

MINUTES OF THE BOARD OF ADJUSTMENT
October 20, 2010

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Ms. Holloway, Mr. Susswein, Mr. Whipple and Mr. Burr; also, Mr. Sullivan, Esq., Ms. Talley, Secretary, and Mr. Charreun, Assistant Secretary

ABSENT: Vice Chair Fleischer

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 Ms. English, seconded by Mr. Burr, Ms. Talley was appointed Secretary. On motion by Mr. Burr, seconded by Mr. Susswein, the **Minutes of the September 15, 2010** regular meeting were adopted as modified, Ms. Holloway abstaining.

On motion by Ms. English, seconded by Ms. Cockey, the following Resolution memorializing the Board's decision on the application of **Macrina Hamilton, 269 Grove Street** was adopted, Chair Harrison, Mr. Susswein, and Ms. Holloway abstaining:

WHEREAS, Macrina Hamilton, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c for additions proposed to the single-family dwelling on property designated as Lot 18 in Block 4512 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant requested the following variances:

1. A variance from **Montclair Code Section 347-45B(1)** for a front yard setback less than 25 feet;
2. A variance from **Montclair Code Section 347-45C(1)** for a northerly side yard setback less than 6 feet and a southerly side yard setback less than 10 feet; and
3. A variance from **Montclair Code Section 347-45A(2)** to exceed 2½ stories for a third floor dormer at the rear of the dwelling; and

WHEREAS, this matter came on to be heard at regular meetings of the Board of Adjustment held on August 18, 2010 and September 15, 2010 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated June 23, 1997 and plans dated April 16, 2010 consisting of existing conditions drawings and a plot plan, and proposed elevations and floor plans; and

WHEREAS, following the August 18, 2010 meeting, the applicant submitted for review at the September 15, 2010 meeting, revised plans also dated April 16, 2010 in response to concerns raised by the Board; and

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

1. The property is located in the R-1 One-Family Zone and contains a 2½ story single family dwelling with a one-car attached garage. The lot measures 48.42 feet in frontage width across the angled front property line, and measures approximately 4,778 square feet in lot area..

2. The proposal involves expanding the interior space of the first floor by infilling an enclosed porch at the rear of the dwelling; expanding the interior space of the second floor by building out a section of the northerly side wall of the second floor and the a section of the front wall of the second floor outward to the existing footprint; and expanding upward for a new third floor on the whole footprint under a new taller roof.

3. The changes to the footprint from a lot coverage perspective are minor, and include the columns proposed for the new roof covering the existing front stoop and steps, and the new unroofed rear stoop and steps. The proposed modifications require the demolition of the entire existing roof and entire existing northerly side wall, and sections of the existing front and rear walls.

4. The required front yard setback for new construction beyond what is existing on the subject property is 25 feet. The existing northerly front corner of the dwelling is nonconforming at 22 feet 9 inches from the front property line, and exists at one story. The proposal is to have a portion of the second floor built forward by 3 feet 8¼ inches to align with the existing northerly front corner of the dwelling and to match the nonconforming front yard setback, and a variance is requested. The front setback of the dwelling increases across the front yard in a southerly direction due to the angle of the front property line. The proposed roof to cover the existing front stoop and steps would have a front setback of 19 feet 6 inches at its closest point and a variance is requested.

5. The existing dwelling footprint has nonconforming side yard setbacks of 9.45 feet at the southerly side yard and 5.93 feet at the northerly side yard. A minimum side yard setback of 10 feet is required for one side yard, and 6 feet is then allowable for the other side yard. The extension of the northerly side wall rearward on the second floor and upward for the new third floor, and the extension of the southerly side wall upward for the new third floor along these nonconforming side yard setbacks require a variance.

6. The proposed third floor dormer at the rear of the dwelling requires a variance due to the width of the dormer. A dormer or the aggregate width of multiple dormers on the third floor at the rear elevation is limited to a maximum width 15.5 feet total or 50 percent of the building width of 31 feet in order to maintain a 2½ story design.

The original design of the proposed shed dormer at the rear elevation of the third floor measured 31 feet in width, which requires a variance. The revised plans reduced the overall width of the shed dormer from 31 feet to 28 feet 4¼ inches. The shifting of the dormer to the south by 2 feet 7¾ inches on the revised plan would also comply with the 6 foot side yard setback on the northerly side of the property.

7. The Board determined that based on the revised plans and subject to the condition below regarding the third floor dormer, all of the requested variances could be granted. The existing dwelling is small in size and the proposed modifications are reasonable to help to modernize the dwelling to accommodate a family. The proposed roof and columns at the front stoop is a reasonable functional improvement that has no impact on the streetscape. The building additions are aligned with the footprint of the dwelling and do not encroach further towards property lines, and the third floor dormer is at the rear of the dwelling and as redesigned would not negatively impact any neighboring properties; and

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

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of **Macrina Hamilton** is hereby approved, subject to the following condition:

1. The proposed at third floor dormer on the rear elevation shall be set back at least 3 feet from the northerly side wall of the dwelling.

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

On motion by Ms. Cockey, seconded by Mr. Burr, the following Resolution memorializing the Board's decision on the application of **Ruth E. Ross, 18 Vera Place** was adopted, Ms. Holloway abstaining:

WHEREAS, Ruth E. Ross, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to N.J.S.A. 40:55D-70c from

Montclair Code Section 347-45D for a rear yard setback less than required for a proposed deck at the rear of the dwelling, on property designated as Lot 11 in Block 2502 on the Township Tax Map and located in the R-1 One-Family Zone; and

WHEREAS, the applicant submitted a property survey dated July 12, 2010 and plans on 2 sheets prepared by Seth A. Leeb, AIA Architect dated June 25, 2010; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 15, 2010 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

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

1. The property is located in the R-1 One-Family Zone, contains a single-family dwelling and a detached garage, and measures 75 feet in width and approximately 111.5 feet in lot depth.

2. A deck is proposed at the rear of the dwelling. The rear yard setback requirement for the property is 33.5 feet, or 30 percent of the lot depth. The proposed deck has a rear yard setback of 30.8 feet, which requires a variance. The proposed deck encroaches into the required rear yard setback by approximately 2.7 feet.

3. There are no other variances required. The proposed principal building coverage measures approximately 21.4 percent of the lot area.

4. The Board took into account that the variance requested is for a deck and not for a typical building addition. The proposed deck is modest in size and the rear yard setback variance requested could be approved due to the location of the dwelling on the lot and the relatively shallow lot depth. Existing vegetation along the rear property line also limits the visibility of the deck which would not have a negative impact on any neighboring 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 proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the variance requested for a rear yard setback less than required is approved, subject to the following condition:

1. The variance granted for a rear yard setback less than required is limited to a deck as depicted on the plans submitted for the application.

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

On motion by Ms. English, seconded by Mr. Burr, the following Resolution memorializing the Board's decision on the application of **Ron Rudolph, 76 Christopher Street** was adopted, Chair Harrison, Mr. Susswein, and Ms. Holloway abstaining:

WHEREAS, Ron Rudolph, did make an application to the Board of Adjustment of the Township of Montclair for variances pursuant to N.J.S.A. 40:55D-70c to construct a detached garage and to extend the existing driveway on property designated as Lot 13 in Block 3309 on the Township Tax Map and located in the R-2 Two-Family Zone; and

WHEREAS, the applicant requested the following variances:

1. A variance from **Montclair Code Section 347-52** for a northerly side yard setback and a rear yard setback of less than 6 feet for the proposed garage; and

2. A variance from **Montclair Code Section 347-104** for a northerly side yard setback less than 1 foot for the driveway extension; and

WHEREAS, this matter came on to be heard at a regular meeting of the Board of Adjustment held on September 15, 2010 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

WHEREAS, the applicant submitted a property survey dated September 25, 2009, and a plot plan and drawings of the proposed garage; and

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

1. The property is located in the R-2 Two-Family Zone, measures 75 feet in width by 160 feet in depth and contains a single family dwelling. There is no garage on the property and the existing driveway ends in the northerly side yard.

2. A new detached garage is proposed in the northerly rear corner of the lot. It is evident from Sanborn Maps that a detached garage once existed in the northerly

rear corner of the lot, where a storage shed presently exists at approximately 2 feet from the northerly side property line and approximately 9 feet from the rear property line. There was no property survey available pertaining to the previously existing garage, which was removed years ago prior to the applicant's ownership of the property.

3. The footprint of the proposed garage measures 26 feet wide by 26 feet long. The garage would be a conforming 15 feet tall. The proposed garage would be set back 1.5 feet from the northerly side property line and 1.5 feet from the rear property line, which requires variances in that side and rear setbacks of no less than 6 feet are required.

4. The existing driveway ends in the northerly side yard. The existing driveway has portions that either have no setback from the northerly side property line or that extend up to 1.23 feet into the adjoining property to the north. No setback is proposed for the driveway extension from the northerly side property line, which requires a variance in that a minimum setback of 1 foot is required for the extension of the driveway that would lead up to the proposed garage.

5. The Board determined that in order to grant any setback variances for the detached garage, the footprint of the garage had to be reduced to be no greater than 22 feet by 22 feet. With that reduced footprint size, as well as the other conditions indicated below, the Board determined that a rear yard setback of no less than 3 feet can be approved considering the existing depth of the rear yard and location of the dwelling on the lot and the similar rear setback of other detached garages on neighboring properties.

6. In considering the variance requested for the northerly side yard setback of the proposed garage, the Board noted the location of a large existing tree located between the proposed garage and the existing detached garage on the neighboring property to the north. The Board also noted the side yard setbacks of existing detached garages on neighboring properties and determined that a variance could be granted with the reduced footprint size, as well as the other conditions indicated below. The Board determined that the proposed garage should be at least 4 feet away from the large existing tree described above, and also determined that the garage should not be any closer than 4 feet from the northerly side property line.

7. Based on the location of the dwelling on the property and an existing decorative retaining wall near the proposed driveway extension, the Board determined that the variance requested for the driveway setback could only be approved for the driveway extension as it approaches and reaches the retaining wall, as well as for the first several feet of the driveway extension as it passes the retaining wall and leads into the rear yard. At the point where the driveway passes the retaining wall, however, the driveway should begin to gradually move away from the property line so that it will conform to the 1 foot minimum side yard setback once the driveway is located in the area of the rear yard that is 6 feet west of the retaining wall.

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

WHEREAS, the Board, based on the aforementioned findings, concluded that the applicant proved that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair that the within application of **Ron Rudolph** is hereby approved, subject to the following conditions:

1. The proposed detached garage shall be limited to maximum dimensions of 22 feet wide by 22 feet long.
2. The rear yard setback shall be no less than 3 feet.
3. The proposed detached garage shall be at least 4 feet away from the large existing tree located between the proposed garage and the existing detached garage on the neighboring property to the north, and shall also not be any closer than 4 feet from the northerly side property line.
4. At the point where the driveway extension passes the retaining wall in the applicant's rear yard, the driveway should begin to gradually move away from the property line so that it will conform to the 1 foot minimum side yard setback from the northerly side property line once the driveway is located in the area of the rear yard that is 6 feet west of the retaining wall.
5. All roof leaders on the proposed garage shall be directed away from the rear property line and northerly side property line.

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

On motion by Ms. English, seconded by Ms. Cockey, the following Resolution memorializing the Board's decision on the application of **Sprint Nextel Corp., 641 Bloomfield Avenue** was adopted as modified, Ms. Holloway abstaining:

WHEREAS, Sprint Nextel Corp. (hereinafter "Sprint"), did make application to the Board of Adjustment of the Township of Montclair (hereinafter "Board") to install three

panel antennas, one GPS antenna and one dish antenna on the roof of the existing commercial building located at 641 Bloomfield Avenue (hereinafter "the subject property") designated as Lot 14 in Block 2209 on the Township Tax Map and located in the C-1 Central Business Zone; and

WHEREAS, the applicant requested variance relief from N.J.S.A. 40:55D-70d(3) for failure to comply with all of the conditional use standards contained in Montclair Code Section 347-17.1C(4); and

WHEREAS, the applicant submitted a site plan and details prepared by Ramaker & Associates, Inc. revised through April 28, 2010 consisting of Sheets T-1, Z-1 through Z-5; and

WHEREAS, this matter came on to be heard at meetings of the Board of Adjustment held on July 21, August 18 and September 15, 2010 at which time it was established the notice was properly published and the 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 located on the northerly side of Bloomfield Avenue between Midland Avenue and Valley Road contains 11,620 square feet in size upon which is situated a six story commercial building. The lot is split zoned, the southerly portion containing the building is located in the C-1 Central Business Zone and the northerly portion consisting primarily of a parking area is located in the R-2 Two Family Zone.

2. By resolution adopted February 26, 1992, the Board approved the application of Nynex Mobile Communications Company for variance relief to install twelve antennas on the roof of the building on the subject property. By resolution adopted January 15, 1997, the Board approved the application of Sprint Spectrum for variance relief to locate nine PCS antennas and one GPS antenna on the rooftop of the subject property. By resolution adopted December 11, 2000, the Montclair Township Planning Board approved the conditional use application of Nextel of New York, Inc. d/b/a Nextel Communications to install twelve panel antennas on the rooftop of the building on the subject property. By resolutions adopted July 20, 2005 and January 18, 2006, the Board approved the application of Omnipoint Communications, Inc. for variance relief to install six panel antennas, three equipment cabinets and one battery cabinet on the roof of the building of the subject property. By resolution adopted November 19, 2008, the Board approved the application of New Cingular Wireless PCS, LLC for variance relief to install twelve antennas, eight equipment cabinets and one GPS antenna on the roof of the building of the subject property. By Judgment of the Superior Court of New Jersey entered on October 13, 2009, the application of Metro PCS New York, LLC for variance relief to install six panel antennas, one GPS antenna and five equipment cabinets on the roof of the building of the subject property was approved.

3. The proposed antennas will be utilized by Clearwire Corp., a subsidiary of Sprint licensed by the Federal Communications Commission to provide wireless communication services which is in the process of a 4G wireless network build-out in this region, approval of which constitutes appropriate municipal action in a manner which promotes the public health, safety and general welfare consistent with the purposes of the Municipal Land Use Law.

4. The application contemplates the installation of three panel antennas, one in each of the alpha (rear), beta (southeasterly side) and gamma (northwesterly side) sectors. At the September 15, 2010 public hearing, Sprint amended the application to provide the panel antenna proposed in the gamma sector would replace an existing antenna and would conform to the ordinance. A twelve inch diameter dish antenna is proposed in the beta sector. The location of a proposed GPS antenna was revised at the September 15, 2010 public hearing to be mounted to the rear penthouse not to exceed one foot four inches above the height of the structure to which it is affixed. A new equipment cabinet is proposed in an existing room within the building.

5. The 1997 Sprint approval provided for the installation of nine panel antennas, however, only six were installed. Pursuant to Montclair Code Section 202-20, the variances associated with the antennas which were not constructed have expired.

6. The application complies with all the conditional use standards contained in the Montclair Township Zoning Ordinance except that the height of the panel antenna in the beta sector, the dish antenna and GPS antenna exceed the top of the parapet wall or penthouse to which they are attached, contrary to Montclair Code Section 347-17.1C(4)(c).

7. Based upon the size and location of the existing commercial building, the proposed roof top location of the site is particularly suited for wireless communication antennas and continues to be an appropriate site for the conditional use notwithstanding the deviations from the conditions imposed by the ordinance consistent with *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994).

8. Based upon the testimony of the applicant's RF Compliance expert, the proposed antennas and related equipment shall comply with all applicable State and Federal regulations for radiation transmission levels.

9. The visual intrusion caused by the height of the proposed antennas is minimal and will not adversely impact adjacent properties and is not inconsistent with the intent and purpose of the Zone Plan and Zoning Ordinance.

10. The application does not involve any noise, vibrations, smoke, dust, odors, heat or glare and thus will not cause substantial detriment to the public good and is not inconsistent with the intent and purpose of the zone plan and zoning ordinance.

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

proved by a preponderance of the evidence that the proposed relief could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Montclair, that the within application of Sprint for variance relief pursuant to N.J.S.A. 40:55D-70d(3) to permit installation of three panel antennas, one GPS antenna, two dish antennas and an equipment cabinet on the roof is hereby approved subject to the following conditions:

1. The applicant shall submit revised plans relocating the panel antenna in the gamma sector to replace an existing antenna in compliance with the ordinance and relocating the dish antenna to the rear penthouse. The dish and antenna and the GPS antenna shall not exceed one foot 4 inches above the height of the structure to which each antenna is affixed.

2. The antennas shall be painted to match the structure to which they are affixed.

3. The antennas not constructed by Sprint in accordance with the 1997 approval shall require application to the appropriate Land Use Board for approval.

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

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

It was announced that at the request of the applicant, a special meeting date to continue the application of **Omnipoint Communications, Inc., 153 Park Street** would be selected at the Board's regular meeting on December 15, 2010. The Board was granted an extension of time. It was announced that at the request of the applicant, the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the November 17, 2010 regular meeting. No further notice would be given. The Board was granted an extension of time through December 31, 2010. It was announced that at the request of the applicant, the site plan application of **Wallwood Gardens, Inc, 400 Orange Road** was postponed until the regular meeting of the Board in January 2011, which is not yet scheduled. The Board was granted an extension of time and the applicant would be required to complete a full public notice for that pending date.

Mr. Whipple arrived. The application of **Mr. & Mrs. Andrew Cohen, 119 Montclair Avenue** was called. Mr. Burr was recused. Mr. Cohen and George Held, Architect were sworn. Mr. Held described the application. The property is located in the R-1 One Family Zone, contains a single family dwelling, and measures 64 feet in width and 163 feet in depth. The proposed addition would expand the second floor and attic space of the dwelling and would be positioned over an existing one story section

located at the southerly side of the dwelling. The addition measures 9 feet 10½ inches by 19 feet 10 inches and would contain a bathroom and dressing room connected to the master bedroom on the second floor. The southerly side yard setback of the existing dwelling is nonconforming at 4.8 feet from the rear corner of the one story section at the southerly side of the dwelling where a minimum of 6 feet is required. The addition is aligned with the existing one story section and would have the same nonconforming side yard setback from the southerly side property line which requires a variance. The dwelling width is limited to 41.6 feet, or 65 percent of the 64 foot lot frontage width of the property. The existing dwelling measures 43.66 feet in overall width, which exceeds the maximum width of 41.6 feet permitted for the property by 2.06 feet. The proposed addition would extend the width of the dwelling for the areas above the first floor to the nonconforming width of 43.66 and a variance is requested.

The Board questioned the applicant. Mr. Held stated that the current plan is to trim the large evergreen tree near the proposed addition. The applicants would like to keep the screening provided by the evergreen tree. A large Oak in the front yard would also have to be trimmed and would also screen the addition from the street. The Board discussed the application and determined that the requested variances could be granted. The proposed addition is aligned with the existing one story section below it. The side yard setback variance is minimal and is caused by the angled positioned of the dwelling to the to the southerly side property line. The proposed widening of the second floor to match the first floor below it would also not result in the dwelling being out with character with the existing homes in the neighborhood. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved.

The application of **Robert M. Adler & Anne Marie Nolin, 235A Christopher Street** was called. Mr. Adler and Stephen Rooney, Architect were sworn. Mr. Rooney described the application. The property is located in the R-1 One Family Zone and contains a single-family dwelling. The lot is an irregularly shaped flag lot with 23.13 feet of frontage on Christopher Street and a total lot area of 10,564 square feet. The proposed addition would expand a second floor area of the dwelling to provide a larger bathroom and storage space. The existing dwelling has no setback from the northerly side property line. The northerly side wall in the area of the proposed addition would be extended eastward and upward under a new roof at this area of the dwelling and would be aligned with the existing northerly side wall with no setback, which requires a variance. The Board questioned the applicant. Mr. Adler stated that he has discussed the proposed addition with his neighbor to the north. The Board discussed the application and determined that the requested variance could be granted subject to the condition below. The proposed addition is small in size and is aligned with the existing northerly side wall of the existing dwelling it. The dwelling would remain in keeping with the character with the existing homes in the neighborhood. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was approved subject to the following condition:

1. Prior to construction of the addition, the applicant shall submit a letter from the owner of the adjoining northerly property that grants the applicant permission to access that property to the extent necessary for the construction of the addition.

The application of **Hillside Square, LLC, 8 Hillside Avenue** was called. David Owen Esq. appeared as attorney for the applicant and described the application. Robert Silver, of Hillside Square, LLC, was sworn. Mr. Silver described some of the other projects that he and his associates have been involved in within Montclair. He also described the recent background of Hillside Square's involvement in the subject property and the proposal and provided a general description of the plan and highlighted its benefits to the Township from his perspective. The Board questioned Mr. Silver. He stated that Hillside Square, LLC would own 100 percent of the property. He also answered questions about the LEED certification the applicant is pursuing and the usage of the garden space by children from nearby schools. No questions were offered from the public.

Mr. Owen called Paul Sionas, Architect, who was sworn. Mr. Sionas described the existing building and proposed modifications to the building in detail. The applicant proposes to modify the existing building and use the property for business offices, professional offices, medical offices and church use. The plan would include 18,310 square feet of general office space, 1,800 square feet of medical office space, and 2,992 for the church use with 117 seats. A small addition is proposed at the rear of the building to contain part of a new elevator. The floor plans were described in detail. The application calls for the removal of five mature trees. Extensive new landscaping would be provided throughout the site and was described in detail. Mr. Sionas also described the proposed signage on the building and throughout the site, the electric vehicle charging stations, and the proposed bollard light fixtures.

Exhibits marked:

- A-1 Property survey, dated 8/17/10, with color added, by Petry Engineering
- A-2 Renderings depicting the existing and proposed elevations, by Joe Zeff Designs
- A-3 "Cut Away" rendering depicting the elevation and floor plans by Joe Zeff Designs
- A-4 Reduced sized versions of A-2 and A-3
- A-5 Lower Level Floor Plan dated 10/5/10, with color added, by Sionas Architecture
- A-6 First Floor Plan dated 10/5/10, with color added, by Sionas Architecture
- A-7 Second Floor Plan dated 10/5/10, with color added, by Sionas Architecture
- A-8 Third Floor- Mezzanine Plan dated 10/5/10, with color added, by Sionas Architecture
- A-9 Landscape and Lighting Plan dated 10/5/10, with color added, by Sionas Architecture
- A-10 North Elevation dated 10/5/10, by Sionas Architecture
- A-11 Kid's Green Garden Plan dated 10/5/10, with color added, by Sionas Architecture

The Board questioned the witnesses. Mr. Sionas continued to describe the floor plan and the access points into the interior from the parking area. The proposed elevator addition would be partially visible from Orange Road, although existing deciduous trees and the existing homes on Orange Road would screen that view to a degree. Additional details were provided on the signage. Up to 4 vehicles can charge on the charging station. The landscape area at the corner of Hillside Avenue and Orange Road would be open the public. Mr. Silver indicated the public garden could be eliminated if the Board that it would be a problem. Mr. Silver also indicated that the medical office space proposed is intended to be limited to psychologists. Mr. Sionas described the lighting provided by the bollards in the parking area and the existing fencing. The public questioned the witnesses. Stephanie Wood, 62 Orange Road asked if the applicant was aware that there are other public parks and gardens in the area and asked about the noise level produced by the proposed central air conditioning units. Francisco Artigas, 64 Orange Road asked how many central air conditioning units are proposed and where the trash containers are located. He also asked about the plantings proposed along the easterly side property line behind his property and how headlights would be shielded from his view. Mr. Sionas stated that the exact number of central air conditioning units was not yet determined. Abe Williams, 68 Orange Road asked various questions about the plan. He asked about the elevator addition, the parking lot expansion, and the landscaping proposed near his property line. The Board had additional questions about the public garden space.

The Board took a 10 minute recess at approximately 9:55 p.m. Upon returning it was announced again that at the request of the applicant, the application of **T-Mobile Northeast, LLC, 118 Watchung Avenue** was postponed until the November 17, 2010 regular meeting. No further notice would be given. The Board was granted an extension of time.

Mr. Owen called J. Michael Petry, Professional Engineer, who was sworn. Mr. Petry described the existing site and proposed modifications to the site in detail. The driveway entrance on Hillside would be relocated and the parking area along the west side of the building and at the rear of the building would be expanded for a total of 75 parking spaces. A retaining wall ranging between 3 and 4 feet in height would be added near the eastern property line in order to allow for the expanded rear parking area. The existing and proposed drainage improvements were described in detail. The existing curbing and drainage structures for the existing parking lot are grossly insufficient and have a negative impact on the properties to the east. The proposed drainage design would greatly improve the collection of storm water runoff from the site. He addressed the Board Engineer's review letter dated September 7, 2010. The new parking area includes 21 compact car parking spaces. According to Ward's Auto Infobank, the 7 of the 10 best selling cars in America measure 16 feet or less in length, which would be considered compact vehicles. The average width of these 7 vehicles is slightly less than 6 feet. Two of the 10 best selling trucks or SUVs also measure 16 feet or less in length.

Exhibits marked:

A-12 Aerial Mapping, dated 8/30/10 by Petry Engineering

- A-13 Layout Sheet, dated 10/5/10, with color added, by Petry Engineering
- A-14 Grading and Drainage, dated 10/5/10, with color added, by Petry Engineering

The Board questioned the witnesses. Mr. Petry addressed several questions pertaining to the number and location of the compact parking spaces and possibly reconfiguring the parking layout. Mr. Sionas stated that trees are generally only available at smaller caliper sizes than the existing trees that are being removed. Mr. Petry also answered several detailed questions on the design of the drainage system. The public questioned Mr. Petry. Stephanie Wood, 62 Orange Road asked about the impact of the proposed drainage system on the roots of a large tree that is in her rear yard. Mr. Petry stated that the drainage system would not impact the tree described by Ms. Wood. At approximately 11:00 p.m. it was announced that the application would continue at the November 17, 2010 regular meeting of the Board. No further notice would be given. The Board was granted an extension of time.

Chair Harrison announced that the Board would go into closed session to discuss litigation. Mr. Sullivan distributed a resolution for that purpose. On motion by Mr. Whipple, seconded by Mr. Susswein, the following resolution was adopted:

WHEREAS, N.J.S.A. 10:4-12 (the Open Public Meetings Act) authorizes the Board to exclude the public from that portion of a meeting at which the Board discusses certain matters; and

WHEREAS, the Board is about to discuss such a matter, specifically, to discuss pending litigation entitled The Mental Health Association of Essex County, Inc. v. Board of Adjustment of the Township of Montclair, New Jersey, captioned in the Superior Court of New Jersey, Law Division, Essex County, and The Mental Health Association of Essex County, Inc. v. Township of Montclair, New Jersey and Board of Adjustment of the Township of Montclair, New Jersey, captioned in the United States District Court For The District of New Jersey; and

WHEREAS, the Board believes the public should be excluded from that discussion in order to discuss litigation strategy; and

NOW, THEREFORE, BE IT RESOLVED, by the Montclair Township Board of Adjustment on this 20th day of October, 2010, that the Board now go into closed session and the public be excluded and that the Board believes that the discussion conducted in the closed session may be disclosed to the public after final disposition of the litigation, including any and all appeals

The public left the room entirely and the Board went into closed session. Upon reconvening in open session, Chair Harrison stated that while in closed session the Board discussed the Federal lawsuit filed against the Township and the Board, and the State lawsuit filed against the Board, regarding the denial of the application of **The Mental Health Association of Essex County, Inc.** The Board unanimously approved a motion that authorized the Township Attorney to also defend the Board in the litigation in

both lawsuits, and to have Mr. Sullivan assist the Township Attorney to the extent necessary.

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