than required pursuant to **Montclair Code Section 347-45D** in connection with the construction of second floor dormer additions on property designated as Lot 33 in Block 603 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey, dated October 2, 1998, and a plot plan, floor plans, and elevations prepared by Lineworks Architecture and Design, LLC, dated May 16, 2007; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on August 15, 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 on the westerly side of North Mountain Avenue in the R-1 One-Family Zone. The property measures 100 feet in width and 19,239 square feet in area, and contains a two-story single-family dwelling.

2. 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.

3. 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.

4. 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 and their impact is insignificant.

**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 Marilyn and Peter Zaret is hereby approved.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Susan and Cesar Cuba, 23 Fairmount Avenue** was adopted, as modified:

**WHEREAS**, **Susan and Cesar Cuba**, as owners of property at **23 Fairmount Avenue**, 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 their dwelling on property designated as Lot 48 in Block 4505 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, a property survey prepared by Canfora Surveying, Inc., dated June 19, 2001, and a packet of plans for the deck that includes a plot plan on a copy of the survey, deck plan, rear elevation of the deck, and a photograph of the rear of the dwelling; and

**WHEREAS**, this matter came to be heard at a regular meeting of the Board of Adjustment held on August 15, 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 in the R-1 One-Family Zone and contains a two-story single-family dwelling, with an attached garage at the front within the dwelling. The lot measures 60 feet wide by 100 feet deep and is located at the northerly end of Fairmount Avenue, where it meets the easterly end of Beverly Road.

2. 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.

3. The required rear yard setback for the property is 30 feet. The applicant is proposing a rear yard setback of 25 feet 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.

4. 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.

5. 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.

**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 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 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 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 Susan and Cesar Cuba is hereby 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.

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Mike and Jessica Freeman, 20 Van Vleck Street** was adopted:

**WHEREAS, Mike and Jessica Freeman**, owners of property at **20 Van Vleck Street** did make application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA40:55D-70c to allow a rear yard setback less than required pursuant to **Montclair Code Section 347-45D** in connection with the construction of a porch and a two-story addition onto the northerly side of their single-family dwelling, on property designated as Lot 5 in Block 1502 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicants submitted a property survey, dated February 18, 2005, and a plot plan, floor plans, and elevations prepared by Lynne Bright Williams, Architect, dated June 28, 2007; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on August 15, 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 a corner lot located at the intersection of Van Vleck Street and North Mountain Avenue in the R-1 One-Family Zone. The property contains a 2½-story single-family dwelling with a detached garage.

2. 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.

3. 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.

4. 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.

5. 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.

**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 Mike and Jessica Freeman is hereby approved, subject to the following condition:

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

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

On motion by Mr. Fleischer, seconded by Mr. Susswein, the following Resolution memorializing the approval of the application of **Edward Billy, 159 High Street** was adopted, as modified:

**WHEREAS**, **Edward Billy**, owner of property at **159 High Street**, did make application to the Board of Adjustment of the Township of Montclair for variances pursuant to NJSA40:55D-70c, to allow for a rear yard setback less than required pursuant to **Montclair Code Section 347-45D**, and to permit a front yard parking area pursuant to **Montclair Code Section 347-46C**, in connection with the construction of a two-story addition onto the rear of his single-family dwelling on property designated as Lot 2 in Block 2901 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey, dated June 24, 1986, and a plot plan, floor plans, and elevations prepared by Molinari Stubaus Architects, PA, dated April 17, 2007; and

**WHEREAS**, this matter came to be heard at a meeting of the Board of Adjustment held on August 15, 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 a corner lot, located at the intersection of High Street and Hilltop Place, and is located in the R-1 One-Family Zone. The property is partially located in West Orange; the municipal boundary goes through the dwelling. The property contains a 2½-story single-family dwelling with a one-story section at the rear, and there is no garage on the property. The lot measures approximately 7,794 square feet in area; the frontage widths measure 66.55 feet on High Street and 102.56 feet on Hilltop Place.

2. 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.

3. Although the addition increases the size of the dwelling and adds interior floor space, 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. Further, 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.

4. Based on Township permit records, 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 lead to that garage was then modified to create the nonconforming parking area that presently exists.

5. The Board 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.

6. The property is partially located in Township of West Orange and **Montclair Code Section 347- 26** requires that the plan also comply with the zoning

requirements of the Township of West Orange. The applicant indicated that he has been in contact with representatives of West Orange and that the plan would require a variance from the West Orange Board of Adjustment for a deficient rear yard setback.

**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 FURTHER RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of Edward Billy is hereby 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.

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

There were no eligible Board members present to vote on the Resolution memorializing the decision for the application of **Mountain Avenue Partners, LLC, 77 Upper Mountain Avenue**, and it was carried to the Board's next meeting on October 17, 2007.

The Board discussed the extension of time requested for the application of **Roger Dolden, 46 Wayside Place**, which is due to expire on October 26, 2007. After a brief discussion, a motion by Mr. Fleischer, seconded by Mr. Susswein, was approved to grant an extension of time through April 30, 2008.

Chair Harrison was recused and Vice Chair Fleischer called the application of **Omnipoint Communications, Inc., 153 Park Street** for the purpose of scheduling special meeting dates. James Pryor, Esq. appeared as attorney for the applicant and Terry Thornton, Esq., resident of 160 Park Street, and objector to the application gave their appearances. After some discussion, a motion was made by Ms. Cockey,

seconded by Mr. Susswein, to select October 3, 2007 and October 24, 2007 as special meeting dates for the application. No further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the application of **Ken Abrams, 17 Wayside Place**. Charles Glaws, Esq., appeared as attorney for the applicant. The Board briefly discussed the variances that are required; Mr. Sullivan stated public notice was sufficient. Mr. Glaws indicated that the owner was not present and that he had no other witness to present testimony. Mr. Sullivan stated that the Board may require testimony in order to satisfy the proofs necessary to grant variances. Chair Harrison stated that if no testimony was provided, the application could be decided based on the plans alone. Mr. Glaws indicated that due to the circumstances, he would request the application be adjourned to the next meeting of the Board. Chair Harrison announced that the application would be carried to the October 17, 2007 regular meeting of the Board, and that no further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the variance application of **Boris Schaefer, 26 Oxford Street**. The applicant was sworn and described the application. The property contains a 2½-story single-family dwelling and the driveway on the property leads to an existing concrete slab in the ground at northwesterly corner of the rear yard. A plastic shed is presently located on a portion of the concrete slab and would be removed from the property. A new detached garage is proposed on the existing concrete slab. The footprint of the concrete slab measures 18 feet in width by 18 feet in length and the proposed garage would have the same dimensions. Variances are requested in that side and rear setbacks of 6 feet are required, and a westerly side yard setback of 3.7 feet and a rear yard setback of 2.9 feet from the northwesterly corner and 3.0 feet from the northeasterly corner of the garage are proposed. A conforming height of 13.5 feet is proposed and all other zoning requirements are met.

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. Bob Kroeckel, 53 Cambridge Road, was sworn and stated his concern over the proposed garage setbacks and stated that no variances should be granted. The Board questioned Mr. Kroeckel.

Marked into evidence were:

- O-1 Photographs of the detached garage on Mr. Kroeckel's property
- O-2 Photographs of the applicant's rear yard
- O-3 Photographs of the applicant's rear yard

The Board discussed the application. The Sanborn Map indicates that a garage previously existed in the location of the concrete slab, and the testimony of an adjoining property owner to the rear at 53 Cambridge Road, also confirmed that fact. The Board determined that requested variances could be granted since the existing concrete slab is being utilized and the location and size of the proposed garage matches that of the garage that previously existed on the property. Additionally, and particularly in terms of

the requested side yard setback variance, the proposed garage is similar to many existing detached garages in the neighborhood. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved, subject to the following conditions:

1. Should a new foundation be required for any reason, the footprint of the proposed garage shall remain at 18 feet wide by 18 feet long.
2. The existing plastic shed on the existing concrete slab shall be removed from the property as indicated by the applicant.

William Ewing, Esq., attorney for the application of **Craftco, 14 North Willow Street** requested that the application be carried to next meeting of the Board scheduled for October 17, 2007. Chair Harrison announced the adjournment and that no further notice would be given. The Board was granted an extension of time on the application.

Chair Harrison called the variance application of **Jacques and Lauren Lapeyrolerie, 18 Hitchcock Place**. Mr. Lapeyrolerie was sworn and described the application. The property is a through lot and contains a 2-story single-family dwelling with a driveway along the easterly side of the dwelling that is accessible from Hitchcock Place. As a through lot, the subject property has front yards on Hitchcock Place and Hilltop Place, no rear yard, and two side yards on the easterly and westerly sides of the lot. There is no access to the subject property from Hilltop Place. An inground swimming pool is proposed to be located in the southerly front yard between the dwelling and Hilltop Place. The proposed pool measures 16 feet wide by 32 feet long. The mechanical equipment for the pool is located 10 feet from the dwelling, between the dwelling and the pool.

The Board questioned the applicant. Chair Harrison called for questions and comments from the public. None were offered. The Board discussed the application. The through lot condition for the subject property and other lots on Hitchcock Place was caused by the creation of Hilltop Place along the rear of these lots as a result of a major subdivision that was approved several years ago. The proposed location of the swimming pool and associated equipment is appropriate given the fact that the southerly yard between the dwelling and Hilltop Place functions as the rear yard for this property and the other through lots on Hitchcock Place. The subject property is also higher in elevation relative to Hilltop Place, which along with existing vegetation and fencing, obscures its visibility and minimizes any negative impact on the neighborhood. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved, subject to the following conditions:

1. The pool shall otherwise comply with all of the location requirements contained in **Montclair Code Section 305-6**.
2. No existing trees shall be removed to install the pool barrier fence depicted on the plan.

Chair Harrison called the variance application of **Bethany and Michael Russo, 143 Walnut Street**. The applicants were sworn and described the application. The subject property measures 25 feet in lot frontage width and 2,087 square feet in lot area. The property contains a 2-story single-family dwelling with no on-site parking. A second floor addition, measuring 16.5 feet wide by 12 feet long, is proposed over the existing one-story section at the rear of the dwelling. The proposed addition would not extend over the one-story mudroom entrance at the rear of the dwelling, but would have a cantilevered section that extends 3.5 feet beyond the existing one-story section of the dwelling along the easterly side of the dwelling. The existing dwelling is positioned at angle on the lot and has nonconforming side yard setbacks of 0.5 feet at the westerly front corner of the dwelling and 4.89 feet at the easterly rear corner of the two-story section of the dwelling. For the proposed addition, side yard setbacks of approximately 3.5 feet from the westerly side property line, and 4.5 feet from the easterly side property line are proposed, where 6 feet and 10 feet are required. The rear yard setback requirement for the subject property is 33.65 feet. The existing dwelling has a nonconforming rear yard setback of approximately 24 feet as measured to the one-story mudroom at the rear of the dwelling and the proposed addition has a rear yard setback of approximately 28 feet at its closest point. The property has an existing nonconforming principal building coverage of approximately 30.2 percent, where the maximum permitted is 25 percent. A principal building coverage of approximately 31.9 percent is proposed.

Marked into evidence was:

A-1 4 photographs of the interior and exterior of the dwelling

The Board questioned the applicants. Chair Harrison called for questions and comments from the public. Tim Goodwin, 145 Walnut Street, was sworn and stated his support for the application.

The Board discussed the application. The Board determined that the variances requested are justified based on the small size of the lot and the placement of the dwelling on the property. The decrease in the easterly side yard setback from 4.89 feet to approximately 4.5 feet is minimal and is dictated by the angled position of the dwelling. The rear yard setback of the addition is greater than the existing rear yard setback and the increase in principal building coverage is also minimal considering the relative size of the lot, the dwelling, and the addition. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved.

Chair Harrison called the variance application of **Marie Carnivale, 5 Rutgers Place**. The applicant was sworn and described the application. The property contains a 1½ story single-family dwelling with an attached one-car garage. An addition to the first and second floors of the dwelling is proposed at the rear of the dwelling. The rear yard setback requirement is 34.13 feet for the subject property, and the proposed addition would have a rear yard setback of 25.82 feet and a variance is requested. The plans submitted to the Board also depict a new deck at the rear of the proposed addition. The deck had a rear setback of 13.82 feet and the proposed principal structure coverage

including the deck was 27.08 percent, where a maximum of 25 percent is permitted. The applicant indicated that the deck would not be constructed, which significantly improves the proposed rear setback encroachment and also reduces the proposed principal structure coverage to approximately 22.8 percent, which eliminates the variance required for coverage.

Marked into evidence was:

A-1 Photographs of the subject property

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 concluded that the rear setback variance requested for the proposed addition is justified based on the placement of the dwelling on the property, which has a large front yard setback of slightly over 50 feet, excluding the open porch and attached garage, relative to the lot depth of 113.77 feet. The Board considered the fact that the large property to the rear of the subject property, which extends beyond the Municipal boundary and does not contain a building in Montclair, is likely to remain vacant due to the physical and environmental constraints on that property that would make development of that property in Montclair difficult. The Board also determined that the impact of the proposed addition on neighboring properties is minimal as it is in keeping with the nonconforming rear yard setback of the property located immediately to the west of the subject property. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved, subject to the following condition:

1. The deck depicted on the plans shall not be constructed.

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